



Appeal Decision

Hearing held on 3 December 2024

Site visit made on 3 December 2024

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 14 February 2025

Appeal Ref: APP/H0724/W/24/3351264

Land North of Duchy Homes, Easting 442879 / Northing 528028

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Wynyard Park Ltd against the decision of Hartlepool Borough Council.
 - The application Ref is H/2024/0011.
 - The development proposed is erection of 3no. residential plots with associated access (all matters reserved except for access).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application was submitted in outline with all matters reserved except for access¹. A site location plan, Ref: 1912/201 Rev D and a proposed site plan, Ref: 1921/200 were submitted with the application. I have regarded all elements of these plans as indicative apart from the details of the access.
3. The proposed development was refused for four reasons. During the course of the appeal, the Council confirmed that it no longer contests the third and fourth reasons for refusal relating to (3) securing necessary obligations² and (4) provision of information concerning drainage/flood risk³. From the submitted evidence and discussion at the Hearing, I have no reason to take a different view. Therefore, the main issues of the appeal are confined to the Council's first and second reasons for refusal.
4. With regard to the above and the third reason for refusal, a 'Planning Obligation by way of Unilateral Undertaking under Section 106 of the Town & Country Planning Act 1990' (UU) dated 15 July 2024, was submitted as part of the appeal. The detail of the UU was discussed at the Hearing in relation to some omissions and inconsistencies. An amended UU dated 9 December 2024, was submitted after the close of the Hearing.
5. I am satisfied that the requirement for contributions is in line with the approach as set out in the Council's Planning Obligations Supplementary Planning Document (2015), and that the amended UU meets the provisions of the Community Infrastructure Levy Regulations 2010 and the tests in the National Planning Policy

¹ Access would be provided via a private road currently under construction as part of a previous permission Ref: H/2021/0282.

² A Unilateral Undertaking was submitted as part of the appeal.

³ The main parties agreed that this matter could be satisfactorily addressed via a detailed pre-commencement condition.

Framework (the Framework)⁴. Consequently, I have had regard to the amended UU and the agreed contributions in my determination of the appeal.

6. A revised version of the Framework was published on 12 December 2024, upon which the main parties were given the opportunity to comment. In determining the appeal, I have had regard to the revised Framework and the comments received.
7. The main parties agreed at the Hearing that the Archaeological Exclusion Zone (AEZ) within which the majority of the appeal site (site) lies, is a non-designated heritage asset (NDHA) of archaeological interest, to which footnote 75 of the Framework does not apply⁵. I have no reason to disagree. I have therefore determined the appeal on this basis and, with the agreement of the main parties, amended the second main issue as stated in the Hearing agenda to reflect this.

Main Issues

8. The main issues are: whether the site would be a suitable location for the proposed development having regard to the development plan; and the effect of the proposed development on the significance of the AEZ, a NDHA of archaeological interest.

Reasons

Background

9. The site is located within Wynyard Park North, one of three areas allocated for significant development within the Hartlepool Local Plan (2018) (Local Plan). It forms part of land, which is allocated as a green wedge and defined as an AEZ.
10. It is an irregular shaped parcel of rough ground, of approximately 0.3 hectares (3000 square metres) in size, which is currently bound by a combination of hedging and heras fencing.
11. To the north, west and south is approved residential development under construction, with that to the north and west being self-build⁶ (hereafter referred to as the Cavendish Site), and that to the south being constructed by Duchy Homes. The land to the north-east is an arable field, and the land to the east includes the site of a 19th century farmhouse and outbuildings that were demolished in 2013. Also to the east is land which has been safeguarded to be delivered as a Green Corridor, comprising an area of public open space and a Multi-use Games Area⁷.

Suitable location

12. The green wedge, within which the majority of the site sits, is allocated within the Local Plan, as shown on the Policies Map, and also included in the Wynyard Masterplan (2019) as part of a 'green network' within the area to be delivered by developments as they come forward. As such, Local Plan Policies NE3: Green Wedges and HSG6: Wynyard Housing Developments, are relevant.

⁴ Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and Paragraph 58 of the Framework.

