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## Appeal Decision

Site visit made on 10 June 2025

by **F Harrison BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 24 June 2025

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**Appeal Ref: APP/N1350/W/25/3359953**

**Mole End, Neasham Road, Hurworth-on-Tees, Darlington DL2 2AZ**

- 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 Mike Bailey against the decision of Darlington Borough Council.
  - The application Ref is 24/00132/FUL.
  - The development proposed is the erection of new bungalow including garage, landscaping and road access.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The appeal site post code has been taken from the appeal form. It is the same as that on the decision notice, which the appellant confirms is correct. During the appeal, a new version of the Framework came into effect but there are no material changes relevant to the substance of the appeal.

### Background and Main Issues

3. There are two reasons for refusal on the decision notice, however the Council has confirmed there are no objections with regard to the second reason for refusal relating to flood risk. Taking account of the submitted Flood Risk-Sequential Test Addendum: New Accessible Bungalow (June 2024) it has been shown there are no reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. Furthermore, I have no clear reason to disagree with the findings of the Flood Risk and Drainage Assessment that the proposal would not exacerbate flood risk in the area and the design measures would mitigate the risk of flooding to the building and its occupiers. The proposal would therefore accord with Policy D2 of the Darlington Local Plan 2016-2036 (2022) (DLP).
4. The appeal site lies within the impact risk zone of the Teesmouth and Cleveland Coast Special Protection Area (SPA) and Ramsar Site (the European site). The site is protected pursuant to the Conservation of Habitats and Species Regulations 2017 (the Regulations) and is recognised for its value as a complex of coastal habitats supporting internationally important populations of breeding and non-breeding water birds including little tern, redshank and ringed plover. Although not an issue included on the decision notice, it is necessary for me to consider whether the proposal would have a likely significant effect on the integrity of the European site. Both parties have provided comments on this matter in their submissions which I have taken into account in my decision.

5. With the above in mind, the main issues are:

- whether the proposal would be in a suitable location, having regard to the Council's spatial strategy; and
- the effect of the proposal on the European site, with regard to nutrient neutrality.

## **Reasons**

### *Location*

6. The appeal site is a plot of land adjacent to Neasham Road. It is not disputed that it lies outside of the development limits of the nearest settlement at Hurworth.
7. DLP Policy SH1 establishes a settlement hierarchy which shapes the broad distribution of development within the local plan area. The supporting text to Policy H3 explains that development limits help to achieve the locational strategy for new development and that the aim of the spatial strategy is for development to be in sustainable locations. The Framework in meeting its objectives for managing patterns of growth also requires proposals to prioritise sustainable transport modes to access services and facilities including walking and cycle movements.
8. There is a direct walking and cycling route from the appeal site to the nearest settlement at Hurworth. While unlit, the footpath is generous in width and is separated from the road by a grass verge. Combined with the relatively short distance, it provides a safe and attractive route to take for pedestrians and cyclists who would choose to access services and facilities in Hurworth in this way. Furthermore, Hurworth is identified in DLP Policy SH1 as a service village that offers a range of facilities and services with convenient access to bus services. Accordingly, future occupiers would not be solely reliant on private vehicles. On this basis, the proposal would be in a location that would enhance or maintain the vitality of rural communities in line with Framework Paragraph 83's aim to promote sustainable development in rural areas.
9. The proposal would be proximate to two dwellings known as Mole End and Garden Cottage. It would be seen in context with these dwellings and would not be visually prominent owing to its high-quality design. The Council do not have any concerns regarding the effect of the proposal on the character and appearance of the area, and from the evidence and my site visit observations I have no clear reason to disagree. The proposal would therefore protect the open countryside between settlements, preserve the countryside's intrinsic character and beauty and preserve the distinctive identity and character of Hurworth and its landscape setting, all of which are objectives of the spatial strategy.
10. The proposal's location would therefore meet the broad aims of the spatial strategy. While separated from Hurworth by intervening fields, given the access to services described above and proximity to other dwellings, it is my view that the appeal site is not particularly remote and so the proposal would not result in an isolated dwelling in the countryside which the plan seeks to avoid.
11. Nevertheless, DLP Policy SH1 sets out that areas that are not within a development limit are regarded as the countryside. In policy terms therefore the appeal site is in the countryside. There is no substantive evidence that the appeal scheme would constitute a form of development that meets any of the exemptions

for housing in the countryside set out in DLP Policy H7. Accordingly, overall, in this location the proposed dwelling would not accord with the development plan's spatial strategy and there would be an 'in principle' policy harm resulting from the location of the proposal. In coming to this conclusion, I have taken account of Framework Paragraph 15 which sets out that the planning system should be genuinely plan-led.

12. To conclude, the proposal would not be in a suitable location, having regard to the Council's spatial strategy. It would be in conflict with DLP Policies SH1 and H7, insofar as these policies direct development to within the development limits in accordance with the settlement hierarchy and require development within the countryside to meet one of the listed exemptions.
13. DLP Policy H3 is also referred to on the decision notice which relates to proposals within development limits. However, given that the appeal site is not within the development limits this policy has not been determinative in my decision.

