



Appeal Decision

Hearing held virtually on 18 October 2022

Site visit made on 28 October 2022

by Mrs Hollie Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 November 2022

Appeal Ref: APP/H0738/W/22/3296940

Yarm Riding Centre, Glaisdale Road, Yarm, TS15 9RN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr D Anderson against the decision of Stockton-on-Tees Borough Council.
 - The application Ref 20/2277/OUT, dated 9 October 2020, was refused by notice dated 15 October 2021.
 - The development proposed is outline planning permission for demolition of existing bungalow (no. 68) and erection new residential dwellings on land at Yarm Riding Centre, Yarm, TS15 9RN.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was submitted in outline form with all matters reserved for future consideration save for access. Accordingly, all plans relating to scale, layout and landscaping have been treated as purely indicative.
3. In March 2022 and following the determination of the appeal application by the Council, an issue was highlighted by Natural England in connection with the unfavourable condition of the *Teesmouth and Cleveland Coast Special Protection Area and Ramsar site* (the Habitats Sites). As competent authority for the purposes of determining the appeal under the Conservation of Habitats and Species Regulations¹ (Habitats Regulations) I have elevated this matter to a main issue and it was discussed as part of the hearing.
4. Following the submission of further information as part of the appeal, the Council confirmed that the third reason for refusal relating to ecological effects had been satisfactorily addressed. I have no reason to reach an alternative conclusion in this regard.
5. A S106 planning obligation dated 14 October 2022 was submitted prior to the hearing which provides for affordable housing and financial contributions towards open space provision, open space maintenance, the local National Health Trust partnership and local education providers at both primary and secondary levels.

¹ Conservation of Habitats and Species Regulations 2017 (as amended)

Main Issues

6. The main issues are the effects of the proposal on:
 - i) the character of the Green Wedge;
 - ii) whether the access would be well-designed having regard to the living conditions of neighbouring occupiers at 66 and 70 Mount Leven Road; and
 - iii) the Habitats Sites.

Reasons

7. The appeal site comprises a number of grazing paddocks and associated structures formerly used in connection with an equestrian centre on the outskirts of Yarm. The buildings and ménage appear largely disused, although the land is still used for the grazing of horses.
8. The site is undulating but generally slopes from a high point in the south-east to the lowest point in the valley of the River Leven in the north-west. The river valley area of the site also falls partly within the 'Green Wedge' which is designated under the Stockton-on-Tees Borough Local Plan (adopted 2019) (Local Plan).
9. The proposal would involve the residential development of the land although only the means of access is detailed at this stage. The provision of the access would involve the demolition of No 68 Mount Leven Road in order to provide a junction and two-way estate road with footways and landscaped verges on either side.
10. The number of dwellings proposed is not detailed, but the latest indicative plans shows a scheme of 49 dwellings, with bungalows backing onto the nearest neighbours at Mount Leven Road. Landscaping measures are also proposed along with a sustainable urban drainage scheme (SUDS), including an attenuation basin on low lying land adjacent to the River Leven.

Green Wedge

11. The designated Green Wedge includes large swathes of mostly undeveloped land either side of the River Leven, including where it merges with the River Tees and extending beyond to the north. These areas are more varied in topography, generally folding into a river valley which is well treed. Some of this area forms part of a scheme underway to create the 'River Leven Country Park', although a number of housing allocations and permissions extend up to its boundary and that of the designated Green Wedge.
12. The Green Wedge designation only covers part of the site from north of the derelict stable buildings to where it descends to the River Leven. The treed boundary with the neighbouring dwellings demarks the extent of the Green Wedge on the western side. The land cover on this part of the site is low quality grazing with some pooled areas of water on the lower, flatter parts.
13. As an individual component of the Green Wedge, the relevant part of the site is of limited aesthetic quality, but its contribution is its greenness, general tranquillity and openness, adding to the mosaic of greenspaces that separate the urban areas from one another.

