



APPEAL STATEMENT OF CASE

**REFUSAL OF APPLICATION 2020/60/93432/E - OUTLINE APPLICATION FOR ERECTION OF
RESIDENTIAL DEVELOPMENT (2NO. DWELLINGS)**

LAND AT WHITLEY ROAD, WHITLEY LOWER, WF12 0LZ

PREPARED FOR: MR P COLLINS
PREPARED BY: JAMES ROBERTS (MRTPI)



www.jrplanning.co.uk



07736459320

1. INTRODUCTION

1.1

The statement describes the grounds of appeal in relation to a refused outline planning application for the construction of two dwellings on land at Whitley Road, Whitley Lower. Planning permission was sought from the Local Planning Authority (LPA), Kirklees Council.

1.2

The planning application was validated by the LPA on 22 October 2020 (reference 2020/60/93432/E). The application was refused for the following single reason on 30 March 2021:

“The application site lies within the Green Belt, within which development is severely restricted. The application comprises the erection of two new dwellings, which is considered to constitute inappropriate development within the Green Belt and no very special circumstances have been provided to outweigh the harm by reason of inappropriateness. As such, the proposed development would result in harm to the openness of the Green Belt and fails to comply with the aims of Chapter 13 of the National Planning Policy Framework.”

1.3

As will be discussed in more depth below, the reason for refusal is fundamentally flawed and does not stand up to scrutiny. We are strongly of the opinion that the scheme represents an appropriate form of development in the Green Belt because it is a form of limited infilling within a village. It is therefore in accordance with paragraph 145 of the NPPF and paragraph 19.31 of the Kirklees Local Plan (KLP).

1.4

This appeal statement focusses solely on the reason for refusal in respect of Green Belt considerations, and specifically the issue of whether the proposal represents a form of limited infill development within a village. It is common ground between us and the LPA that there is no harm in terms of residential amenity, highway safety, trees and ecology or any other material planning considerations. A comprehensive Planning Statement was submitted with the application which sets out the planning history and policy background and discussed all material planning considerations. These matters, excluding the issues specific to the reason for refusal, are therefore not repeated in this statement of case.

1.5

The conclusion is reached that the proposal is not in conflict with either the adopted development plan or national planning guidance. There is no justification for the refusal of the application and the LPA's final determination of the application is therefore severely flawed.

2. THE ISSUES

2.1

Both local and national policy makes provision for limited infilling within villages in the Green Belt. Our planning statement that was submitted with the application demonstrated that the proposal is an acceptable form of development within the Green Belt and fully complies with all relevant policies in this regard.

2.2

The LPA took the view that the site is not within a village and does not represent infill development. We fundamentally disagree with the LPA on both these points and believe that conclusion must be reached that the scheme constitutes limited infill development within a village. This statement firstly considers the issue of whether the site is within a village, and then goes on to examine the issue of whether it amounts to a form of limited infill development.

3. WHETHER THE SITE IS LOCATED WITHIN A VILLAGE

3.1

The LPA's delegated report discusses the question of whether Whitely Lower is a village and states the following:

"It is considered that, for Whitley Lower to be deemed a village location, there should be sufficient local services/amenities for the occupiers of the village to meet their daily needs. In this instance, it is clearly the case that any future occupiers of this application site would be reliant on the use of private cars for day-to-day facilities, such as shops, schools, doctors and hairdressers for example. These needs could not be met within the existing settlement. For these reasons, it is concluded that the application site does not fall within a village location."

3.2

We assert that the LPA's requirement for a settlement to have sufficient services and facilities to meet all daily needs of residents in order to be classed as a village is wholly unreasonable and unjustified for the following reasons:

- There is no basis on planning policy for this requirement;
- There is no basis in case law for this requirement;
- Application of such a stringent requirement would, in practice, exclude any development happening under the limited infilling in villages section of paragraph 145 of the NPPF; clearly contrary to the intention of central government policy.

These matters are discussed in more detail below.

3.3

In terms of the planning policy and case law basis for the LPA requiring that a settlement has all the services and facilities to meet residents' daily needs in order to constitute a village for the purpose of paragraph 145, we are very unclear about what the LPA's policy justification for such a strict definition of a village is.

