

Appeal Decision

Site visit made on 5 August 2025

by **L Clark BA(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 November 2025

Appeal Ref: APP/X1355/W/25/3365870

Hill's End, Low Friarside Lane, Burnopfield, Durham NE16 6BR

Eastings: 415854 Northing: 557320

- 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 Darren Hilling against the decision of Durham County Council.
 - The application Ref is DM/23/03859/FPA.
 - The development proposed is replacement of an existing barn with a family home.
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Decision

1. The appeal is allowed and planning permission is granted for a replacement of an existing barn with a family home at Hill's End, Low Friarside Lane, Burnopfield, Durham NE16 6BR in accordance with the terms of the application, Ref DM/23/03859/FPA, subject to the conditions in the attached schedule.

Preliminary Matters

2. The Council refused the application for three reasons as set out in the decision notice. The third of these reasons related to the failure to make necessary financial contributions towards the provision of Open Space in County Durham (open space). The appellant submitted a signed Unilateral Undertaking (UU) alongside their appeal, agreeing to pay £1,739.10 to the Council towards open space. The Council have confirmed that this addresses its third reason for refusal. I have therefore proceeded on that basis.
3. The proposal is for the replacement of an existing barn with a family home. The Council has indicated that it has no objections to the proposed demolition of the barn and, based on the evidence and observations on site, I have no reason to take a different view. The dispute between the parties, therefore, relates to the proposed new dwelling, and this shall be the focus of my assessment.
4. The grid reference in the banner heading is taken from the application form. This locates the site as shown on the submitted drawings and has been added for completeness.

Main Issues

5. The main issues are:
 - whether or not the site is in a suitable location for housing, having regard to the spatial strategy set out in the development plan, and accessibility to services and facilities, and;
 - if any harm is identified, whether that harm would be outweighed by the presence of a fallback position for alternative proposed developments.

Reasons

Whether a suitable location for housing

6. The appeal site is accessed from Front Street via Low Friarside Lane (the Lane). The Lane is predominantly single track, the majority of which has no dedicated footpath or street lighting, with limited passing places. Ground levels at the section of the Lane where it joins Front Street are significantly steep, which plateaus and then steepens towards the appeal site.
7. The appeal site is close to a number of existing dwellings and is therefore not physically or geographically isolated. It does, however, lie outside of a defined settlement boundary and in the countryside. These matters are not disputed by the appellant.
8. Policy 10 of the County Durham Plan 2020 (the CDP) states, amongst other things, that development in the countryside would not be permitted unless allowed by specific policies in the plan, or where the proposal meets one of the exceptions set out within the policy. Given that the proposal seeks the demolition of the existing barn to facilitate the rebuild, the proposed development falls outside the scope of those exceptions listed.
9. CDP Policy 10 further states that new development in the countryside must accord with all other relevant development plan policies and, by virtue of their siting, scale, design and operation, must meet criterion l - t.
10. The decision notice has not specified which criteria of CDP Policy 10 it relies upon; however, it is clear from its officer report that it relies upon criterion p, which states, amongst other matters, that development in the countryside must not be solely reliant upon unsustainable modes of transport. It also states that new development in countryside locations that are not well served by public transport must exploit any opportunities to make a location more sustainable, including improving the scope for access on foot, by cycle or by public transport.
11. CDP Policy 21 relates to delivering sustainable transport and requires that all development deliver safe, sustainable modes of transport by, amongst others matters, providing appropriate, well-designed, permeable and direct routes for walking and cycling, so that new developments clearly link to existing services and facilities together with existing routes for the convenience of all users.
12. The appellant does not dispute that the site, would not ordinarily be considered a sustainable location for residential development, with it being approximately 1km from the nearest bus stop, retail outlet and community facilities (community centre, medical centre and pharmacy), and slightly further from additional services, but contends that it would not be unreasonable for future occupiers to walk or cycle to these services.
13. I note that the Council contends that it has no concerns with regard to highway safety and that additional measures to improve the sustainability of the site, such as cycle parking and EV charging points, would help offset the locational issues. However, given its location, together with the length, topography and unlit nature of the Lane, it would, in my mind unlikely be utilised by pedestrians or cyclists during the hours of darkness or in inclement weather.

14. For the reasons given above, the site would not be an appropriate location for the proposed development, having regard to the settlement strategy and access to facilities and services. It would therefore not accord with CDP Policies 10 and 21, which collectively seek to deliver sustainable development.

