



Appeal Decision

Hearing held on 6 and 7 December 2022

Site visit made on 6 December 2022

by C Beeby BA (Hons) MIPROW

an Inspector appointed by the Secretary of State

Decision date: 6 April 2023

Appeal Ref: APP/Y2003/W/22/3299010

91 Barrow Road, Barton-upon-Humber, DN18 6AE

- 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 Ben Pearson against the decision of North Lincolnshire Council.
 - The application Ref PA/2021/223, dated 8 February 2021, was refused by notice dated 18 November 2021.
 - The development proposed is the demolition of existing dwelling and all other structures, the formation of a revised access to the highway, and new dwellings.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Ben Pearson against North Lincolnshire Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The proposal seeks outline planning permission, with all matters reserved except access. I have considered the appeal on this basis and have treated any plans in relation to the reserved matters as illustrative.
4. New plans (reference 21-146-002(A), 003(A) and 004(A)) were submitted by the appellant during the appeal process. These show visibility splays and swept path analysis.
5. In considering whether to accept the amended drawings I have had regard to the "Wheatcroft principles". The plans do not alter the proposed development and consequently the development is not so changed that to accept them would deprive those who should have been consulted of the opportunity of such consultation. Accordingly, I have formally considered the additional drawings in my determination of the appeal.
6. The Council considers that it cannot demonstrate a 5-year housing land supply (5YHLS), citing a recent appeal decision¹ which concluded that its housing supply position lay somewhere between 3.2 and 4.8 years. There is minimal evidence to the contrary and therefore I have determined the appeal on this basis.

¹ APP/Y2003/W/21/3278257

Main Issues

7. The main issues are the effect of the proposed development on:

- Heritage assets of archaeological interest;
- The character and appearance of the area; and
- Highway safety and congestion.

Reasons

Archaeological remains

8. An archaeological evaluation was carried out at the appeal site in 2008, comprising the excavation of trial trenches. This identified the presence of archaeology across the appeal site, including more than 100 cut features representing Saxon and medieval occupation remains, and a section of 12th century town defences known as the Castledyke. Archaeological remains of early medieval date relating to the Castledyke were found at the site. Evidence of metal working was additionally found. The density of archaeological features in each of the trenches was consistent across the site, with the exception of two trenches to the south of the existing house.
9. The Historic Environment Record (HER) consequently consider that the presence of the archaeology at the site provides evidence that the Saxon settlement of Barton was more widespread than the area of a large enclosure in the vicinity of the nearby Church of St Peter. They submit that the archaeological survival of Saxon and medieval remains at Barton is of national importance.
10. The remains at the site evidently have archaeological interest, but are not currently designated heritage assets. Footnote 68 of the National Planning Policy Framework (2021) (the Framework) states that, where such assets are demonstrably of equivalent significance to scheduled monuments, they should be considered subject to the policies for designated heritage assets.
11. The Historic England Scheduling Selection Guides for Settlement Sites to 1500 and Pre-1500 Military Sites set out considerations for assessing the eligibility for scheduling of Anglo-Saxon and medieval settlements and town defences. One of these, from the first document, is the survival of evidence.
12. The 2008 evaluation identified a significant density of surviving features across the whole site. Whilst groundworks are likely to have disturbed a proportion of the Castledyke remains since then, a considerable area of the site was not subject to these works. Furthermore, the HER consider that the other remains are equally as important as the Castledyke, if not more so, a submission to which I attach full weight in view of their substantial local knowledge. The density of surviving features found in 2008 consequently lends weight to the contention that the survival of evidence at the site contributes to the significance of the remains, and there is minimal contradictory evidence in this regard.
13. Whether a settlement is representative of a period is a further criterion for assessing eligibility for scheduling. Settlement of the site began during the 8th to mid-9th century and probably continued, largely unbroken, until perhaps the 11th century. Activity at the neighbouring site, which has also undergone

archaeological assessment, may not have begun until the later 9th century, with the apparent difference in date between the two neighbouring sites being of particular interest. The Archaeological Mitigation Strategy (AMS) submitted by the appellant acknowledges that several phases of activity are likely to have occurred, and that the results of the 2008 evaluation demonstrate a multi-phased area of archaeological remains across the site. The site consequently has archaeological potential arising from both the Saxon and medieval periods which contributes to its significance.

