



Appeal Decision

Site visit made on 22 April 2025

by Ryan Cowley MPlan (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 July 2025

Appeal Ref: APP/U2750/W/24/3357941

Land Adjacent The East House, Great Smeaton Church Track, Great Smeaton, North Yorkshire DL6 2EP

- 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 Mr A Simpson against the decision of North Yorkshire Council.
 - The application Ref is ZB24/00877/FUL.
 - The development proposed is construction of one highly energy efficient self build dwelling, with integral garage and gardens utilising existing access and drive.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal submission has been accompanied by a Unilateral Undertaking (UU), which would secure the development as a self-build dwelling, in accordance with the definition contained in section 1 of the Self-Build and Custom Housebuilding Act 2015 (as amended). This would have ensured that first occupation of the dwelling is by a person or persons who had primary input into its design and layout and intends to live there for at least one year from the date of practical completion as their sole or main residence. The Council has had an opportunity to comment on the UU and so would not be prejudiced by my consideration of it.
3. There are exemptions from biodiversity net gain (BNG) requirements for certain types of development. The exemptions are set out in paragraph 17 of Schedule 7A of the EA and the Biodiversity Gain Requirements (Exemptions) Regulations 2023 and includes self-build and custom build development. This approach to secure self-build is acceptable to the Council. I am satisfied that the provisions of the UU are sufficient for this purpose and the proposal would therefore benefit from the BNG exemption. The fourth reason for refusal thus falls away.
4. Nevertheless, based on the evidence and representations from Natural England (NE), the appeal site is located within the nutrient neutrality catchment area for the Teesmouth and Cleveland Coast Special Protection Area (SPA) and Ramsar site. The Teesmouth and Cleveland Coast SPA is legally underpinned by the Teesmouth and Cleveland Coast SSSI. As the competent authority, I must have regard to The Conservation of Habitats and Species Regulations 2017 (as amended). These regulations require that, where a project is likely to have a significant effect on a European site (either alone or in combination with other plans or projects), the competent authority must make an appropriate assessment of the project's implications in view of the relevant site's conservation objectives.

Main Issues

5. The main issues are therefore:

- The effect of the proposal on the integrity of European sites, with particular regard to nutrient neutrality;
- The effect of the proposal on the character and appearance of the area, including the Great Smeaton Conservation Area (CA) and the setting of the Grade II listed buildings (LBs) known as East House, Church of St Eloy and The Old Rectory;
- Whether the proposal would provide adequate living conditions for future occupiers, with particular regard to the provision of private external amenity space and privacy; and
- The effect of the proposal on the living conditions of the occupiers of neighbouring properties, with particular regard to outlook and privacy.

Reasons

Nutrient neutrality

6. Guidance was issued by NE on 16 March 2022 requiring competent authorities to carefully consider the nutrients impacts of any new plans and projects (including new development proposals) on habitats sites and whether those impacts may have an adverse effect on the integrity of a habitats site that requires mitigation, including through nutrient neutrality.
7. The SPA/Ramsar is a wetland comprised of a wide variety of habitats including: intertidal sand and mudflats, rocky shore, saltmarsh, freshwater marsh, saline lagoons, sand dunes and estuarine and coastal waters on and around the Tees estuary, which has been considerably modified by human activities. These habitats provide feeding and roosting opportunities for an important number of waterbirds in winter and during passage periods.
8. The SPA/Ramsar is designated for the following qualifying features: Avocet, Common tern, Knot, Little tern, Redshank, Ruff, Sandwich tern and assemblages of a wide range of breeding, wintering and passage waterbird species. The conservation objectives of the site are to ensure that the integrity of the site is maintained or restored as appropriate and ensure that the site contributes to achieving the aims of the Wild Birds Directive by maintaining or restoring the habitats, populations and distribution within the site of the qualifying features.
9. NE has highlighted that the SPA/Ramsar is in unfavourable condition due to nutrients (in this case nitrogen), where new development may have an adverse effect by contributing additional nutrients and therefore where nutrient neutrality is a potential solution to enable development to proceed.
10. The appeal scheme comprises the construction of a new dwelling and so would likely lead to an increase in the local population. In turn, it would lead to an increase in nutrient loading from nitrogen. Given the unfavourable status of the SPA/Ramsar, and the likely increases in nutrient loading, the appeal scheme is likely to have a significant effect on the aforementioned species and habitats (both

alone, and in combination with other development). I must therefore undertake an appropriate assessment in accordance with the Habitat Regulations.

