



Appeal Decision

Site visit made on 22 August 2022

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 12 December 2022

Appeal Ref: APP/H0724/W/22/3300990

Vacant land on Fens Lane, Hart

Easting: 447440, Northing: 534960

- 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 R Greig against the decision of Hartlepool Borough Council.
 - The application Ref: H/2021/0354, dated 29 July 2021, was refused by notice dated 16 December 2021.
 - The development proposed is construction of single dwelling house and associated drive.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The route from which access into the appeal site (the site) would be gained is contradictorily referred to in the submitted evidence as Fens Lane, Fens Road and The Fens. For the avoidance of doubt, throughout my Decision, I have referred to this route as stated in the application and appeal forms, namely, Fens Lane.
3. The site is located within the Teesmouth & Cleveland Coast Special Protection Area/Ramsar (the SPA/Ramsar), which is a designated European site. Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations), requires the 'Competent Authority', before granting consent for a plan or project which is likely to have a significant effect on a European site (either alone or in combination with other plans or projects), to carry out an Appropriate Assessment of the implications of the plan or project for that site in view of that site's conservation objectives. In determining this appeal on behalf of the Secretary of State, I am the 'Competent Authority'. I return to this matter later in my Decision.

Main Issues

4. The main issues are:
 - Whether the site would be a suitable location for the proposed development, having regard to the development strategy for the area and the character and appearance of the site and surrounding area;
 - Whether the significance of the archaeology within the site has been adequately established, and the effect of the proposed development on it; and

- Whether the proposed development would provide adequate arrangements for the disposal of foul water from the site.

Reasons

5. The site is a modestly sized, wedge-shaped piece of vacant land which slopes down towards Fens Lane. It is bordered by a combination of a close-boarded timber fence and a mix of small trees and bushes, and is currently overgrown. It is part of a larger area of land that provides, what the parties describe as, a 'buffer' between the A179 and Fens Lane.
6. The Village of Hart is in fairly close proximity to the west. However, the site's wider setting to the north, south and east is generally one of open pastoral land delineated by field boundaries.
7. The land adjoining the site has an extant planning permission for a single dwelling¹ following a previous grant of outline permission with some matters reserved². Adjacent to the site, on the opposite side of Fens Lane, are residential properties, which have been constructed recently as part of a grant of outline permission and reserved matters³.

Whether a suitable location

8. While the site sits reasonably near to the Village of Hart, for the purposes of Hartlepool Local Plan, adopted May 2018 (the HLP) and the Hartlepool Rural Neighbourhood Plan 2016-2031, made December 2018 (the HRNP), it is located outside the defined development limits of the settlement. Additionally, it is sited within a Strategic Gap as defined in the HLP and a Green Gap as defined in the HRNP.
9. With regard to the site's location outside of Hart's development limits, there is no substantive or compelling evidence before me which confirms that the proposed development would demonstrate any of the exceptions and/or circumstances that would provide clear justification for its acceptance.
10. I note the 'Active House' principles⁴ upon which the dwelling is designed, the building's future-proofed internal flexibility, and the eco-credentials of the proposed development as a whole. However, while the appliance of these principles and measures to protect and enhance the environment, as well as support the health and wellbeing of the building's future occupants, is highly commendable, I am not persuaded that it results in a dwelling that would be truly outstanding, groundbreaking and innovative.
11. Similarly, I am not convinced that the dwelling's design is of an exceptional quality that reflects the highest standards in architecture. Indeed, I consider that the structure's crudely simplistic block form and expansive asymmetrical roofscape, combined with its basic render finish and jarring combination of fenestration, would result in a dwelling of mediocre and inharmonious design.

¹ Kirkefield Stables Site. Erection of a dormer bungalow, garage and associated external works including removal of existing stable block – Application Ref: H/2020/0384 granted 26 June 2021.

² Kirkefield Stables Site. Erection of one dormer bungalow – Application Ref: H/2017/0174 outline application with some matters reserved granted 7 September 2017;

³ 15 dwellings at the Fens – Application Ref: H/2015/0209 outline application granted 30 March 2017; and Application Ref: H/2019/0047 reserved matters application in respect of outline application Ref: H/2015/0209 granted 13 November 2019.

⁴ Active House is a vision of buildings that creates healthy and comfortable lives for their occupants without negatively influencing the climate and environment – moving us towards a cleaner, healthier and safer world.

Consequently, it would not enhance its immediate setting; reflect or complement the common pattern, scale, form or materials of housing within nearby Hart; or assimilate well into the wider agrarian landscape.

