



Appeal Decisions

Site visit made on 18 March 2025

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 MARCH 2025

Appeal A Ref: APP/H0738/C/24/3357451

Appeal B Ref: APP/H0738/C/24/3357452

Land on the east side of Durham Road, Thorpe Thewles, Stockton-on-Tees, TS21 3JY

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). Appeal A is made by Mandale Homes North Yorkshire Limited and Appeal B is made by 1XDH Grandchildrens Investments Limited against an enforcement notice issued by Stockton-on-Tees Borough Council.
 - The notice was issued on 13 November 2024.
 - The breach of planning control as alleged in the notice is ground levels have not been built in accordance with approved levels.
 - The requirements of the notice are to a) restore the ground levels to that as approved under applications 18/2332/APC and 21/0330/DCH, plans E18/7196/016D and H76318 JNP 92 00 DR C 2007 P03 and b) remove from the Land any resultant debris/materials associated with complying with point a) above and re-seed the Land with grass.
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d), (e), (f) of the Town and Country Planning Act 1990 (as amended).
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Appeal C Ref: APP/H0738/W/24/3357450

Astral Park Development Site, Thorpe Thewles, Stockton-on-Tees, TS21 3JN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mandale Homes Ltd against the decision of Stockton-on-Tees Borough Council.
 - The application Ref is 21/0349/FUL.
 - The development proposed is application for revised ground levels to the public open space.
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Decisions

Appeal A Ref: APP/H0738/C/24/3357451

1. The appeal is dismissed, and the enforcement notice is upheld.

Appeal B Ref: APP/H0738/C/24/3357452

2. The appeal is dismissed, and the enforcement notice is upheld.

Appeal C Ref: APP/H0738/W/24/3357450

3. The appeal is dismissed.

Preliminary Matter

4. The National Planning Policy Framework was revised in December 2024 (the 2024 Framework) and was subsequently amended on 7 February 2025 to correct cross-references from footnotes 7 and 8 and amend the end of the first sentence of paragraph 155 to make its intent clear. The 2024 Framework replaces the previous version of the National Planning Policy Framework published in December 2023. In relative terms, the 2024 Framework does not have a material bearing on how the planning application (Appeal C) main issues should be considered.

Appeals A and B

Appeals on ground (e)

5. An appeal made on ground (e) is that copies of the notice were not properly served on everyone with an interest in the land as required by section 172 of the Act. Section 172(2) of the Act requires that a copy of the notice should be served (a) on the owner and on the occupier of the land to which it relates; and (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.
6. The evidence indicates that prior to issuing the notice, the Council undertook a land registry search of the land to which the appeal relates. Based on the land registry information at the time, the Council proceeded to serve copies of the notice on 1XDH Grandchildrens Investments Limited and Mandale Homes North Yorkshire Limited. While the evidence indicates that the ownership of the appeal land has now changed to Astral Park Management Company Limited, an up-to-date check of land registry details prior to the notice being issued constitutes adequate prior investigation for the purposes of section 172 of the Act. In this regard, I am satisfied that the notice was properly served.
7. The appellant has raised concern in terms of who is now responsible for ensuring compliance with the requirements of the notice. This is not a relevant ground (e) consideration, although it is noteworthy that the Council has referred to case law and states that the seller of a property subject to a notice remains liable to comply with it until the transfer is registered.
8. For the reasons outlined above, I conclude that the notice was properly served as required by section 172 of the Act. Therefore, the ground (e) appeals fail.

Appeals on ground (d)

9. An appeal made on ground (d) is that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. In an appeal against an enforcement notice on ground (d), the burden of proving relevant facts is on the appellant, and the relevant test of the evidence is on the balance of probability.
10. The appellants make the claim that the SUDs basin and surrounding land levels had been substantially completed in May 2020. While a Google Earth image dated 20 May 2020 does appear to show the presence of some sort of hollow in the land, this image does not provide certainty or precision in terms of the levels of the SUDs basin or indeed the surrounding land. This is because it is simply an aerial image.