11. NE's Nutrient Neutrality Methodology enables a nutrient budget to be calculated for all development that would result in a net increase in population served by a wastewater system. The appellant has used a nutrient budget calculator (NBC) to determine that the annual nitrogen load to mitigate would be 2.99 kg TN/year.
12. Excessive levels of nutrients can cause rapid growth of certain plants through eutrophication. Dense algal mats can impair waterbird foraging success and high concentrations of nutrients in the water can impact sensitive fish, epifauna and infauna communities, and hence adversely affect the availability and suitability of bird breeding, rearing, feeding and roosting habitats. Given the conservation objectives, without adequate mitigation, any net increase in nutrient loads arising from the development would adversely affect the integrity of the SPA/Ramsar.
13. A nutrient mitigation scheme operated by NE has been agreed for the Tees catchment. One nutrient credit from NE mitigates 1 kg of nitrogen pollution. Accordingly, buying the required number of credits can provide a means to address nutrient neutrality requirements within the planning process. The appellant has submitted a final Nutrient Credit Certificate and NE's receipt, confirming that they have purchased 2.99kg worth of credits from NE.
14. Nevertheless, the appellant has indicated through the NBC that the development would use a package treatment plant (PTP) for wastewater treatment. A "user defined" figure for the concentration of nitrogen in the wastewater of 7.9 mg TN/litre has been input into the calculator, yet the appellant has advised that the details of the PTP to be installed have not been confirmed, and no further information about how foul water will be treated has been provided. Notably, this figure is considerably lower than the default figure for this type of wastewater treatment system and has a significant bearing on the total annual nitrogen load calculation.
15. It is thus not clear where the figures in the Nutrient Budget Calculator are derived from or whether they are likely to change. NE in its role as the Statutory Nature Conservation Body has raised similar concerns and has advised that the appellant should have provided a document such as a waste certificate, which defines the nitrogen output of the package treatment plant, to validate the values used.
16. Without certainty that the annual nitrogen load to mitigate is correct, I cannot be sure that the number of nutrient credits purchased from NE is sufficient to adequately mitigate the net increase in nutrient loads arising from the development, or the adverse effect on the integrity of the SPA/Ramsar. The evidence is therefore not sufficiently precise, robust or conclusive on this matter.
17. The appellant contends that details of the PTP could be secured via a planning condition. However, as the competent authority in this case, I must be able to rule out all reasonable scientific doubt that the proposal would have an adverse effect on the integrity of the SPA/Ramsar at the time of my decision. Given the lack of clarity in the information, and the high level of statutory protection afforded to the SPA/Ramsar, I am not satisfied that a condition would provide adequate certainty that adverse effects on the integrity of the SPA/Ramsar would be avoided.
18. The appellant highlights that the calculator has changed since it was completed in 2023 and, under the new guidance, a lower occupancy rate can be used, which

reduces the nutrients to mitigate per property. Even so, I cannot be sure based on the evidence before me that the current secured credits will address any nutrient impacts arising from the proposed development.

19. Consequently, I cannot conclude, beyond all reasonable scientific doubt, that the appeal scheme would not have an adverse effect on the integrity of European sites, with particular regard to nutrient neutrality. Accordingly, the proposal would conflict with Policy E3 of the Hambleton Local Plan Adopted February 2022 (the Local Plan). This policy, among other provisions, seeks to ensure that a proposal that may impact on a SPA or Ramsar site is only supported where it can be demonstrated that there will be no likely significant effects and no adverse effects on the integrity of a European site. Additionally, it states that a proposal that may either directly or indirectly negatively impact a SSSI will not normally be supported.

Character and appearance

20. The appeal site is located within the built form of Great Smeaton, defined as a secondary village in the Local Plan. Policy HG5 states that, within the main built form of defined settlements, a proposal for housing development will be supported where the site is not protected for its environmental, historic, community or other value, or allocated, designated or otherwise safeguarded for another type of development. The Council recognise that, on this basis, the proposal could be acceptable in principle subject to compliance with other relevant policies.
21. Great Smeaton has a primarily linear form, based along the A167 (Northallerton Road). At the eastern end of the village, development branches out to the north and south along Hornby Road and the A167. The appeal site sits on the northern side of the CA, to the rear of East House.
22. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the 1990 Act) requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the CA. Sections 66(1) of the 1990 Act requires special regard to be given to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest.
23. This part of the CA is characterised by several historic buildings set within generous grounds and interspersed with mature landscaping, including the LBs. An area of open space sits to the front of East House, with an extensive private garden area to the rear. To the northeast, planning permission has been granted for 2 dwellings¹. I saw on site that development here has commenced. The evidence indicates that the former coach house associated with East House has also been converted to a separate dwelling with accommodation across 2 levels.
24. The wider area, beyond the CA boundary, features more contemporary housing development, particularly to the north and east off Hornby Road. Nevertheless, in so far as it relates to this appeal, the significance of the CA is derived from the composition and architecture of the historic buildings, the spaciousness of the area and the attractive landscape setting.
25. The significance of East House is derived from its mid-18th century features, including its red brick exterior, pantile roof, shaped kneelers, stone coping, chimney stacks, and the traditional style and symmetrical arrangement of its

¹ Council Ref ZB23/00945/FUL

fenestration. The Old Rectory derives significance from its later, 19th century style, while the Church of St Eloy's significance is based on its ecclesiastical architecture. The generous space around each of the buildings and the surrounding mature landscaping provides an attractive and verdant setting.

