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## Appeal Decision

Site visit made on 12 September 2017

**by Mrs Zoë Hill BA(Hons) Dip Bldg Cons(RICS) MRTPI IHBC**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 6 October 2017**

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**Appeal Ref: APP/F4410/W/17/3172944**

**Land north of Clay Lane West, Clay Lane West, Long Sandall, Doncaster DN2 4QY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr G Gee against the decision of Doncaster Metropolitan Borough Council.
  - The application Ref: 15/01364/OUT, dated 2 June 2015, was refused by notice dated 3 October 2016.
  - The development proposed is described as B1, B2 & B8 Development including construction of a new access.
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### Preliminary Matters

1. The appeal proposal relates to a number of proposed uses. The Town and Country Planning (Use Classes Order) 1987 as amended describes Use Class B1 as Business, Use Class B2 as General industrial and Use Class B8 as Storage or distribution.
2. The application was made in outline with only access and layout to be determined at this stage.
3. A s.106 Unilateral Undertaking was submitted with the appeal which identifies a Heavy Goods Vehicle (HGV) route and which requires the developer to erect signage regarding that route on site and to provide HGV drivers with details of the route.
4. During the application process revisions were made to the site area and the layout of the proposed development. The appellant, in their appeal documentation confirm that the Council determined the application on the basis of the revised scheme Drawing Ref: 122/14/2D dated June 2016. From the consultation responses it seems the Council undertook consultation on the revised plan and I shall determine the appeal on that basis.

### Application for Costs

5. An application for costs was made by Mr G Gee against the Council. This application will be the subject of a separate Decision.

### Decision

6. The appeal is dismissed.

## **Main Issues**

7. The main issues in this case are the effect of the proposed development on:
  - (a) the setting of 1-4 Clay Lane, which are grade II listed buildings;
  - (b) the archaeological interest of the site; and,
  - (c) common lizards, having particular regard to the mitigation measures proposed.

## **Reasons**

### **Listed Buildings**

8. Nos 1-4 Clay Lane are two pairs of semi-detached houses. These are red brick dwellings with ashlar dressings under a slate roof. The dwellings are mirrored within each pair with decorative features, including arched brickwork features, mullion windows, a dentil course to the ridge sided chimney and the decoratively finished bargeboards. The pairs of dwellings were designed by J Butterfield for Doncaster Corporation. Dating from 1867 their aesthetic interest is in terms of the architectural detail and their historic interest is as very early and high quality examples of Council housing in a pleasant rural setting is of significance.
9. The key aspects of the immediate setting are the modest cottage gardens and the inter-relationship of the four listed cottages. However, the nearby canal and lock positively contribute to the setting of the houses and their significance as early Council housing of a high quality, as does the derelict farm complex. The agricultural nature of that farm, with its buildings in a ruinous state, and the currently vacant land provide a rural element to the setting and a historic context. However, the setting also includes the large industrial buildings, many of relatively modern construction, which form a backdrop to the dwellings.
10. The listed cottages would be some 80 metres from the nearest point of the appeal site which is on the opposite side of Clay Lane. Notwithstanding the proposed revised layout which illustrates a narrower building along the road-side with larger buildings within the site, the proposed large industrial buildings would detract from the rural aspect of the setting of the listed buildings, beginning to make them appear hemmed in by industrial development rather than retaining their historic relationship to the rural area. Whilst the industrial buildings clearly forms part of the cottages' setting this does not justify exacerbating that existing harm.
11. I appreciate that there would be some scope for landscape planting within the appeal site. However, the areas illustrated would not enable particularly substantial planting belts and while the development would be softened at some of the boundary points, it would be seen as a large-scale industrial and commercial development. Moreover, the application form details the use of particularly industrial materials (cladding/metal/upvc) along with a 2.4m security boundary fence.
12. I have also noted the suggestion that this scheme would help soften the impact of the approved development on the adjoining site, further from the listed buildings. However, I attach little weight to this in terms of improving the setting of the cottages as that site is further away and has not been developed

- as yet. Thus, its development might alter or it might remain undeveloped. Indeed, nothing is provided to clarify the situation with that earlier permission which appears to have been in outline and approved in December of 2012.
13. Furthermore, in the heritage statement it is asserted that the buildings on the adjoining site are likely to be 6m high but to soften the visual impact 'an extensive landscaping belt is proposed along the canal, with additional landscaping proposed along the southern boundary'. Thus, some planting would soften that proposal which gained planning permission on the adjacent site. Moreover, I have some concerns that placing a very large building on the appeal site alongside that boundary would jeopardise the planting for that adjoining scheme were it to be built.
  14. In terms of the impact upon the listed buildings, the Council has concerns about the impact on the attractiveness of the dwellings for use and their long term viability. Clearly the list descriptions indicate 'empty and derelict at time of resurvey' and while three of the four properties appear to currently be occupied, and in reasonable condition, one is unoccupied and requiring some attention. In this respect the setting of the listed buildings plays a part in the attractiveness of the dwellings.
  15. I appreciate that the appeal site has a long history of previous occupation. However, former development was not on the scale now proposed. Thus, the proposed appeal scheme would have an impact upon the historic value of these early Council built houses which, in addition to the detail of their attractive aesthetic, would have been pleasantly located for occupation. I conclude that there would be harm to the setting of 1-4 Clay Lane which are grade II listed buildings. This is a matter to which I must give considerable importance and weight having regard to my statutory duty under s.66 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
  16. In this regard I also find that the proposal fails to accord with policy CS15 of the Core Strategy which supports proposals provided that they preserve and, where appropriate, enhance the heritage significance and setting of the borough's heritage assets.
  17. I appreciate that, as the appellant notes, the site is part of saved policy RP 9 regeneration area which covers an area that includes land nearer to the listed buildings. However, the mixed use regeneration development allocation includes commercial, industrial, residential and recreational uses. It would be for detailed applications to determine the acceptability or otherwise of those uses and their detailed siting and design, including in respect of the setting of the listed buildings. Indeed the supporting text to saved policy RP 9 specifically notes 'there is scope for development of an initiative to promote and facilitate a mixed use scheme which will take account of the need to protect and enhance existing buildings and settings and to exploit the recreational potential of the South Yorkshire Canal.' Thus, whilst the scheme accords with the principle of this type of use it is evident that it is a broad policy and therefore I attach greater weight to the more detailed and recent policy CS15.
  18. In terms of the Framework, I find that the harm to the listed cottages would amount to less than substantial harm and, as such, I should weigh that harm against the public benefits of the scheme which I shall do before arriving at the planning balance.