Fallback position

15. My attention has been drawn to two prior approval¹ applications for the appeal site under the provisions of Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). These have approved permission for a change of use of an agricultural building into a Class C3 residential dwelling (Class Q).
16. The appellant has drawn my attention to the decision of the court² with particular regard to a fallback position. For significant weight to be afforded to a fallback position, there not only needs to be a real possibility of it being carried out, but it would also need to be equally or more harmful than the appeal scheme.
17. The appeal site has two extant prior approval schemes to create a residential dwelling in the countryside and, without any evidence to the contrary, I have no reason to doubt that there is more than a theoretical prospect of either scheme coming forward if I were to dismiss the appeal. I must therefore assess whether either of the fallbacks would be equally or more harmful than the appeal scheme.
18. There is no dispute that the proposal seeks the demolition of the existing agricultural building to facilitate the proposed dwelling. I am therefore satisfied that the proposal would not result in the creation of any additional dwellings above and beyond the one created by the Class Q approval.
19. With regard to the main issue, the Class Q permissions would result in one dwelling within the countryside. This is the same number of dwellings as the appeal before me. The appellant's fallback position would therefore likely result in future occupiers being reliant upon private car travel to access services and facilities. Given this, the fallback position would have similar effects as the proposed dwelling and therefore attach significant weight to this in my assessment.

Planning Obligation

20. The appellant has submitted a signed UU which would make a financial contribution of £1,739.10 towards the provision of open space in County Durham, which would be paid prior to commencement of development. Whilst the Council has advised that they are satisfied that the UU secures the required open space contribution, it is necessary for me to consider this obligation against the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (CILS Regs).
21. The Council's Supplementary Planning Document - Development Viability, Affordable Housing, and Financial Contributions 2024 requires a financial contribution towards green infrastructure (including open space and sports & recreation). CDP Policy 26 requires proposals for new residential development to make provision for open space to meet the needs of future residents, having regard to the standards of open space provision set out in the Open Space Needs Assessment.

¹ DM/23/03846/PN56 and DM/25/00563/PN56

² Mansell v Tonbridge and Malling BC [2017] EWCA Civ. 1314

22. I am satisfied that the UU would achieve the desired objective of securing a financial contribution towards open space. I am also satisfied that the undertaking would meet the tests set out in the CIL Regs and paragraph 58 of the Framework, which state that a planning obligation must be necessary to make the development acceptable in planning terms, directly related to and fairly and reasonably related in scale and kind to the development.

Other Matters

23. I acknowledge that the overall height of the proposed dwelling would be slightly higher than the existing structure of the barn, and the footprint would be significantly larger than either of the dwellings permitted under the Class Q prior approvals. However, whilst the proposed dwelling would be materially larger than the fallback, the resultant number of dwellings would remain the same. Whether or not the appeal proposal shows 5 bedrooms rather than the 4 stated in the appellant's statement, or that the larger dwelling can accommodate additional visitors, has little weight in my assessment. I have considered this appeal proposal on its own merits and concluded that it would not cause harm for the reasons set out above.
24. The Council has drawn my attention to CDP Policy 10 criterion h.2, with regard to the immediate setting of the appeal site. This criterion relates to the development of existing buildings. As the proposed development seeks demolition and rebuild, this criterion is not applicable to the main issue.

Planning Balance

25. Section 38(6) of the Planning and Compulsory Purchase Act 2004, requires that all applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. As detailed above, the proposal is contrary to CDP Policies 10 and 21, and thus this appeal turns on whether there are material considerations which outweigh this conflict.
26. I have found there to be more than a theoretical prospect of the appellant's Class Q prior approval taking place, and the extant Class Q permissions would result in the same number of dwellings in the countryside as the appeal proposal. I have therefore attached significant weight to the prospect of the fallback position in favour of the proposal.
27. Whilst I have found conflict with CDP Policies 10 and 21 for the reasons detailed above, I conclude that in this instance there are material considerations in favour of the proposal that outweigh this conflict and indicates that I make a decision which is not in accordance with the development plan. I therefore conclude that the proposed development is suitable for the site.

Conditions

28. The Council has suggested several conditions, some of which I have amended for the sake of clarity and precision. I have also had regard to the Framework and the PPG.
29. In addition to the standard implementation condition (1), it is necessary to define the plans for certainty (2). In the interests of the character and appearance of the area, conditions are necessary to ensure appropriate external materials (3), boundary treatments (5), a landscaping scheme and hard surfaces for the site (6 and 7).

