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## Appeal Decision

Site visit made on 28 February 2022

**by S Hunt BA (Hons) MA MRTPI**

Inspector appointed by the Secretary of State

Decision date: 21 March 2022

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**Appeal Ref: APP/H0724/W/21/3286101**

**Southbrooke Farm, Summerhill Lane, Hartlepool TS25 4LL**

- 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 M Dickinson against the decision of Hartlepool Borough Council.
  - The application Ref H/2017/0054, dated 31 January 2017, was refused by notice dated 26 August 2021.
  - The development proposed is erection of 14 no detached properties of 2, 3 and 4 bed on existing site which currently has a number of outbuildings and detached former farmhouse.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The appellant's name in the banner heading above reflects the amended details as agreed by the Council prior to decision.
3. The Council's list of suggested conditions refers to plans which have since been superseded. My decision is based on the amended plans submitted to and consulted on by the Council in June 2021, prior to the decision being made.

### Main Issues

4. The main issues are:
  - The effects of the proposed development on the integrity of nearby European sites with regard to increased recreational and dog walking activity;
  - The effect of the proposed development on the setting of Park Conservation Area;
  - The effect on living conditions of future occupiers with particular reference to outlook, in terms of the relationship with the adjacent telecommunications poles; and
  - Whether the proposals make adequate provision for infrastructure, social and ecology requirements arising from the development, and whether the contributions meet the tests set out in Regulation 122(2) of the Community Infrastructure Regulations 2010 (as amended).

## Reasons

### *European Sites*

5. The appeal site lies some 2.7 kilometres (km) from the boundary of the Teesmouth and Cleveland Coast Special Protection Area (SPA) and Ramsar site, and around 5.9 km from the Durham Coast Special Area of Conservation (SAC). The Council identified at screening stage of their Habitats Regulations Assessment (HRA) an indirect likely significant effect (LSE) on both European sites relating to increased public access. In terms of the SPA this includes disruption of breeding little terns, foraging redshank and winter foraging or winter roosting knot. Increased activity has the potential to reduce the population size and the distribution of these qualifying species. At the SAC, an indirect LSE has been identified from increased trampling of vegetation communities and pollution via dog fouling. I have had regard to the Council's HRA incorporating appropriate assessment<sup>1</sup> further to my duty as competent authority in accordance with the Conservation of Habitats and Species Regulations 2017.
6. Mitigation is based on the predicted number of new residents and new dog-owning families. There is insufficient space within the appeal site for provision of on-site Suitable Alternative Natural Green Space for daily walks and dog exercising. Financial contributions are therefore sought by the Council to accommodate the additional use of the Summerhill Country Park, which is in close proximity to the appeal site. Contributions are also sought towards the continued operation of an existing warden scheme which seeks to protect the interest features of SPA and Ramsar, specifically a little tern breeding colony. Contributions of £200 per dwelling are sought, comprising £100 per dwelling with respect to coastal accessibility, and £100 per dwelling for reliance on Council-run sites (Summerhill Country Park). The contributions are appropriately justified by the Council in their HRA report.
7. Natural England concur with the findings of the Council's HRA which concludes that with this mitigation, secured by Section 106 Agreement (S106), an adverse effect on the integrity of the European sites could be avoided. I have no reason to conclude otherwise. However there is no planning obligation under S106 before me which is required to secure the necessary total contribution of £2600. Consequently as competent authority I am unable to rule out an adverse effect on the integrity of the Teesmouth and Cleveland Coast SPA.
8. The proposed development is therefore contrary to part 2) of Hartlepool Local Plan 2018 (HLP) Policy NE1 which requires appropriate mitigation measures or contributions to avoid detrimental impacts to internationally designated sites.

### *Setting of Conservation Area*

9. The appeal site largely comprises rough grassland and rubble, formerly occupied by a range of agricultural and equestrian buildings. An occupied residential dwelling is situated to the eastern end of the site (Southbrooke Farm). It is situated in a semi-rural area of Hartlepool, where there are a range of community uses including Summerhill Country Park, allotments and education facilities. To the rear edge of the site are two telecommunications poles and associated equipment. Alongside the site is a public right of way

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<sup>1</sup> Habitats Regulations Assessment Hartlepool Borough Council 27 July 2017 and Natural England 23 August 2017

which links Summerhill Lane to the Ward Jackson Park area of west Hartlepool. Here lies the Park Conservation Area, the boundary of which is stated to be some 400 metres away from the appeal site.