### **Archaeology**

19. The appeal site is in an area of known archaeological interest with at least three phases of activity dating to the Roman, medieval and post-medieval periods. Whilst it has a long history of occupation the key period of interest appears to relate to a Roman fort. As a consequence of this archaeological interest there has been investigative trenching on the appeal site and adjoining land.
20. The outcome of the trenching has provided evidence of periods of occupation/activity in the central part of the area investigated for its archaeology. However, this area is to the south of the appeal site. Trenching within the appeal site area provided evidence relating to farm activity probably associated with the now derelict farm. As such, the on-site archaeology is not considered to be of the same interest as that on the adjoining site. Whilst there is potential for on-site archaeology to be of interest The South Yorkshire Archaeology Service considered that impact on archaeology on the appeal site could be dealt with through the use of a condition securing further archaeological work and setting out how to deal with any archaeological deposits that might be found.
21. I am satisfied that, on the basis of the evidence before me and subject to the condition sought, the development would comply with respect to archaeological matters with the requirements of Policy CS15 which requires development to preserve, protect or enhance Doncaster's historic environment.

### **Common Lizards**

22. The appeal site has been found to provide habitat for common lizards which are protected from deliberate killing or injury and from being sold or other forms of trading under the Wildlife and Countryside Act 1981<sup>1</sup>. However, the site survey work identified a low population. A method statement to cover the translocation of any common lizards found following an appropriate pre-development search has been agreed with the Council's ecologist and is supported by the Yorkshire Wildlife Trust (YWT). This would result in any common lizards that are found being moved within the site to a 5 metre wide buffer area at the west side of the site which extends as a linear corridor into adjoining land owned by the appellant (within the blue line site area). This buffer area is identified in the appellant's Estrada Ecology Report dated September 2015.
23. The Council's concern in this respect is that the identified buffer area is situated near the canal where there is a footpath which appears is used by people who go there to fish. As such, there is concern that any relocated lizards would not be adequately protected from people or animals. However, the site and the size of the buffer area proposed in the plan, which has potential links to the wildlife corridor formed by the canal bank (although I note that, in places, a wall separates the towpath and other land) and the scope, through the proposed ecology condition, to retain suitable habitat with vegetative areas, places to provide for food and refuge, I am satisfied that the relocation would be acceptable. I am also mindful that the qualified ecologists for the appellant, the Council's ecologist and the YWT were satisfied by the mitigation proposed as shown on Drawing Revision B and in the Ecology Report.

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<sup>1</sup> Section 9 (1) and (5)

24. However, I note that the required buffer arrangement is not shown on the drawing on which I am to determine the appeal (Drawing Revision D). That plan includes built development in the buffer area which results from seeking to reduce impacts upon the nearby listed buildings. Indeed the Heritage Statement places reliance on the Revision D scheme as being the plan which was determined. Drawing Revision D does not provide the required buffer and so would not protect the ecological interests of the site. As a consequence, I am not satisfied that the common lizard population would be adequately protected. Thus there would be conflict with Policy CS16 of the Core Strategy which, amongst other things, requires that species will be given the highest level of protection in accordance with the relevant legislation and policy.

### ***Other Matters***

25. Local residents express additional concerns regarding traffic and noise disturbance. Traffic is unlikely to cause highway capacity problems and increased activity on roads would be limited because of the hours of operation conditions that are proposed. The s.106 would also manage some HGV traffic matters, albeit the routing would result in all HGV traffic being directed past Rose Cottage. Conditions are also proposed which would assist in controlling noise. However, in terms of the impact on the occupiers of some residential properties, including that nearest the site, noise associated with the proposed B2 and B8 uses, from a direction where there is no significant continuous noise source is likely to compound existing noise and disturbance from the nearby large industrial areas even if controls are sought. Therefore a carefully designed scheme at the detailed matters stage would be important for residential amenity as well as visual amenity.

26. The effect of the proposal on property values is not a matter for consideration in this appeal.

### ***The Benefits of the Scheme and the Planning Balance***

27. The scheme would have benefits in that it would bring an active use to the site and thus have a benefit to the economy. However, it would on the basis of the evidence before me have an adverse impact on the setting of the listed dwellings 1-4 Clay Lane, by intensifying the industrial setting and detracting from the more open rural aspect. This weighs against the scheme in the planning balance. Moreover, the revised scheme fails to make adequate provision for the ecology of the site. Thus, on the basis of the outline scheme before me, which includes access and layout for determination at this stage, I conclude that the planning balance is firmly against the proposal. As such, the appeal is dismissed.

### **Conclusion**

28. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should fail.

*Zoë Hill*

Inspector