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## Appeal Decision

Site visit made on 26 May 2020

**by Darren Hendley BA(Hons) MA MRTPI**

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

**Decision date: 2<sup>nd</sup> June 2020**

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**Appeal Ref: APP/M4510/W/20/3244176**

**Moorey Spot Farm, Prestwick Road, Dinnington, Newcastle Upon Tyne NE13 7AQ**

- 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 Morrison against the decision of Newcastle City Council.
  - The application Ref: 2019/0783/01/DET, dated 23 May 2019, was refused by notice dated 18 November 2019.
  - The development proposed is the erection of 8 No. residential dwellings (Class C3) with associated landscaping and access following demolition of existing buildings.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues are a) whether the proposal would constitute inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (Framework) and the development plan policy, b) the effect on the character and appearance of the area, c) the effect on protected species, in particular Great Crested Newts (GCN), d) land stability and public safety considerations, e) the effect on the amenity value of trees and landscaping, f) the effect on flood risk, and g) if it 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 comprises a number of buildings, together with land associated with Moorey Spot Farm. The buildings take the form of traditional stone and more modern farm structures. Parts of the stone buildings are in a state of disrepair. The main area of open land within the site is an expansive area which lies towards the south boundary. This is surfaced in loose stone and is partially used for storage purposes. Other smaller areas of such land are found around and in between the buildings. The farmhouse is largely traditional in its appearance and is positioned towards the long site access onto Prestwick Road. There are trees and vegetation along some of the site boundaries, in particular the north-west side.
4. Surrounding the site are fields which are in use as paddocks, with further fields found beyond. Adjacent to a fairly narrow paddock to the west of the site is a

Public Right of Way (PROW). A pond lies adjacent to the southern boundary of the site. Dwellings are located in a linear arrangement on the north side of Prestwick Road from near to the site access and lead into Dinnington. Part of the control tower for Newcastle Airport is also visible. Otherwise, the site lies in rural surroundings. It is located in the Green Belt.

### *Inappropriate Development*

5. Policy CS19 of the Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne 2010-2030 (2015) (CSUCP) provides for the protection of the Green Belt land around Newcastle and Gateshead. The policy goes on to state the Green Belt as shown on the Proposals Maps will be protected to safeguard the countryside from encroachment, amongst other matters that are related to the Green Belt purposes that are set out in the Framework.
6. Paragraph 145 of the Framework states that the construction of new buildings is inappropriate in the Green Belt unless, amongst other exceptions, it involves limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings) which would, under the first limb of this exception, not have a greater impact on the openness of the Green Belt than the existing development.
7. The definition of previously developed land (PDL) that is set out in the Framework excludes land that is or was last occupied by agricultural or forestry buildings. Whilst I am aware that a not insignificant proportion of the site benefits from a Lawful Development Certificate<sup>1</sup> (LDC) for an equestrian centre, some of the buildings that were not subject of the LDC would also make way for the proposal. The evidence does not satisfactorily establish that they are all not agricultural buildings, even if they are no longer practically used as such. I also observed on my site visit that the buildings, and the site more broadly, contained vehicles of both an equestrian and agricultural nature.
8. As at least part of the proposal would be on land that contains these buildings, it would involve land that is not PDL, under the definition in the Framework. In addition, it would not be sensible to try to split the proposal up as regards PDL and non-PDL because some of the plots would be on both, and as there would be shared arrangements across the whole of the proposal, such as for access and drainage.
9. Matters raised in relation to how far the curtilage of the equestrian buildings extends across the site does not have a significant bearing because, regardless, the Framework is clear that agricultural buildings are excluded from the definition of PDL. Simply because a site contains some structures that would meet the definition of PDL does not mean that the whole site should be considered as such.
10. Even if I found that the whole site could be considered PDL, the proposal would have a greater impact on the openness of the Green Belt than the existing development. In relation to the spatial element, the proposed dwellings would be spaced out across the site to a greater degree, in particular in the southern part of the site, than the more clustered arrangement of the current buildings. The precise calculations of the floor areas do not alter my conclusion on this

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<sup>1</sup> Council ref: 2016/1917/01/LDC

matter because the layout of the proposed dwellings is clearly shown on the submitted plans in relation to the existing buildings to enable me to come to this view.