30. To ensure the development is carried out in accordance with the appropriate best practice guidance to protect the amenity value of trees, a condition is necessary to ensure the implementation of the Tree Protection Plan (4).
31. Conditions relating to land contamination and remediation, construction and demolition hours are required to protect the living conditions of occupiers of the nearest residential properties (8, 9, 13 and 14). A condition requiring approval of a foul and surface water drainage scheme is also necessary to ensure suitable drainage and pollution prevention (12).
32. To mitigate risks associated with previous coal mining activity, conditions are necessary to require a scheme of intrusive investigations to be carried out, that any remediation works, or mitigation have been implemented; and a statement confirming that the site is safe and stable for the development (15 and 16). I have added the recorded on-site mine entries as stated on the Coal Authority consultee comments dated 18 June 2024 for precision, as these were omitted from the Council's suggested condition.
33. Conditions relating to details and the subsequent approval of cycle parking (11) and electric charging points (10) are required to encourage modes of sustainable transport and combat climate change.
34. With regard to biodiversity net gain, given that the planning application was received by the Council prior to the set trigger date, I do not consider it necessary to impose those conditions suggested by the Council. However, given that the submitted Bat Survey & Ecological Assessment prepared by E3 Ecology (Rev R02) outlined the potential impact upon species of wildlife, I do consider it necessary to impose a condition requiring details to be submitted of a precautionary method statement with particular regard to hedgehog and amphibians, together with details of their hibernacula and that bat and bird boxes are provided (17 and 18).

Conclusion

35. For the reasons given above, I conclude that the appeal should be allowed.

L Clark

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in material accordance with the following approved drawings:

XX-XX-SI-0001 Rev P02 Location Plan

XX-XX-SI-0010 Rev P06 Pr_Site_Plan

XX-XX-GA-1000 Rev P05 Pr_GF-and_01_Plans

XX-XX-EL-3000 Rev P05 – Pr_Elevations

- 3) Notwithstanding Condition 2, prior to the construction of any external surfaces of the development hereby permitted, details of the materials to be used in the construction of all new external surfaces, shall have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 4) No site clearance, preparatory work including any site cabins, materials or machinery brought on site, or development shall take place until the tree and hedge protection fencing, and any other protection measures, contained within the submitted 'Tree Protection Plan, prepared by Woodsman Arboricultural Consultancy, dated 02.10.2023' have been erected on site in accordance with these approved details. Fencing shall be placed as indicated on the approved plan and comprise a vertical and horizontal framework of scaffolding, well braced to resist impacts, and supporting temporary welded mesh fencing panels or similar in accordance with British Standard BS 5837 2012 Trees in Relation to Design, Demolition and Construction - Recommendations (or in an equivalent British Standard if replaced). The scheme for the protection of the retained trees shall be carried out as approved and retained for the duration of the construction works.
- 5) Prior to the first occupation of the development hereby permitted, details of the position, height, design, materials and colour finish of boundary treatment to be erected shall be submitted to and approved by the local planning authority. The boundary treatment shall be completed in accordance with the approved details before the building is first occupied and retained thereafter.
- 6) Notwithstanding the submitted information, prior to the first occupation of the development hereby approved, details of soft landscape works shall be submitted to and approved in writing by the local planning authority. These details shall include: details soft landscaping including planting species, sizes, layout, densities, numbers; details of planting procedures and/or specification; finished topsoil levels and depths; details of temporary topsoil and subsoil storage provision. The landscaping works shall be carried out in accordance with the approved details in the first planting season following the first occupation of the buildings or the practical completion of the development, whichever is the sooner. Any approved replacement tree or hedge planting shall be carried out within 12 months of the felling or removal of any existing tree or hedge. All landscape planting shall be maintained for a minimum of five years. Any trees or plants which are removed, die, fail to become established, or become seriously damaged or diseased within a

period of five years from the completion of the development shall be replaced in the next planting season with others of a similar size and species to those originally planted. Replacement planting will be subject to the same conditions.

- 7) Notwithstanding the submitted information, prior to the first occupation of the development hereby approved, details of hard landscaping shall be submitted to and approved in writing by the local planning authority. The hard surfaces shall be constructed in accordance with the approved details prior to the development being first occupied and retained thereafter.
- 8) No development shall take place until a land contamination scheme has been submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall be compliant with the YALPAG guidance and include a Phase 2 site investigation, which shall include a sampling and analysis plan. If the Phase 2 identifies any unacceptable risks, a Phase 3 remediation strategy shall be produced, and where necessary, include gas protection measures and method of verification.
- 9) Remediation works shall be carried out in accordance with the approved remediation strategy. The development shall not be brought into use until such time as a Phase 4 verification report related to that part of the development has been submitted to and approved in writing by the Local Planning Authority.
- 10) No development above ground level shall take place until a scheme (including a timetable for implementation) to minimise greenhouse gas emissions, with the aim of achieving as close as possible a zero-carbon development, has been submitted and approved in writing by the Local Planning Authority. The scheme shall include, but not limited to, provision of renewable and low carbon energy generation and electrical car charging points. The renewable and low carbon energy measures shall be implemented and retained thereafter in operation.
- 11) Notwithstanding Condition 2, prior to the first occupation of the dwelling hereby approved, details of secure cycle parking within the site shall be submitted to and approved in writing by the Local Planning Authority. These details shall include plans at a minimum scale of 1:50 to show the location of cycle parking and include the type of stands to be installed. The development shall be carried out in accordance with the approved details and the space(s) shall be made available for use and thereafter be retained as secure cycle parking for the occupiers of the approved development.
- 12) No development shall take place until a scheme for the provision of foul and surface water drainage works for the site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be developed in accordance with the Council's Sustainable Drainage Systems (SuDS) Adoption Guide 2016 (or in an equivalent document if replaced). The development shall be carried out in accordance with the approved details and agreed timetable and retained thereafter.
- 13) No development shall take place, including demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - a. A Dust Action Plan including measures to control the emission of dust and dirt during construction.

