



Appeal Decision

Online Hearing held on 14 March 2025

Site visit made on 17 March 2025

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 14 August 2025

Appeal Ref: APP/Y2003/W/24/3351201

91 Barrow Road, Barton upon Humber DN18 6AE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for Permission in Principle.
 - The appeal is made by Mr Ben Pearson against North Lincolnshire Council.
 - The application Ref is PA/2024/800.
 - The development proposed is 'demolish existing dwelling and outbuildings, form revised access to highway and erect up to nine new dwellings.'
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Decision

1. The appeal is dismissed and permission in principle for 'demolish existing dwelling and outbuildings, form revised access to highway and erect up to nine new dwellings', is refused.

Application for Costs

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

Preliminary Matters

3. The amended description to that stated in the application form, used in the heading above, is taken from the signed Statement of Common Ground. The application form states and it was confirmed at the Hearing, that the net number of dwellings proposed is a minimum of six and a maximum of nine.
4. A procedural matter of disagreement between the main parties concerns the determination of the application and submission of the appeal. The appeal was made on the basis of the non-determination of the application within the prescribed period. However, the Council submit that it lawfully determined the application¹ with a decision notice issued on 12 September 2024.
5. The date of the decision was outwith the time period for determining an application for permission in principle and no extension of time was agreed in writing by the appellant. The appellant was therefore entitled to submit an appeal on the basis of non-determination.
6. Once the Planning Inspectorate (PINs) has accepted an appeal, any decision notice issued by a Local Planning Authority (LPA) is not a formal 'decision', as jurisdiction transfers from the LPA to PINs to determine the application/appeal.

¹ Reported to the Council's Planning Committee on 4 September 2024.

Consequently, I have determined the appeal on the basis of non-determination as submitted by the appellant and used the Council's informal 'decision notice' as a basis for the main issues.

7. Following the Hearing, the Council confirmed that the examination of the Barton-Upon-Humber Neighbourhood Plan 2024-2039 (the emerging NP) commenced on 9 June 2025 with associated public consultation being undertaken between 17 April and 4 June 2025². The Council submits that, having regard to Paragraph 49 of the National Planning Policy Framework 2024 (the Framework), greater weight should be given to the emerging NP and any relevant policies. Relevant to this appeal is Policy BNDP10 – Heritage³, which includes non-designated heritage assets (NDHA). In the interests of fairness, the appellant was given the opportunity to comment on this matter⁴, but no response was received.
8. The emerging NP is now more advanced in its preparation. The Council submit that there are no unresolved objections to Policy BNDP10 and that it is consistent with the Framework. Consequently, relevant Policy BNDP10 attracts greater weight in the determination of the appeal.
9. In accordance with the Procedural Guide: Planning appeals – England⁵, video evidence and images contained on a USB memory stick submitted by the appellant prior to the Hearing were returned. In their place, a written summary and still copies of the images were provided. No request was made for the video evidence to be accepted/played at the Hearing. I am satisfied that no parties' interests were prejudiced by this.

Main Issue

10. The proposal is for permission in principle. The Planning Practice Guidance (the PPG) advises that this is an alternative way of obtaining planning permission for housing-led development. This route has two stages: the first ('permission in principle' stage) establishes whether a site is suitable in-principle and the second ('technical details consent' stage) is when the detailed development proposals are assessed. A full planning permission is only secured when both stages 1 and 2 have been passed⁶.
11. This appeal relates to the 'permission in principle' stage. The PPG is clear that the scope of the considerations at this stage is limited to location, land use and amount of development, and that it is 'issues relevant to these 'in principle' matters' that should be considered⁷.
12. The main parties agree that, should the principle of the proposal be found to be acceptable, matters such as visual amenity, residential amenity, impact upon highway safety, drainage, ecology and environmental protection considerations would be dealt with as part of any future application for technical details consent. I have no reason to disagree. On this basis and for the avoidance of doubt, although some of these matters have been raised in representations by interested parties, I have not considered them as part of the determination of this application/appeal.

² Correspondence dated 11 June 2025.

