The Planning Inspectorate

Appeal Decision

Site visit made on 10 April 2024

by E Worthington BA (Hons) MTP MUED MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 16th May 2024

Appeal Ref: APP/Z4718/W/23/3334872
124 Hartshead Lane, Hartshead, Kirklees, Liversedge, WF15 8AJ

- 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 Mr David Brown against the decision of Kirklees Council.
- The application Ref 2023/62/92340/E, dated 3 August 2023, was refused by notice dated 24 November 2023.
- The development proposed is 2 No. detached dwellings.

Decision

1. The appeal is allowed and planning permission is granted for 2 No. detached dwellings at 124 Hartshead Lane, Hartshead, Kirklees, Liversedge, WF15 8AJ in accordance with the terms of the application, Ref 2023/62/92340/E, dated 3 August 2023, subject to the conditions in Annex A.

Procedural Matters

2. Since the proposal relates to the setting of a listed building, I have had special regard to section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).

3. On 19 December 2023 the government published its revised National Planning Policy Framework (the Framework). Whilst this post-dates the date on the appeal form and some of the evidence provided by the main parties in relation to this appeal, since the revised Framework's approach to the main issue in this case has not altered significantly, I confirm that all references to the Framework in this decision are to the updated 2023 version.

Main Issue

4. The main issue is whether the proposal would preserve the setting of the nearby grade II listed building at 120 Hartshead Lane (Ref: 1184297).

Reasons

Background

5. The appeal site is an area of open land adjacent to 124 Hartshead Lane (Sherwood) and is part of the substantial garden of that large detached dwelling which dates to the 1950s and has been recently remodelled. The appeal site is accessed from Hartshead Lane and the land slopes downwards from there.

6. Planning permission was granted in 2023 for one detached dwelling to the east of Sherwood, and one to the west of it (on the appeal site). The house to the east has now been built and the appeal scheme seeks two dwellings to the west of Sherwood (instead of the single dwelling approved). I note that two dwellings were initially sought as part of the approved scheme on the appeal site, but the proposal was reduced to a single dwelling due to the Council's concerns. The appeal scheme has been re-designed following advice from a heritage specialist to incorporate two dwellings.

The setting of the listed building at No 120 and other nearby listed buildings

7. The appeal site is immediately adjacent to 120 Hartshead Lane. This two storey detached cottage dates to the early/mid 19th century, and is built in hammer dressed stone with a slate roof. It fronts directly on to Hartshead Lane with an enclosed garden area to the rear. On the other side of the road to the north are the grade II listed buildings at 119 and 121 Hartshead Lane. No 119 dates to the mid 18th century and No 121 to the early 19th century. They are also traditional stone cottages, set back from the road behind front gardens and a stone boundary wall. These listed buildings are all part of the historic rural settlement of Hartshead.

8. Accepting that they each have their own particular features of interest and significance, there is nevertheless a cohesiveness to this small grouping of traditional vernacular rural buildings which have a shared significance. Insofar as relating to this appeal, this common significance is derived from their historic interest as traditional rural domestic buildings including their functional vernacular design and use of materials typical of the local area.

9. The settings of these buildings, and the contribution they make to the significance of those assets, insofar as they relate to this appeal, is derived from the historic character of the rural surroundings, its traditional functional buildings and the spaces around and between them as well as their relationship with the surrounding open countryside. This setting contributes positively to the understanding and the special interest and significance of the listed buildings along with the ability to appreciate them.

10. The Framework defines setting as the surroundings in which a heritage asset is experienced. The nearby historic buildings identified are close to the appeal site, in particular No 120 is immediately adjacent to it. All the buildings over-look the appeal site to some degree or form part of the back drop to it. Overall I consider that there is inter-visibility to varying extents between these buildings and the appeal site, and that some contextual views of the buildings include the appeal site.

11. Whilst the appeal site was formerly part of a large field parcel on the south side of Hartshead Lane, that parcel has already been divided by the introduction of housing development, and the appeal site is part of the residential garden associated with Sherwood. As such, it is no longer part of the open countryside surrounding the settlement, and has not been for some time. Nor have I seen any evidence to suggest that the appeal site has any historic or functional connection to No 120 which has a well-defined eastern boundary to the appeal site (stone wall and mature trees) and an enclosed rear garden area to the south.

12. Nevertheless, the appeal site has a visual relationship with the listed buildings nearby, and as an open area of land, allows views through the site between Hartshead Lane and the open countryside beyond to the south. In doing so it helps to maintain the visual connection between the historic settlement and its rural surroundings. It also allows views of the flank boundary of No 120 in particular, and provides the space in which the nearby listed buildings can be appreciated. As such, the site contributes to the settings of the listed buildings nearby. I have had special regard to this matter in considering the appeal.