3.4

We assert that very few villages provide all the day to day amenities and services to allow residents to not have to leave the settlement by means of private car, which is what the paragraph above appears to suggest is the requisite criteria.

3.5

The delegated report suggests that hairdressers and doctor's surgeries are both defining features of villages. This is, in our view, a wholly unrealistic and unreasonable position to take. Hairdressers are widely accepted to be a town centre use. Whilst they may feature in some smaller settlement high streets, we are astounded that a hairdresser has been identified as an essential daily facility that defines whether or not a settlement is a village. Many, many villages around the country do not have a hairdresser and it is perfectly reasonable expectation that residents of villages may well have to travel outside of their village to obtain hairdressing services.

3.6

We also believe that the LPA's requirement for a settlement to have a doctor's surgery in order to be classified as a village is, perhaps sadly, a completely archaic and unrealistic one. There has been a strong trend in recent years for the closure of smaller medical practices in favour of larger group practices. The closure of GPs practices has been most apparent in rural areas. A Pulse Magazine investigation found that in 2018 almost 140 GP surgeries closed. This has been attributed, at least in part, to a central government requirement for all GPs practices to sign up to care networks that service between 30,000 and 50,000 patients. Clearly, doctors' surgeries in villages with a few hundred residents are not going to be sustainable in some cases. Using the presence of a doctor's surgery as a defining factor of a village is therefore completely unreasonable. There are many large settlements that are clearly villages or smaller towns that do not have a doctor's surgery.

3.7

We therefore strongly assert that the LPA's requirements for the definition of a village have no basis in planning policy or guidance. It will also be noted that the objectors to the appeal proposal describe the site as within the village.

3.8

Case law has established that, contrary to the position taken by the LPA in this case, the normal, everyday definition of a village should be used to interpret the meaning of "village" in the NPPF. Case

law dictates that whether a settlement is a village is essentially a matter of fact and degree. A logical starting point is the Oxford dictionary definition:

"A group of houses and associated buildings, larger than a hamlet and smaller than a town, situated in a rural area."

3.9

Conversely, a hamlet is described as:

"A small village, usually without a church"

3.10

When carrying out a desktop review of Whitley Lower it is exclusively described as a village:

https://en.wikipedia.org/wiki/Whitley_Lower

<https://www.thornhillparishchurch.org.uk/whitleyparishchurch.htm>

<https://www.streetlist.co.uk/towns/west-yorkshire/whitley-lower>

3.11

Whitley Lower contains a church which appears to be a clear defining feature between a village and a hamlet. The following are all key indicators that the settlement is indeed a village using the normal, everyday understanding of the word:

- The population of Whitley Lower is thought be in the region of 300;
- the settlement contains a public house – a key community hub of village life;
- the settlement contains a church – again, a key community hub of village life;
- the settlement also contains a playground, community centre, a number of farms, bus stops, and a village notice board – all key indicators of a village.



3.12

These services and facilities are all much more appropriate indicators of a settlement being a village, and being a hub of village life, rather than the LPA's highly questionable requirement for a hairdresser. The services in Whitley Lower constitute a very good provision of services for a rural village. The suggestion that the settlement is not a village because it does not have a school, hairdressers or doctors is untenable.

3.13

The issue of how a village should be defined for the purposes of paragraph 145 of the NPPF was a key aspect of appeal reference APP/B3438/W/18/3211000 at the settlement of Ridgeway in Staffordshire Moorlands. The Inspector took the Oxford dictionary definition to be the correct explanation of what a village is, and what the difference between a village and a hamlet is.

3.14

In the Ridgeway case, the Inspector found in favour of the LPA's decision that the settlement was a hamlet. The Inspector placed a great deal of weight on that fact that there was no longer a church in the settlement and this was a key defining feature of a village. Given that there is a church in Whitley Lower, as well as the numerous other community facilities and services set out above, it is clear that the application of the same definition of a village as was applied in the Ridgeway case must lead to the conclusion that Whitley Lower is a village.

3.15

It should also be noted that the Inspector in the Ridgeway case found that it was acceptable for residents to need to travel to other nearby settlements to access shops. The lack of a shop in Whitley Lower therefore has no bearing of the status of the settlement as a village.