14. Turning to the rarity of the archaeological evidence, the HER submit that the survival of Middle Saxon settlement remains such as those within the appeal site is not commonplace, as Saxon settlement was generally located within areas where later development has destroyed any evidence of such earlier origins. In light of these considerations and the minimal contradictory evidence, the rarity of the archaeological remains at the site contributes to their significance.
15. Historic England's Inspector of Monuments emphasises the contribution of the archaeology of the appeal site to the settings of two nearby scheduled monuments, St Peter's Church and the site of a Saxon manor, Tyrwhitt Hall. The HER consider that previous published excavations at St Peter's Church and the Castledyke Anglo-Saxon cemetery demonstrate that the archaeological interest of Barton-upon-Humber as a whole is of national and international importance. They note that the absence of finds from the site dating to the mid 11th/early 12th century was similar to that noted at excavations at St Peter's Church, suggesting periods of abandonment potentially associated with the digging of the town ditch in the 12th century. The AMS states that there is an associative connection between the archaeological resource at the site, results at the neighbouring property and the site of the Saxon manor of Tyrwhitt Hall. Thus, there is a synergy between the parties' evidence in this regard, and the group value of the site's archaeological evidence has consequently been demonstrated to contribute to its significance.
16. The AMS states that limited evidence for iron smithing was found in features on the site, including 10 hearth bottoms. It notes that few middle Saxon smithing sites have been identified and that, if any were found, it would be important for the understanding and interpretation of the development of the craft. Some evidence to indicate possible iron smithing was additionally discovered at the neighbouring property. There is consequently some archaeological potential which further contributes to the site's significance.
17. The Council considers that the Castledyke may have been constructed as a response to the increasing instability during the Anarchy period of the mid 12th century, and that the town defences may be associated with the documented construction of a castle during this time. There is consequently some potential historical importance associated with the remains, which makes a limited contribution to their significance.
18. The appellant submits that the remains at the site do not comprise the entire asset and that they have limited aesthetic value, in support of their view that the assets are not of demonstrably equivalent significance to scheduled monuments. Nevertheless, there is nothing before me to suggest that it is necessary for a site to encompass an entire heritage asset in order for an assessment of whether remains within it are demonstrably of equivalent

significance to scheduled monuments to be made. Furthermore, the aesthetic value of archaeological remains is not referred to as a potential scheduling criterion and, even if it were a consideration, an objective assessment of the aesthetic value of the remains which would corroborate the point is not before me.

19. Conversely, a number of the scheduling considerations have been demonstrated to contribute to the significance of the heritage assets at the site, and there is minimal evidence to the contrary. Furthermore, Historic England, the government's statutory adviser on the historic environment, has referred to the archaeological remains at the site as "of national archaeological importance". Taking these matters as a whole, the heritage assets are consequently demonstrably of equivalent significance to scheduled monuments. As a result, they should be considered subject to the policies for designated heritage assets.
20. Paragraph 199 of the Framework states that, when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Paragraph 201 states that where a proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset, authorities should refuse consent, unless particular criteria apply.
21. A lawful development certificate² (LDC) for a proposed swimming pool, changing room and detached garage/carport with a workshop and wood store was approved in 2019. A LDC³ for a proposed tennis court, ponds and associated water features and landscaping at the site was later approved in 2020. These were both obtained by the appellant, who considers that they provide a lawful fallback position which would result in the total loss of the section of the Castledyke within the site. The ponds and some of the other works set out in the LDCs have been partially implemented at the site.
22. The evidence, on which the AMS's assessment of archaeological remains at the site is based, comprises the archaeological assessment and desktop study made in 2008. These identified that some of the remains lay close to the surface. They were consequently highly vulnerable to disturbance. Groundworks, as set out above, have been carried out at the site since then, and therefore it is highly likely that the depth of cover over a proportion of the remains has changed since the 2008 assessment. The location of some of the remains may additionally have altered. Nevertheless, no new assessment of the remains, following the groundworks, has informed the AMS. The details within the AMS which purport to show the location and depth of remains consequently cannot be relied upon.
23. Groundworks for the proposed development are anticipated to include those associated with preliminary works, site preparation and landscaping, construction works and final landscaping. These works would inevitably involve a significant level of ground disturbance across the whole site, and hence mitigation measures would be necessary in respect of the remains.