³ Supported by the Non-Designated Heritage Assets Appraisal produced by TheUrbanGlow Design & Heritage Ltd 2024.

⁴ Correspondence dated 23 June 2025.

⁵ Paragraph 10.10.

⁶ Planning Practice Guidance, Paragraph: 001 Reference ID: 58-001-20180615.

⁷ Planning Practice Guidance, Paragraph: 012 Reference ID: 58-012-20180615.

13. Nonetheless, the main parties disagree as to whether issues of archaeology and the demolition of 91 Barrow Road, advanced by the Council as a NDHA, should be considered as part of this 'permission in principle' stage.
14. Deciding whether these issues are 'relevant' to the matters of location, land use and amount of development and how, is a question of evaluative judgement for the decision maker. In this regard, I also note that the PPG references 'historic environment records' as an information source that should be used to support decisions on whether to grant permission in principle⁸.
15. Given the description and nature of the proposal, coupled with the particulars of the site, I find that these issues are central to the considerations of whether or not the proposal is acceptable in this specific 'location'. It follows that they should be considered in the determination of the appeal.
16. On the basis of the above, the main issue is: Whether the site is suitable for residential development, having regard to its location, the proposed land use and the amount of development, with reference to the effect of the proposal on the significance of i) a heritage asset of archaeological interest and ii) a non-designated heritage asset.

Reasons

Background

17. The appeal site is a largely rectangular shaped plot of land of 0.5 hectares in size, containing a single dwelling and associated curtilage. It is accessed via a driveway from Barrow Road and bound by a combination of hedges, close-boarded timber fences and brick walls. Adjacent to the rear and sides of the site lie existing residential development and Barton-Upon-Humber Cemetery and Cemetery Lodge.
18. The site has been the subject of proposals for residential development since 2010, the applications for which have been withdrawn or refused. During this time, in 2019 and 2020, two Lawful Development Certificates (LDCs) for a proposed swimming pool, changing room and detached garage/carport with workshop and wood store, and proposed tennis court, ponds and associated water features, and landscaping to the rear of the dwelling, were approved⁹.
19. The most recent application for planning permission for housing on the site was in February 2021¹⁰. This was refused by the Council in November 2021 and subsequently appealed¹¹. Of the three main issues considered as part of that appeal, matters of character and appearance and highway safety and congestion were found to be acceptable. However, conflict with relevant local and national policies was found in relation to the archaeology within the site, with the LDCs not attracting weight as a fallback consideration. The appeal was dismissed in April 2023.
20. The Council's informal 'decision notice' repeats the previous application's reason for refusal relating to archaeology, and includes an additional reason for refusal concerning the demolition of the existing dwelling.

⁸ Planning Practice Guidance, Paragraph: 042 Reference ID: 58-042-20170728.

⁹ Application Ref: PA/2019/1785. Approved 17/12/2019 and Application Ref: PA/2020/816. Approved 27/07/2020.

¹⁰ Application Ref: PA/2021/223, Outline planning permission for the demolition of existing dwelling and all other structures, the formation of a revised access to the highway, and new dwellings.

¹¹ Appeal Ref: APP/Y2003/W/22/3299010.