⁵ Footnote (75) of the Framework - 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.

⁶ Application Ref: H/2021/0282. Outline planning application with all matters reserved except for access for the erection of 25no. residential plots (use class C3) with associated access (Amended site location plan and reduction in the number of proposed dwellings from 29no. to 25no) Approved 18 January 2022.

⁷ Through a S106 Agreement pertaining to Application Ref: H/2019/0365 Residential development of 67 dwellings Permitted 18/03/2020 Approved 18 January 2022.

13. Policy NE3 aims to protect, maintain, enhance and, where appropriate, increase the number of green wedges to provide a wide range of benefits for the town. It sets out that development within the green wedges as stated in the Policy, which includes (6) Wynyard, will be 'strictly controlled' and that approval will only be given for the development of buildings or structures which meet specific criteria, namely 7) comprise extensions to existing premises located within a green wedge, or 8) provide facilities ancillary to existing or proposed recreation, leisure, sporting or other uses compatible with the open nature of the green wedge, or 9) relate to the provision, enhancement or management of areas of biodiversity value, and 10) there is no significant adverse effect on the overall integrity of the green wedge.
14. Supporting text to the policy outlines the multi-functional role of the green wedge at Wynyard, including protecting areas of valuable green space, providing good opportunities for enhancing footpath and cycle way links, helping to improve wildlife habitats, providing more opportunities for leisure and recreation, and providing a high quality environment to encourage new investment.
15. The proposed development would not accord with any of the criteria set out in 7), 8) or 9) above and, as such, requirement 10) is not applicable. In these regards, there would be clear and direct conflict of the proposal with Policy NE3.
16. Policy HSG6 includes, b) Wynyard Park North, comprising 25.8ha being allocated for approximately 400 dwellings, and sets out the criteria against which planning applications will be determined. Pertinent to this appeal are: 2) At Wynyard Park North...the development will incorporate a minimum of 5.6ha of green infrastructure, informal open space and recreational and leisure land; 5) A multifunctional strategic green wedge is allocated, as defined on the Policies Map. Planning Permission will only be given for developments which relate to the use of land within the green wedge as parkland or other amenity, recreational or landscaped open space, or for allotments or wildlife purposes; and 9) Development to accord with the key principles set out in concept diagram contained in the Plan; development to accord with an approved masterplan.
17. I acknowledge that, as advanced by the appellant, 5.6ha of what could reasonably be described as 'green infrastructure⁸, informal open space and recreational and leisure land' would be provided by existing and future developments within Wynyard Park North, meeting the requirement of criterion 2) above. Nonetheless, the proposal for residential development on the site would not comply with criteria 5) and 9) above. Consequently, in these respects, there would be clear and direct conflict of the proposal with Policy HSG6.
18. Accordingly, I conclude that the site would not be a suitable location for the proposed development having regard to the development plan, and there would be conflict with Policies NE3 and HSG6 of the Local Plan referred to above.
19. The appellant concedes this policy conflict in their written and oral evidence. However, having regard to Section 38(6) of the Planning and Compulsory Purchase Act 2004, they submit that material considerations indicate the decision should be made other than in accordance with the development plan. I deal with these under 'Other Matters' below.

⁸ As defined in Appendix 1, Glossary of Key Terms – Hartlepool Borough Council, Green Infrastructure Supplementary Planning Document, dated 2020.