The effect of the proposal

13. As set out above, two houses would be introduced to the west of Sherwood. Plot 1 would be on the western half of the site adjacent to No 120, with Plot 2 on the eastern half of the site adjacent to Sherwood in the location of the previously approved dwelling there.

14. The Council confirms that the principle of residential development is acceptable on the site. The proposed dwellings would be two storeys in height, predominantly faced in coursed stone, with dual pitched roofs and grey artstone slates. They would not exceed the ridge height of No 120 and would be set back from the road to ensure the eastern elevation of No 120 remains visible and in order to differentiate the new dwellings from the historic building line. The existing stone walls on the western and southern boundaries of the appeal site would be retained.

15. The Council finds that the footprint, massing, materials and design of the proposed dwellings would be in-keeping with neighbouring properties and would harmonise with their surroundings. I see no reason to come to a different view on these points. However, the Council is concerned about the impact of the dwelling on Plot 1 on No 120. It argues that the two dwellings would appear squeezed or shoehorned in to the site and in combination would represent a creep of development westwards. It considers that this would threaten the appeal site's sense of openness, undermine its connection to the wider rural area, and diminish the ability to appreciate No 120.

16. On the other hand, as set out above, the appeal site has no historic connection to No 120, and is a longstanding residential garden rather than an open rural field or part of the surrounding countryside. The house on Plot 1 would be a more modest dwelling in comparison to that on Plot 2 and Sherwood, and similar in footprint to No 120. Space would be retained around the dwellings which would be set in spacious plots and off the boundaries. Both houses would be positioned well back from the street frontage and would not interrupt views of No 120 from Hartshead Lane or exceed its height. The existing boundary wall and mature planting on the boundary with No 120 would be retained.

17. Nevertheless, in introducing two dwellings rather than just one to the appeal site, the proposal would bring development closer to No 120, and further diminish the openness of the appeal site. In doing so it would curtail views through it to the countryside beyond and lessen connections between the rural areas to the south and the built development of the historic part of the settlement on Hartshead Lane. However, I find that the effect of the proposal in this regard would not be substantial in the context of the completed house to the east of Sherwood and the permitted house to the west of Sherwood, which have already served to undermine these views and connections.

18. Thus, bringing matters together, for the reasons given, I find that in eroding the visual connection between the historic development on Hartshead Lane and the countryside to the south, the proposal would to a very modest extent undermine the setting of the listed building at No 120, so as to cause a very small amount of harm to the significance of that heritage asset and the ability to appreciate it.

19. For these reasons, I conclude on this main issue that the proposal would fail to preserve the setting of the nearby listed building at No 120 and would cause some very limited harm to the significance of that heritage asset. Nevertheless, I give this harm considerable importance and weight in the balance of this appeal.

20. The reason for refusal on the decision notice and the Council's case relate only to the impact of the proposal on No 120, and do not consider the listed buildings at Nos 119 and 121. Whilst the Conservation Officer's comments refer to some limited impact on the settings of Nos 119 and 121, no further details are given. I am mindful that these heritage assets are more remote from the appeal site on the other side of Hartshead Lane and share a less direct visual relationship with it.

21. However, given my findings above in relation to the settings of those listed buildings, and with my statutory duty in mind, I find that in diminishing views of and visual connections to the surrounding rural area, it follows that the proposal would also undermine the settings of those buildings, albeit to an even lesser extent than is the case for No 120. I also give this harm considerable importance and weight in the balance of this appeal.

Heritage balance

22. The Framework advises at paragraph 205 that when considering the impact of a proposal on the significance of a designated heritage asset, great weight should be given to the asset's conservation. I consider that the harm in this case would be less than substantial in the terms meant by the Framework. Paragraph 208 of the Framework requires that less than substantial harm should be weighed against the public benefits of the proposal, including where appropriate, securing its optimum viable use.

23. The Council accepts that it is unable to demonstrate a five year supply of deliverable housing sites, and the proposal would provide two additional homes that would contribute, albeit modestly, to housing land supply. This would support the government's aim, as set out in the Framework, to significantly boost the supply of homes. The proposal would also contribute to the local economy during the construction phase and to maintaining the vitality of the rural community and supporting services once the units are occupied. These are all public benefits of the proposal which count in its favour.

24. Taking this context into account, and given the very limited impact of the proposal on the settings of the nearby heritage assets, and the minimal harm that would arise to the significance of those listed buildings, I find that overall, the public benefits of the proposal are sufficient to outweigh the less than substantial harm to the heritage assets that I have identified, and the considerable importance this carries. Thus the proposal would satisfy paragraph 203 of the Framework.

