



Appeal Decision

Site visit made on 7 October 2019

by Helen B Hockenhull BA (Hons) B.PI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28 October 2019

Appeal Ref: APP/A4520/W/19/3223626

Existing Equestrian and Paddock land, south of Undercliff, Cleadon Lane, Cleadon, Tyne and Wear, SR6 7UX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr and Mrs Craig and Caroline Fitzakerly against the decision of South Tyneside Metropolitan Borough Council.
 - The application Ref ST/0467/18/FUL, dated 8 May 2018, was refused by notice dated 28 August 2018.
 - The development proposed is the redevelopment of equestrian site for single dwelling house and restoration of historic gardens.
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Decision

1. The appeal is allowed and planning permission is granted for the redevelopment of equestrian site for single dwelling house and restoration of historic gardens on Existing Equestrian and Paddock land, south of Undercliff, Cleadon Lane, Cleadon, Tyne and Wear, SR6 7UX in accordance with the terms of the application, Ref ST/0467/18/FUL, dated 8 May 2018, subject to the conditions in the attached schedule.

Main Issues

2. The main issues in this case are
 - whether the proposal is inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and development plan policy;
 - the effect of the development on the openness and purposes of the Green Belt;
 - the effect of the proposal on the setting of the Grade II Listed Undercliff and whether it would preserve or enhance the character or appearance of the Cleadon Conservation area;
 - the effect of the proposal on the biodiversity and ecology of a designated local wildlife site, Undercliff Pond;
 - if the proposal is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

3. The appeal site is located approximately 500 metres east of the village of Cleadon. It forms part of the historic estate of Undercliff, a Grade II Listed Building which also lies in the Cleadon Conservation Area. The site is located within the Green Belt.
4. Undercliff was formerly a country manor house set in 10 acres of grounds, built between 1853–1855 for the Allison family. The property and associated outbuildings were subdivided and converted in the late 1970's to provide six separate residential properties. The appeal site forms part of the gardens to the main house and has been in equestrian use since 1980. There is an existing single storey stable building on the site. Several features of the original garden remain including the Undercliff Pond, the original sluice gate and pond infrastructure, estate boundary walls, a stone seating area overlooking the pond and natural spring with stone surround.

Inappropriate development

5. The Framework states that inappropriate development in the Green Belt is by definition harmful and should not be approved except in very special circumstances. Paragraph 145 states that the construction of new buildings in the Green Belt shall be regarded as inappropriate development. One exception to this is the limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt than the existing use.
6. There is no dispute between the parties that the stable building and the area of hardstanding immediately surrounding it would form previously developed or brownfield land. I agree with this assessment. The appellant however has argued that the entire site should be viewed as previously developed because the paddock is incidental to the stabling of horses and thus forms part of its curtilage.
7. The Framework in Annex 2 defines previously developed land as land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole curtilage should be developed). In the appeal case, from my observations on site, I consider that the grassed paddock area, whilst it may be ancillary to the stable use, is too extensive an area to be considered part of the curtilage of the stable block. The appeal site is therefore only partly previously developed.
8. I have had regard to the appellant's views that the site forms part of the same planning unit. Whilst the use of the land as paddock may be ancillary to the stable use and therefore part of the same planning unit, it does not follow that the whole site should be described as previously developed. A different assessment is required having regard to the definition of previously developed land in the Framework.
9. The proposed dwelling with garage and associated parking/manoeuvring area would extend beyond the footprint of the stable building and its immediate curtilage into undeveloped areas of the site. Accordingly, as the development would extend into land that is not previously developed, the proposal would not accord with the exceptions stated in paragraph 145 of the Framework and

would form inappropriate development in the Green Belt. The proposal would also be contrary to Policy EA1 of the South Tyneside Local Development Framework - Core Strategy 2007 which seeks to protect and enhance the Green Belt.