Heritage asset of archaeological interest

21. At the previous appeal, the site was identified as having heritage significance because of its archaeological interest. An archaeological evaluation in 2008¹² (the evaluation) revealed archaeologically significant remains across the site in 14 of the 16 evaluation trenches. The remains dated mainly from the mid-8th century to the 12th century and included a medieval town ditch, the Castle Dyke¹³. The remains survived at differing depths below the ground surface across the site at that time, with an average depth of circa 0.7m but as little as circa 0.25m. The Castle Dyke was recorded as having a width of 5.1m and a surviving depth of 1.5m.
22. From these findings, it was concluded that the archaeological remains were 'demonstrably of equivalent significance to scheduled monuments', which 'should be considered subject to the policies for designated heritage assets'¹⁴. The previous Inspector agreed¹⁵ and the appeal was determined on that basis. This conclusion was supported by Historic England in its comments at that time.
23. Nonetheless, this consideration affords no statutory protection to the archaeological remains within the site. Since that time, the appellant has undertaken lawful permitted development relating to the LDCs, which has involved substantial groundworks across the site. As a result, the appellant asserts that the whole site no longer holds any archaeological remains and there is no 'heritage asset' to be preserved, with this fundamental change resulting in this reason for refusal to fall away.
24. The extensive set of images submitted by the appellant illustrate the process of the excavation and movement of land within the garden and around the existing building and outbuilding. Moreover, the letter from Stenon Landscaping¹⁶ sets out that 'categorically no soil or anything above sand/clay level was left undisturbed, everything was moved across the site.'
25. I do not dispute the undertaking of these processes and acknowledge the vulnerability of the fairly shallow remains to damage from ground disturbance. I also reasonably accept that no archaeological remains would lie beneath the existing dwelling's cellar. However, the presence of trees and a brick and timber outbuilding on the site run counter to the appellant's claim that the whole site was excavated (my emphasis). There is also no precise evidence before me to corroborate the appellant's claims that the ponds as featured in the LDC have been dug 4m deep and the rest of the site, excluding the house, to 1m deep or more.
26. Importantly, no substantive information beyond that in the appellant's written and oral statements has been presented regarding the asserted screening and grading of the land which was dug/moved; the disposal of any objects off-site; or the introduction of any new soil into the site.
27. The Framework and PPG require that where a site has the potential to include heritage assets with archaeological interest, then an appropriate desk-based assessment and where necessary a field evaluation should be submitted¹⁷. No evaluation has been undertaken.

¹² Lindsey Archaeological Services – Archaeological Evaluation LAS Report No. 1067 August 2008.

¹³ Also referenced as Castledyke.

¹⁴ Footnote 75 of the Framework.

¹⁵ When assessed against The Historic England Scheduling Selection Guides.

¹⁶ Dated 1-5 September 2023.

¹⁷ Paragraph 207 and Paragraph: 041 Reference ID: 18a-041-20190723.

28. An appeal can only be based on the information before the Inspector. The ambiguities and deficiencies in the evidence before me, limit a meaningful assessment. Without an archaeological evaluation of the site, I am unable to conclude whether it still holds any archaeological interest and thus significance; and without establishing the site's significance, I cannot determine any potential effects that the proposal may cause.
29. The Council and Historic England have directed me to Paragraph 209 of the Framework which states, where there is evidence of deliberate neglect of, or damage to, a heritage asset, the deteriorated state of the heritage asset should not be taken into account in any decision. I have also had regard to the caselaw cited by the appellant and Counsel on this matter¹⁸.
30. Given that the groundworks undertaken on the site and consequent damage to the archaeological remains have been conscious and intentional, they equate with the ordinary definition of 'deliberate'. However, as permitted development confirmed by the LDCs, the groundworks are lawful. Also, whilst the groundworks may have gone beyond the prescribed scope of the LDCs, I note the Council have not taken any enforcement action in this respect. In any event, given my findings above, this matter is not determinative.
31. Drawing the above together, the evidence before me is insufficiently precise and deficient, and no archaeological evaluation has been submitted which conclusively confirms the extent of any surviving archaeology within the site. Mindful of the high significance of the archaeological remains prior to the groundworks being carried out and the potentially adverse consequences of allowing the proposal before this matter has been resolved, I have no option but to take a precautionary approach.
32. Accordingly, I am unable to conclude whether the site is suitable for residential development, having regard to its location, the proposed land use and the amount of development, with reference to the effect of the proposal on the significance of a heritage asset of archaeological interest.
33. As such, I am unable to conclude against Policy CS6 of the North Lincolnshire Core Strategy, adopted June 2011, (the CS) and Saved Policy HE8 of the North Lincolnshire Local Plan, adopted May 2003 (the LP). Together these policies seek to promote the effective management of the area's historic assets through, amongst other things, the preservation and enhancement of the rich archaeological heritage of North Lincolnshire; and resist proposals which would result in an adverse effect on nationally important monuments. Similarly, I cannot conclude against relevant paragraphs of the Framework.
34. However, given my reasoning above, I do find conflict with Saved Policy HE9 of the LP, which requires an adequate assessment of the nature, extent and significance of archaeological remains present and the degree to which the proposal is likely to affect them, prior to the determination of an application. Similarly, there is conflict with Paragraph 207 of the Framework.