14. The extent of the red line site area appears to deliberately limit housing to areas outside of the Green Wedge, which means that it would be protected from this form of urbanising development. However, the red line area within the Green Wedge includes an attenuation basin and a maintenance access track, which would form part of the SUDS scheme. Given the outline nature of the proposal, limited design detail has been included of these features.
15. At the hearing, the Council conceded that a SUDS basin is not a feature that is strictly incompatible with the Green Wedge, but that in this case, the combination of the unavoidably steep gradient of the containing walls, edge and railing features, outlets and the access track, would collectively harm the natural quality of this part of the Green Wedge and give it a more man-made and utilitarian appearance.
16. Whilst I accept that there would be some change to the appearance of the area of managed pastureland on a naturally occurring slope, to one with some manmade features and altered topography to form the basin's containing walls, I consider that these features can be designed in such a way as to minimise their effects in this regard. The area within the basin itself could be greened, and the structure of it could be formed in a way that enables it to become green, similarly to the track which could be formed from a cellular grassed paving solution that greens over time. Additionally, the intention that the area on the slope would be a wildflower grassland and planted with clusters of trees and shrubs could offset the effects of these changes and maintain the overall contribution of the site to the character of the Green Wedge.
17. In view of the above, and subject to future design and planning conditions, the proposal would maintain the character and appearance of the Green Wedge. It would therefore comply with Policy ENV6 of the Local Plan which, amongst other things, seeks to ensure that development within Green Wedges avoids adverse impacts on the local character and the separate identity of communities.

Access Design

18. The character of Mount Leven Road is one of pleasant repetitiousness, low density and spaciousness with a wide, sweeping estate road. With few exceptions, the bungalows retain a similar appearance and are set back from the road by generous open frontages with modest level differences in between the dwellings. The consistent orientation and regular spacing between the dwellings and gardens means that the front elevations are public-facing, entrance doors are typically in the side elevations where the garages are situated, and the other side and rear elevations are private. Given the single storey nature of the dwellings, rear gardens also benefit from a feeling of seclusion with little incidental overlooking which is otherwise typical of such urban situations.
19. The access to the site would be created by demolishing the dwelling at No 68 Mount Leven Road and providing a two-way carriageway of 5.6 metres with footways of 1.8 metres on each side. There would also be a landscape strip of 1.5 metres on the side of the neighbour at No 66, which has a slightly lower floor level than No 68. On the other side adjacent to No 70, the landscaped strip would be approximately 4 metres wide. The floor level of No 70 is around 700mm higher than that of No 68.

20. No 66 is separated by No 68 by a boundary wall of around 1.8 metres in height, measured from the ground level at No 68. There is a single garage and driveway which sets the side elevation of No 66 away from this boundary wall. The entrance to No 66 is on this side elevation, providing access from the driveway. A bedroom window is positioned next to the front door and reportedly serves a bedroom.
21. The garage belonging to No 68 forms part of the side boundary between Nos 68 and 70, with a timber fence of around 1.8 metres in height extending either side of the garage along the length of the boundary. Due to the ground level differences between the dwellings, the outlook from No 70 is partly over the boundary features and garage. The outlook is afforded by a door and window in the kitchen and a window in one of the bedrooms, though there are also two obscure glazed windows that serve a bathroom and cloakroom facing towards No 68. The door and window are technically the only openings in the kitchen that provide light and outlook when the interconnecting internal double doors to the dining room are closed.
22. As the outlook from the openings at No 66 would be unchanged, there would be no harm to the living conditions of its occupiers in this regard. The combination of the existing fence, proposed additional acoustic fence and landscaped strip of 1.5 metres would ensure that there would be sufficient distance to avoid any direct loss of privacy.
23. However, in terms of the effects on No 70, despite the addition of a fence of 1.8 metres and an intention to provide landscaping, partial views into the windows would still be gained by passers-by on the footways and vice-versa. With the comings and goings of people from the potential number of houses proposed, there would be a materially noticeable difference in the degree of intrusion experienced by the occupants of No 70. Furthermore, as the landscaped verge of 4 metres would not be within the control of the occupiers, there could be no certainty that the landscaping would prevent people walking in this area which is only some 2.3 metres away from the windows and door, with the single storey nature of the dwelling offering little respite in this regard.
24. In terms of the noise effects on both Nos 66 and 70, the Noise Assessment Report (Wardell Armstrong, March 2021) states that the proposed acoustic fence of 1.8 metres along the majority of the side boundaries would attenuate the traffic noise from the new access to avoid disruption to the occupiers when within their dwellings or gardens. However, there would still be a perceptible change to the noise profile in the area given the number of houses that would be served by the new access. In addition, the noise from passing pedestrians, which cannot be as easily predicted or quantified and which would originate from sources closer to the top of the fence, could also cause a degree of additional disturbance. In my view, the combination of these perceptible changes to the otherwise currently peaceful and private experience of living in Nos 66 and 70 would, on balance, result in harm to the quality of the occupiers' living conditions.
25. I acknowledge that there are some precedents for new accesses having been created between dwellings or alongside dwellings elsewhere. But in this case, by reason of its siting and design, the new access would appear contrived within a relatively constrained amount of space relative to the very deliberate and generously-spaced layout of the estate which has junctions set within

