
Appeal Decisions

Hearing held on 27 September 2016

Site visit made on 27 September 2016

by Cullum J A Parker BA(Hons) MA MRTPI IHBC

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

Decision date: 10 October 2016

Appeal A Ref: APP/M1005/W/16/3147211

Newlands Inn, Golden Valley, Riddings, Alfreton DE55 4ES

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Eaton Developments against Amber Valley Borough Council.
 - The application Ref AVA/2015/0897 is dated 18 September 2015.
 - The development proposed is described as *'restoration and conversion of Newlands Inn to form 5 flats, and the construction of 12 new dwellings on land adjacent (an enabling development scheme)'*.
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Appeal B Ref: APP/M1005/Y/16/3147210

Newlands Inn, Golden Valley, Riddings, Alfreton DE55 4ES

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a failure to give notice within the prescribed period of a decision on an application for listed building consent.
 - The appeal is made by Eaton Developments against Amber Valley Borough Council.
 - The application Ref AVA/2015/0898 is dated 15 September 2015.
 - The works proposed are described as *'restoration and conversion of Newlands Inn to form 5 flats, and the construction of 12 new dwellings on land adjacent (an enabling development scheme)'*.
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Decisions

1. Both appeals are dismissed.

Procedural Matters

2. This decision considers both planning and listed building consent appeals for the same site and for the same scheme. The remit of both regimes are different, but not dissimilar. To reduce repetition, and for the avoidance of doubt, I have dealt with both appeals within this single decision letter.
3. The applications were not determined by the local planning authority (LPA) who have suggested reasons for refusal, had they been in a position to determine them, within their submitted statement. These have formed the basis of the appellant's response in writing and orally at the Hearing. I have therefore taken these into account in framing the main issues. I also acknowledge that the LPA consider that some of the suggested reasons for refusal have been overcome through the submission of further information. I see no reason not to concur on these points, and the main issues principally reflect the outstanding areas of conflict between the main parties.

Main Issues

4. The main parties agree that the proposed development would constitute inappropriate development for the purposes of Green Belt policy, as it seeks the construction of new buildings within the Nottingham and Derby Green Belt. I see no reason to disagree given that it does not fall into exceptions listed within Paragraphs 89 and 90 of the *National Planning Policy Framework* (the Framework), nor has any other exception been suggested. The main issues therefore are:
- The effect of the proposed development on the openness of the Green Belt and the purposes it serves; and,
 - Whether the proposed development would preserve the special architectural or historical interest of the Grade II Newlands Inn and its setting; and,
 - Whether the proposed development would preserve or enhance the character or appearance of the Golden Valley Conservation Area, and its setting as a designated heritage asset; and,
 - Whether any harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Green Belt

5. The appeal site comprises the Grade II listed Newlands Inn, (which was subject to fire damage in around 2011), its adjoining car park formed of hardstanding to the north, and open field with trees to the west. The proposal seeks the erection of 12 new dwellings on the surrounding land and the conversion of the listed building, last used as a public house in around 2006, into five flats.
6. More generally, the site is located within the settlement of Golden Valley, which is a small ribbon development located along Cromford Canal and the main road (called Newlands Road) between Riddings to the north and Codnor to the south. The site is located outside of the built framework of settlements as detailed in Saved Policy H5 of the *Amber Valley Borough Local Plan 2006* (LP); it is therefore in the countryside for the purposes of planning policy. What is more, from what I saw at my site inspection, I see no reason to disagree with the fact that it is located within the countryside in practical terms.
7. The Framework indicates that new buildings in the Green Belt should be regarded as inappropriate development unless it falls within certain exceptions listed in Paragraphs 89 and 90. Locally, this is reflected in Saved Policy EN2 of the LP, which seeks to ensure that only 'appropriate' development which falls into specific categories and does not conflict with the openness and reasons for Green Belt, is permitted there. Neither party has suggested in this case that the proposal falls into any of these exceptions and I have no reason not to concur. Accordingly, the proposed development constitutes inappropriate development in the Green Belt.
8. Paragraph 87 of the Framework clearly sets out that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except

in very special circumstances. The Framework also makes clear at Paragraph 79 that the essential characteristics of the Green Belt are their openness and permanence; so any reduction in these characteristics would also be harmful. In this case, the scale and location of the proposal would make it a conspicuous development within what is currently an open field and car park area, and generally free from built form.