3.16

In light of these appeal decisions, there should be no doubt at all about what defines a village for the purposes of paragraph 145 of the NPPF. The LPA has no basis on which to substantiate trying to impose a stricter definition. Their view that a village has to have all the facilities and services to meet daily needs has absolutely no basis in planning policy or case law and is an unreasonable position to take.

3.17

We also believe that the physical form of settlement should be taken into consideration, as well as the facilities that it contains. This principle was applied in appeal reference APP/B1605/W/19/3225401 in the Prestbury area of Cheltenham.

3.18

Again, in this appeal the Inspector turned to the dictionary definition of a village, further confirming that the LPA in our case have been unreasonable in applying their own stricter definition. Of further relevance though is that the Inspector placed weight on the formation of the settlement itself and considered the boundaries of the settlement and stated that *“A village would normally be expected to have its own visual separation from surrounding settlements and particularly nearby larger towns and cities.”*

3.19

As well as the good range of settlements that has been discussed further above, we have therefore also considered the grain of the settlement with the following questions in mind:

- Does the settlement have what could reasonably be considered a village centre?
- Is there an envelope form to the village, or is development sporadic or forming of a suburb of a larger town?

We believe there is no doubt at all about the answer to these questions which both help to solidify the view that the settlement is a village.

3.20

As the aerial image below indicates, the settlement has a strong nucleus to the eastern side of the reservoir:



This is the area where the public house, church and most of the housing in the settlement is located. This area can clearly be identified as the village centre.

3.21

We therefore conclude that, having regard to planning policy and case law, there can be no reasonable conclusion other than that Whitley Lower is a village for the purposes of paragraph 145. In further support of our appeal case, we must question clear conflict between the LPA's definition of a village and the central government's clear intention to allow for limited infilling in rural Green Belt villages.

3.22

If the LPA's view of what constitutes a village is followed through, we must question if any rural green belt villages exist at all? Settlements with the services quoted by the LPA (shops, schools, doctors' hairdressers, etc) would have to be sizeable to accommodate all these services, as well as a very significant number of houses to support them all. Such a settlement is highly unlikely to lie within the

Green Belt. What the LPA are describing is a characteristic of a very large village or small town, and not a rural village.

3.23

As such, by taking this approach the LPA are effectively putting a blanket ban on any development under paragraph 145 of the NPPF. If no settlements exist that meet the LPA's totally unrealistic and unfounded definition of a rural village in the green belt, then the LPA are directly blocking the central government intention that infilling in rural villages should be allowed. The LPA's approach is perverse.

3.24

To demonstrate how obstructive and unreasonable the LPA's approach is in practice, we have carried out an examination of the Green Belt map for the whole of Kirklees. This clearly shows that there are no settlements within the Green Belt that are of a size that would meet the LPA's definition of a village.

3.25

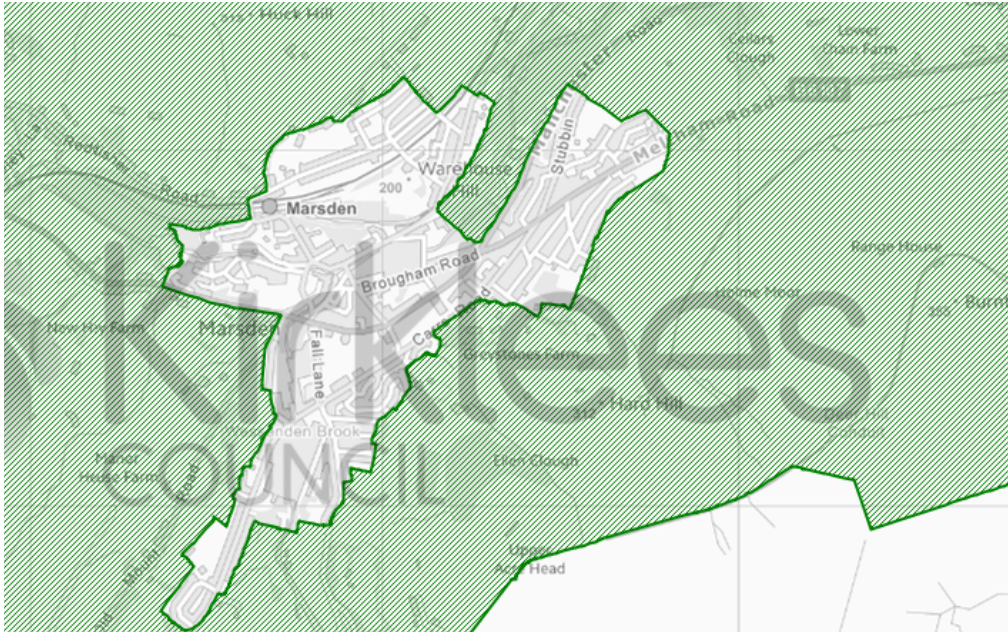
All the built-up areas with sufficient services and facilities to meet the LPA's definition of a village are excluded from the Green Belt. None of the rural villages within the Green Belt have sufficient services and facilities to meet the LPA's strict definition of what constitutes a village.

