



Appeal Decision

Site visit made on 20 February 2024

by Mr R Walker BA HONS DIPTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 April 2024

Appeal Ref: APP/W0734/W/23/3334000

Land South West of Grey Towers Farm, Nunthorpe, Middlesbrough

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Fordy Farms (Ingleby) Ltd against the decision of Middlesbrough Council.
 - The application Ref is 22/0270/MAJ.
 - The development proposed is the erection of 8 no. dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 8 no. dwellings at Land South West of Grey Towers Farm, Nunthorpe, Middlesbrough in accordance with the terms of the application, Ref 22/0270/MAJ, subject to the conditions in the attached schedule.

Preliminary Matters

2. The application was initially submitted for 10 dwellings but the scheme was amended during the application process. As such, the description of the development in the banner heading above is taken from the Council's decision notice and appeal form, which accurately reflects the proposals before me.
3. Since the appeal was submitted, the Government has published a revised version of the National Planning Policy Framework (the Framework). The main parties were invited to comment on any implications for the appeal of this change, and I am therefore satisfied that no prejudice would be caused by my consideration of the appeal in light of the revised Framework.
4. The Nunthorpe and Pool Conservation Area (CA) boundary dissects the appeal site. As part of the site is in a CA, I have had special regard to section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).

Main Issue

5. The main issue is the effects of the proposed development on the character and appearance of the surrounding area, including any effects on the significance of designated and non-designated heritage assets.

Reasons

6. The Nunthorpe and Pool CA comprises of a rural settlement set in a gently undulating landscape of arable and pastoral farmland with remnants of parkland. The part of the appeal site falling within the CA lies within sub-area 5, as defined in the Council's CA Appraisal, and in particular a part of the sub-area concentrated around Grey Towers Farm.

7. The appeal site is an open parcel of land with a public right of way (PROW) passing through it. It was historically associated with Grey Towers Farm, a Non Designated Heritage Asset (NDHA). Grey Towers Farm is constructed of brick with a pitched slate roof, and its age, size, design, and boundary treatment are distinct from the surrounding modern suburban housing. Buildings historically associated with the farm that were formerly on the appeal site are no longer in situ. Moreover, other built form near the appeal site in the CA, includes suburban housing to the south, which does not have a high level of architectural and historical interest.
8. In so far as it relates to this appeal, the significance of this part of the CA is derived from the age, surviving built form and features of a rural quality that are associated with Grey Towers Farm. These elements also contribute to the special interest of the NDHA. The significance of the CA also lies in the low density of housing, the quality of PROW's passing through the CA, the prevalence of mature trees, planting and grassed landscaped open spaces. These are important features that contribute positively to the attractiveness of the CA and its verdant qualities.
9. The appeal site is close to the housing to the south of the site, which is within the CA. However, due to the bridleway and planting in between and the road layout, that housing turns its back on the appeal site. The appeal site is not part of the landscaped area of open space to the north that is associated with the suburban housing to the north and west of the appeal site. Moreover, its historical agricultural use and associations with Grey Towers Farm have been significantly eroded by the presence of modern housing and the modest size of the land. As such, although the PROW passing through the site connects with the open space to the north and the routes in the CA to the south, the appeal site appears a somewhat ad-hoc open parcel of land. In forming this assessment, I have not given weight to the detracting elements of the site that could be readily removed such as the security fencing and piles of debris.
10. In this regard, the appeal site contributes little if anything to the significance of the CA, its setting or the historic context and setting of Grey Towers Farm, and thus its special interest as a NDHA.
11. The proposal would fill the gap between the modern housing to the west and Grey Towers Farm to the east. The three detached dwellings proposed would be of a scale, design and form that would assimilate well to the suburban design of the housing in Sessay Grange. The design of the five houses arranged in a courtyard would provide a contrast with the suburban housing. They would have detailing and a layout that would draw from the rural history of the site and its relationship with Grey Towers Farm. In this regard, the design of the scheme would be an appropriate transition between the modern housing in Sessay Grange and Grey Tower Farm.
12. A PROW would still pass through the site maintaining access connections with the wider PROW network. Moreover, the proposed grassed landscaped area with new tree planting would integrate well with the landscaped open space to the north of the appeal site.
13. The proposal would alter the character and appearance of the appeal site, significantly eroding its open qualities. However, the design, layout, density and landscaping would mean that this change would not be harmful.