Non-designated heritage asset

35. The proposal involves the demolition of the existing dwelling on the site. The Council advance that the building is a NDHA and that its loss would result in

¹⁸ Counsel's Opinion dated August 2024 and Caselaw *Bohm v SSCLG* [2017] EWHC 3217. *Bohm v Secretary of State for Communities and Local Government* [2017] EWHC 3217 (Admin).

substantial harm to the asset which has not been justified. This is contested by the appellant on the grounds of the assessment and designation, highlighting that this matter and its inclusion as a reason for refusal have not been raised previously.

36. The PPG sets out that NDHA's are buildings, monuments, sites, places, areas or landscapes identified by plan-making bodies as having a degree of heritage significance meriting consideration in planning decisions but which do not meet the criteria for designated heritage assets. NDHAs can be identified by a number of ways, including the local and neighbourhood plan-making processes, or as part of the decision-making process on planning applications. That said, the PPG is clear that, irrespective of how they are identified, it is important that the decisions to identify them as NDHAs are based on sound evidence, and that clear and up to date information on NDHAs is accessible to the public to provide greater clarity and certainty for developers and decision-makers¹⁹.
37. It was confirmed at the Hearing that the existing dwelling has been included on the North Lincolnshire Historic Environment Record (the HER) since 2011²⁰, identified as 'Seaforth'. At that time it was put forward and assessed by English Heritage²¹ for designation as a listed building. This concluded that the criteria for statutory listing, and it being of special interest in a national context, were not fulfilled. Nonetheless, its inclusion on the HER since that time indicates the building's heritage interest in a local context.
38. Additionally, and more recently, Seaforth has been identified as a NDHA as part of the emerging NP plan-making process, the area for which was designated in April 2020. As part of this process, in 2023/24, TheUrbanGlow Design & Heritage Limited undertook an appraisal of possible NDHAs²² utilising a list drawn up by representatives of Barton-Upon-Humber Town Council.
39. The appraisal supports Policy BNDP10 and, whilst not a formally published document, is referenced within the emerging NP, which has been the subject of public consultation. Moreover, the buildings in the appraisal and Policy BNDP10 have been identified as NDHAs via a process of being assessed by qualified professionals against criteria used by Historic England²³. It is therefore reasonable to conclude that the decisions to identify them as NDHAs are based on sound evidence.
40. I note the appellant's comments that no weight should be given to the appraisal; that the building's assessment and identification as a NDHA is flawed; and that the building is not on a local list. I am also aware of the lack of consistency in the matters raised by the Council in relation to the application/appeal before me and those determined in 2022/23.
41. Nevertheless, from the submitted information and my observations on site, I find that the building possesses a degree of heritage significance within a local context, as set out below. Not being on a formal local list does not prohibit the building from being considered a NDHA. I agree with its identification as a NDHA, and I am satisfied that its assessment and designation as such, is objective and valid. Furthermore, the Council state that information on this issue was made available to

¹⁹ Paragraphs: 039 Reference ID: 18a-039-20190723 and 040 Reference ID: 18a-040-20190723.

²⁰ SMR Number: 21599-MLS21599. Site Name: Seaforth, 91 Barrow Road.

²¹ Now Historic England.

²² The Barton-Upon-Humber Non Designated Heritage Assets Appraisal, 2024.

²³ Historic England Advice Note 7. Local Heritage Listing: Identifying and Conserving Local Heritage.

the appellant during the application process. As such, he had the opportunity to respond to the matters raised.