12. I acknowledge the measures the Appellant has utilised in an attempt to mitigate the presence of the dwelling within the site and landscape, including its partial subterranean form, shallow roof pitch, the retention of existing planting and the incorporation of new foliage to the site's perimeters. However, in my judgement, these measures would not satisfactorily limit or lessen the building's prominence within the site or its incongruity within the landscape.
13. The basic presence of built form within this verdant 'buffer', particularly the roofscape, would be conspicuous from the A179; and the dwelling with its domestic curtilage and associated paraphernalia would be readily perceived from Fens Lane when passing the site's access. Furthermore, the recommended incorporation of an acoustic barrier along the southern edge of the site⁵ compounds my concerns in relation to the proposed development's undue prominence.
14. The location, size and shape of the site means that it does not display the expansive openness of the surrounding agrarian landscape. However, as a undeveloped and verdant site, it possesses positive qualities which echo and harmonise with the wider area. The introduction of built form and associated domestic elements into this space would adversely lessen those positive characteristics, constituting an adverse incursion into the countryside. In doing so, and notwithstanding that it is for a single dwelling, the proposed development would cause the piecemeal erosion of the defined Strategic Gap and Green Gap, as well as profoundly undermining the intent of the policies within the HLP and HRNP which seek to expressly protect these areas.
15. I note the Appellant's comments that the dwelling would not be 'isolated' in the sense of being remote from other development, services and facilities⁶. Be that as it may, this does not vindicate the clear policy conflict that the proposal would have in relation to its location outside of development limits and its effect on the character and appearance of the site and surrounding area.
16. A large part of the Appellant's case concerns the presence of other dwellings in the locale and the Council's grant of planning permission for housing development on other sites, either nearby or within the Council area. No information has been provided as to when the three houses at the Fens were granted and built. Moreover, details of the housing developments in or around Dalton Piercy and at the western end of Hart⁷, along with the circumstances which led to them being accepted are not before me. Consequently, I cannot be certain that these developments represent a direct parallel to the appeal scheme in terms of their location and/or the legislative and/or policy context against which they were assessed.
17. Although very close to the site, the adjacent housing granted by the Council⁸ is inside the development limits of Hart. As such, it cannot be compared to the scheme before me. I acknowledge the similarities of the granted development

⁵ As recommended by the Council's Public Protection Team.

⁶ Court of Appeal Case Braintree District Council v Secretary of State for Communities and Local Government 2018 WL 01513032.

⁷ Application Ref: H/2020/0215; Application Ref: H/2017/0118; and Application Ref: H/2019/0206.

⁸ Application Ref: H/2015/0209 and Application Ref: H/2019/0047.

on land adjoining the site⁹. However, I note that the application for outline permission with some matters reserved was determined and granted prior to the adoption of the HLP and the making of the HRNP. Moreover, I am mindful of the Council's submissions that the recent grant of permission was approved by planning committee, contrary to officer recommendation, and justified mainly on the basis of the fall-back position of the outline permission.

18. For all of the reasons set out above, the other developments and permissions cited by the Appellant carry little weight in favour of the appeal and do not justify the acceptance of the proposal.
19. I note the Appellant's willingness to agree to further discussion with the Council on the matter of amendments to the building's design. Nevertheless, I have assessed the appeal on the basis of the plans and information as submitted to the Council, on which interested parties views were sought and upon which the application was determined. In any event, I am not persuaded that modifications to the building's design would overcome the fundamental objections to its location.
20. Accordingly, I conclude that the site would not be a suitable location for the proposed development, having regard to the development strategy for the area and the character and appearance of the site and surrounding area.
21. As such, it would be contrary to Policies LS1, RUR1 and RUR2, QP4 and NE1 of the HLP as well as the SPD, in so far as they aim to protect the rural character of the Borough avoiding coalescence between the urban areas of Hartlepool and the surrounding villages; control development in the rural area; control development outside of development limits by only permitting new dwellings if there is clear justification and where it demonstrates specific exceptions or exceptional circumstances; seek to ensure all developments are designed to a high quality and positively enhance their location and setting; and protect, manage and enhance Hartlepool's natural environment.
22. It would also not accord with Policies GEN1, GEN2 and H4 of the HRNP which, amongst other things, seek to control development outside development limits; adhere to specific design principles; and control housing in the countryside. It would also conflict with the provisions in the Framework regarding housing in rural areas and achieving well-designed places.