- b. Details of methods and means of noise reduction and suppression.
- c. Where construction involves penetrative piling, details of methods for piling of foundations including measures to suppress any associated noise and vibration.
- d. Details of measures to prevent mud and other such material migrating onto the highway from all vehicles entering and leaving the site.
- e. Designation, layout and design of construction access and egress points.
- f. Details for the provision of directional signage (on and off site).
- g. Plan based details of the position, and heights relative to ground level, of security fencing, contractors' compounds, and temporary infrastructure, including cranes, plant, and other equipment, and storage arrangements for materials.
- h. Details of provision for all site operatives for the loading and unloading of plant, machinery and materials, to including the timings of deliveries and the types of delivery vehicle(s) to be used.
- i. Details of provision for all site operatives, including visitors and construction vehicles, for parking and turning within the site during the construction period.
- j. Routing agreements for construction traffic.
- k. Details of the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate.
- l. Waste audit and scheme for waste minimisation and recycling/disposing of waste resulting from demolition and construction works.
- m. Management measures for the control of pest species as a result of demolition or construction works.
- n. Details of measures for liaison with the local community and procedures to deal with any complaints received. The management strategy shall have regard to BS 5228 "Noise and Vibration Control on Construction and Open Sites" (or an equivalent British Standard if replaced) during the planning and implementation of site activities and operations.

The approved Construction Method Statement shall be adhered to throughout the construction period of the development.

- 14) Demolition and external construction works (including deliveries, external running of plant and equipment) shall take place only between the hours of 0730 to 1800 on Monday to Friday and 0730 to 1400 on Saturday. No internal works audible outside the site boundary shall take place on the site other than between the hours of 0730 to 1800 on Monday to Friday and 0800 to 1700 on Saturday. There shall be no construction works, works of demolition whatsoever, including deliveries, external running of plant and equipment, or internal works, whether or not audible outside the site boundary, take place on Sundays or Public/Bank Holidays. For the purposes of this condition, construction works are defined as: The carrying out of any building, civil engineering or engineering construction work involving the use of plant and machinery, including hand tools.

15) No above-ground development shall commence until:

- a. A scheme of intrusive investigations has been carried out on site to establish the risks posed to the development by past coal mining activity (on-site mine entries 415557-005 and 415557-006); and
- b. Any remediation works and/or mitigation measures to address land instability arising from coal mining legacy, as may be necessary, have been implemented on site in full in order to ensure that the site is made safe and stable for the development hereby permitted.

The intrusive site investigations and remedial works shall be carried out in accordance with authoritative UK guidance.

- 16) Prior to the first occupation of the development hereby approved, a signed statement or declaration prepared by a suitably competent person confirming that the site is, or has been made, safe and stable for the development shall be submitted to and approved in writing by the Local Planning Authority. This document shall confirm the methods and findings of the intrusive site investigations and the completion of any remedial works and/or mitigation necessary to address the risks posed by past coal mining activity.
- 17) No site clearance, preparatory work, including any site cabins, materials or machinery shall be brought on site until precautionary method statements identified in the Bat Survey & Ecological Assessment prepared by E3 Ecology (Rev R02) with regard to hedgehogs and amphibians, and details of hibernacula have been submitted and approved in writing by the Local Planning Authority. The hibernacula shall be available for use prior to the dwelling first being occupied and retained thereafter.
- 18) Prior to the first occupation of the development hereby approved, details of the location and specification of integrated bat boxes and bird boxes shall be submitted to and approved in writing by the Local Planning Authority. The bat boxes and bird boxes shall be completed in accordance with the approved details before the building is occupied and retained thereafter.

***** END OF CONDITIONS *****