42. The appellant cites appeal decisions where the Inspector concluded that a building was not a NDHA²⁴. That building was not included on the Council's Historic Environment Record and, whilst it was considered for listing in a national context, its heritage interests do not appear to have been robustly assessed in a local context. The circumstances of that assessment are therefore different to those before me, and like that Inspector, I have drawn my own conclusions based on the evidence before me.
43. The Framework requires that the effect of an application on the significance of a NDHA should be taken into account in determining the application. In weighing applications that directly or indirectly affect NDHAs, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset²⁵.
44. The building is a large detached Victorian villa which occupies a prominent position in the street scene on Barrow Road. It is stated to date from circa 1870-1880, and is constructed of red brick with a Welsh slate roof, and with stone, timber, ironwork, moulded and buff brick ornamentation. It has been extended and altered, including the insertion of uPVC windows, and is generally in a poor state of repair.
45. Nonetheless, its historic form and key architectural features still survive and are legible. Relative to the appeal, the building's significance at a local level largely stems from its historic and architectural interests, in illustrating a fairly grand Victorian residence with pleasing architectural symmetry and high-quality detailing. Significance also stems, in part, from its value as part of a group with other such properties on Barrow Road. The appraisal indicates that this age and type of property 'are of some scarcity' and there is no evidence before me to the contrary. Taking all of the above together, I find the building to be of moderate local significance.
46. The proposal would result in the total loss of the building and thus its significance within the local context. This would clearly not sustain and enhance the significance of this heritage asset and would instead result in the greatest scale of loss and harm to significance, eradicating the positive contribution that the building's conservation could make to the local community. I am also mindful that, having regard to the requirements of Paragraph 218 of the Framework, there is no proposal for any recording prior to demolition before me.
47. Accordingly, I conclude that the site is not suitable for residential development, having regard to its location, the proposed land use and the amount of development, with reference to the effect of the proposal on the significance of a NDHA. This conflicts with Policy CS6 of the CS in so far as it seeks to conserve and enhance North Lincolnshire's historic environment. There is also conflict, albeit of lesser weight, with Policy BNDP10 of the emerging NP which seeks that the development or alteration of a NDHA should be undertaken sensitively, respecting the historical and architectural integrity of the building. It would also conflict with the provisions within the Framework which seek to conserve and enhance the historic environment.

²⁴ Appeal Refs A-C: APP/R3650/W/21/3266933; 19/3225899; and 19/3242532.

²⁵ Paragraph 216.

48. A 'balanced judgement', as required under Paragraph 216 of the Framework, is undertaken as part of the overall planning balance below.

Other Considerations/Matters

49. In coming to my conclusions, I have had regard to the permitted development and demolition fallback positions advanced by the appellant. There is no dispute between the main parties that permitted development rights have not been removed from the site, and that the appellant could undertake further permitted development²⁶. This includes the existing dwelling being extended to its side and rear and enlarged cellarage. Furthermore, the written and oral evidence presented confirms the appellant's intention to continue to exercise his permitted development rights, indicating that there is a real prospect that additional permitted development would take place.
50. Nonetheless, given I am unable to conclude on the archaeological resource within the site, combined with the absence of details of any permitted development proposals, I cannot meaningfully compare the two to determine whether this fallback would be less or more harmful than the appeal proposal.
51. Reference is also made to the ability of the appellant to demolish the existing dwelling (and outbuildings) which would only require prior approval from the Council. However, the demolition of the dwelling would eliminate any financial return the appellant may be able to make on the building. It would also limit the permitted development rights of the appellant within the site. Consequently, I find that there is very little real prospect that this would occur.
52. For these reasons, both fallback positions advanced attract little weight in the determination of the appeal.
53. The appeal site is located in proximity to the designated heritage assets of Scheduled Monument, Site of Saxon manor, Tyrwhitt Hall²⁷, also Grade II* Listed Building, Tyrwhitt Hall²⁸; and Scheduled Monument St Peter's Church²⁹, also Grade I Listed Building Church of St Peter³⁰. I recognise that these are heritage assets of the highest significance, and have had regard to the statutory duty as set out in Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) (the Act).
54. From the information presented and my observations on site, the special interest and significance of these assets primarily stem, to a greater or lesser degree, from their archaeological, historic and/or architectural interests. However, they are also derived, in part, from their respective immediate and wider settings, which have evolved over time.
55. Given the changes to the surrounding area as well as the location and nature of the proposal, I find that the settings of these assets would be preserved and their significance would not be harmed. This would meet the statutory presumption set out in section 66(1) of the Act; the provisions in the Framework regarding the conservation and enhancement of the historic environment; and Policy CS6 of the CS and Saved Policy HE8 of the LP referred to above. I note Historic England's

²⁶ Pursuant to the Town and Country Planning (General Permitted Development) (England) Order 2015.