11. There is evidence before me which also casts doubt about the appellants' claim that the SUDs basin and surrounding land levels were substantially completed in summer 2020.
12. Firstly, the Council's photographs dated 15 January 2021 show mounds of piled earth (i.e., either side of the footpath running through the public open space site) and the appellants do not dispute that this was from digging the foundations out for Astral Park to be built. The photographs also show what appears to be newly deposited earth banking (i.e., no vegetation) around the SUDs basin and which is in direct contrast to the grass which can be seen in the bottom of the SUDs.
13. Secondly, a planning application was submitted to the Council on 8 February 2021 for a variation of ground levels to the public open space (i.e., that which is the subject of appeal C) and it states that the proposals commenced on 4 January 2021. As part of such a planning application it is also noteworthy that comments were made by third parties, including Grindon and Thorpe Thewles Parish Council, the latter of which commented that *'Mandale are progressing with the construction of the low-level path. Mandale have also been distributing a huge amount of soil around the field in an effort to improve the appearance of the field'*.
14. On the evidence that is before me, I do not find, on the balance of probability, that the appellants' case is sufficiently precise or unambiguous to demonstrate that the land levels had been in place for four years prior to the date of the issued notice. The above evidence casts sufficient doubt about any such claim. Therefore, the ground (d) appeals fail.

Appeals on ground (f)

15. An appeal made on ground (f) of section 174(2) of the Act is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control or to remedy any injury to amenity which has been caused by any such a breach.
16. The appellants claim that the requirements of the notice are unclear in so far that the drawings referenced in respect of discharge of condition applications 18/2332/APC and 21/0330/DCH are not consistent with one another. However, I do not accept that proposition and agree with the Council that drawing H76318 JNP 92 00 DR C 2007 P03 shows levels for the wider land and drawing E18/7196/016D shows levels for the SUDs basin. I agree with the Council that the area shaded yellow on drawing H76318 JNP 92 00 DR C 2007 P03 relates to the levels of drainage infrastructure and not to land levels. In this regard, I find that the requirements of the notice are clear, and that the inconsistency claim is not well founded. Moreover, there is no evidence to indicate that the changed levels elsewhere within the red edged plan appended to the notice have the benefit of planning permission or have been formally approved by the Council.
17. The appellants also state that informal discussions took place with the Council as part of the determination of the planning application (Appeal C) with reference to an alternative *'sketch proposal'* which involved the *'partial regrading of some of the land to the south of the pond and native planting across the site, as well as the introduction of some timber benches'*. The appellants state that based on the sketch proposal *'much of the existing levels would remain on the site'*. The sketch proposal is not an approved scheme and nor does it form part of the consideration of Appeal C below. Moreover, the sketch scheme does not include any levels

information and so, in any event, could not reasonably be considered as an alternative scheme in respect of Appeal C. This is not, in any event, a matter which is of direct relevance to the breach of planning control and hence the ground (f) appeals.

18. The appellants also state that the requirements of the notice are excessive in so far that based on the levels of the land, the alleged planning harm that has been caused has not been reasonably substantiated by the Council. I have considered a proposal to change the levels of the 'open space' land as part of my assessment of Appeal C below (i.e., the Council's refusal of planning permission for altered land levels). I have concluded that planning permission should be refused. In this regard, the requirements of the notice are not therefore excessive. In other words, there is no ground (a) appeal before me in respect of the breach of planning control and, moreover, a scheme relating to land level changes has not been approved as part of the appeal made under section 78 of the Act.
19. Finally, the appellants make the claim that the requirements of the notice are excessive in that they would *'involve the removal of a huge quantity of topsoil'* and, due to the location of the open space, this would need to be removed from the site in heavy goods vehicles via the Astral Park residential development which would firstly cause harm to the living conditions of residents, and, secondly, would mean that the open space and public right of way had to be closed during this time. The appellants also comment that moving soil is unsustainable and contrary to paragraph 187 of the 2024 Framework.
20. There is no ground (a) appeal and hence deemed planning application before me. In any event, I have weighed the above matters in the balance in respect of my consideration of Appeal C below and have concluded that planning permission should be refused. In this regard, the requirements of the notice are not therefore excessive.
21. For the reasons outlined above, I conclude that the steps in the notice are not excessive. Therefore, the ground (f) appeals fail.

Appeal C

Main Issues

22. I have considered the Council's reasons for refusal as well as concerns raised about the useability of the open space on the land, as outlined in the Council's committee report and statement of case, and as addressed by the appellant. I have also considered comments made by other interested parties, including those that live in North Close which is adjacent to the site.
23. In the context of the above, the main issues are the effect of the development on (i) the character and appearance of the area including the useability of the designated Multifunctional Green Infrastructure Area (MGIA); (ii) whether the development has preserved the setting of St James' Church which is Grade II listed; (iii) the risk of flooding adjacent to the site; (iv) the effect of the development on the living conditions of the occupiers of neighbouring residential properties in North Close in terms of privacy; and (v) whether the pond would be safe in respect of passers-by and capable of being appropriately maintained.