Openness

10. Paragraph 133 of the Framework advises that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.
11. Openness has a visual aspect as well as a spatial aspect. The proposed dwelling would have a ridge height around 1.35 metres lower than the existing stable building. It would therefore be less visible than the existing building on the site from external viewpoints, though glimpses would likely be achievable through gaps in the trees on the western site boundary and when looking down the driveway from Cleadon Lane.
12. Within the site itself, it is proposed to replace the existing timber panel fence along the drive with a hedgerow feature. The lower height of the proposed dwelling would again result in the proposal having a lesser visual impact from this viewpoint.
13. The Council has raised concern that the dwelling would result in an intensification of use when compared to the existing equestrian activity which would impact negatively on openness. I have had regard to the Appellant's Technical Note outlining that the traffic movements to and from the stables on a daily and weekly basis would be around 50% less than the existing use. I conclude that in this regard, the appeal proposal would have a lesser impact on openness than the current equestrian use.
14. The absence of visual intrusion however does not in itself mean that there is no impact on the openness of the Green Belt. In terms of the spatial impact, when compared to the existing stable block, the appeal scheme would result in an increase in footprint of around 56% and an increase in volume of approximately 146%.
15. I accept that the design measures incorporated into the scheme, such as making use of the contours of the land and setting the building into the site to create a partially subterranean dwelling, would to some extent reduce the spatial impact of the proposal. However, I consider that overall, the extension of built form on the site, the footprint and volume of the dwelling, together with external areas of hardstanding for parking etc, would encroach into areas currently free from development. This would result in harm to openness.

Heritage Assets

16. Built in the 1850's by a prominent local merchant, Undercliff formed a private residence set in generous gardens. The estate boundary walls and mature planting provide seclusion and privacy. This style of landscape design is representative of the period. Historic maps show terraced informal and formal garden areas as well as an area for growing produce. The grounds provide amenity to the house but also contribute to its setting. The relationship of the house and garden is integral to the significance of the site.

17. Redevelopment and conversion in the late 1970's have seen the house and grounds subdivided. This has impacted negatively on the legibility and significance of the heritage asset. The erection of fencing and poor maintenance over the years have resulted in many of the gardens features and planting being undermined, diminishing their definition and their contribution to the setting of the listed building.
18. The removal of the existing stable building, an unsympathetic addition to the site and the associated hardstanding and storage areas would be a positive aspect of the scheme. The design of the appeal proposal, including its lower height, the partially subterranean position and the green flat roof assist to reduce the visual impact of the development and blend it into the surrounding landscape. This understated appearance serves to ensure that the listed building retains its prominence on the site.
19. The appeal site lies at a lower level to Undercliff. Looking from the house and its immediate garden area, the existing hedge and close boarded fence on the boundary of the upper garden, together with the level difference would mean that the proposal would not be visible. This would preserve the immediate setting of the listed building when viewed from this position. From the upper floors of Undercliff, views would be of the proposed green roof of the dwelling and the wider garden area.
20. Views from the appeal site to Undercliff are currently poor. Glimpses of the roof and part of the first floor of the house can be seen above overgrown vegetation. The proposed restoration works would allow original views of the house to be opened up and restored, improving the surroundings in which the house is experienced and therefore its setting.
21. A significant benefit of the appeal scheme is the proposed restoration works to the historic gardens, including the repair of the remaining garden features and boundaries, and the restoration of the historic garden planting. The cessation of the equestrian use on the appeal site and the introduction of a residential use with a restored garden would maintain the domestic character of the site. Furthermore, the removal of the close boarded fencing and the planting of a new hedgerow feature to set off the avenue of trees on the drive would significantly improve the approach to the house.
22. The design of the scheme aims to ensure that the visual impact of domestic paraphernalia is minimised across the site. The proposed subterranean garage includes a bin store and cycle store, an external vertical washing line is proposed within the building envelope and a covered terrace/seating area provides amenity space but contains it close to the dwelling. These measures ensure that the impact on the setting of the listed building is minimised.
23. Notwithstanding the above, I have had regard to the fact that Undercliff is already subdivided into different residential units. This results in a degree of fragmentation which impacts on its wider setting and significance. The provision of a new dwelling would result in further subdivision and cause harm to the significance of the heritage asset. Bearing in mind the design of the proposal, its location within the site, I consider that this harm would be less than substantial.