much wider spaces. I consider that the deficiency of space to design an access more in-keeping with this particular streetscene would not only result in design shortcomings but would fail to afford sufficient protection to the living conditions of neighbouring occupiers at Nos 66 and 70 Mount Leven Road from a combination of more modest noise and privacy effects.

26. Drawing the above points together, the access would not be well-designed having regard to the living conditions of neighbouring occupiers which brings the scheme into conflict with Local Plan Policy SD8 and these effects could not be overcome by planning conditions. This Policy aims to protect the privacy and amenity of all existing and future occupants of land and buildings.

Habitats Sites

27. The Habitats Sites make up a wetland which is designated for its diverse range of habitats, including intertidal sand and mudflats, marshlands, dunes, estuarine and coastal waters. These habitats provide feeding and roosting opportunities for a diverse assemblage of important bird species. The Protected Sites has been recently found to be in unfavourable condition from the impact of nutrient pollution.
28. The parties agree that the scheme would generate new nitrate loadings from additional wastewater that would be created by occupiers of the new dwellings. The wastewater would be treated by a wastewater treatment works (WWTW) that discharges to the Habitats Sites. Even taking into account the reduction in nutrient pollution from ceasing the grazing of the land, there would be an impact on the waterbody. Therefore, considered alone or in combination with other similar projects and proposals, the development would result in likely significant effects (LSEs) on the Habitats Sites.
29. A *Technical Note – Nutrient Neutrality* (OS Ecology, October 2022) was submitted prior to the hearing. It contains information to quantify the LSEs which I have used to inform my appropriate assessment (AA) under the Habitats Regulations. The Technical Note sets out that using the '*Nutrient Neutrality Budget Calculator*², there would be a net gain in nitrates in the order of 169.39kg/TN/yr, inclusive of a buffer of 20% to account for uncertainties.
30. As the issue of the Habitat Sites' unfavourable condition has only relatively recently emerged, the means of securing credits or a strategic offsetting scheme are still under development. The option put to me is that a negatively worded condition could be secured to prevent either the commencement of any development or occupation of any dwellings until a scheme to address the additional nutrient pollution can be secured with certainty. There is some limited information that nitrate reduction credits may be able to be secured through other strategic sites in the area, but nothing which offers any certainty that could be required by legal agreement or planning condition.
31. Another appeal decision³ has been put to me which uses a negatively worded condition on a scheme to prevent occupation of dwellings until such time as a suitable mitigation scheme is agreed by the respective Council to address the nutrient pollution which envisages the completion of a legal agreement. I note the relevant Inspector's conclusions about the use of such a condition which

² Nutrient Neutrality Budget Calculator: a tool for assessing the nutrient loading to a Habitats Site – Teesmouth and Cleveland Coast SPA/Ramsar; 2022; Natural England and Ricardo

³ Appeal decision Ref: APP/B1740/W/20/3265937 dated 8 June 2021

the Planning Practice Guidance (PPG) advises must only be if exceptional circumstances can be demonstrated. In the case before him, it appears that the exceptional circumstances arose in part from the absence of a five year housing land supply and the imminently-anticipated completion of the strategic offsetting solution at that point in time.