Planning history

24. Planning permission was approved in outline on appeal on 22 January 2018 for the erection of 40 dwellings¹. This included condition 5 that *'details of the reserved matters shall broadly follow the principles and parameters set out on the indicative Development Framework drawing 7699-L-02 Rev A'*. The outline planning permission was accompanied by a completed section 106 agreement which, amongst other things, required the provision of 0.6 hectares of open space to be provided within land edged blue on the accompanying plan. Such a plan includes most of the land to which this planning application relates. It is noteworthy that the Council has approved some levels on the land for the SUDs basin as part of the consideration of discharge of condition applications. I have considered these matters as part of my assessment of the appeals made under Appeals A and B.
25. The approved position relating to land levels constitutes a fall-back position in respect of this appeal, although there is no dispute that a large proportion of the existing land levels on the site are not approved. The relative differences in terms of land levels are shown in terms of drawing No.1810-22 (i.e., sections) which accompanies this planning application. This shows the original ground levels prior to the development commencing in blue, the unlawful land levels in purple, and the proposed ground levels in black. It is the latter which is relevant in terms of the approval or refusal of this planning application.
26. There does not appear to be a dispute between the main parties that the levels on the land were altered because of importing soil from the adjacent housing site.

Character and appearance and useability of MGIA

27. I have considered evidence in the form of photographs and topographical surveys. The evidence demonstrates that prior to the unauthorised level changes being undertaken on the site, the land as a whole was almost flat and included a public right of way running through it.
28. I have considered the indicative Development Framework drawing 7699-L-02 Rev A which formed part of the outline planning permission, as well as condition No. 5 which states that *'details of the reserved matters shall broadly follow the principles and parameters set out on the indicative Development Framework drawing 7699-L-02 Rev A'*. The indicative drawing includes a note which states that the subject land would be a *'Multifunctional Green Infrastructure 1.65ha'* and *'includes open space, informal recreation space, potential wildlife friendly space, tree planting, children and young people's space, kick about area, sustainable urban drainage (SUDs) and buffer to existing trees, Durham Road, adjacent residential properties and retained open setting to St James Church'*.
29. I acknowledge that the above is an indicative plan. However, the evidence demonstrates that the indicative Development Framework drawing envisaged use of an essentially flat site. Indeed, that must have been the case given the range of facilities (e.g., kick about area) to be contained within the MGIA which forms the land which is the subject of this notice. Accounting for necessary buffers, I am concerned that the proposed land levels would make it difficult to provide the sort of open space facilities that were envisaged on land which was otherwise essentially flat (save for a much shallower SUDs basin).

¹ Planning permission ref APP/H0738/W/17/3187827

30. I have very little evidence from the appellant in terms of demonstrating that the proposed levels would suitably accommodate the sort of kick about areas or informal recreation space which could reasonably be used by members of the public. Put another way, on the evidence that is before me I cannot conclude that the land level changes would enable the type and quality of open space that would otherwise have been capable of being provided on the land and as envisaged in respect of the indicative Development Framework drawing and associated condition No. 5 of the outline planning permission. In this regard, I am unable to find that the proposed land levels would enable the provision of a well-designed open space facility for surrounding residents and members of the public.
31. I accept that the land was essentially previously flat. The proposal would result in land that is more elevated and where the SUDs pond is set within rising land. While I acknowledge that some interested parties do not support this change, I nonetheless do not find that any material harm would be caused to the general character and appearance of the area. Indeed, it is reasonable that I consider that while material land level changes were not likely envisaged at outline planning permission stage, and, have not been approved, the fact is that this land was always going to change in terms of its resultant character, appearance and function, given the planning permission and completed planning obligation associated with it.
32. Overall, I conclude that the proposed land level changes would not cause harm to the character and appearance of the area, or materially harm the way in which users of the public right of way experience the site. I recognise that the proposal would result in a change to the character and appearance of the land, but such a change would not equate to planning harm. However, on the evidence that is before me, I am unable to conclude that the proposed levels would be capable of ensuring that a well designed and functional open space/MGIA could be provided on the resultant land.
33. Therefore, subject to the imposition of conditions (e.g., landscaping), I conclude that while the proposal would accord with the design requirements of policies SD5 and SD8 of the adopted Stockton-on-Tees Local Plan 2019 (LP) and chapter 12 of the 2024 Framework in terms of its effect on the character and appearance of the area, I am unable to conclude that it would constitute good design in terms of the resultant provision of a good MGIA on the land. In respect of the latter, I therefore conclude that the proposal conflicts with the above policies.