NDHA of archaeological interest

20. The majority of the site is located within the AEZ (western side). The AEZ is referenced in the Wynyard Masterplan (2019)⁹ and also in the Wynyard Garden Village Visioning Document (2022). The parties' evidence sets out that the AEZ was established to protect and preserve in situ and free from impact, earthworks and buried archaeological features, relating to the medieval settlement at Low Newton Hanzard. The Zone and its physical extent were established by the Council / Tees Archaeology in conjunction with the developer¹⁰ in 2009 following an Archaeological Evaluation and Earthwork Survey of the land (the 2009 survey)¹¹.
21. As set out above, the main parties agree that the AEZ is a NDHA. As such, Local Plan Policies HE1: Heritage Assets and HE2: Archaeology, and Paragraph 216 of the Framework¹² are relevant.
22. Significance (for heritage policy) is defined in the Framework as 'The value of a heritage asset to this and future generations because of its heritage interest', which includes 'archaeological interest'. A heritage asset possesses archaeological interest if it 'holds, or potentially holds, evidence of past human activity worthy of expert investigation at some point.'
23. The parties disagree as to the scale of 'archaeological interest' and thus significance of the AEZ, including the site. Any identification and assessment of interest and significance are determined by the available evidence at that time.
24. Following the 2009 survey, the views of English Heritage (EH)¹³ were sought as to the 'potential significance of the site'. EH concluded that the medieval settlement at Low Newton Hanzard was 'clearly of at least regional importance' but that, from the information available, a clear case for national importance could not be made, with it comparing unfavourably to the nearby scheduled medieval farmstead at High Burntoft¹⁴. On this basis, EH declared that the proposal to allocate the land as an AEZ allowing 'the in situ preservation of the core of the remains' was 'considered an appropriate and satisfactory outcome.'
25. Since that time, the permitted demolition of the 19th century farmstead in 2013 has resulted in damage to known archaeological remains within the AEZ, and additional evaluations/surveys have been undertaken on land within and adjacent to the Zone. The latter provide assessments on the extent of the damage and additional information as to the archaeological interest and thus significance of the asset. Of particular relevance to the appeal are the Historic Environment Mitigation Proposal by Northern Archaeological Associates (NAA) (March 2022); an Earthwork Survey Report by Pre-Construct Archaeology (PCA) (June 2022); a watching brief for the SUDs pond and associated drainage in the Cavendish Site; and a Strip, Map and Record of land within the Cavendish Site¹⁵.
26. The 2022 evaluations/surveys concluded that the 2009 survey misinterpreted some of the archaeological features; and that the movement of heavy machinery along

⁹ Section 2.6 Historic Environment (Area of Archaeological Importance).

¹⁰ Wynyard Park.

¹¹ Headland Archaeology UK Ltd, dated June 2009.

¹² Paragraph 216 of the Framework: In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

¹³ Now Historic England.

¹⁴ National Heritage List Entry Number: 1015207.

¹⁵ Interim Statement prepared by PCA, Appendix 1 of appellant's Appendix 6g.

with the deposition and removal of spoil within the AEZ as part of the demolition of the farmstead, had seriously compromised the earthworks and severely reduced the potential for below-ground features to survive in some parts of the Zone. On this basis, the appellant submits that the archaeological site is 'neither largely complete nor clearly recognisable' to warrant its designation as an AEZ.

27. With regard to the 'damage' within the AEZ, whilst I note the comments of the Council and interested parties on this matter, from the evidence before me I cannot be certain that it was 'deliberate'. As a result, Paragraph 209 does not apply in this instance.
28. Nonetheless, whilst some features within the AEZ may have been misinterpreted, this does not completely undermine the Zone's heritage interest, value and designation as a whole. Moreover, the damage, although extensive, concerns only part of the Zone, and importantly, does not include the majority of the site. In any event, the reassessment of the extent and designation of the AEZ is not within the scope of this appeal.
29. I am also mindful that the evaluation within the site as part of the 2009 study was confined to two trenches, and although additional evaluations/surveys have been carried out within and adjacent to the AEZ, knowledge regarding the survival and potential of any archaeology within the site is still limited, being described by the appellant as 'an unknown quantity'. Also, importantly, more recent evaluations/surveys on the Cavendish Site have found archaeology 'of a greater quantity and quality' than expected, including six phases of medieval settlement and agricultural activity, 'contemporary with and a continuation of the adjacent medieval estate centre'.
30. Bearing the above in mind, it is reasonable to conclude that there is potential for the site to hold further archaeological remains that contribute to the archaeological interest and thus significance of the AEZ as a whole. Although, given the uncertainty of the resource present, this is difficult to gauge.
31. The proposed development of three units, involving groundworks and construction activities would affect most or all of the site to some degree. Having regard to the NAA survey in 2022, this would result in severe or total loss of the known archaeological features¹⁶; and potential partial or total loss of any unknown archaeological remains within the site. Of itself, this loss would cause harm to the archaeological interest and thus significance of the NDHA. However, similar to above, the uncertainty of the resource present, limits an appraisal of the scale of this loss and harm.
32. I recognise that the damage to or loss of archaeological remains within and adjacent to the AEZ as a result of previous planning permissions have compromised the completeness of the medieval settlement. I also acknowledge that any loss and harm as a result of the proposed development would relate to a small part of the AEZ. Nonetheless, these factors do not justify further harm to the significance of the asset and the intent of the AEZ as a designation. Indeed, the damage to/loss of archaeological remains located either side of the site (albeit that to the west being outside of the AEZ) provide additional support to the AEZ's objective of the land remaining undeveloped.