14. I therefore conclude that the proposed development would not have a harmful effect on the character and appearance of the surrounding area, including the effects of the proposed development on the significance of designated and non-designated heritage assets. As such, the proposal would accord with the requirements of Policies CS5 and DC1 of the Council's Core Strategy (CS) and the requirements of the Framework, when taken together and in so far as they relate to this matter. These say, amongst other things, that all new developments will be required to demonstrate a high quality of design in terms of layout, form and contribution to the character and appearance of the area. It follows that the proposal would also satisfy the requirements of section 72(1) of the Act in so far as it relates to the appeal site.

Other Matters

15. There is no substantive evidence of a lack of need for new homes in this area. Moreover, the government places considerable importance on making effective use of land to boost the supply of housing, including in locations with good access to services and facilities, such as the appeal site.
16. Given the modest number of dwellings, amount of car parking proposed, and its location within a suburban housing area, the parking provision, and the levels of traffic generated, would be acceptable. There is no substantive evidence before me that the proposal would lead to any highway or pedestrian safety concerns.
17. Considering the positioning of each of the proposed dwellings within the site, their two-storey height, and the distance to the neighbouring properties there would not be an unacceptable impact on outlook or levels of overlooking. Moreover, any noise and disturbance during construction would be for a temporary period only.
18. Due to the location of the appeal site relative to the other housing, light pollution from the proposal would be acceptable. Moreover, there is no firm evidence that harm to wildlife in the area would occur.
19. Having found that the proposal would not cause unacceptable harm to the living conditions of the occupiers of neighbouring properties the degree of interference that would be caused would be insufficient to give rise to a violation of rights under Article 8 or Article 1 of the First Protocol of the Human Rights Act 1998.
20. Matters relating to house prices, council tax, suggested alternative uses or designs, discussions or concerns with any builder/developer or landowner, are not matters for my consideration in this appeal. I have determined the appeal on its own merits considering the plans that were before the Council when they made their decision and the evidence before me.
21. I have been referred to the draft Nunthorpe Neighbourhood Plan, which has been subject to consultation. However, since it is unknown whether it will be made (adopted) in its current form and as it could be subject to change, I give it limited weight.

European protected sites

22. The appeal site falls within the catchment of the Teesmouth and Cleveland Coast Special Protection Area (SPA)/Ramsar site (a European Designated Site),

whose interest features include, overwintering and passaging redshank and knot.

23. The Conservation of Habitat and Species Regulations¹ (the Regulations) require the competent authority to ensure that there are no significant adverse effects from the proposed development, either alone or in combination with other projects, that would adversely affect the integrity of European designated sites such as the Teesmouth and Cleveland Coast.
24. The proposed development would result in an increase in the number of people living near this European Designated Site. In combination with other plans and projects, this is likely to have a significant effect on it through an increased nutrient load. In such circumstances, the Regulations place a duty on the competent authority to undertake an appropriate assessment (AA) of the implications of the appeal scheme.
25. The proposed development would generate a total nitrogen load of 12.25 kg per annum and this increased nutrient load would have an adverse effect on the integrity of the Teesmouth and Cleveland Coast. However, as part of the AA regard can be had as to whether these adverse effects can be mitigated.
26. The appellant applied to purchase credits to offset the nitrate discharge from the use of the site under a nutrient mitigation scheme operated by Natural England (NE). The purchase of credits to mitigate the total nitrogen load of 12.25 kg per annum was provisionally approved by NE, confirming that it considers that the development can be mitigated to avoid harm to the European designated site.
27. Both main parties have agreed a condition that would prevent occupancy until a final certificate for the credits under the NE's mitigation scheme has been released or an alternative mitigation scheme has been approved. This is to ensure that development only occurs on condition that adequate mitigation of nitrate discharge is achieved. NE has been consulted during the appeal process and has confirmed it has no objections to the scheme on this basis. Accordingly, I am satisfied that the measures controlled by the proposed condition would adequately overcome any adverse effects of the proposal on the identified European designated sites and there would be no conflict with the requirements of Policies DC1 and CS4 of the CS in so far as they relate to this matter.