11. The visual impacts would also be extended with the proposed dwellings positioned across the site. This would negate benefits arising from the removal of the larger buildings and the external storage in visual terms. From the PROW, it would be apparent that the proposed dwellings would increase the visual impacts, as they would extend in parallel to it for a greater distance and would be more visible beyond, to the south. The views in between the proposed dwellings would not satisfactorily address this effect because their built form would still be evident and would continue over more of the site than the existing buildings.
12. The proposed gardens and the small area of open space that would be created near to the trees along the north-west boundary would only be of modest benefit to openness when considered against the effects from the proposed built aspects of the proposal. Whilst not decisive on its own, external domestic paraphernalia would also likely add to the adverse visual impacts.
13. The main parties have referred me to caselaw as regards how openness is to be assessed. This centres on the need to consider the impact or harm, wrought by the change. An adverse impact would occur due to the layout of the proposal resulting in a more spaced arrangement of development on the site, especially by extending into the southern part, causing the associated spatial and visual effects.
14. As a consequence, the proposal would not accord with the first limb to the exception and it would not preserve the openness of the Green Belt.
15. The second limb to this exception only applies to development that would contribute to meeting an identified affordable housing need. Based on the evidence before me, this is not the type of residential development that is proposed. Nor do any of the other exceptions in the Framework apply.
16. Both main parties have also expressed views concerning whether or not the proposal would accord with the purposes of the Green Belt. With the site's countryside location and as the proposal would be spread over a larger part of the site than the existing buildings, it would not accord with the purpose to assist in safeguarding the countryside from encroachment.
17. The appellant has also referred me to a planning permission for 6 units on the site. However, it is for the proposal itself to be considered against the Framework and the development plan policy by way of whether or not it constitutes inappropriate development, rather than by comparing it to an alternative. This permission is considered later in my decision.
18. I conclude that the proposal would constitute inappropriate development in the Green Belt. Accordingly, it would not comply with paragraph 145 of the Framework. Nor would it accord with the protections that Policy CS19 affords to the Green Belt.
19. The appellant considers that the policies in the Framework should carry more weight because no specific local plan policies adequately assess the proposal. Policy CS19 is, though, consistent with the Framework and so it carries significant weight in my decision. It provides for the protection of the Green

Belt and applies the purposes that are set out in the Framework within a local context. In any event, the policies in the Framework do not favour the proposal in this regard.

### *Character and Appearance*

20. The Council's Newcastle Character Assessment (2017) (NCA) describes the area where the site is found as a traditional agricultural landscape of informal field pattern with hedges and hedgerow trees centred around Toft Hill, and mainly arable and horsiculture, which relates to its use. It is said to be in average condition but, nevertheless, it is pleasing in its appearance. The NCA goes on to denote that farm buildings are a predominant landscape feature within the area, and identifies Moorey Spot Farm as a positive landscape feature.
21. The proposal would result in a significant reduction in the contribution of the site to the local character with the loss of the equestrian and agricultural buildings and their replacement with a residential development. The rural setting that these buildings provide to the farmhouse would be lost. In effect, the result would be an enclave of residential development in the countryside, extending beyond where there are currently buildings on the site and removed from the nearest settlement where such housing would be more usually found. Nor would the proposal be a typical landscape feature of the area under the NCA and Moorey Spot Farm's positive role would be much diminished.
22. The design of the majority of the proposed dwellings, whilst utilising stone and timber and save for the 2 dwellings that would be somewhat 'Dutch barn' in their appearance, would still be akin more to an 'executive' style residential development of well-proportioned houses. The proposal would not relate well in rural character terms to the farmhouse because it would constitute separate new build dwellings, not associated buildings. The site would no longer have the pleasant appearance of a farmstead, which it maintains even with the state of some of the stone buildings.
23. The housing site within the same landscape area under the NCA that I have been referred to lies on the edge of Dinnington. In contrast, the appeal site is considerably more removed from this settlement and is viewed within its distinct countryside surroundings. Hence, I am satisfied that the site circumstances are sufficiently different.
24. I conclude that the proposal would have an unacceptable effect on the character and appearance of the area. Therefore, it would not comply with Policies CS15 of the CSUCP, 'Saved' Policies EN1.1 and H4 of the Newcastle upon Tyne Unitary Development Plan (1998) (UDP) which concern high standards of design, responding to local distinctiveness and character, design principles and the character and quality of the local environment. It would also not accord with the Framework where it involves achieving well designed places.