St James' Church

34. I was able to appreciate the setting of St James' Church, which is a Grade II listed building, as part of my site visit. I experienced it from both the appeal land (i.e., that which is elevated), from parts of the public right of way, and from Winyard Road.
35. The listed church is set within a walled graveyard. It has a peaceful character, and the stone wall and mature trees provide a pleasant, private and intimate context. Prior to the unauthorised land level changes occurring, the backdrop to the church when viewed from Winyard Road was flat land concealed from view behind the stone wall. In contrast, the rising land is now very apparent when viewed from Winyard Road and is experienced as being a jarring and imposing landform when seen against the simplicity afforded to the stone wall that forms part of the setting of the listed church. In this regard, I find that the landform adversely visual competes

with what would otherwise have been a softer, open and inconspicuous landform forming the backdrop to the listed church.

36. While I accept that my site visit was only a snapshot in time, I nonetheless noticed a walker on top of the raised land (i.e., the appeal land) to the rear of the listed church. When seen from Winyard Road, the presence of some activity on this land detracted from the otherwise peaceful character immediately surrounding the listed church. As this land is earmarked as an MGIA, I am concerned that the level of activity may be greater and more apparent when arrangements have been formalised (even accounting for my conclusion on the MGIA main issue) and that a visual appreciation of more people using the land may also represent of visual distraction from the otherwise simplicity and openness to the setting of the listed church.
37. Moreover, I do not share the conclusion reached by the local planning authority about the juxtaposition of the proposed land level changes with the listed church when experienced from the public right of way. While the boundary trees may partly screen the listed church when in leaf, this is not the case throughout the whole of the year. In addition, it is not the case that only the stone wall boundary wall of the listed church would be concealed from longer distance views for those that use the public right of way running through the appeal site. It is also the case that lower sections of the rear wall of the listed church would no longer be appreciated by passers-by from some viewpoints. Furthermore, the rising land constitutes an unacceptable visual distraction from what would otherwise have been flat land surrounding the stone boundary wall and hence which provided a less imposing setting to the architectural splendour of the listed church.
38. In this case, I share the views expressed by some of the other interested parties about the harm that would be caused to the setting of the listed church. For the reasons outlined above, I do not find that the proposal would preserve the setting of the listed church. In this regard, I consider that harm would be caused to its overall significance. In the context of paragraph 215 of the 2024 Framework, I find that less than substantial harm would be caused to the significance of the designated heritage asset.
39. I recognise that the unauthorised development would facilitate use of the land as an MGIA which would be a public benefit. However, a refusal of planning permission would not mean that an MGIA could not still be provided on the site and set within a land topography which did not cause the same degree of planning harm. There are no public benefits in this case which outweigh the less than substantial harm caused to the significance of the listed church.
40. I therefore conclude that the proposal would not accord with the conservation requirements of policies SD5 and SD8 of the LP, and chapter 16 of the 2024 Framework.

Living conditions

41. While the plans show the public right of way and adjacent land at the same land level as the bottom of the fence associated with dwellinghouses on North Close (i.e., as distinct from the 'existing levels'), the proposal seeks to retain rising land to the east of the public right of way. From this area, I note the concerns raised by some of the occupiers of properties on North Close who refer to their gardens and rear windows being overlooked should this land be used.

42. As part of the site visit, I was able to consider the relationship of this land with properties on North Close. Indeed, as part of my site visit, I stood on higher ground so that I could appreciate the interrelationship with nearby properties and particularly Nos. 11 to 16 North Close.
43. While I accept that the raised land is not immediately adjacent to the rear gardens and rear windows of the identified dwellinghouses on North Close, I nonetheless find that owing to height of the rising land, and its relative intervisibility with the neighbouring development, some harm has been caused to the occupiers of these properties in terms of at least the perception of being overlooked. Therefore, harm has been caused to the living conditions of these residents. The evidence is that this land is approved as being used as an MGIA. While I have found that the rising land is no longer useable to the same extent in relative terms (i.e., for recreational and kick about purposes), it nonetheless remains possible that members of the public may stand or sit on this land on a more informal basis.
44. Notwithstanding the conclusion reached by the Council in respect of this matter, I do find that comments made by some interested parties are well founded and that some harm would be caused to occupiers of neighbouring residential properties in North Close in terms of at least the perception of being overlooked. Therefore, I conclude that the proposal would not accord with the amenity requirements of policy SD8 of the LP, and paragraph 135(f) of the 2024 Framework.