#### *European site*

14. The European site is currently in an unfavourable condition due to nutrient enrichment. The wastewater from additional new housing development has the potential to increase nitrate loads and result in the deterioration of water quality, significantly affecting the environmentally sensitive site.
15. The proposal would dispose of foul drainage through a package treatment plant that has been designed to reduce nitrate flows. It would generate a total nitrogen load of 0.42 kg per annum. While this may be lower than the typical outflow for the proposed occupancy levels, the proposal would generate additional nutrients to the European site catchment. There is no basis for me to dispute Natural England's position about the effect of such proposals on the qualifying features of the European site in view of its current condition and conservation objectives. Consequently, when considered in combination with other developments in the area, there would be a likely significant effect on the qualifying features of the European site from the proposal.
16. I am required to carry out an appropriate assessment (AA) in relation to the effect of granting permission on the integrity of the European site. Natural England has put a mitigation strategy in place which is based on the purchase of nutrient credits. The purchase of such credits would ensure that the proposal achieved nutrient neutrality and, on this basis, the adverse effects of the proposal on the integrity of the European site could be avoided. However, despite the appellant's agreement to purchase credits there is no evidence that this has taken place, nor any mechanism to secure them.
17. The Council indicate that a condition could be imposed to require the purchase of credits, but no such condition has been suggested. The Planning Practice Guidance (PPG) confirms that positively worded conditions cannot be imposed which require the payment of money. The PPG also advises that a positively worded condition which requires an applicant to enter into a planning obligation is unlikely to be enforceable. While a negatively worded Grampian condition could be pursued, the PPG sets out that they are unlikely to be appropriate in the majority of cases except in exceptional circumstances, for instance where the delivery of particularly complex development schemes may otherwise be at risk. That would not be the case here.

18. In any event, the certainty around securing Grampian conditions can be challenging whereby mitigation to be later secured is lacking precise details and I have no evidence about any appropriate schemes which would have sufficient credits available for the appellant to purchase. Consequently, given the importance of this issue, together with the lack of certainty as to whether appropriate provisions would be in place to secure the necessary mitigation, the use of a Grampian condition would not give the degree of precision required by Framework Paragraph 58 and would not therefore be suitable in this instance.
19. As such, in carrying out the AA, without any mitigation measures sufficiently secured, taking account of the precautionary principal I am unable to rule out beyond all reasonable scientific doubt that there would be no adverse effect on the European site. I therefore conclude that the proposal would adversely affect the integrity of the European site, either alone or in combination with other development. Having regard to the Regulations, permission should not be granted. While not referred to on the decision notice, the proposal would be in conflict with DLP Policy ENV7 insofar as this policy requires development to avoid or adequately mitigate any significant adverse effects to biodiversity.

## **Conclusion**

20. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. I have found that the proposal would not be in a suitable location, in conflict with DLP Policies SH1 and H7. However, as the proposal would meet the broad aims of the spatial strategy there would be limited material harm arising from the conflict with these policies. I have also found through undertaking an AA that the proposal would adversely affect the integrity of the European site. Taking account of the Regulations, substantial weight is given to the conflict with DLP Policy ENV7. I will now consider whether there are material considerations that would indicate that my decision should be made otherwise than in accordance with the development plan.
21. The proposal would contribute to the local housing mix, including for an ageing population, through the addition of an adaptable home in an accessible location that the appellant indicates can be delivered quickly. These are clear benefits of the scheme. There is considerable support for boosting the supply of homes that meets the needs of groups with specific housing requirements, including adaptable housing for older people. While the Council suggest that there are many opportunities available for this type of housing within the development limits this is not supported in evidence. Within the context of the need for adaptable housing for an ageing population, specifically within the Hurworth area, this benefit attracts significant positive weight.
22. The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. The appeal scheme would be well designed, including sustainable design and construction measures, reflecting local design policies and government guidance on design which attracts significant positive weight in line with Framework Paragraph 139.
23. Even if I were to accept the appellant's evidence that there is a demonstrable need for self-build plots within the Borough there is no means of ensuring that the proposal

is constructed in the context of the Self-Build and Custom Housebuilding Act 2015 (as amended). This is not something that could be overcome through the imposition of a condition, as requiring first occupation of the dwelling by the person who built it would be unlikely to pass the Framework Paragraph 58 tests. It therefore follows that this matter attracts very limited positive weight.

24. The proposal would not be harmful to the living conditions of neighbouring residents and future occupiers, incorporates lower embodied carbon design and construction and would deliver biodiversity net gains. However, these matters, and any other policy compliance including land contamination, tree protection and highway safety are neutral factors which weigh neither for nor against the scheme.
25. The proposal would result in benefits, but it would also cause harm. Weighing the two up is a matter of planning judgement. In this case, the benefits of the proposal are insufficient to outweigh the identified conflict with the development plan. I therefore conclude that the appeal should be dismissed.

*F Harrison*

INSPECTOR