24. Section 66 of the Planning (Listed Building and Conservation Areas) Act 1990 sets out a statutory duty to give special regard to the desirability of preserving the setting of a listed building. The Framework in paragraph 196 requires that harm be weighed against the public benefits of the proposal. In this case, I consider that the harm to the significance of the heritage asset would be outweighed by the significant benefits of the restoration to the historic garden which I have outlined above.
25. I acknowledge the representations from interested parties that the landowner could restore the garden area without the need to construct a new house. However, I am advised the restoration scheme would cost between £150-£200 000. It would be unrealistic to expect a landowner to undertake such works in isolation, without the restored garden areas adding to the amenity and enjoyment of a residential property. I also note the lack of objection from Heritage England to the scheme.
26. The appeal site is located within the Cleadon Conservation Area. I must also consider whether the scheme would preserve or enhance its character or appearance. The Conservation Area Character Appraisal notes that although hidden from public view, the built and garden elements of the estate are of architectural, historic and landscape importance and continue to make a substantial contribution to the overall character of the conservation area. The Appraisal also recognises that the garden has been subdivided and much of the original garden design has been lost, though it could be retrieved. In seeking to restore the historic gardens, the appeal scheme meets many of the objectives of the Conservation Area Management Plan. I therefore conclude that the proposal would enhance the character and appearance of the conservation area.
27. The appeal proposal would therefore comply with Policy DM6 of the South Tyneside Local Development Framework – Core Strategy which seeks to support development proposals that protect, preserve and where possible enhance heritage assets and their settings. It would also accord with section 16 of the Framework which aims to conserve and enhance the historic environment.

Ecology

28. The appeal site includes Undercliff Pond, a designated Local Wildlife Site. The Council in their reason for refusal raises concern that the residential use of the site and the permanent residential occupation would result in an increase in human disturbance which could impact negatively in ecological terms.
29. The existing use as grazing for horses clearly causes some damage to the biodiversity value of the site. Ecological surveys undertaken by the appellant confirm that the site currently has low ecological value. The cessation of this use would therefore be beneficial. In introducing a new dwelling, I am mindful that the site was originally part of a residential garden and therefore there would have been human activity and disturbance.
30. The pond has suffered from neglect over the years. The restoration proposals put forward in the appeal scheme will significantly enhance its biodiversity value.

31. Residential development on the site would inevitably increase the potential for light pollution, particularly as the proposed dwelling has substantial areas of glazing. Light pollution could impact on several species including bats. Measures are proposed within the scheme to address this matter, including the fitting of electronically controlled black out blinds and a bespoke lighting strategy. I am satisfied that these proposals would ensure that light pollution from the proposed dwelling would be no greater than that from the existing stable building. Such measures could be secured by appropriate conditions. I consider the enforceability of such conditions below.
32. In summary, I consider that the cessation of equestrian use and proposed residential development, together with the restoration of the garden areas and pond, would have positive impacts on the ecology of the site. The scheme would therefore comply with Policies EA3 and DM7 of the South Tyneside Local Development Framework and section 15 of the Framework which seek to conserve and enhance the natural environment.

Other Considerations

33. The appellant has put forward several other considerations in favour of the proposal.
34. The proposed dwelling is of a contemporary style which incorporates sustainable construction techniques. The creation of a Magnesium Limestone Grassland roof is a unique design feature. The dwelling makes use of the contours of the site and responds well to its context in the setting of a listed building. The Framework in paragraph 131 states that great weight should be given to outstanding or innovative designs which promote high levels of sustainability. Paragraph 79 which relates to rural dwellings supports this objective. However, the requirement for outstanding design is a high bar. In the appeal case, while the scheme is of a very high quality, I do not consider it is so innovative, introducing new concepts, that it would meet this standard. Nevertheless, the high design quality of the scheme is of merit, providing support to the proposal.
35. The appeal site is in an accessible location within walking distance of the shops and facilities in Cleadon. There is a footway on the northern side of the road leading to the village. Bus stops are located on Cleadon Lane close to the south east corner of the appeal site. It has already been established that the residential dwelling would generate less traffic than the existing equestrian use. These factors weigh in favour of the scheme.
36. The appeal scheme provides the opportunity for substantial landscape, ecological and arboricultural enhancements to be provided. I have already referred to the ecological improvements that would be achieved. The proposed habitat creation and new planting would be of benefit to mammals, birds and insects. Bat and bird nest boxes, new hedgerow planting and the removal of ivy from the stone walls are also proposed.
37. No trees are to be removed to facilitate the development itself, but some removal would be needed in the interests of the management of the woodland areas and to facilitate the restoration of the pond and other features. Replacement tree planting is proposed with shrub and understorey