Risk of flooding

45. The Council has already approved SUDs on the land. It is a shallow feature that blends into the authorised topography of the area. The proposed scheme alters the levels around the SUDs pond and the resultant SUDs pond has a much deeper basin.
46. The Lead Local Flood Authority (LLFA) object to the planning application as they consider that it would alter the natural drainage characteristics of the land and would increase surface water runoff which would result in an increase of the flood risk to the curtilage of neighbouring properties, the public right of way and the underpass that passes beneath the A177 Durham Road.
47. In response to the above concern, the appellant has commented that a land drain has been laid adjacent to the curtilage of neighbouring properties on North Close (photographs are provided) and that this captures any overland runoff and directs them back into the surface water system to the north end of Astral Drive. The appellant maintains that the appeal land *'has now been removed from the previous surface water flood route'* and hence the flood risk objection should no longer be maintained.
48. While the appellant maintains that the concerns raised by the LLFA are not reasonably substantiated, it is the case that land levels have been and are proposed to be changed on the land. The land levels are materially different to what originally existed on the land. In this context, I would have expected to see very detailed technical evidence from the appellant in terms of the extent, detailed design, and position of the drainage alongside neighbouring properties (including the specific area where water discharges), as well as accompanying modelling information for the whole of the appeal land to show what effect the proposed level changes would have in terms of the flow of water within and from the site and including mitigation if needed.

49. Such evidence is critical to the acceptability of the proposed development and cannot therefore be left to condition. Such evidence would need to prove that no harm would be caused to neighbouring properties/land, the public right of way, or the underpass, in terms of the risk of flooding.
50. In the context of the above, the appellants' evidence (including the Technical Report dated December 2024) is simply not detailed enough for me to reach a certain and sound conclusion that the proposal would be capable of being acceptable in terms of ensuring that unacceptable flooding events did not occur. In this regard, I cannot conclude that the development accords with the flood risk and safety requirements of policies SD5 and ENV4 of the LP, and chapter 14 of the 2024 Framework.

Safety and maintenance

51. While I acknowledge that the SUDs pond is now set within surrounding raised land, and hence has an overall deeper profile than that which has been approved, it would be possible to enclose the SUDs pond with some sort of safety enclosure and/or provide some safety awareness signage in the area (for example alongside the public right of way) to alert children and others of the SUDs pond and its potential to include water. In this regard, I do not find that the safety concerns raised by the LLFA are well founded. This is a matter that could be addressed by planning condition.
52. I acknowledge that it may be more difficult, in relative terms, to maintain a SUDs pond which has a deeper profile. Nonetheless, I do not find that the LLFA has reasonably substantiated why it would not be possible to maintain the SUDs basin arising from the changes in land levels and when it was in a dry condition. In my judgement, and notwithstanding the non-statutory technical guidance that has been referred to me, the evidence does not lead me to find that there is a reason why the SUDs basin could not be properly maintained and with any engineer undertaking a prior risk assessment and ensuring accordance with health and safety legislation. I do not therefore find conflict with the safety requirements of paragraph 102 of the 2024 Framework.

Other considerations

53. I am mindful that a refusal of planning permission would likely result in the need to remove soil/earth from the land in association with enforcement action. I accept that this would in turn likely mean some disruption for occupiers of the adjacent estate of houses arising from the comings and goings of heavy goods vehicles, and that it may mean that the public right of way had to be temporarily closed off for safety reasons. While these would be unfortunate and adverse impacts, they would nonetheless be temporary in nature. I do not therefore afford significant adverse weight to these matters.
54. Moreover, while it may not be very sustainable to move soil/earth elsewhere, this must be considered in the context that unauthorised development has taken place and the specific harms that have been identified in terms of my conclusions on the main issues.

Planning balance and conclusion

55. While I do not find that the proposal would cause harm to the character and appearance of the area, it would cause harm to the setting of the listed church and hence to its significance as a designated heritage asset. Moreover, I am unable to conclude on the evidence before me that a suitable, functional and hence well-designed open space or MGIA facility would be capable of being provided on the land in accordance with condition No. 5 of the outline planning permission, and the principles and parameters set out on the indicative Development Framework drawing 7699-L-02 Rev A. This weighs against allowing the appeal.
56. Moreover, while the evidence is that the SUDs pond would be acceptable in terms of maintenance and, subject to the imposition of a planning condition, would not pose a danger to children or others in terms of safety, I nonetheless have insufficient technical evidence before me to conclude that the proposal would not give rise to a risks of surface level flooding to off-site receptors or users of the public right of way. In addition, I have found that harm would be caused to occupiers of neighbouring properties on North Close arising from at least the perception of being overlooked. In the context of land which was essentially previously flat, I do not consider that this would be acceptable in planning terms.
57. The above adverse matters are of overriding concern and are not outweighed by the identified other considerations. I therefore conclude that the proposal would not accord with the development plan for the area taken as a whole and there are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, the appeal should be dismissed.

Appeals A and B Conclusion

58. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice.

Appeal C Conclusion

59. For the reasons given above, the appeal should be dismissed.

D Hartley

INSPECTOR