



Appeal Decision

Site visit made on 29 September 2023

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 December 2023

Appeal Ref: APP/H0724/W/23/3323428

Low Throston House, The Bungalow, Netherby Gate, Hartlepool TS26 0LF

- 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 Haygarth against the decision of Hartlepool Borough Council.
 - The application Ref H/2022/0378, dated 21 September 2022, was refused by notice dated 15 March 2023.
 - The development proposed was originally described as '*Revised Application for a proposed Bungalow on Land adj Low Throston House*'.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Haygarth against Hartlepool Borough Council. This application is the subject of a separate decision.

Preliminary Matters

3. Notwithstanding the description of development set out above, which is taken from the application form, it is clear from the plans and accompanying details that the development comprises '*change of use of land to extend curtilage of 1no dwelling approved under H/2021/0215 and to enclose land into residential curtilage*'. The Council dealt with the proposal on this basis and so shall I in the formal decision.
4. As I saw at the time of the site visit, the change of use, enclosure of land and erection of a fence has already taken place, I am therefore dealing with the appeal on a retrospective basis.
5. A screening direction was issued under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations). In exercise of the powers conferred by Regulations 14(1) and 7(5) of the EIA Regulations, the Secretary of State directed that the development is not EIA development.

Main Issue

6. The main issue is the effect of the development on the character and appearance of the area, including the setting of the Scheduled Ancient Monument (SAM) known as (Low Throston deserted medieval village).

Reasons

7. The appeal site relates to a new dwelling which was given permission¹. The dwelling is sited at the end of a small cul-de-sac at Netherby Gate which serves other dwellings and there are several ancillary buildings, stables, and a paddock. The site sits at an elevated position due to the topography of the area and Hart Lane to the south. It is surrounded to the north and west by open pastureland which provides a clear distinction and separation between existing residential development.
8. The appeal site falls within and is surrounded by an area of national importance and the land is protected as a schedule monument known as 'Low Throston deserted medieval village' listing Ref: 1006765. Its significance derives from the association of well-preserved earthworks remaining of an abandoned medieval village expressed on the 1st Edition OS maps and are clearly visible on the ground. Evidence dated from partial excavations in 1972 indicates that the medieval village was occupied between the 14th-16th century with further archaeological evaluations of the land in 1996. It has high levels of evidential, historical and communal heritage values relating to early abandonments of medieval settlements in Hartlepool and the North.
9. Paragraph 189 of the National Planning Policy Framework 2023 (the Framework) is clear that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations. Paragraph 194 requires that an applicant should describe the significance of any heritage assets affected, including any contribution made by their setting. In addition, where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, the local planning authority should require a desk-based assessment and, where necessary, a field evaluation.
10. The development has resulted in a notable extension of curtilage to both the northern and western areas within the open pastureland, clearly deviating from the previous approved scheme, plans and conditions. This has resulted in an extension of the garden area and enclosing it with wooden fencing of some 1.8m in height. The garden itself, sits at different levels and as I saw the fencing is fixed within the ground and in part with additional ground works of gravel channels which would have resulted in physical harm to the ground during the construction and erection including those areas of permanent raised hardstanding. Moreover, given that the land is now enclosed and in use as a garden this is likely to result in an additional level of future harm to the SAM due to a continued domestic use.
11. The fence appears as a stark addition which is exacerbated by its scale and design which encroaches within the SAM and does not align with any existing residential curtilage. It has resulted in a visual intrusive and incongruous form of development causing harm to the setting and significance of the SAM. It cannot be considered to be de-minimis. Furthermore, given the land levels the fence is clearly visible within and from the immediate landscape and wider views particularly as it encroaches into areas of land which were open and free from existing development.
12. I note that the appellant originally submitted a Heritage Statement (H/2020/0062), nonetheless this related to the original planning permission, of

¹ H/2021/0215 – reserved matters pursuant to outline application H/2020/0062 - 02/08/2021 & 20/12/2020

which at that time there was no encroachment into the area of the SAM and clearly does not relate to the development which has taken place in this appeal. However, the additional Heritage Statement² (HS) at paragraph 3.1.1 states that the development is immediately adjacent to and partly within the SAM. It further denotes at paragraph 4.4.2 that the fence posts will have physically impacted the below ground elements of the SAM to a degree. It goes on to say there has been a lack of archaeological monitoring and no ongoing maintenance plan. The conclusion of the HS is that the development has caused less than substantial harm.