Conditions

28. I have adapted the Council's suggested conditions where necessary, in the interests of precision and brevity. Where necessary, consent has been obtained from the appellant for the use of pre-commencement conditions, as the carrying out of building work in advance of approval could prejudice the scope to agree any changes to the submitted details.
29. In addition to the standard time limit condition (1), I have imposed a condition requiring that the development is carried out in accordance with the approved plans (2) in the interests of certainty. Conditions 3, 12 and 13, are necessary in the interests of the character and appearance of the area. Conditions 4 and 5 are necessary in the interests of the character and appearance of the area and highway safety. Condition 6 is required to minimise the effects of construction

¹ The Conservation of Habitats and Species Regulations 2017 (The Habitats Regulations)

on local residents and highway users. Condition 7 is required to maintain the PROW, including links to surrounding PROWs.

30. Conditions 8, 9 and 10 are required to ensure the implementation of suitable drainage provision and to prevent localised flooding. Condition 11 is necessary to deal with any risk of contamination. Condition 14 is necessary to safeguard and promote biodiversity and, insofar as they relate to planting, the amenity values of such planting. Conditions 15 and 16 are necessary to safeguard the ecological interest of a protected site.
31. The Council has suggested several conditions removing permitted development rights including restrictions on new windows, doors, extensions, ancillary garden buildings, hardstanding, boundary treatments, vehicular or pedestrian access or the conversion of garages. These are extensive restrictions proposed for all of the properties. It is put to me that they are necessary to adequately control the level of development on the site to a degree by which the principle of the permission is based, to protect the visual amenity of the area, the interests of residents' amenity or highway safety.
32. However, there are no firm details before me as to why the proposed development would only be acceptable if any of the permitted rights are not exercised in the future. Having regard to the guidance in paragraph 54 of the Framework and the Planning Practice Guidance² I do not consider there to be clearly justified reasons to restrict the properties for the reasons indicated. In my view, future alterations to properties, within the scope of permitted development rights, would not make the scheme unacceptable. As such, I have not included conditions restricting permitted development rights.

Conclusion

33. To conclude, the proposal would accord with the development plan when read as a whole and there are no material considerations that indicate the proposal should be determined other than in accordance with it. For the reasons given above, the appeal is allowed, subject to conditions.

Mr R Walker

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 accordance with the following approved plans: Drawing No: S231 PL001; S231 PL003 rev. C; S231 PL004 rev. C; S231 PL005 rev. C; S231 PL006 rev. C; S231 PL007 rev. C; S231 PL008 rev. C; S231 PL009 rev. C; S231 PL010 rev. C; S231 PL011 rev. C; S231 PL012 rev. C; S231 PL013 rev. C; S231 08; S231 PL014 rev. C; and S231 PL015 rev. C;

² PPG paragraph 21a-017-20190723

- 3) Prior to the construction of the external elevations of the building(s) hereby approved samples of the external finishing materials to be used shall be 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 development shall commence until a detailed drawing of the design and materials of roads, footpaths and other adoptable open spaces 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.
- 5) No dwelling shall be occupied until the areas for vehicle parking have been constructed and laid out in accordance with the approved drawing(s) Ref S231 PL003 rev. C, or such plans which are subsequently submitted to and approved in writing by the Local Planning Authority. Such areas shall thereafter be kept available at all times for the parking of vehicles.
- 6) No development shall commence until a detailed method of works statement shall have been submitted to and approved in writing by the Local Planning Authority. Such statement shall include at least the following details:
 - a) Routing of construction traffic, including signage where appropriate;
 - b) Arrangements for site compound and contractor parking;
 - c) Measures to prevent the egress of mud and other detritus onto the public highway;
 - d) A jointly undertaken dilapidation survey of the adjacent highway;
 - e) Program of works; and
 - f) Details of any road/footpath closures as may be required.

The development shall be carried out in accordance with the approved details.

- 7) No development shall commence until, a Public Rights of Way General Arrangements Plan(s) shall have been submitted to and approved in writing by the Local Planning Authority. The plan shall show the following works to the existing Public Rights of Way network:
 - Signing and Furniture;
 - Structures on or adjacent to;
 - Changes to the surface; and
 - Extent of any stopping up, diversion or dedication of new highway rights (including all public rights of way shown on the definitive map and statement).

The development shall be carried out in accordance with the approved details.