3.26

It's abundantly clear that any rural settlement that meets the LPA's unreasonable definition of a village has to be of such a size that it does not serve any purpose to include that land within the Green Belt.

3.27

To highlight this point, rural settlements within the Kirklees area that would seem to meet the LPA's definition of a village can be considered. Settlements such as Marsden and Golcar are rural settlements contain the range of services the LPA require to meet their village definition, but are excluded from the surrounding Green Belt land for the very obvious reasons that the settlements are so large that they can serve no green belt purposes:



3.28

We therefore come back to the normal, everyday meaning of a village and the dictionary definition that has been accepted by Inspectors in several decisions as being the correct application to paragraph 145. Taking into account the following:

- Relevant planning policy and guidance;
- Relevant case law;
- The clear conflict between the LPA's criteria for defining a village and the government's clear intention to allow infilling in rural villages in the Green Belt;

The conclusion must be reached that Whitley Lower is a village for the purposes of paragraph 145.

3.29

Because the settlement is a village, paragraph 145 is engaged. It should therefore be considered whether the proposal represents a form of infill development.

4. IS THE PROPOSAL A FORM OF INFILL DEVELOPMENT?

4.1

The LPA has taken the view that the application site is not an infill plot because of the size of the site. The delegated report states:

“...the site must also constitute a suitable infill plot for the purposes of Local Plan paragraph 19.31, which states that the site must be small, normally sufficient for no more than 2 houses, and within an otherwise continuously built-up frontage. The plot as identified in the application is approximately 0.15ha in size, which at a standard density of 35 dwellings per hectare (as set out in Policy LP7 of the KLP) could accommodate 5 dwellings. This means that the site is too large to constitute an infill plot, irrespective of the size of the plots to the west.”

4.2

We disagree that the site is too big to be considered an infill plot. The submitted plans show that two houses would be comfortably accommodated within the site in a manner that reflects the existing pattern of development in the village. The suggestion that 35 dwellings per hectare is an appropriate guide completely fails to take into account the rural village setting or the pattern of development in the locality. A development of 35 dwellings per hectare would be significantly denser than any of the surrounding plots.