26. The proposal would introduce an additional dwelling to the northeast of the LB. The exterior would be predominantly finished in a weathered red brick and natural slate roof tiles that would complement the traditional finishing materials found locally. The use of dark timber cladding to the garage section would reduce its prominence and status within the site and its surroundings.
27. The proposed dwelling would be a predominantly single storey structure with a flat, green roof. There would be a dual-pitched roof above the garage and part of the ground floor. The first-floor element would be considerably smaller in area than the ground floor, and partially contained within a second pitched roof to the north. These roof structures would be sited perpendicular to one another and, though separated, this would be analogous of the roof orientations of the 2 approved dwellings adjacent and the linear arrangement of other neighbouring buildings.
28. Though the footprint of the dwelling would be large, the plot is generously sized, and thus the development would not appear cramped. The building would be positioned centrally within the site, appreciably set back from the boundaries to the north, south and west, with even greater distance to existing and proposed neighbouring dwellings. Mature trees would be retained within the garden areas, and the Council has raised concerns that the retention of these trees would result in a constrained site and lead to pruning or felling concerns.
29. However, the dwelling would appear well integrated with the existing and proposed landscaping. Sufficient external amenity space would be provided including areas away from mature trees, which would ensure any pressure for any harmful pruning or felling of existing mature trees would be limited. Combined with the modest height of the proposed dwelling, and separation distances to neighbouring buildings, this would negate any sense of overdevelopment either individually or considered cumulatively with the neighbouring development.
30. The generously sized garden of the East House would be unaffected and would remain segregated from the appeal site by the existing brick wall. The limited height and modest roof forms of the scheme, combined with the space retained around the building, would ensure a considerable degree of spaciousness is maintained across this area. The distance of the proposed dwelling from the Old Rectory and the Church of St Eloy's would negate any harmful impact on their setting. Moreover, the mature landscaping that fundamentally contributes to the setting of the LBs and the character of the CA would be preserved. Details of soft landscaping and tree protection measures could have been secured by condition.
31. Except for the rear boundary, the site is relatively well contained behind tall boundary walls, mature landscaping and the neighbouring buildings. The proposed dwelling would thus be considerably screened from most public vantage points due to its height. Where it is visible in fleeting views between existing buildings and vegetation, the proposal would appear akin to a collection of relatively modest structures and outbuildings of sympathetic form and appearance.
32. I recognise that the previous application for the 2 dwellings adjacent was amended to omit a third dwelling at the appeal site, in view of similar concerns raised by the

Council with regard to the impact on the character and appearance of the area. The full details of the previous scheme are not before me. Irrespective, I have assessed the appeal proposal on its own merits. This does not therefore lead me to a different conclusion on this main issue.

33. Interested parties have raised concerns that the proposal would create a precedent for incongruous development in the village and encourage development to continue into the neighbouring field. However, each proposal must be considered on its individual merits and so my findings on this main issue are not instructive to future applications elsewhere.
34. While the proposal would increase residential activity on the application site, the addition of one dwelling, in the context of the wider residential setting of the site and the residential development approved adjacent, would not result in any undue increase in noise and disturbance or light pollution. The proposal would not unduly detract from the tranquillity of the site and surrounding area.
35. In conclusion, the proposal would not detract from the prevailing character and appearance of the appeal site and surrounding area. It would thus have a neutral effect on both the character and appearance of the CA and the setting of the LB, thereby preserving their significance.
36. The proposal would be in accordance with Policies E1, E2 and E5 of the Hambleton Local Plan Adopted February 2022 (the Local Plan). These policies, among other provisions, seek to ensure that proposals draw inspiration from key characteristics of their surroundings, including the natural, historic and built environment, and respect and contribute positively to local character, identity and distinctiveness. They also seek to ensure that proposals preserve features that contribute to the special architectural or historic interest of a listed building or its setting and preserve or enhance those elements that make a positive contribution to the significance of a conservation area.