² Local Planning Authority reference PA/2019/1785

³ LPA reference PA/2020/816

24. A planning application for residential development at the site was submitted in 2011. This was accompanied by a Heritage Impact Assessment (revised in 2012 and 2013), which recommended a programme of mitigation. This included the use of a foundation design which meant that the dwellings would lie at least 40 centimetres above the highest archaeological horizon, and a programme of archaeological excavation and monitoring. A Written Scheme of Investigation (WSI) was subsequently produced in respect of the site in 2015. The mitigation proposed by the current AMS is based on these documents.
25. The production of a new WSI following any grant of permission is proposed. However, assessment and evaluation should take place before a planning application is determined in order to predict the presence of remains and to assess their potential significance, so that the resulting information may be taken into account in the decision. This is particularly necessary in this case in view of the changes at the site since the 2008 assessment. The production of a WSI following any grant of permission would consequently fail to adequately allow for this.
26. The mitigation currently proposed includes a programme of excavation in respect of part of the site, a watching brief during site clearance, importing soil to seek to ensure that remains are preserved in situ at a depth of at least 40 centimetres below the development, the use of ground beams with a maximum depth of 35 centimetres, groundworks to be carried out under archaeological supervision, and the use of protective membrane or matting.
27. The appellant additionally contends that, although some subterranean services at the site would need to pass through the remains, others could be designed to sit above them. However, there is minimal information to confirm whether this would be possible, and it is likely that some of the services would need to be at specific levels. Similarly, there is minimal evidence to support the submission that the section of the Castledyke would be preserved within the development.
28. The current depth of the archaeological remains is generally unknown, due to the above considerations. As a result, it has not been demonstrated that there would be sufficient clearance above the remains for site preparation works and construction formation levels not to damage them, or that the proposed 40 centimetres of depth between the new dwellings and the remains would be achievable. The AMS is consequently based on out-of-date evidence and it has not been demonstrated that the mitigation currently proposed would be suitable, as a result.
29. The HER consider that the whole site would be affected by the preparation, landscaping and construction works and by the installation of services, resulting in the exposure and total or partial destruction of the archaeological evidence, and the evidence before me does not lead me to an alternative view.
30. In view of the above considerations and the close proximity of some of the remains to the surface, it is likely that the proposal would destroy a significant proportion of the archaeological evidence, which includes the Saxon and medieval occupation remains as well as the Castledyke section.
31. The parties generally concur that there is a real prospect that one or both of the LDCs could be implemented, and in view of the existing groundworks I have no basis to take an alternative view. The LDC works could include the

creation of ponds which are proposed to be located within the Castledyke section, a tennis court, swimming pool, and garage, and hence would involve a considerable level of ground disturbance. The implementation of one or both of the LDCs would therefore potentially destroy a proportion of the remains.

32. Nevertheless, I have found that the appeal proposal would destroy a significant proportion of the archaeological evidence across the whole site. Thus, the evidence before me fails to demonstrate that the LDCs would have a more harmful effect on the archaeological remains than the appeal scheme. As a result, the LDCs do not attract weight as a fallback consideration in determining the appeal.
33. The proposed development would consequently cause substantial harm to non-designated heritage assets of archaeological interest, which are demonstrably of equivalent significance to scheduled monuments. Therefore it conflicts with Policy CS6 of the North Lincolnshire Council Core Strategy (2011) (the CS), which states that the council will promote the effective management of the area's historic assets through the preservation and enhancement of the rich archaeological heritage of North Lincolnshire. Further conflict exists with Policy HE8 of the North Lincolnshire Local Plan (2003) (the LP), which sets out that development proposals which would result in an adverse effect on nationally important monuments will not be permitted. Additional conflict exists with Policy HE9 of the LP, which states that planning permission will not be granted for development without adequate assessment of the nature, extent and significance of the archaeological remains present and the degree to which the proposed development is likely to affect them.
34. Further conflict exists with paragraph 194 of the Framework, which states that where a site on which development is proposed includes heritage assets with archaeological interest, developers should submit an appropriate desk-based assessment. Additional conflict exists with paragraph 199 of the Framework, which states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be).

Character and appearance

35. The appeal site is the rear garden of the host dwelling. The surrounding pattern of development is a combination of terraced housing, detached properties set within relatively spacious grounds and residential estates containing dwellings at a generally greater density. The prevailing density is consequently not so uniform as to render any limited divergence from the pattern visually unacceptable. Thus, as the density of development is not set out within the application, and layout is a matter reserved for future consideration, an acceptable scheme could be produced in this regard.
36. The proposal would consequently comply with Policy H5 of the LP, which requires the layout of development to be in keeping with the character of the immediate environment. Further compliance exists with Policy DS1 of the LP, which states that the design of a proposal should reflect and enhance the appearance of the immediate area. Additional compliance exists with Policy CS5 of the CS, which sets out that development should ensure that it takes account of the existing built heritage in terms of density and layout. Further compliance

exists with Policy CS7 of the CS, which states that the density of new development should be in keeping with the character of the area.