¹⁶ Summary, NAA 2022 Survey.

33. A mitigation strategy of strip, map and record of the site is advanced by the appellant¹⁷, which would be controlled by condition, the wording of which was agreed by the main parties as part of the Hearing. They highlight that this process is considered acceptable by two separate archaeological consultants; and assert that it would address any archaeology that may be encountered, establish the nature, survival and value of any archaeological remains present and 'better reveal' the significance of the asset.
34. However, I note the conclusions of the archaeological consultants were prior to the recent evaluations/surveys on the Cavendish Site. Given the investigative work to date and the 'unknown quantity' of the archaeological resource within the site, I am not persuaded that this would be an appropriate response. Whilst it would 'preserve' this part of the asset, it would do so only by record, undermining the fundamental intent of the AEZ's designation. Moreover, as it would only involve the site, there would be limitations as to how far it would 'better reveal' the significance of the 'medieval settlement'. In any event, Paragraph 218 of the Framework sets out that the ability to record evidence of our past should not be a factor in deciding whether the loss of a heritage asset (wholly or in part) should be permitted.
35. The appellant is willing to provide interpretation boards to be controlled by condition, the wording of which was agreed by the main parties as part of the Hearing. This would be in accordance with Policies HE1, HE2 and NE3 of the Local Plan. However, whilst I acknowledge the benefits of these, I am conscious that their provision would only be as a result of the loss of any archaeological remains within the site as part of the AEZ.
36. That the archaeological interest and significance of the medieval settlement at Low Newton Hanzard is not as great as the scheduled site at High Burntoft nearby, does not, of itself, justify the loss of any archaeological remains within the site as part of the AEZ.
37. In conclusion, as set out above, the available evidence and particularly the uncertainty of the archaeological resource present in the site, impede the undertaking of a balanced judgement, in relation to the scale of any harm or loss and the significance of the asset. In these circumstances, I cannot be certain that the proposed development would not have an unacceptably harmful effect on the significance of the AEZ, a NDHA of archaeological interest. As such, the proposal would conflict with Policies HE1 and HE2 of the Local Plan, in so far as they seek to preserve, protect and positively enhance all heritage assets; and protect and enhance Hartlepool's archaeological heritage. It would also not comply with the provisions within the Framework which seek to conserve and enhance the historic environment.

Other Matters

38. Supporting text to Policy NE3 confirms that green wedges 'provide convenient and often extensive amenity open space'¹⁸. Moreover, it is reasonable to conclude that they display aspects of the 'description' and 'purpose' of 'amenity greenspace' as referred to in the Hartlepool Borough Council, Open Space, Sport and Recreation

¹⁷ Written Scheme of Investigation: Strip Map and Record Land North of Duchy Homes, Plots 1-3, Wynyard Park Estate, Hartlepool dated July 2024.

¹⁸ Local Plan Paragraph 16.54.

Assessment (2015)¹⁹. However, it remains that the green wedge including the site, was allocated as part of the examination and adoption of the Local Plan and is as defined on the Policies Map, to which the requirements of the relevant policies apply. It is not for me as part of this appeal to re-examine that allocation.