4.3

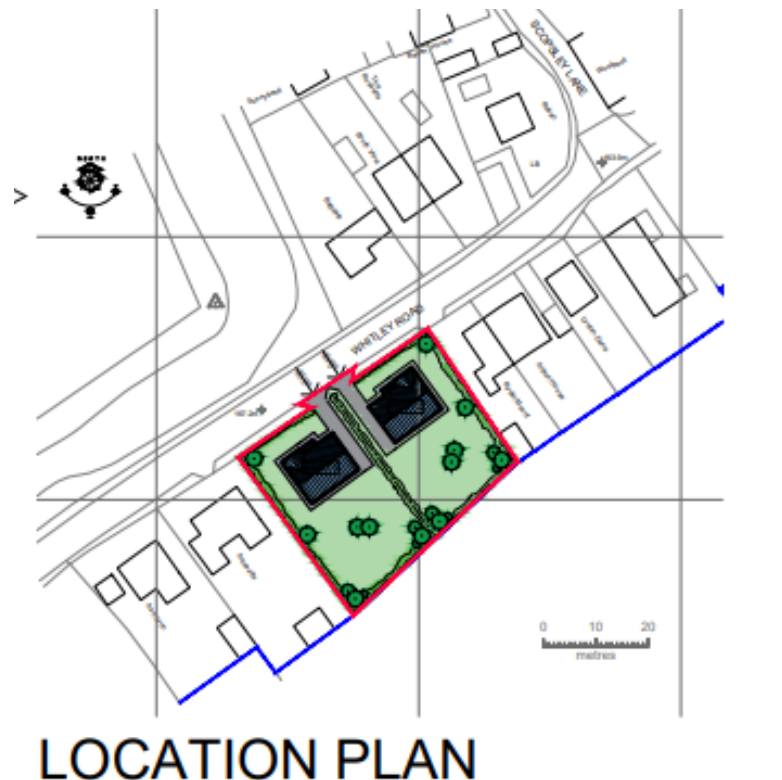
Each of the two plots as shown on the submitted plans would be a very similar size to the plots immediately to the west of the site at Aquaville and Ash Lyn. By applying such an arbitrary formula in respect of housing density, the LPA has completely failed to properly consider the character of the application site and the existing built form in the village. We contend that the site is indeed of an appropriate size for two dwellings and therefore meets the requirements of the local plan policy to be considered an infill plot.

4.4

The delegated report goes on to say that:

“The character of the road frontage is not continuously developed, but rather one of sporadic development forming part of the transitional landscape between the settlement and the countryside.”

We dispute the accuracy of this statement as a clear matter of fact. The location and site plans show that the application site sits in between a continuously developed frontage on either side:



4.5

The proposed development would form an entirely comfortable addition to the built frontage along Whitley Road. The development site is small, suitable for two dwellings, and within an otherwise continuous built frontage. This is therefore compliant with paragraph 19.31 of the Local Plan.

4.6

We believe that when the character of the site and the surrounding existing built form is properly taken into account, the conclusion must be reached that the site is an acceptable infill plot. Appeal decision APP/F2360/W/20/3244797 (Chain house Lane, Lancashire) discusses this matter and the Inspector concludes:

“...there is nothing in paragraph 145 or Policy G2 that states or implies that the exception can be met only through development of small gaps between existing buildings. The matter has to be assessed in the context of the sites location and the form of development proposed.

Whether the proposal constitutes limited infilling is, therefore, a question of fact and planning judgement having regard to the nature and size of the proposed development, the location of the site and its relationship to existing development adjoining and adjacent to it.”

The LPA have failed to use any real planning judgement and have failed to take into account the nature of the site and surrounding area.

4.7

The LPA has clearly placed a great deal of weight on a 2003 appeal at the site that was dismissed and the Inspector found that the proposed development was not a form of infill development. However, that decision pre-dates all current adopted national and local planning policy and guidance (i.e. the NPPF and the KLP).

4.8

Also, significantly, the application now under consideration is a materially different development to the one dismissed at appeal in 2003. As such, the proposal must be reconsidered based on the merits of the development as now proposed, as well as up-to-date policy, guidance and case law.

4.9

We believe that the site sits in a continuous built frontage and is of a suitable size for two new dwellings. It is therefore a limited infill development and is an appropriate form of development within the Green Belt, fully in accordance with paragraph 145 of the NPPF and paragraph 19.31 of the KLP.

5. CONCLUSION

5.1

For the reasons set out above, it is clear that the criteria that the LPA has applied to considering whether Whitley Lower is a village is unreasonable and has no basis in planning policy or case law. When the well-accepted everyday meaning of “village” is applied, it can only be concluded that Whitley Lower is a village, and paragraph 145 of the NPPF is therefore engaged.

5.2

It has also been demonstrated that the proposal represents a form of limited infilling within the village. The proposal is therefore an appropriate form of development within the Green Belt that is supported by paragraph 145 of the NPPF and paragraph 19.31 of the KLP.

5.3

The LPA's reason for refusal therefore does not stand up to scrutiny and the appeal should be allowed.

James Roberts (BA, MSc, MRTPI)