Highway safety and congestion

37. The specific concern raised by the Council in this regard is that as the application is in outline the proposed number of dwellings is unknown, making it difficult to determine the true effects of the proposal on the highway network. The Council referred at the hearing to concerns regarding the visibility splay plan and to apparent differences between that and the site plan. The Council relies on local knowledge in support of its assessment of the effect of the proposal on highway safety and congestion.
38. Nevertheless, a limited survey carried out for the appellant found that traffic was not travelling at excessive speeds. The flow of traffic was steady but not continuous at the time of my site visit. Whilst this was merely a snapshot, the survey identified a similarly moderate level of traffic on Barrow Road, with sufficient gaps for vehicles to enter and exit the flow of traffic safely. The road has footways on both sides, and street lighting. Its width allows for the passage of two vehicles simultaneously when one is parked at the side of the road. The road's alignment at this point is relatively straight, and visibility from the proposed site access is reasonable, which is further supported by the additional submitted plans.
39. The relatively small size of the site would limit the number of dwellings and resulting journeys, and TRICS data provided by the appellant suggests that a potential development of six houses would generate no more than three vehicle trips per hour. Furthermore, there is potential to agree a layout which would have a satisfactory effect on highway safety and congestion at the reserved matters stage. The concerns regarding the plans, and the local knowledge relied upon, have not been explained sufficiently for me to attach weight to them. Whilst I note submissions concerning highway safety and congestion, and the safety of school pupils using the road, there is minimal evidence before me to suggest that residential development at the site may result in unacceptable harm to these matters. I additionally note the lack of objection by the highway authority to the proposal, subject to the imposition of requested conditions.
40. As a result of these considerations, it has not been demonstrated that the proposal would cause unacceptable harm to highway safety and congestion in the area. Thus, the proposal complies with Policy T2 of the LP, which states that all development must be provided with a satisfactory access.

Other Matters

41. I have had regard to other matters raised, including concerns about the proposal's effect on flood risk and the privacy of nearby occupiers. However, as I am dismissing the appeal on a main issue for the reasons given above, I have not pursued these matters further.

Other Considerations

42. The Government's objective is to significantly boost the supply of housing and the proposal would provide modern homes with the potential for good design in a location with access to services. Occupiers of the development would be likely to support local services and facilities. The scheme would also lead to a

small and time-limited economic benefit during the construction phase, which may give rise to extra local employment. Given the relatively small scale of the proposal, these benefits attract modest weight.

43. Whilst the AMS notes the potential of the proposed archaeological investigation to further understanding of the assets in their context, the Framework sets out that the ability to record evidence of our past should not be a factor in deciding whether the partial or total loss of any heritage assets should be permitted. Thus, this consideration does not form a benefit of the proposal.
44. It is suggested that the appeal site forms previously developed land (PDL) and consequently that the proposal gains support from provisions within the Framework for the use of such land. Notwithstanding this, the Framework definition of PDL excludes land in built-up areas such as residential gardens. As the appeal site is a residential garden within a built-up area, it does not form PDL and the proposal consequently does not gain support from the Framework in this regard.
45. The proposal's compliance with highway safety policies is a neutral matter which does not add weight in its favour.

Whether the proposal would conflict with the development plan as a whole

46. I have found that the proposal would cause substantial harm to non-designated heritage assets of archaeological interest, which are demonstrably of equivalent significance to scheduled monuments. I consider the conservation and enhancement of the historic environment to be a matter of central importance within the development plan, and the development conflicts with a number of relevant policies by a significant degree. Accordingly, I attach significant weight to the identified conflict with Policy CS6 of the CS and Policies HE8 and HE9 of the LP. The proposal would consequently conflict with the development plan taken as a whole.

Framework paragraph 11d)

47. As the Council cannot currently demonstrate a 5YHLS and this is an application for the provision of housing, the development plan policies which are most important for determining the application are considered to be out-of-date in accordance with paragraph 11 d) of the Framework. I am therefore required to consider, as set out in Framework paragraph 11 d) i, whether the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusal.
48. The proposed development would cause significant conflict with paragraph 201 of the Framework, which states that consent should be refused where a proposed development will lead to substantial harm to a designated heritage asset, unless it can be demonstrated that the substantial harm is necessary to achieve substantial public benefits, or certain criteria apply. None of these criteria have been demonstrated to apply in this case. The proposal would bring about modest public benefits, as identified above, which do not justify the substantial harm it would cause to the heritage assets.
49. The application of the footnote 7 Framework policies consequently provides a clear reason for refusing the development proposed. As a result, the proposal does not benefit from the presumption in favour of sustainable development.

Section 38(6) balance

50. The proposal would conflict with the development plan as a whole and the other considerations, including the Framework, do not outweigh this conflict.

Conclusion

51. For the reasons given above I conclude that the appeal should be dismissed.

C Beeby

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Harry Clarke	Associate Heritage Planner, Stantec
Nicholas Kingsley-Smith	Agent and Planning Solicitor
Ben Pearson	Appellant
Gareth Pritchard	Town Planner, Stantec
Emily Scott-Holt	Odyssey

FOR THE LOCAL PLANNING AUTHORITY:

Rebecca Leggott	Principal Planning Officer
Alison Williams	Historic Environment Officer

DOCUMENTS:

Plan of the town and old inclosure of Barton on Humber, showing the line of the Castle Dyke