Living conditions for future occupiers

37. The proposed dwelling would benefit from external garden areas to its north, south and west, with a modest strip of additional soft landscaping along the eastern frontage. There would also be a private external courtyard area in the centre of the dwelling. Based on the evidence before me, there are no development plan policies or local guidance that set out minimum standards for the size or arrangement of private gardens. The amount of space proposed as private garden is considerable, and more than sufficient to serve a large 3-bedroom dwelling.
38. I recognise there would be several large trees retained around the site, and these would cast shadow over large parts of the garden areas at certain times of day. The plans before me also depict additional tree planting in places. Nevertheless, there would remain large useable external areas for future occupants. In particular, there would be a large garden space provided to the north of the dwelling, with a large patio area, direct access from the ground floor living spaces and views across the countryside. Though its orientation and relationship to nearby trees may limit direct sunlight at times, its depth would ensure sunlight would reach parts of it throughout the day, particularly during summer months. The space along the western side of the dwelling would also be of significant size and useable, while the courtyard would provide a more private, sheltered outdoor space. Overall, the garden spaces would provide a pleasant external environment for future occupiers.

39. The separation distances between the proposed dwelling and neighbouring dwellings would be significant, and views between existing and proposed windows would be largely oblique. Though there is a difference in levels between the appeal site and the rear garden of the East House, views towards the south facing patio doors serving the proposed snug would be oblique. This patio would be set a considerable distance away from the shared boundary and there is an intervening brick wall in this location with existing and proposed landscaping providing further screening. Moreover, there are ample external areas around the site that would provide greater privacy for future occupiers.
40. The west facing windows closest to the shared boundary serve a dressing room and bathroom, where future occupiers are unlikely to spend significant time and would expect mutual privacy. Such windows could thus reasonably have been obscurely glazed by planning condition. There would therefore be limited opportunities for harmful overlooking between the East House and the appeal site.
41. The proposal would therefore provide adequate living conditions for future occupiers, with particular regard to the provision of private external amenity space and privacy. It would thus comply with Policies E1, E2 and E3 of the Local Plan. These policies, among other provisions, seek to ensure that proposals achieve a satisfactory relationship with adjacent development, does not have an unacceptable impact on the amenities or safety of future occupiers and provides and maintains a high standard of amenity for all users and occupiers. This includes ensuring adequate availability of daylight and sunlight, adequate and convenient provision of private external amenity space and ensuring that the physical relationships arising from the design and separation of buildings are not oppressive or overbearing, and in particular will not result in overlooking.

Living conditions of neighbours

42. The Council's third reason for refusal states that the development would not achieve a satisfactory relationship with adjacent properties and their garden areas. The Council clarifies in its officer report however that it does not consider that the new dwelling would impact on the amenity of the occupiers of The East House or their garden given the change in levels, oblique views and separation distance.
43. Nevertheless, representations have been received from interested parties raising concerns that the development would have an overbearing presence in the rear amenity space of the East House and would have windows facing towards this neighbouring property. Concerns have also been raised that the development would overlook the neighbouring dwelling known as New Rectory.
44. The proposed dwelling would be set off the shared boundary with the East House by an appreciable distance. Having regard to this, the site levels and the modest height and form of the proposed dwelling, it would not have an overbearing effect on outlook from the rear garden space of the East House.
45. The separation distances between the proposed dwelling and neighbouring dwellings would also be sufficient to preclude any harmful overlooking between proposed windows and those in neighbouring dwellings. While there would be several windows in the proposed western elevation, those windows closest to the shared boundary and at first floor would be obscurely glazed. The ground floor master suite west facing window would sit further from the site boundary, while the south facing snug patio doors would face perpendicular to it.

46. Moreover, while some existing vegetation is not in the control of the appellant, an appreciable degree of screening would be provided by the existing boundary treatments and retained and proposed soft landscaping at the appeal site. There would thus be limited opportunities for harmful overlooking between the appeal site and the rear garden areas of The East House or the New Rectory.
47. The proposal would not have a harmful effect on the living conditions of the occupiers of neighbouring properties, with particular regard to outlook and privacy. It would be in accordance with Policy E2 of the Local Plan which seeks to ensure that all proposals provide and maintain a high standard of amenity for all users and occupiers, including existing occupants and users of neighbouring land and buildings, in particular those in residential use.

Other Matters

48. The proposal would provide an additional dwelling that would contribute to the housing supply in this area. It would provide a temporary economic boost during construction, and additional residents may contribute to the vitality and viability of Great Smeaton. It would also address an area of need by providing self-build housing. There is no compelling evidence before me however to indicate that these would be anything more than modest benefits, given the small scale of the development.

Conclusion

49. I have found that the proposal would not have a harmful effect on the character and appearance of the area, including the CA and the setting of the LBs, or the living conditions of the occupiers of neighbouring properties, and would provide adequate living conditions for future occupiers. However, this does not overcome the harm and development plan conflict arising from the failure to demonstrate that the proposal would not have an adverse effect on the integrity of European Sites.
50. The proposal therefore conflicts with the development plan, taken as a whole. I have found no material considerations that indicate the appeal should be determined other than in accordance with the development plan. Consequently, I conclude that the appeal is dismissed.

Ryan Cowley

INSPECTOR