9. The combination of the height, scale, and overall nature of the twelve detached dwellings proposed, together with their gardens, parking areas and ancillary structures such as sheds, garages, and fences for example, would serve to exacerbate and emphasise its intrusive and incongruous appearance in the Green Belt. As a result, the proposal would lead to a reduction in the openness of the Green Belt.
10. The Framework sets out at Paragraph 80 that Green Belt serves five purposes, which includes assisting in safeguarding the countryside from encroachment. The proposal here, and in particular the twelve detached houses, would be located within the countryside and would see an existing open field, which is typical of such a rural location, replaced with what would amount to a small housing estate. The proposal would therefore contradict one of the five purposes Green Belt serves.
11. Accordingly, the proposal would result in harm in the form of inappropriate development and the loss of openness of the Green Belt, and would also fail to achieve one of the purposes Green Belt serves. The Framework is clear in that substantial weight should be given to any harm to the Green Belt. Accordingly, the proposal would fail to comply with Saved Policy EN2 of the LP and the policies of the Framework in this regard.

Heritage assets

12. The LPA has identified the main heritage assets they consider to be affected by the proposal are the Grade II listed building Newlands Inn and the Golden Valley Conservation Area. I also note that the Cromford Canal and Butterley Tunnel are located to the south of the appeal site and form part of a Schedule Ancient Monument (SAM). However, I heard at the Hearing that neither party consider the proposal would harm the setting of this heritage asset. In the absence of identified potential harm to other heritage assets, and in light of the cases presented by both parties, I have focussed my considerations on the former two designated heritage assets.
13. Newlands Inn was subject to fire damage in 2011, prior to the appellant purchasing the site. However, it is clear to see that a sizeable part of its structural shell remains even though internal features, such as ceiling, floors, timber windows and roof, have either been lost or damaged. Nevertheless, it is clear to see that the building has evolved in three stages, as indicated by the appellant's heritage statement. It appears as though the initial part formed the basis of the original inn that has a strong historical connection with the Cromford Canal and the wider spread of the Industrial Revolution in the East Midlands.
14. Indeed, I heard that the building is considered by the parties to make an important visual contribution to the industrial landscape through links with the

Cromford Canal and the likely use of Newlands Inn by 'leggers'¹ waiting to service passing canal boats on their way to the Butterley Works through the Butterley Tunnel. The significance of the listed building derives in part from it being an example of the infrastructure that arose as part of the industrial revolution and of the key links between settlements and industry grew in the 18th and 19th Centuries.

15. More specifically, the special architectural and historical interest, and therefore part of its significance, also derives from its ability to inform current and future generations of how public houses, in relatively isolated positions such as Golden Valley, evolved and thrived during this period of history. This is further evidenced by the linear row of cottages which date from around the same period of industrial growth along the canal. This significance is not only constrained to its history, but is also related to understanding how the plan form of the building operated and its architecture more generally.
16. I heard from the Council that due to the fire damage and loss of features, the internal significance of the listed building was significantly diminished. They suggested that it was principally the external appearance and the historical connection that were the main concerns. Indeed, the Council agreed that were the scheme for listed building consent submitted on its own, without the enabling scheme of 12 dwellings, it may have approved consent. This is, by its very nature following a non-determination, a hypothetical position, and I do not entirely agree with the Council's assessment of the perceived lack of internal importance of the listed building.
17. For example, the proposal would result in the loss of the plan form of the building which, even with fire damage, was and is still possible to see. The insertion of stud walls to close off areas of the plan form would fail to better reveal the significance of the listed building or assist future generations from understanding how a public house would have operated and grown during its early period, and how it was expanded in later years, for example with a skittle alley (to be demolished) and the external steps down to the cellar (to be filled in and covered).
18. These later additions form important parts of the evolutionary story of the listed building and its specific use as a public house during and after the Industrial Revolution. The scheme would also see the insertion of ahistorical windows and door openings, which are positioned so as to serve the proposed five flats, rather than serve the historical or architectural interest of the listed building. The combination of the loss of plan form, the loss of other features which contribute to understanding the building, and the insertion of new windows and doors would result in a proposal that fails to preserve the special interest of the listed building.
19. In terms of settings and character or appearance, the appeal site is both contained within and adjacent to the Golden Valley Conservation Area. The significance of the conservation area derives in part from its historical association with the industrial landscape, which together with the SAM, the listed building, and the row of cottages along the canal help explain the industrial heritage of this part of Derbyshire. The settlement of Golden Valley is characterised by linear ribbon developments along either Newlands Road or

¹ These were people who 'legged', or used their legs, on either side of a canal tunnel wall in order to push boats through tunnels.

the highway known as Golden Valley. Indeed, it is not until Riddings to the north and Codnor to the south (and both with interceding countryside) that this linear form changes. What is more, the immediate confines of Newlands Inn are defined by open areas of space meaning that the appeal building is visually isolated on the western side of Newlands Road when compared to the built form on its eastern edge.