Archaeology

Significance of the heritage asset

23. Tees Archaeology declare that there is little doubt that the site is located within an area of archaeological importance and potential, in the form of an Anglo-Saxon Cemetery (the Cemetery). This assertion is supported by archaeological research associated with other developments nearby¹⁰ and confirmed to an extent by the archaeological evaluation of part of the site in 2018¹¹.
24. They submit that the archaeological interest of the Cemetery, in terms of its date, rarity and potential to hold evidence of past human activity, causes it to be of local, regional and national significance, with the potential to be of

⁹ Applications for land known as Kirkefield Stables site - Application Ref: H/2017/0174; and Application Ref: H/2020/0384.

¹⁰ Including Application Ref: H/2015/0209.

¹¹ Vindomora Solutions Ltd Archaeological Practice Archaeological Evaluation Project 239-18-HS. Dated Dec 2018.

international significance¹². Having regard to the information presented and with no substantive evidence to the contrary, I have no reason to disagree with these conclusions.

25. On this basis and having regard to Footnote 68 of the Framework¹³, I have considered this heritage asset of archaeological interest subject to the Framework's policies for designated heritage assets.
26. Paragraph 194 of the Framework requires that the significance of a heritage asset, including any contribution made by its setting, should be established to a level of detail proportionate to the asset's importance. Where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, it requires the submission of an appropriate desk-based assessment and, where necessary, a field evaluation.
27. I acknowledge the archaeological evaluation of part of the site, the extent of which was agreed with Tees Archaeology/the Council. Nonetheless, it is evident that this was limited in its scope, with the report confirming that 'the full nature of the burials and extent of the Cemetery within the proposed development area could not be ascertained through the evaluation'¹⁴. Given the potential importance of the site as outlined above, I am not satisfied that the submitted evaluation identifies and describes the significance of the archaeology within the site in sufficient detail. In turn, this restricts an appraisal of the impact of the proposed development on the asset. In these respects, the submitted archaeological evaluation of the site fails to comply with the Framework.
28. I note that the Appellant is willing to carry out a further, pre-agreed, Scheme of Investigation on the site prior to the proposed development commencing, which could be secured by detailed condition(s). Nonetheless, given the proclaimed and potential significance of the Cemetery, as well as the potential implications of the proposed development upon it, as set out below, I am of the opinion that it would not be appropriate to leave this matter to be dealt with by condition(s), as it goes to the heart of whether the proposed development would be acceptable in planning and conservation terms.

Effects

29. From the information before me, given the position and footprint of the dwelling within the site, as well as the earth movement which would be required for its partially subterranean form and the creation of the access and connections to services, it is highly likely that the proposed development would bring about the irreversible destruction of, at the very least, part of the Cemetery and obvious harm to the significance of this heritage asset.
30. With reference to Paragraphs 201 and 202 of the Framework, Tees Archaeology /the Council state that the proposed development would cause substantial harm to the significance of the heritage asset. However, I am mindful that this is a high test and without a full understanding of the extent and significance of the heritage asset, the level of harm cannot be accurately confirmed. Saying that, it is clear that there would be some harm and, at the very least, this

¹² Consultation response 18 November 2021.

¹³ National Planning Policy Framework Footnote 68 Non-designated heritage assets of archaeological interest, which are demonstrably of equivalent significance to scheduled monuments, should be considered subject to the policies for designated heritage assets

¹⁴ Section 4.2.3. Vindomora Solutions Ltd Archaeological Practice. Archaeological Evaluation. Dated Dec 2018

would be less than substantial, to which I give considerable importance and weight.

Heritage balance

31. The 'less than substantial' harm is required to be weighed against the public benefits of the proposed scheme. It would provide a single new dwelling which would contribute to the local housing stock. Some environmental and social benefits would accrue from the building's utilisation of 'Active House' principles. Additionally, economic benefits would flow from its construction and occupation, as well as from future occupiers supporting local services and facilities. These benefits are tempered by the modest amount of development proposed, but still carry moderate weight in the appeal's favour.
32. Nonetheless, overall, the moderate weight that I ascribe to the public benefits which would accrue from the proposal is not sufficient to outweigh the considerable importance and weight that I attach to the harm I have found.
33. In coming to my decision on this main issue, I note the correspondence between the Appellant and Tees Archaeology/the Council regarding the presence of archaeology within the site and whether or not the site could be developed. I also note the grant of planning permission for development on land adjacent to the site¹⁵. However, it is evident that the archaeological findings at the adjacent site, and thus their significance, were in excess of what was originally anticipated, changing perceptions of the heritage value and interest of the wider area in archaeological terms. As such, these factors carry little weight in support of the appeal.
34. Accordingly, I conclude that the significance of the archaeology within the site has not been adequately established. Moreover, at the very least, the proposed development would cause less than substantial harm to the heritage asset which would not be outweighed by the identified public benefits. This would be contrary to Policy HE2 of the HLP which seeks to protect, enhance and promote Hartlepool's archaeological heritage. It would also conflict with the provisions in the Framework which seek to conserve and enhance the historic environment.