Other matters

25. The Council raises no objection to the proposal with regard to its effect on the living conditions of nearby occupiers in terms of privacy, light or outlook, or in respect of the living conditions that would be provided for the future occupiers of the proposed houses. Subject to the imposition of conditions the Council also finds the scheme to be acceptable in terms of highway safety and ecology.

26. The southern part of the site is in the Green Belt and the Council is content that this currently forms the curtilage of Sherwood and has a well established character as a residential garden. Accordingly (subject to the imposition of conditions) the Council raises no objections to the proposal in terms of its impact on the Green Belt. Based on the evidence before me, I see no reason to come to a different view on any of these matters. The need for conditions is considered below.

Overall planning balance

27. As set out above, the Council accepts that it is unable to demonstrate a five year supply of deliverable housing sites. Accordingly the appellant refers to the presumption in favour of sustainable development set out in the Framework and the provisions of paragraph 11 d. I have found that the harm to the heritage assets in this case is outweighed by the public benefits. Accordingly, paragraph 208 of the Framework should no longer be taken to indicate that development should be restricted and the weighted balance in paragraph 11 d) ii applies. Since any adverse impacts of granting permission in this case would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, this indicates that permission should be granted for the appeal scheme.

28. In terms of the development plan, Policy LP24(a) of the Kirklees Local Plan (LP) seeks to promote good design by ensuring that the scale, form, layout and details of all development respects and enhances the character of the townscape, heritage assets and landscape. LP Policy LP35 states that proposals affecting a designated heritage asset should preserve or enhance the significance of the asset. Whilst there would be some limited conflict with the development plan in these regards, given that I have found the proposal to be in accordance with the advice in the Framework, and in the context of the presumption in favour of development described above, I am satisfied that the public benefits of the proposal would outweigh the conflict with the development plan that would arise in this particular instance.

29. The decision notice also refers to the Principles of the Kirklees Householders Design Guide. Principle 2 requires residential proposals to respect and enhance local character by (amongst other things) taking cues from the character of the built and natural environment within the locality, creating a positive and coherent identity, and complementing the surrounding built form in terms of its height, shape, form and architectural details. Principle 13 requires the consideration of the use of locally prevalent materials and finishings to reflect the character of the area. Principle 14 notes that the design of openings is expected to relate well to the street frontage and neighbouring properties, and Principle 15 states that the design of the roofline should relate well to the site context. However, given my findings above in relation to the design of the scheme, I am not convinced that the proposal is contrary to this guidance.

Conclusion and Conditions

30. For the reasons set out above, and having regard to all the other matters raised, I conclude that the appeal should be allowed.

31. I have considered the Council's suggested conditions in light of the advice in the National Planning Policy Guidance. I have attached a condition limiting the life of the planning permission in accordance with the required of the Act. It is necessary that the development shall be carried out in accordance with the approved plans for the avoidance of doubt and in the interests of proper planning.

32. A condition relating to the details of the external facing materials is required in the interests of the character and appearance of the area. I note that the Council also suggests conditions relating to the specific materials to be used for each of the dwellings. However, in light of the suggested condition requiring the external facing materials to be submitted and approved which has been imposed, these are superfluous.

33. A condition relating to boundary treatments is also required for this reason and also in order to safeguard the living conditions of nearby occupiers and those of the future occupiers of the houses. Whilst not suggested by the Council, the officer's report refers to the need for a condition to secure a scheme of landscaping, which I have imposed in the interests of the character and appearance of the surrounding area.

34. The Council's Environmental Health response, states that the site is potentially contaminated due to the presence of a historic sandstone quarry and sewage works nearby. As such, a contaminated land condition is recommended to demonstrate that all potential contaminated land risks have been fully assessed. I have imposed such a condition.

35. An Ecological Impact Assessment was submitted with the application which indicates an overall net gain of habitat and hedgerow units. A condition is recommended to ensure that the biodiversity net gains at the site are achievable in line with the recommendations for further survey, mitigation and enhancement set out in section 6.4 of the submitted assessment. I have imposed a condition to require an Ecological Design Strategy as suggested by the Council. This is necessary in order to ensure the development provides ecological enhancement and creation measures in accordance with LP Policy LP30.

36. A condition to require a surface water drainage strategy (to follow the hierarchy of sustainable drainage) is required to ensure the provision of an adequate drainage system in the interests of amenity, environmental well-being, and to accord with LP Policies LP24, LP28 and LP52. A condition to ensure the hardsurfacing and drainage of the access and driveway is necessary to ensure that appropriate space for vehicular movements is provided within the site in order to provide adequate living conditions for future occupiers, in the interests of highway safety, and to mitigate flood risk in accordance with LP Policies LP21, LP22 and LP24.