20. The proposed development seeks to introduce 12 detached houses on part of the car park and an open field that are located to the north, north-west and west of the listed building. These would be laid out in an approximate 'T' shape, with the head facing Newlands Road as shown on submitted drawing 947-006 Revision H. The appellant asserts that this layout would continue the linear form found in the area. However, I saw that the linear form, which is a key characteristic of the conservation area, is centred along the Cromford Canal, rather than a road servicing a small housing estate. In this respect, the layout of the 12 houses would introduce a suburban form in what is currently open countryside and which would be at odds with the prevailing pattern of historic layout within the conservation area and the settlement of Golden Valley as a whole.
21. This 'at odds' layout would also erode the generally open and currently visually isolated aspects of Newlands Inn when viewed from either end of Newlands Road. The result of erecting 12 dwellinghouses in this location would be a loss of the visual prominence of the listed building within the conservation area, and it being surrounding on the north and western sides by a small housing estate. The 12 dwellings would not only detract from the setting of the conservation area, but also from the listed building, as future generations would not be able to easily appreciate how the building operated as a relatively isolated building serving the passing canal trade. The proposal would therefore fail to preserve the settings of the listed building and the conservation area and would fail to preserve or enhance the character of the conservation area.
22. Section 16(2) of the *Planning (Listed Buildings and Conservation Areas) Act 1990*, as amended (PLBCA), sets out that when considering to grant listed building consent '*special regard shall be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possess*'. Section 66(1) of the PLBCA indicates that when considering to grant planning permission '*which affects a listed building or its setting...shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possess*'. Section 72(1) of the PBLCA sets out that '*special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area*' in relation to conservation areas.
23. Similarly, Paragraphs 131 to 134 of the Framework set out Policies when determining the degree of harm to heritage assets, which includes their settings. In this case, the proposal seeks the conversion of the listed building to residential accommodation and the proposed dwellings seek to use materials found locally and incorporate features which are typical of this area, both factors would provide some mitigation. Nonetheless, I find that the proposal would still result in less than substantial harm to the significance of the heritage assets. Less than substantial harm does not equate to less than substantial planning objection. In this respect, I give considerable importance and weight to the desirability to preserve the heritage assets and their settings.

24. Paragraph 134 of the Framework indicates that the less than substantial harm should be weighed against the public benefits of the proposal. Paragraph 140 sets out that '*Local planning authorities should assess whether the benefits of a proposal for enabling development, which would otherwise conflict with planning policies, but which would secure the future conservation of a heritage asset, outweigh the disbenefits of departing from those policies.*' I will examine these 'tests' after considering the case put forward by the appellant in favour of the proposals.

Other considerations

Enabling development and viability

25. The appellant broadly agrees that the proposal is contrary to both the adopted development plan and national policy as it represents inappropriate development within the Green Belt. The appellant has suggested that the erection of 12 detached dwellings and conversion of the former public house to five flats is an 'enabling development'. The concept of which exists in planning practice and, put very simply, is a situation where even though a development is contrary to planning policies it provides funds for the long-term restoration and securing of the future of the heritage asset (in the form of the Grade II listed building) and in doing so it could provide justification for overcoming this policy conflict.
26. Historic England² (HE), as the government's adviser on heritage matters, has published the document *Enabling Development and the Conservation of Significant Places 2001 (Revision Note June 2012)* (herein the HEED document), which the parties agreed at the Hearing was an important material consideration in assessing the proposed scheme. Given that this document is still extant, and although it predates the Framework, I consider that it provides a useful guide in establishing key principles in dealing with proposed enabling development and I have therefore considered its content in making my assessment.
27. Put simply, the HEED document indicates that firstly the decision-maker needs to consider compliance with policy. If the proposal does not comply with policy, then it should be considered as enabling development. The HEED document sets out on page 5 'The policy' relating to enabling development. Given that it is common ground between the parties that the planning proposal does conflict with planning policies, the proposal should be considered against the enabling development context. In this respect, the appellant has submitted financial data and a reasoned justification, which they consider the development proposed here is the minimum necessary to secure the future of the listed building, as required by the Policy in the HEED document.
28. At the Hearing I was able to explore the financial data in some greater detail. For example, the information submitted by the appellant indicates that the completed value of the flats would be in the region of £90,000 per two bedroom flat and £80,000 for the one bedroom flat, but only £80,000 per plot for the dwellings, as shown in the provisional costing dated 17 September 2015. It is somewhat concerning that these figures appear to be based upon the views of only one estate agent and differ from those given in the estimated costings dated 22 March 2016.