Drainage

35. The proposed development incorporates the use of a non-mains foul drainage system (a cess pit), rather than a system of foul drainage discharge into a public sewer. On this basis, the Environment Agency (the EA) submitted an objection, stating that the proposed development would pose an unacceptable risk of pollution to the water environment. While I note the Appellant's comments regarding his communication with the EA, from the information before me, I have no reason to take a different view.
36. I am aware that the EA's objection and, in turn, the Council's fourth reason for refusal, were raised very late in the determination of the application, giving little time for the Appellant to respond. However, having regard to the form of the proposed development as submitted, it is not unreasonable of the EA and the Council to have concerns in this regard.
37. Nevertheless, the EA state that connection to the mains sewer is feasible in this location and I note the Appellant's willingness to connect the dwelling to the

¹⁵ Application Ref: H/2015/0209 and Application Ref: H/2019/0047.

mains drainage system. On this basis, were I minded to allow the appeal, I am satisfied that this issue could be addressed by the imposition of an appropriately worded condition.

38. Therefore, I conclude that a scheme could be achieved which would provide adequate arrangements for the disposal of foul water from the site. On this basis, the proposed development would be capable of according with Policy H4 of the HRNP regarding new housing in the countryside and foul drainage discharge into a public sewer. It would also be capable of complying with Paragraph 174 of the Framework in relation to new development and water pollution.

Other Matters

39. The site is located within the SPA/Ramsar. Updated guidance from Natural England advises that this designated European site is in an unfavourable conservation status due to nutrient enrichment that is polluting the protected area¹⁶, and which may be worsened by new development including residential units.
40. Even though the updated guidance was introduced after the Council determined the application which is the subject of the appeal, given the type of proposed development and my role as the 'Competent Authority', I am required to have regard to this matter. However, given my conclusions on the main issues, there is no need for me to consider the implications of the proposal on the SPA/Ramsar, because the scheme is unacceptable for other reasons.
41. I note the Appellant's comments regarding the conduct of the Council in determining the application, including the lack of consistency in approach to development in the area and the belated submission of the EA's response which led to the Council's fourth reason for refusal. However, of themselves, these matters are not within the remit of my considerations in the context of an appeal under section 78 of the Town and Country Planning Act 1990.

Planning Balance and Conclusion

42. The benefits of the proposed development are outlined above in the heritage balance and carry moderate weight in the appeal's favour. I have found that a scheme could be achieved that would provide adequate arrangements for the disposal of foul water from the site. However, an absence of harm in this regard weighs neutrally in the planning balance.
43. Conversely, I have found that the site would not be a suitable location for the proposed development, having regard to the development strategy for the area, and the character and appearance of the site and surrounding area. Moreover, that the significance of the archaeology within the site has not been adequately established and that the proposed development would cause, at the very least, less than substantial harm to the heritage asset which would not be sufficiently outweighed by the public benefits that would be realised via the scheme. This harm attracts substantial weight against the appeal.
44. I have had regard to the support within the Framework for significantly boosting the supply of homes, to which the development of small and medium sized sites can make an important contribution. I also acknowledge that the

¹⁶ Dated 16 March 2022.

proposed development would not be 'isolated' in relation to other development as well as services and facilities.

45. However, the site is outside of defined development limits and none of the exceptional circumstances set out in Paragraph 80 of the Framework apply. Moreover, the Framework is clear in stating that planning decisions should contribute to and enhance the natural and local environment; and that heritage assets should be conserved in a manner appropriate to their significance.
46. While there are considerations that weigh in favour of the proposed development, in my judgement, they are not sufficient to outweigh the harm I have found. It would therefore conflict with the development plan when taken as a whole and there are no other material considerations, including the Framework, that outweigh this conflict.
47. No information has been submitted by either party regarding whether or not the Council can demonstrate a five year housing land supply. Even if this could not be demonstrated, having regard to Paragraph 11d(i) of the Framework, the potential harm to the aforementioned heritage asset and the application of policies in the Framework that protect assets or areas of particular importance, as identified in Footnote 7, provides a clear reason for refusing the proposed development.
48. Overall, I afford substantial weight to the harm I have identified and the conflict with the development plan when taken as a whole. Whilst I afford moderate weight to the benefits referred to above, material considerations do not indicate that the decision should be taken otherwise than in accordance with the development plan.
49. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

F Cullen

INSPECTOR