37. Although not included in the Council's list of suggested conditions, the officer's report refers to the need for a condition to require electric vehicle charging points within the site for the future occupants of the dwellings. This is to

comply with the aims of LP Policies LP24 and LP51 and to promote sustainable transport and support a low carbon future. A condition to ensure that the sight lines/visibility at the access point with Hartshead Lane are not obscured is necessary in the interests of highway safety.

38. A condition to withdraw permitted development rights in relation to outbuildings is necessary and reasonable in order to preserve openness given that part of the site is within the Green Belt. Whilst the Council suggests that rights under Classes A to E should be removed, the Framework is clear that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. In the absence of any such justification, and in the interests of precision, I have imposed a condition relation to Class E (outbuildings) only.

39. Whilst I have had regard to the 'notes' provided by the Council at the end of the list of conditions, I am mindful that such informatives do not carry any legal weight and cannot be used in place of a condition. However, given the residential nature of the area, and in the interests of the living conditions of nearby occupiers, I have imposed a condition to control the hours of construction.

E Worthington

INSPECTOR

Annex A

1) The development hereby permitted shall begin not later than three years of the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan, Proposed Plans and Elevations (Plot 1) drawing number 17-017-46, Proposed Plans and Elevations (Plot 2) drawing number 17-017-47, Block Plan, and Proposed Site Plan drawing number 17-017-SP02-3 Rev D.

3) Development shall not commence until details of the materials to be used in the construction of the external surfaces of the dwellings have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

4) Notwithstanding the details shown on the plans, the development shall not commence until details of the boundary treatments have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

5) Development shall not commence until details of hard and soft landscape works have been submitted to and approved in writing by the local planning authority. The landscaping works shall be carried out in accordance with the approved details and in accordance with an agreed implementation programme.

6) Development shall not commence until an assessment of the risks posed by any contamination have been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitable qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites – Code of Practice and the Environment Agency – Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard or Model Procedures if replaced), shall have been submitted to an approved in writing by the local planning authority. If any contamination is found a report specifying the measures to be taken, including the timescale to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority.

7) Development shall not commence until an Ecological Design Strategy (EDS) including details of the biodiversity units for habitats and hedgerows and roosting bat and nesting bird provision included in the submitted Ecological Impact Assessment dated 20 June 2023 (Report Reference MBE/ECO/2023/10/01) have been submitted to, and approved in writing by, the Local Planning Authority. The EDS shall include:

   - Purpose and conservation objectives for the proposed works;
   - Review of site potential and constraints;
   - Detailed design(s) and/or working method(s) to achieve stated objectives;

- Extent and location/area of proposed works on appropriate scale maps and plans;
- Type and source of materials to be used where appropriate, e.g. native species of local provenance;
- Timetable for implementation demonstrating that works are aligned with the proposed phasing of development;
- Persons responsible for implementing the works;
- Details of initial aftercare and long-term maintenance;
- Details for monitoring and (where the results from monitoring show that conservation aims and objectives of the EDS are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers a measurable biodiversity net gain; and
- Details for disposal of any wastes arising from works.

The development shall be carried out in accordance with the approved EDS and the measures shall be retained thereafter.

8) Development shall not commence until a scheme detailing the surface water drainage strategy for the site has been submitted to and approved in writing by the local planning authority. The strategy shall be developed in accordance with the hierarchy of drainage and where soakaways are proposed, testing shall be provided to demonstrate that they are a suitable option for the site. The dwellings shall not be occupied until the works included in the approved surface drainage strategy have been completed. The works shall be retained thereafter.

9) The dwellings shall not be occupied until all areas of hard surfacing on the approved Proposed Site Plan drawing number 17-017-SP02-3 Rev D including the access and driveway, have been drained and hard surfaced in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. The areas shall be retained thereafter.

10) The dwellings shall not be occupied until fully operational electric charging points have been fitted in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. The electric vehicle charging points shall be retained thereafter.

11) No structure or erection exceeding 1 metre in height, and no shrubs, trees or other vegetation shall be allowed to grow above 1 metre in height within a strip of land 2.0m deep measured from the carriageway edge of Hartshead Lane along the full frontage of the site.

12) Notwithstanding the provisions within Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking or re-enacting that Order (with or without modification)) no building or enclosure shall be provided within the curtilage of the houses hereby permitted without the prior written consent of the Local Planning Authority.

13) Construction works shall take place only between the following hours: 07:30 - 18:00 Mondays to Fridays, 08:00 - 13:00 Saturdays, and not at any time on Sundays or Bank or Public Holidays.