



---

## Appeal Decision

Site visit made on 7 December 2019

**by C L Humphrey BA (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 9<sup>th</sup> January 2020**

---

**Appeal Ref: APP/W0734/W/19/3235859**

**Land at Dell Close, Marton, Middlesbrough TS7 8JG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr Julian Astbury against the decision of Middlesbrough Borough Council.
  - The application Ref 18/0605/OUT, dated 7 September 2018, was refused by notice dated 10 June 2019.
  - The development proposed was originally described as 'Outline application with all matters reserved for the erection of up to 5. No dwellings'.
- 

### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The description of development set out in the banner heading above is taken from the application form. During the course of the application, the scheme was amended and an indicative plan showing 3 dwellings was submitted. It is this amended scheme which was determined by the Council, following further consultation with local residents. Both the Council's decision notice and the appeal form describe the proposed development as 'Outline application with all matters reserved for the erection of up to 3 No. dwellings.' I have considered the appeal on that basis, since no party would be prejudiced or caused any injustice by my doing so.
3. The Council's reason for refusal refers to, among others, Policies INFRA7 and INFRA8 of the then emerging Middlesbrough Local Plan. The Council has stated that work on the Local Plan has been paused and that these policies should not be afforded any weight in the appeal process. I have therefore not had regard to them.

### Main Issue

4. The effect of the proposed development on open space.

### Reasons

5. The appeal site is an area of open land situated at the west end of Dell Close, a short cul-de-sac of bungalows. The northern edge of the site is bounded by the back gardens of neighbouring residential development. At a lower level, to the south and west, lies Fairy Dell, an extensive area of woodland, parkland and ornamental lakes.

6. Both the appeal site and Fairy Dell form part of the designated Green Wedge and Primary Open Space areas of Marton West as set out in the Council's saved Local Plan (LP) Policies E2 and E7.
7. In relation to the designation as a whole, the appeal site covers a fairly small area, and is of a different character to Fairy Dell. However, the site creates an attractive, green and undeveloped space at one of the principal access points into Fairy Dell and makes a positive contribution to the character, appearance and amenity value of the area.
8. The Marton West Neighbourhood Plan (NP) recognises the importance of green space. NP Policy MW1 sets out that 'development will not be permitted which would have an adverse effect on the use, management, amenity or enjoyment of...that part of Fairy Dell which falls within Marton West' and goes on to state that 'applications which result in the loss of green space, mature trees, and landscaping which make a positive contribution to the character of the area and local amenity will be resisted'. Moreover, NP Policy MW3 states, among other things, that 'development should not result in the loss of existing amenity open space unless it is replaced by open space of a similar or improved area and quality within the development'.
9. The appeal scheme would result in the loss of existing amenity open space. Although the submitted plan indicates that two areas of open land would be retained to the west and south-west of the proposed development, they would be very small and would provide an inadequate visual transition between the built form and the entrance to Fairy Dell. The resultant open space would thus not be of a similar or improved area and quality as required by NP Policy MW3.
10. Distances between the proposed development and Fairy Dell would be greater than those between the existing dwellings on Montrose Close and Fairy Dell. However, there is no public access to the open space from Montrose Close and, as such, the situations are not directly comparable.
11. For the reasons set out above I conclude that the proposed development would have a harmful effect on open space, contrary to NP Policies MW1 and MW3 and LP Policies E2 and E7.

### **Other Matters**

12. The appeal proposal was revised following discussions with Council officers, who subsequently recommended approval of the scheme. However, the local planning authority is not bound to accept the recommendations of its officers. I have assessed the appeal on the basis of the planning merits of the case.

### **Planning Balance and Conclusion**

13. I have found harm in respect of the main issue and have identified conflict with relevant development plan policies. The weight to be given to these policies does not hinge on their age. Rather, the National Planning Policy Framework (Framework) makes it clear that due weight should be given to existing policies according to their degree of consistency with the Framework.
14. The importance of access to a network of high quality open spaces is noted by the Framework, which states existing open space should not be built on unless it is surplus to requirements, the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and

quality in a suitable location or the development is for alternative sports and recreational provision the benefits of which clearly outweigh the loss. The development plan policies which are most important for determining the application are largely consistent with the open space and recreation policies in the Framework.

15. Set against the harm identified, there would be some social and economic benefits associated with the proposal, including the creation of jobs during the construction phase, additional support to local shops and services and revenue to the Council, and the provision of new bungalows in an accessible location. However, 3 additional units would make little difference to the overall supply or range of housing and the support these extra households would provide to the local economy would be insignificant.
16. I note the proposed improvements to the footpath across the site which leads to the stepped access into Fairy Dell. However, the existing path provides a legible and accessible link to Fairy Dell. Moreover, I have no evidence that any such environmental benefits could not be achieved through other means.
17. An absence of harm in relation to matters such as highway safety, flood risk, ecology and residents' living conditions are neutral factors which weigh neither for nor against the appeal scheme.
18. There is very limited evidence before me regarding housing land supply. However, even if I were to conclude there was a shortfall in the five year supply of deliverable housing sites and that consequently the policies which are most important for determining the proposal were out-of-date, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply.
19. The proposal would conflict with the development plan and there are no material considerations, including the provisions of the Framework, which indicate that the decision should be taken otherwise than in accordance with it. Therefore, for the reasons given above and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

*CL Humphrey*

INSPECTOR