10. Whilst the appeal site is not within nor directly adjacent to the Park Conservation Area, the surroundings in which it is experienced would be affected. I am obliged to pay special attention to the desirability of preserving or enhancing its character or appearance<sup>2</sup>.
11. The Park Conservation Area is characterised by low density, sizeable Victorian and Edwardian houses of good quality, many of which are set in mature wooded grounds. The development of the area is associated with the wealthy industrialists of the Hartlepool area in the 19<sup>th</sup> century and this adds to its high significance.
12. The character appraisal<sup>3</sup> notes that thickness of tree cover means that there are only a few distinctive views of the area from outside of the Conservation Area. Views north from Summerhill are defined by heavy tree cover to the south. The character of Summerhill, in the environs of the appeal site, is distinctly different from the Park Conservation Area. Tree cover is more sparse, and nearby buildings are modern in appearance and of wide ranging designs.
13. The fields which surround the appeal site form part of a green wedge bounding Park Conservation Area. However I find views both into and out of it to be limited due to its self-contained nature, well-screened by verdant gardens and by trees which bound the intervening open fields. The southern extent Conservation Area provides numerous views of the fields, including near Briarfields allotments. However Summerhill Lane and the appeal site are visibly more distantly located and tucked behind a ridge within the landscape, so that only glimpses of the appeal site are possible. In view of this, I find that the appeal site makes a neutral contribution to the character and appearance of the Conservation Area as a whole.
14. The presence of built development would not be a new feature within the appeal site, as prior to demolition it included a number of considerably sized agricultural buildings. It is noteworthy that the Council do not object to the principle of residential development on the site, on account of its previously developed nature, location within the development limits of the town and previous planning history.
15. When viewed from the rear, the proposed development would appear as a relatively isolated row of modern two storey houses. By virtue of the long and narrow shape of the site, it is logical that the dwellings would be arranged in the manner proposed to make best use of land. I acknowledge that the appellant has made attempts to break up the monotony of this view, by staggering the houses and providing a variation in house types. Overall I do not find any significant harm arising from this view based on the plans before me. Variations in materials and a suitable landscaping scheme to assist in screening and softening the development could be achieved by imposition of conditions.
16. Overall, I find that the proposed development would not affect the ability to appreciate the significance of the Conservation Area and its effect on setting

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<sup>2</sup> Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

<sup>3</sup> Park Conservation Area Character Appraisal, September 2008

would be neutral. Consequently, the character and appearance would be preserved and it is not necessary for me to carry out the weighting exercise set out in paragraph 202 of the National Planning Policy Framework (the Framework). The development would comply with Policies HE1 and HE3 of the HLP which require proposals to preserve or enhance the special character of a heritage asset in a manner which is appropriate to significance, including views and vistas affecting its setting.

### *Living Conditions*

17. Two telecommunication poles are situated immediately to the rear of the appeal site. The poles and associated equipment would abut the garden boundaries of two of the proposed plots, 1 and 4. The amended plans show that these particular dwellings would be staggered forwards slightly to provide a longer rear garden. The height of the masts and their proximity to the appeal site boundary means that the outlook of a number of other dwellings would also be affected, albeit with less direct views.
18. I find the stagger in the layout would go some way to addressing the effects on the living conditions of plots 1 and 4, due to the increase in garden size and additional space for landscaping. However in turn, the stagger would result in a degree of enclosure and dominance to neighbouring properties and plots 1 and 4 themselves.
19. The future occupiers of these properties would experience a lower level of living conditions in terms of outlook than the plots which would be located further away from the masts. Nonetheless, I do not find the level of harm to living conditions to be significant. The monopole structures are slim in nature and occupiers would still benefit from views of the open landscape beyond. Future residents would be aware of the layout and the presence of the masts when making the decision to occupy these particular dwellings. Furthermore, the effects could be reduced to some degree by appropriate landscaping secured by condition.
20. In conclusion on this main issue, I find the effects on the living conditions of future occupiers to be acceptable overall and in compliance with HLP Policy QP4 (part 9) which expects new developments to avoid negatively impacting upon the relationship with neighbouring land uses and the amenity of adjoining or nearby properties, including visual intrusion relating to poor outlook.

### *Planning Obligations*

21. HLP Policy QP1 seeks planning obligations to be secured by legal agreement for a range of contributions where viable and deemed to be required to address the impacts arising from a development. Further detail is set out in the Council's Supplementary Planning Document on Planning Obligations.
22. In 2017 a S106 was prepared by the Council following a 'minded to approve' decision by the planning committee, subject to a number of planning obligations being secured. Notwithstanding the passage of time since then, and the adoption of the HLP, the Council continues to seek the same range of contributions, totalling £234,075. This differs only marginally from the total amount required in 2017. I now go on to consider whether each contribution would meet the tests set out in Regulation 122(2) of the Community

Infrastructure Regulations 2010 (as amended) (the CIL regulations) and paragraph 57 of the Framework.