planting. Many of the above measures are required for the scheme to meet the biodiversity and landscape policies of the development plan. Accordingly, whilst they weigh in favour of the scheme, I attribute them moderate weight.

38. There is an above ground sewerage system and filter bed on the site which is in poor condition leading to effluent leaks. This serves the appeal site and also Undercliff itself. The scheme seeks to replace this with a new below ground sewage system. As the improvements proposed could potentially be required in the future to address water pollution issues, I afford this benefit limited weight.

Green Belt Balance

39. The Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Very special circumstances will not exist unless the harm to the Green Belt and any other harm is clearly outweighed by other considerations.
40. I have found that the appeal scheme would form inappropriate development in the Green Belt and that it would cause harm to openness. These factors attract significant weight. Against this harm is the significant public benefit of the restoration of the historic gardens and the associated ecological and landscape enhancements of the site.
41. I consider that the harm by reason of inappropriateness and harm to the openness of the Green Belt are clearly outweighed by the other considerations outlined above, in particular the substantial heritage benefits of the scheme. Very special circumstances therefore exist in this case to justify the development.
42. The appeal proposal would therefore comply with Policy EA1 of the South Tyneside LDF - Core Strategy and section 13 of the Framework which amongst other things seek to protect the Green Belt against inappropriate development and protect its openness.

Conditions

43. I have had regard to the conditions suggested by the Council and the appellant. In the interest of clarity and to better reflect the Framework, I have amended the detailed wording. The appellant has agreed in writing to those I attach which require compliance prior to the commencement of development.
44. In order to protect the living conditions of future residents and to reduce the risk of pollution, I attach conditions requiring investigation of on-site contamination and any necessary remedial measures (conditions 3, 4, 5, and 6). In the interests of safeguarding the amenity of existing residential occupiers I impose condition 13 which controls the hours of construction.
45. I attach condition 7 requiring the submission of materials to be used in the construction of the dwelling in order to protect the character and appearance of the area.

46. To ensure that the site is properly drained, conditions 8 and 9 require the submission of a detailed drainage scheme and a validation report to ensure it has been implemented to the agreed specification. I have noted the Council's concerns with regard to the implementation of drainage conditions, however in the absence of substantive evidence that such measures cannot be implemented, I consider that the above conditions meet the tests of the Framework.
47. The Council also raised doubts about the enforceability of conditions to secure the long-term management of the landscape works, and to provide black out blinds at the windows. Concern is raised about the ability for compliance to be monitored as the site is secluded and not visible from public vantage points. However, such a situation is not uncommon and does not in my view mean conditions cannot be legally enforced.
48. I am satisfied that the submission and agreement of a detailed landscape management plan is an appropriate way to ensure the site is management appropriately in perpetuity.
49. With regard to black out blinds on the windows, I have no evidence before me to suggest that an effective mechanism could not be installed to provide automatic blinds thereby controlling light pollution.
50. Accordingly, I have attached conditions requiring the submission of a lighting scheme and the provision of blinds to glazed areas in the interests of visual amenity and ecology (conditions 11 and 12). I have also imposed condition 10 which requires the submission of a landscape management plan in the interests of biodiversity and to maintain the character and appearance of the area.
51. Conditions 14, 15 and 16 remove Permitted Development rights for enlargements or alterations to the dwelling, gates and fences and renewable energy installations. This is in order to retain control over the development and to protect the setting of the nearby listed building and the character and appearance of the area.