13. I have had regard to the appellants' maps and evidence put to me which show their depiction of where they consider the boundaries of the SAM lie. However, it is clear from the evidence provided by Historic England that the site clearly encroaches within the SAM, and that the appellant's evidence is not precise. Moreover, as Plan PL1 and PL3 are a statement of interpretation with the boundary and are hand drawn with no scale from an overlay, it cannot be considered that it forms part of an official listing entry or part of the official NHLE³. Even if I considered that the fence to the north was along the boundary of the SAM, there is no substantive evidence to suggest that this has not resulted in harm to the SAM by its erection and construction being fixed within the ground. In addition, I note that the application and appeal is provided with limited detail including fixings, change in ground levels or construction methods or that any watching brief took place for this development.
14. Given the above, I find that the proposal would fail to preserve the special interest and the significance of the SAM. Consequently, I give this harm considerable importance and weight in the planning balance of this appeal.
15. Paragraph 199 of the Framework advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to the asset's conservation. Paragraph 200 goes on to advise that significance can be harmed or lost through the alteration or destruction of those assets and that any such harm should have a clear and convincing justification. Given that the extension of the curtilage and erection of the fence is visually intrusive, I find the harm to be less than substantial in this instance but nevertheless of considerable importance and weight.
16. Where a proposal will lead to less than substantial harm to the significance of a designated heritage asset, paragraph 202 of the Framework advises that this harm should be weighed against the public benefits of the proposal, including, where appropriate, securing its [the asset's] optimal viable use. The appellant has not advanced any benefits only that it was unreasonable for the Council to refuse the development and there is no impact. Thus, it appears to me that benefits would be personal to serve the occupiers of the property and garden area. However, these are not sufficient to outweigh the harm that I have identified. In the absence of any substantiated evidence to the contrary neither would any public benefits accrue in relation to the SAM.
17. For these reasons, I conclude that the development would fail to preserve the identified national importance and setting, and therefore the significance of the SAM, and has a detrimental impact on the character and appearance of the area, thus failing to satisfy the requirements of paragraphs 199 and 200 of the

² Rocket Heritage & Archaeology, January 2023

³ The National Heritage List for England

Framework referred to above. It is also contrary to Policy HE1 and QP4 of the Hartlepool Local Plan, 2018. Taken together amongst other matters the policies seek to preserve, protect and positively enhance all heritage assets, sustain and/or enhance the historic environment and heritage assets including archaeological remains, and their settings; and developments should be high quality, including being appropriate and reflect and enhance the distinctive features, character and history of the local area.

Other Matters

18. The appellant has raised concerns over previous developments that have taken place in the vicinity of the appeal site and suggests that the Council have been inconsistent and made inaccurate assertions, but these do not affect the precise circumstances of the appeal scheme before me.
19. I have also had regard to the appellants recent personal circumstances, and in that having due regard to the Human Rights Act 1998 (HRA) and the Public Sector Equality Duty (PSED) under the Equality Act 2010. The appellant who occupies the site has protected characteristics for the purposes of the PSED. However, after having regard to all material considerations, I am satisfied that the aim of avoiding unacceptable harm to the heritage asset can only be adequately addressed by dismissal of the appeal. Any interference with the human rights of the appellant is therefore necessary and proportionate.
20. The appellant has referred to the fence being permitted development. However, I have no substantive evidence of a lawful development certificate for the fence before me, and it appears to me that the development is in breach of the terms granted on the original permission.
21. The appeal site is located within 3km of the Teesmouth and Cleveland Coast Site of Special Scientific Interest (SSSI) and Ramsar site, both which are designated areas. Accordingly, referring to paragraph 180 and 181 of the Framework, the development has not resulted or would not likely lead to significant effects on designated sites to warrant the preparation of a habitat regulations assessment.
22. The Conservation of Habitats and Species Regulations 2017 (as amended) require that, where a project is likely to have a significant effect on (a) European site(s) (either alone or in combination with other plans or projects), the competent authority must, before any grant of planning permission, make an appropriate assessment (AA) of the project's implications in view of the relevant conservation objectives. Nevertheless, as I have found the proposal to be unacceptable for other reasons, it is not necessary for me to undertake an AA, or consider this matter further. For the avoidance of doubt, even if I had done so and identified no adverse effect, it would not have affected my overall conclusions on this appeal.

Conclusion

23. The development would be contrary to the development as a whole and there are no other considerations or public benefits which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

K A Taylor

INSPECTOR