*Highway infrastructure improvements (£156,000):*

23. This contribution is sought by the Council towards the Elwick bypass and A19 grade separated junction. This project is specifically identified in the Local Infrastructure Plan and in HLP Policies INF2 and LS1. Policy INF2 notes that legally binding agreements would be used to secure improvements or financial contributions necessary to the transport network as a result of a development.
24. The appeal site's location to the western edge of Hartlepool means that traffic is expected to utilise the A19, which the evidence states is at capacity. Whilst some funding opportunities are expected, the Council seeks for developments in Hartlepool which would have an impact on the need for the improvements to contribute towards the estimated total cost on a per dwelling basis. The Highway Authority have confirmed that the current cost per dwelling is £12,000 and this is based on the expected number of dwellings to be constructed in the affected area.
25. In view of this, and in the absence of any evidence to the contrary, I would concur with the Council that the highway infrastructure contribution is necessary and reasonable and related to the development.

*Play provision (£3,250), built sports (£3,250), play pitches (£3,032.77), tennis courts (£741.26), bowling greens (£64.61) and green infrastructure (£3,250):*

26. All such contributions are based on policy requirements for developments of five or more dwellings and calculations are clearly set out in the SPD. Given the type of development proposed, there would be an increase in users of sports and play facilities. Contributions are expected to be directed to Summerhill Country Park and English Martyrs School, both of which are in close proximity to the appeal site. I am therefore satisfied that these contributions meet the tests.

*Primary (£38,445.23) and secondary school provision (£25,115.66):*

27. The Council has provided calculations to demonstrate that the proposed development is expected to accommodate a number of primary and secondary school children. There is limited information before me regarding capacity of the identified schools and the necessity for the contributions. However in the absence of evidence to the contrary overall I am satisfied that the contributions would be meet the tests set out in paragraph 57 of the Framework.

*Ecology mitigation (£2,600):*

28. Further to my findings in paragraphs 5 to 8 above in relation to the HRA, I am satisfied that the ecology mitigation obligation is necessary, directly related and reasonable in scale and kind.
29. I am told that the S106 drafted in 2017 was subsequently not completed by the appellant. In April 2020 a viability appraisal<sup>4</sup> was submitted in seeking to justify reduced contributions. Correspondence to the Council<sup>5</sup> and a heads of terms document suggest a 'final offer' of £60,000. This would include the

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<sup>4</sup> Development Appraisals dated April 2020 by AndCo Homes Ltd

<sup>5</sup> Emails to HBC 23 April and 10 July 2020

£2600 towards ecological mitigation as set out above, but there is no identification of the other obligations that the remainder of the £60,000 would contribute towards.

30. The appellant is clear that no contribution towards highway infrastructure improvements would be provided, however they do not elaborate on their reasons for this, aside from it being an excessive amount in terms of the scale of development proposed. Justification is lacking in their evidence in terms of whether they consider it would comply with the requisite tests set out in Regulation 122(2) of the Community Infrastructure Regulations 2010 (as amended) and paragraph 57 of the Framework.
31. With regard to the 2020 viability appraisals, these demonstrate that the development would result in a positive profit for the developer, both with or without the requested financial obligations. However in both cases, the appellant is dissatisfied with the expected level of profit. I make no conclusions on whether the level of profit is appropriate, because the appraisals before me do not provide calculations which reflect the 'final offer' of £60,000. I acknowledge that a number of matters have changed since the proposals were originally considered in 2017. However the details before me do not adequately justify the insufficient level of contributions put forward.
32. Notwithstanding such viability matters, no completed S106 has been submitted with the appeal. As such, I cannot give any significant weight to any benefits which any such obligations would secure.
33. In conclusion on this main issue, there is a lack of justification for the proposed reduced contributions and a S106 is absent. The development therefore fails to make adequate provision to secure infrastructure, social and ecology contributions which are necessary, directly related to and fairly and reasonably related in scale and kind to the development. I therefore find conflict with Policies QP1, LS1, INF2 and INF4 of the HLP and the Planning Obligations SPD.

### **Other Matters**

34. I do not dispute that the development is in an accessible location and that it would make a valuable contribution to the supply of family housing in the area. The proposed housing would make use of a semi-derelict site which is perceived to attract anti-social behaviour. Both its construction and future residents would contribute to the local economy. In view of the scale of the development these are benefits to which I give moderate weight, however they do not outweigh the harm arising from the lack of contributions to required planning obligations. Whether the demolition of the existing buildings is unauthorised has no material bearing on my findings.

### **Conclusion**

35. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

*Susan Hunt*  
Inspector