Conclusion

52. For the reasons given above, and having had regard to all other matters raised, I allow this appeal.

Helen Hockenhull

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Proposed Site Plan Drawing No. AL (00) 0030, Proposed Plan Drawing No. AL (00) 0200, Proposed Roof Plan Drawing No. AL (00) 0210, Proposed West Elevation Drawing No. AL (00) 0220, Proposed East Elevation Drawing No. AL (00) 0221, Proposed South Elevation Drawing No. AL (00) 0222, Proposed North Elevation Drawing No. AL (00) 0223, Proposed Site Elevations Drawing No. AL (00) 0224.
- 3) An investigation and risk assessment must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the local planning authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the local planning authority. The report of the findings must include (i) a survey of the extent, scale and nature of contamination and to include ground / groundwater / gas conditions; (ii) an assessment of the potential risks to human health, property (existing or proposed) and (iii) an appraisal of remedial options, and proposal of the preferred option(s). This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.
- 4) A Detailed Remediation Strategy for the proposed remedial works shall be submitted to and approved by the local planning authority prior to commencing remedial works. It must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. It must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation. The strategy must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation. Development shall be carried out in accordance with the approved Remediation Strategy.
- 5) Following completion of measures identified in the approved Remediation Strategy, a Verification Report that demonstrates the effectiveness of the remediation carried out must be produced and is subject to the approval in writing of the local planning authority prior to the site being first occupied. Where remediation of gas has been identified as necessary by the site investigation, a Gas Verification Plan shall be submitted for the gas protection measures as part of the Remediation Strategy.
- 6) In the event that contamination is found at any time when carrying out the approved development that was not previously identified, it must be reported in writing immediately to the local planning authority. Sufficient detail should be provided identifying how the unexpected contamination will be dealt with and to update the Remediation Strategy (required by

- condition 4). Development shall be carried out in accordance with the approved details.
- 7) Before construction of the dwelling commences and notwithstanding the annotations on the submitted plans; full details (including samples, specification sheets and/or drawings) of all external facing materials and hard-surfacing shall be submitted and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
 - 8) The detailed drainage design shall be implemented in accordance with the approved drainage proposals and maintained and retained thereafter. Any amendments to the drainage proposals shall be submitted to and approved in writing by the local planning authority.
 - 9) A validation report providing detail on the final installation of SuDS measures installed shall be submitted following completion. This shall include but not be limited to a methodology of installation, evidence of depths and dimensions of the SuDS in situ and supporting images throughout the installation to completion to ensure that it has been installed correctly and as per the designs agreed. This can be in the form of as built drawings and photographs. It is recommended that the developer uses the relevant checklists as detailed in the Ciria C768 – Guidance on the construction of SuDS as a guide.
 - 10) Before the dwelling is first occupied until a woodland, biodiversity and landscape management plan has been submitted to the local planning authority for approval in writing. The approved measures shall be implemented no later than 12 months after occupation or in accordance with a programme to be agreed in writing with the local planning authority.
 - 11) External lighting shall only be carried out as per the submitted lighting assessment and strategy. It shall be installed before the development is first brought into use and shall be retained in working order thereafter. No other external lighting shall be installed.
 - 12) Before the dwelling is first occupied, a scheme for the provision of automatic blinds on all windows that will close during the hours of darkness shall be submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details and retained thereafter.
 - 13) No construction or associated works or deliveries of materials shall take place outside the hours of 8am - 6pm Monday to Friday and 9am - 1pm Saturdays and no such works or deliveries shall be carried out at any time on Sundays or Public Holidays.
 - 14) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no fences, gates or walls shall be erected within the curtilage of the dwelling house other than those expressly authorised by this permission.
 - 15) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no garages, outbuildings or extensions to the dwelling, additions or

alterations to the roof, porches or hard surfaces incidental to the enjoyment of the dwelling house shall be constructed other than those expressly authorised by this permission.

- 16) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no solar equipment, ground source heat pumps, water source heat pumps, air source heat pumps or wind turbines, either on the dwelling or freestanding, shall be installed other than those expressly authorised by this permission.