- 8) No development shall commence until a detailed surface water drainage scheme (design and strategy) shall have been submitted to and approved in writing by the Local Planning Authority. The scheme shall be designed, following the principles in the Flood Risk Assessment, reference no. GT9-CDL-XX-XX-RT-C-1001, dated 27th April 2023. The design of the drainage scheme shall include but is not limited to:

- (i) The surface water discharge from the development must be limited to a Greenfield run off rate (Qbar value) with sufficient storage within the system to accommodate a 1 in 30 year storm;
- (ii) The method used for calculation of the existing greenfield run-off rate shall be the ICP SUDS method;
- (iii) The design shall ensure that storm water resulting from a 1 in 100 year event, plus climate change surcharging the system, can be stored on site with minimal risk to persons or property and without overflowing into drains, local highways or watercourses;
- (iv) Provide an outline assessment of existing geology, ground conditions and permeability;
- (v) The design shall take into account potential urban creep; and
- (vi) The flow path of flood waters for the site as a result on a 1 in 100 year event plus climate change (Conveyance and exceedance routes).

This should be accomplished by the use of SuDs techniques, if it is not possible to include a sustainable drainage system, details as to the reason why must be submitted. The development shall be carried out in accordance with the approved scheme.

- 9) No development shall commence until details of a Surface Water Drainage Management Plan shall have been submitted to and approved in writing by the Local Planning Authority. The Management Plan shall include:
- (i) A build program and timetable for the provision of the critical surface water drainage infrastructure;
 - (ii) Details of any control structure(s) and surface water storage structures;
 - (iii) Details of how surface water runoff from the site will be managed during the construction phase; and
 - (iv) Measures to control silt levels entering the system and out falling into any watercourse or public sewer during construction.

The development shall be carried out in accordance with the approved Management Plan.

- 10) No dwelling shall be occupied until a Management & Maintenance Plan for the surface water drainage scheme has been submitted to and approved by the Local planning Authority. The plan shall include details of the following:
- (i) A plan clearly identifying the arrangements for the adoption of the surface water system by any public authority or statutory undertaker (i.e s104 Agreement) and any other arrangements to secure the operation of the scheme throughout its lifetime; and
 - (ii) Arrangements for the short and long term maintenance of the SuDS elements of the surface water system.

The drainage scheme shall be implemented and thereafter managed and maintained in accordance with the approved details.

- 11) No dwelling shall be occupied until a validation report shall have been submitted to and approved in writing by the Local Planning Authority. The

validation report shall confirm that all the proposed remediation works set out in the Geoenvironmental Appraisal, report no. C8874, dated November 2020 were completed.

- 12) No development shall commence until details of both hard and soft landscape works shall have been submitted to and approved in writing by the local planning authority. These details shall include:
- i) Planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants noting species, plant supply sizes and proposed numbers/densities where appropriate;
 - ii) Details of any existing trees and hedgerows on the land, identifying those to be retained and setting out measures for their protection throughout the course of development.
 - iii) Earthworks showing existing and proposed finished levels or contours;
 - iv) Means of enclosure and retaining structures;
 - v) Boundary treatments;
 - vi) Vehicle parking layouts;
 - vii) Other vehicle and pedestrian access and circulation areas;
 - viii) Hard surfacing materials;
 - ix) Minor artefacts and structures (e.g. furniture, refuse or other storage units, signs, etc.);
 - x) Proposed and existing functional services above and below ground (e.g. drainage, power, communications cables, pipelines etc. indicating alignments, levels, access points, supports as relevant);
 - xi) Retained historic or other landscape features and proposals for restoration, where relevant;
 - xii) Lighting;
 - xiii) An implementation programme; and
 - xiv) Scheme of management and/or maintenance.

The landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied in accordance with the agreed implementation programme. The completed scheme shall be managed and/or maintained in accordance with the approved scheme of management and/or maintenance.

- 13) Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 14) No development shall commence until a detailed scheme of ecological enhancement measures, including a programme of works, shall have been submitted to and approved in writing by the Local Planning Authority. The enhancement measures shall accord with the details set out in the approved Biodiversity Net Gain Report, dated 23rd February 2023. Thereafter the works shall be carried out on site and thereafter maintained in accordance with the approved details.

- 15) No dwelling shall be occupied until measures shall have been incorporated within the development to ensure a water efficiency standard of 110 litres (or less) per person per day.
- 16) Prior to the commencement of the development hereby approved a copy of the signed Final Credit Certificate from Natural England, must be submitted to and approved in writing by the Local Planning Authority. If the final credit certificate cannot be obtained for any reason full details and specifications of an alternative Nutrient Neutrality Mitigation Scheme, including any long term maintenance and monitoring details must be submitted to and approved in writing by the Local Planning Authority (in consultation with Natural England). Thereafter the development shall be carried out in accordance with the approved Nutrient Neutrality Mitigation Scheme.

End of Schedule