39. The appellant submits that the green wedge including the site is 'former agricultural land' and not 'valuable green space'. I have not been directed to any definition of what constitutes 'valuable green space' to assess this green wedge against it. Even if I accept the appellant's view on this matter, as above, it remains that the land is allocated as a green wedge. Moreover, as more developments in Wynyard North are delivered, it has the potential to positively support the social and environmental objectives of both Policy NE3 and the Framework, generating 'value' in those regards.
40. Green wedges have a multi-functional role. The green wedge including the site may not meet all of the functions set out in supporting text to Policy NE3, or be comparable to others in the Borough in this respect. Nonetheless, its value and/or potential value is not diminished because of this. It still has the potential to offer good opportunities for enhancing links to the countryside and adjacent urban areas, and more opportunities for leisure and recreation, both of benefit to nearby residents.
41. Green wedges have no standard form or size, and the proposed development would leave the majority of the wedge intact. It is on this basis that the appellant asserts that it would still be able to fulfil its purpose and any harm would be 'negligible'. However, whilst I acknowledge the need for flexibility, as and when schemes come forward, the green wedge including the site, was never intended to be a 'development opportunity'. The further erosion of the green wedge by development, which is not compatible with its designation as such, would fundamentally undermine its integrity as a whole and the intent of its allocation.
42. As set out above, evidence provided by the appellant demonstrates that the requirement of part 2) of Policy HSG6, in relation to the provision of green infrastructure, informal open space and recreational and leisure land, will be met. Nonetheless, this requirement is a 'minimum' not a ceiling and does not offset the direct conflict with parts 5) and 9) of this policy.
43. The evidence indicates that the earlier delineation of the land as an AEZ and the intent that archaeological remains within it would be preserved in situ, provided an opportunity for it to be a 'no built development area' and part of the green infrastructure network within Wynyard. As such, although having different functions, the green wedge is not secondary to the AEZ, rather, the dual delineation and allocation are equal and compatible.
44. The appellant has drawn my attention to recent applications where the loss of parts of the green wedge has been approved by the Council. However, the loss of part of the green wedge within the Cavendish Site differs to that before me, in that it involved land located outside of the AEZ. Moreover, the decision had regard to the retention of the green wedge to the east, which includes the site, and the further loss of green wedge land as a result of the appeal proposal would undermine part

¹⁹ Table 1.4 Typology of Open Spaces. Amenity Greenspace: Landscaped areas with no designated specific use, but which provide visual amenity or separate different buildings or land uses for environmental, visual or safety reasons particularly in and around housing areas are generically described as amenity greenspace.

of that decision's rationale. Additionally, the loss of part of the green wedge arising from the provision of basic infrastructure in the form of a spine road to the south is not comparable to the type of development before me.

45. I am not persuaded that the Cavendish Site would appear incomplete if the proposed development does not go ahead. Unlike the very regular pattern of development apparent in other areas of Wynyard Park North, the Cavendish Site comprises self-build units which, whilst adhering to a high-level design code, means that they are not of uniform footprint, orientation, size, scale, design and/or materials. On this basis, the omission of development within the site would not appear as a discordant gap.
46. The potential for future damage to archaeological remains within the AEZ by tree roots, and public safety concerns of potentially contaminated land arising from the demolition of the farmhouse are raised by the appellant. However, no details in support of these claims have been provided.
47. None of the considerations advanced by the appellant, individually or cumulatively, outweigh or alter my overall conclusions on the main issues.
48. Natural England (NE) has confirmed that designated European habitats sites, which are located within the Council's boundary, are in an unfavourable conservation status due to nutrient enrichment that is polluting the protected area, and which may be worsened by certain types of development, including residential.
49. With regard to regulation 63 of the Conservation of Habitats and Species Regulations 2017, I am the 'Competent Authority' in determining this appeal. The main parties and NE consider that the proposed development would not have significant effects/adverse impacts on the protected sites which, from the submitted evidence, I have no reason to disagree with. Consequently, there is no need for me to consider this matter further.