32. In this case, neither a proposal-specific, more strategic offsetting solution or WWTW upgrade are offered and the Council could not confirm when a strategic offsetting solution would be made available, other than to state that it was proactively being worked on and could take around 12 to 18 months. Whilst the appellant indicates that the condition would prevent the LSEs from occurring, I do not have sufficient certainty of what a mitigation solution looks like or the relevant delivery timescales for such. I have also been made aware that the Council is capable of demonstrating an adequate five year supply of housing. Consequently, these factors suggest that circumstances to justify the use of such a condition do not exist and it would fail to meet the six tests in the PPG.
33. As such, I can only conclude that the development would result in LSEs, and would thus harmfully affect the integrity of the Habitats Sites. In terms of whether there are alternative solutions that would have a lesser effect or avoid an effect on the integrity of the Habitats Sites, there is limited information. However, the Council currently has an adequate supply of housing land. Other schemes with permission which would not harm the integrity of the Habitats Sites are likely to exist. The Council also referred to a scheme on adjoining land that would likely be referred to its Planning Committee subject to resolution that LSEs on the Habitats Sites could be overcome satisfactorily, and through means other than a negatively worded condition. Therefore, I am of the view that less harmful alternatives to the development are likely to exist.
34. I therefore find that the likely adverse effects on the Habitats Sites bring the scheme into conflict with Local Plan Policy ENV5. In such circumstances, under the Habitats Regulations, planning permission cannot be granted.

Planning Balance and Conclusion

35. Though I find that the proposal would not harm the character of the Green Wedge, I consider that it would be harmful to the living conditions of neighbouring occupiers and could not avoid harmful effects on the integrity of protected sites. For these reasons, the scheme conflicts with the development plan, when taken as a whole.
36. I do not attribute weight in favour of the aspects of the scheme which would be of overall neutral effect, such as financial contributions towards schools. These aspects would offset the impacts of the introduction of additional demand for facilities, but would not provide material public benefits.
37. The obvious planning benefits of the scheme would result from the delivery of additional dwellings, with particular regard to the 20% of the total number which would be affordable by requirement of the S106 planning obligation. Though it is agreed that the Council has an adequate supply of housing land against the requirements of the National Planning Policy Framework, the additional housing still attracts weight in favour of the scheme, particularly given the anticipated number of houses and absence of other landscape or other such constraints to development. I also note the intention that the site would be delivered by an established volume housebuilder, though the

efficiency of the build-out rate is not certain even if this factor is taken into account.

38. The provision of publicly open green space in excess of the policy requirements for such provision would be a material benefit of the scheme. There would also be economic benefits from the construction phase, albeit of a more temporary nature, and longer-term economic benefits to the area linked to the occupation of the dwellings by new occupiers. Taken together, I attribute all of the public benefits great weight in the planning balance.
39. However, I do not consider that the great weight attributable to the public benefits amounts to a consideration of such materiality that it outweighs the conflict with the development plan. Accordingly, there is no reason to indicate that a decision should be taken other than in accordance therewith.
40. Therefore, for the reasons outlined above, the appeal is dismissed.

Hollie Nicholls

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Stephen Litherland	Hedley Planning Services
Ms Nina Pindham	Counsel – No 5 Chambers
Ms Lucy Green	Wardell Armstrong Landscape Architect

FOR THE LOCAL PLANNING AUTHORITY:

Ms Elaine Atkinson	Principal Planning Officer
Ms Sarah Wood	Landscape Architect
Mr Robert Parker	Highways Officer
Mr Stephen Donaghy	Environmental Health Officer

INTERESTED PARTIES:

Mr Colin Morgan	Local Resident
Mr Peter Foster	Local Resident
Mr Tom Howson	Local Resident
Mr Cotton	Local Resident
Mr Ian McGregor	Local Resident
Mrs Angela Daws	Local Resident
Mrs Christine Mundy	Local Resident
Mrs Hartley	Local Resident
Mr Malcolm Robinson	Local Resident

DOCUMENTS:

Document 1	Engrossed S106 legal obligation
Document 2	Email clarification concerning noise assessment
Document 3	Mount Leven overlay site plan
Document 4	House type plan
Document 5	Habitats Regulations Assessment by OS Ecology
Document 6	Green Wedge plan
Document 7	Supplementary Planning Document 1: Sustainable Design Guide