### *Protected Species*

25. The Conservation of Habitats and Species Regulations 2017 (Habitats Regulations) imposes a duty to consider the relevant Directives and whether there is a reasonable likelihood of European Protected Species being present and affected. GCN are European Protected Species. It is agreed between the

main parties that the pond adjacent to the site is used by GCN. Hence, there is a reasonable likelihood of protected species being affected.

26. The related supporting information that the appellant submitted with the planning application acknowledged that without mitigation the proposal would impact on GCN. This relates to a loss of terrestrial habitat. The habitat is deemed as poor and the impact is said to be low. Nevertheless, the effect would be adverse and would require mitigation, under the Habitats Regulations.
27. The mitigation, as well as construction phase related measures, would include providing a buffer zone planted with scrub near to the existing pond. This would involve land that would be in the rear gardens of the nearest proposed dwellings. This would be contrary to Natural England Standing Advice Great crested newts: surveys and mitigation for development projects (2015) (Standing Advice) where it states that private gardens should not be relied on as compensation for terrestrial habitat lost through development. Clearly, householders might make alterations to their gardens, unaware that it is providing GCN habitat.
28. A pond is also proposed in the north-west of the site. Habitat linkages would appear to involve the GCN using a circuitous route around the external boundaries of the site. Substantive information is not provided on the likely success of such a route, even with new planting. Such mitigation measures would be likely to be inadequate, based on the evidence before me.
29. The appellant has suggested that further mitigation could be dealt with through the imposition of a planning condition, as additional land outside of the site could also be utilised that is under the ownership of the appellant. The Standing Advice states that mitigation plans are required as part of getting planning permission. Such a condition would not address these concerns because details of satisfactory measures are not before me in order to establish that the adverse effects could be properly mitigated, under the Habitats Regulations.
30. I conclude that the proposal would have an unacceptable effect on protected species, in particular GCN. Thus, the proposal would not comply in this regard with Policy CS18 of the CSUCP and Saved Policies EN3, EN3.2 and NC1.7 of the UDP where they seek to protect biodiversity interests, including protected species and habitat related matters. It would also not comply with the Framework where it concerns habitats and biodiversity interests.

#### *Land Stability and Public Safety*

31. The site is located in a defined Development High Risk Area, which reflects the historical legacy of coal mining. It is in dispute whether or not an adequate Coal Mining Risk Assessment was provided with the planning application, which included a Phase 1 Land Quality Report (LQR). This contains information on coal mining and includes a report that had been carried out previously by the Coal Authority.
32. The LQR states that the possibility of shallow coal mining beneath the site is unable to be dismissed and states that further works would be required to determine the level or risk with greater certainty. Similarly, the related recommendation in the LQR also states that intrusive works should be

undertaken to determine with greater certainty the presence or otherwise of shallow worked coal seems below the site. This is consistent with the Coal Authority Report which points out that associated risks should be fully considered in developing any proposals. This is due to the public safety implications.

33. Overall, there is a lack of clarity over what the implications of the coal mining legacy of the area might be for the proposal, beyond recommending that works need to be undertaken in order to make such an assessment. It has not, therefore, been satisfactorily demonstrated that the site is safe, stable and suitable for the proposal.
34. This is not a concern which could be addressed through the imposition of a planning condition without having the potential to nullify a permission, especially as the proposal would be in a high risk area. Whilst the LQR's conclusions can be seen as positive, this is caveated on the basis of the works that need to be carried out. The level of risk is not as such that I can be satisfied that it would not preclude the proposal without the recommendation in the LQR being implemented and the results establishing that this issue can be properly addressed.
35. Based on the information before me, I conclude that the proposal would not be acceptable as regards land stability and public safety. Consequently, it would not comply with Policy CS14 of the CSUCP and with Saved Policy POL6 of the UDP where they concern preventing negative impacts on residential amenity and wider public safety, including ground instability, as well as contaminated land related matters. It would also not accord with the Framework which seeks to ensure that a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination, including mining, and establishes that responsibility for securing a safe development rests with the developer and/or landowner.