Planning Balance

50. The proposed development would provide three self-build residential units which would contribute to the overall supply and mix of housing in the Borough, and would have the potential to make a positive contribution to local character and distinctiveness. The development would also generate economic and social benefits through the creation of employment and occupation of the properties, including support towards local services and facilities.
51. The contribution to off-site affordable housing within the Borough is also a benefit along with the other contributions²⁰ which are required across the Wynyard area to create a sustainable community. These contributions and securing them through the UU provide additional support to the appeal.
52. The strip, map and record of any archaeological remains within the site is largely mitigation of the proposal's harmful effects, which weighs neutrally. Although, I acknowledge the benefits of the process in facilitating improved knowledge of the archaeological resource within the site and the medieval settlement; and the provision of interpretation boards.

²⁰ Walkway; cycle link; ecology; primary education; secondary education; tennis; bowls; and sports hub and pitch.

53. The weight that these benefits and contributions attract is moderated by the modest quantum of development proposed but, nevertheless, carry weight in favour of the appeal.
54. Against this, I have found that the site would not be a suitable location for the proposed development. Moreover, I cannot be certain that the proposed development would not have an unacceptably harmful effect on the significance of the AEZ, a NDHA of archaeological interest. In these regards, there would be conflict with the relevant policies of the Local Plan. Together, these matters attract significant weight against the appeal.
55. At the Hearing the Council confirmed that it could demonstrate a five-year housing land supply. In response to the revised Framework, the appellant highlights the changes to the Standard Method for assessing housing needs and the implications for Hartlepool Borough Council arising from this. Namely that, as alleged by the appellant, the Council will urgently need to plan for the current/new Standard Method Figure, which exceeds the old Standard Method figure, the current Local Plan figure and the average annual delivery figure²¹.
56. Whilst I acknowledge the additional support this gives to the proposal in relation to its provision of three residential units, I am mindful that the appellant has not challenged the Council's ability to demonstrate a five-year housing land supply on this basis. There is nothing before me which demonstrates that this alters the Council's housing land supply position and that Paragraph 11(d) of the Framework is engaged.
57. I am aware of the Government's objective of significantly boosting the supply of homes and growing the economy, which are reflected in the recent changes to the Framework. However, the Framework also sets out the need to plan positively for the provision and use of community facilities, such as open space; and confirms the value of heritage assets, that they are an irreplaceable resource, and should be conserved in a manner appropriate to their significance.
58. Whilst 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. The proposed development would therefore conflict with the development plan when taken as a whole, and material considerations do not indicate that the decision should be taken otherwise than in accordance with the development plan.
59. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

F Cullen

INSPECTOR

²¹ Appellant's response to publication of the revised Framework December 2024.

APPEARANCES

FOR THE APPELLANT:

C Smith	Lichfields
J Woollard	Lichfields
N Westwick	Lichfields
N Rosenberg	Prospect Archaeology

FOR THE LOCAL PLANNING AUTHORITY:

N McCann	Hartlepool Borough Council Planning Development Management
H Smith	Hartlepool Borough Council Planning Policy
R Banens	Hartlepool Borough Council / Tees Archaeology
E Watson	Hartlepool Borough Council / Tees Archaeology

INTERESTED PARTIES:

K Forrester	Wynyard Parish Council
E Hurst	Wynyard Parish Council
D Normandale	Wynyard Parish Council
J Normandale	Wynyard Parish Council

ADDITIONAL DOCUMENTS Submitted prior to the Hearing

1. Appendices 14-27 as set out in 'Document Summary' submitted by the Council in response to Pre-Hearing Note.

ADDITIONAL DOCUMENTS Submitted at the Hearing

1. Aerial Image – AEZ Appeal Plan 1 (submitted by the Appellant).
2. Statement by Wynyard Parish Council.

ADDITIONAL DOCUMENTS Submitted after the Hearing

1. Copy of Appellant's Appendix 3s.
2. Copy of Wynyard Garden Village Visioning Document, March 2022.

3. Planning Obligation by way of Unilateral Undertaking under Section 106 of the Town & Country Planning Act 1990, dated 9 December 2024 (supersedes version dated 15 July 2024).
4. Agreed conditions as set out in email dated 10 December 2024 relating to provision of interpretation boards; and protection of AEZ, including associated plan ref: 1921/001.