²⁷ National Heritage List for England – Scheduled Monument, List Entry Number: 1003690.

²⁸ National Heritage List for England – Listed Building Grade II*, List Entry Number 1083105.

²⁹ National Heritage List for England – Scheduled Monument, List Entry Number: 1003689.

³⁰ National Heritage List for England – Listed Building Grade I, List Entry Number 1083108.

comments on this matter. However, I am mindful that it was not raised as a reason for refusal by the Council in this or the previous application or appeal.

56. A representation in support of the proposal submits that there is now no reason to refuse it on heritage grounds. This matter is addressed in my reasoning above.
57. I note the appellant's comments regarding the conduct of the Council prior to and during the determination of the application. However, these matters are not within the scope of my considerations in an appeal under section 78 of the Town and Country Planning Act 1990 (as amended).

Planning Balance

58. I have been unable to conclude on the effect of the proposal on the significance of a heritage asset of archaeological interest. Additionally, I have found that the proposal would result in the loss of a NDHA and thus its significance.
59. Given that the heritage asset of archaeological interest has previously been identified as being demonstrably of equivalent significance to a scheduled monument, and mindful that heritage assets are an irreplaceable resource, these matters carry considerable weight against the appeal.
60. In favour of the appeal, the proposal would provide between six and nine residential units in an accessible location. These would make a meaningful contribution to the supply of housing in the area. Economic and social benefits would flow from their construction and occupation, as well as from future occupiers supporting local services and facilities. These carry moderate weight in favour of the appeal.
61. I recognise the Government's objective to boost the housing supply and grow the economy. I also note the Framework's support for housing. However, the protection and enhancement of the historic environment is a key element of the planning system and a fundamental objective in achieving sustainable development. Additionally, the Council has confirmed it can demonstrate a five year housing land supply, which the appellant has not challenged.
62. Consequently, whilst there are considerations that weigh in favour of the proposal, in my judgement, they are not sufficient to outweigh the harm I have found. The proposal conflicts with the development plan when taken as a whole and the material considerations do not indicate that the appeal should be decided other than in accordance with it.

Conclusion

63. For the reasons given above the appeal should be dismissed and permission in principle refused.

F Cullen

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

B Pearson Appellant
N Kingsley-Smith Agent, Kingsley Smith Solicitors LLP

FOR THE LOCAL PLANNING AUTHORITY:

J Ashworth Senior Planning Officer
A Williams Historic Environment Officer
F Mayle Conservation Officer

ADDITIONAL DOCUMENTS SUBMITTED PRIOR TO, AT, OR AFTER THE HEARING

1. Appeal Decisions APP/R3650/W/21/3266933; 19/3225899; 19/3242532; 19/3242615, and H/20/3247524.
2. *Bohm v Secretary of State for Communities and Local Government* [2017] EWHC 3217 (Admin).
3. Lindsey Archaeological Services – Archaeological Evaluation LAS Report No. 1067 August 2008 (Full Report including Figures and Plates).
4. North Lincolnshire Historic Environment Record Report for ‘Seaforth’, 91 Barrow Road.
5. North Lincolnshire Council Five Year Housing Land Supply Statement 2024-2029.
6. National Heritage List for England entries:
Scheduled Monuments – Site of Saxon manor, Tyrwhitt Hall and St Peter’s Church.
Listed Buildings – Tyrwhitt Hall (Grade II*) and Church of St Peter (Grade I).
7. Barton-Upon-Humber Non Designated Heritage Assets Appraisal, TheUrbanGlow Design & Heritage Limited 2024.
8. Notice of the designation of the Barton upon Humber Neighbourhood Area, 28 April 2020.
9. Barton-Upon-Humber Neighbourhood Plan Submission Version 2024-2039 – Policy BNDP10-Heritage.