#### *Amenity Value of Trees and Landscaping*

36. The trees around the north-west boundary of the site are the subject of Tree Preservation Order 2018/011. They are visible from Prestwick Road and provide an attractive foreground as the farmhouse and the buildings are approached along the access. They have an appreciable amenity value.
37. Based on the proposed layout, it is not evident that the trees would be removed in order to accommodate the siting of the proposed dwellings. The particular area of trees along the north-west boundary would be largely retained in order to accommodate the access, including a prominent ash tree. A willow tree of some note lies on the opposite side of the access. However, as this is outside of the site boundary of the proposal, it is also outside of the proposed works.
38. The appellant's Arboricultural Impact Assessment and the Tree Protection Plan are not up to date and provide insufficient details. This is because the tree removal and the pollarding they indicate would not be required, based on the layout that is for my consideration. Accordingly, these documents could be updated by way of a planning condition so as to protect the amenity value of the trees, if I was minded to allow the appeal.

39. In relation to the hedgerow around the access point, replanting could take place so that in time it would continue to contribute to the pleasant visual character along Prestwick Road that is maintained by the extent of the boundary hedgerows. Again, this could be dealt with through a planning condition if the appeal was to be allowed.
40. I conclude that the proposal would not have an unacceptable effect on the amenity value of trees and landscaping. Therefore, it would comply in this regard with Policy CS18 of the CSUCP and Saved Policies EN3, EN3.2 and NC1.7 of the UDP which, collectively, concern the protection and retention of trees and hedgerows, and landscaping and planting schemes. It would also accord with the Framework in relation to the role of trees in conserving and enhancing the natural environment

#### *Flood Risk*

41. Concerning the proposed surface water drainage arrangement, the appellant's Drainage Strategy proposes that surface water from each of the dwellings would feed into a swale which, in turn, would connect to a basin. The basin would then discharge to a local watercourse. A hydrobrake would be utilised to control the discharge. The rate of discharge is proposed at 7.3 litres/second (l/s). The Council consider the rate should be 5 l/s and point to storm events, and so is concerned that the proposal would not effectively manage flood risk.
42. The Drainage Strategy sets out how the 7.3 l/s rate has been calculated using the site area and methodology from the Institute of Hydrology. The Council, by way of the Planning Officer Report and the representation of the Lead Local Flood Authority, refer to the smaller site area of the developable area. The Planning Officer Report also acknowledges, though, that the permeable area of the site would likely increase under the proposal and that the risk of flooding to the site from all sources has been assessed and is considered to be low.
43. In these circumstances, flooding from surface water would not represent an unacceptable risk. It would be a matter that could be dealt with by way of a planning condition concerning a full detailed drainage design, including attenuation and details related to the watercourse, if I was minded to allow the appeal.
44. I conclude that the proposal would not have an unacceptable effect on flood risk and so it would comply with Policy CS17 of the CSUCP which concerns avoiding and managing flood risk from all sources, as well as with the Framework in relation to planning and flood risk.

#### *Other Considerations*

45. The proposal would boost housing provision as a development of a small/medium site in accordance with the Framework, along with the associated social benefits related to increasing housing supply. There would also be economic benefits, including through construction, Council Tax receipts and the New Homes Bonus. The proposal would also be in a location that is accessible as regards the local services in Dinnington by transport modes other than the car, and it would support these services. These benefits would be on a modest scale, though, with the number of dwellings that are proposed.
46. Environmental benefits, including the use of the PDL elements of the site, are lessened by the harm that arises by way of character and appearance,

protected species, and land and stability considerations. As a consequence, the environmental benefits attract limited weight.

47. In relation to the fallback position of the 6 units on the site, the appellant has referred to it as an extant permission. The Council has stated, though, that none of the associated pre-commencement planning conditions have been discharged and I do not have substantive evidence to the contrary. The same applies in relation to whether or not the development has commenced. As such, the fallback position also attracts limited weight in my decision.
48. As regards whether or not the principle of development would be acceptable, the proposal falls to be considered against the relevant issues. In relation to whether or not these issues have been previously found acceptable or otherwise, the proposal is to be appraised based on its details and the submitted evidence, as I have set out above.

### **Conclusion**

49. The proposal would be inappropriate development in the Green Belt. Paragraph 143 of the Framework establishes that inappropriate development is by definition harmful. Paragraph 144 goes on to state that substantial weight should be given to any harm to the Green Belt. In addition, the proposal would be unacceptable as regards the effect on the character and appearance of the area; protected species, in particular GCN; and, land stability and public safety. Other considerations which arise do not clearly outweigh the totality of the harm. Consequently, very special circumstances do not exist. Accordingly, I conclude that the appeal should be dismissed.

*Darren Hendley*

INSPECTOR