² Formerly English Heritage

29. The appellant explained that the intention is to sell the plots, possibly individually, so that they could be custom built (although the scheme is in full rather than outline, so the custom element would be principally restricted to internal layout). Nevertheless, it would be very strange if the selling of the plots and erection of new dwellings on each would not see any uplift in the plot value from £80k to its value as a built house, which logic suggests would surely be greater. This likely uplift in value is not accounted for within the calculations. In practice, this means that the potential planning gain from building 12 new detached houses within this rural location within the Green Belt would not be directly related to the conversion and rebuilding of the listed building, but rather earned as a private benefit to the developer of the site.
30. I am also concerned that the figures provided have not been independently scrutinised by a third party, or someone appointed by the local planning authority, to test the robustness of the data. Such an exercise may have quelled some of my concerns. But I also heard that some of the costs may have been underestimated from the appellant's Quantity Surveyor at the Hearing. This begins to raise serious questions over the validity of the financial data when taken as a whole, in terms of its credibility.
31. With limited independent scrutiny, and concerns raised by the appellant's own advisor in respect of costs, together with the apparently limited single source for sales figures based partly on sold flats and partly on plots of land, I cannot be certain that the figures supplied provide a robust justification that this amount of development is the 'minimum necessary to secure the future of the place'³. For example, were the figures subject to greater financial scrutiny and modelling, it may be the case that 10 dwellings is the minimum required or conversely more. But without certainty, such speculation can be no more than that.
32. What is more, there appears to be no effective mechanism in place that would effectively secure the conversion and rebuilding of the listed building. The local planning authority suggested at the Hearing that their preferred method would be through the use of a legal agreement under Section 106 of the TCPA. They also suggested that a condition might be used as an alternative, and one has been suggested within the Statement of Common Ground (SOCG). Notwithstanding my concerns over the financial data itself, I cannot be certain that allowing the erection of 12 detached houses would mean that the listed building would be rebuilt, however laudable the aims of the current owner are. There is nothing to prevent future owners from constructing 12 detached houses and leaving the listed building as a burnt out shell. Furthermore, the intention to sell off of individual plots, as suggested by the appellant, would make any phasing condition almost impracticable to implement in practice and raise serious concerns as to how it could be enforced.
33. I appreciate the eagerness of all parties to conserve the listed building, but this does not negate the need to test the financial evidence rigorously given the fact that the proposal is clearly contrary to policy. On the basis of the evidence before me, and given my reasoning above, I am not convinced that the enabling development scheme is either financially viable, given the inconsistencies in the submitted information, or that the scheme would definitely lead to the rebuilding of the listed building. In terms of Paragraph

³ See 'The Policy' part (f), Page 5, HEED, HE

140 of the Framework, the proposal cannot be said to secure the future conservation of the heritage asset in this case. In such circumstances, I afford minimal weight to this factor.

The need for the works

34. The appellant indicated at the Hearing that the works are urgently needed. Whilst I was able to see both inside and outside of the listed building, there is no cogent evidence before me that the building requires urgent works; for example the building is at significant risk of collapse. This is not to undermine the fact that the building should be sustained and put to a viable use, as per Paragraph 131 of the Framework. Nevertheless, there is little indication that the building is at immediate risk of loss and therefore this factor is afforded minimal weight.

Five year housing supply

35. Both parties agree that the council is currently unable to demonstrate a 5 year supply of deliverable housing sites. With no evidence to the contrary I see no reason to disagree with this position. As such, Paragraph 49 of the Framework, which indicates that relevant policies for the supply of housing should not be considered up to date if this is the case, is engaged. The proposal here would result in 16 new dwellings (taking the likely one 'dwelling' out from the former public house landlord/lady). The provision of these new dwellings in an area that cannot demonstrate a five year supply of deliverable housing land site when set against the context of the Framework which makes clear that the government seeks a significant boost in the supply of housing is a modest benefit in favour of the proposal.

Overall Conclusion

36. The public benefits of the proposal are limited to the modest benefit of providing of 16 new dwellings and the intention to rebuild the listed building. In considering these public benefits, I do not find that these public benefits outweigh the less than substantial harm to the conservation area and listed building, in accordance with Paragraph 134 of the Framework.
37. The proposal would also represent inappropriate development within the Green Belt that would reduce its openness. Paragraph 87 of the Framework is clear in that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. In addition, the proposal would conflict with one of the five purposes Green Belt serves, namely to assist in safeguarding the countryside from encroachment. There would also be less than substantial harm to the settings of the listed building and conservation area; of which the desirability of preserving should be given considerable importance and weight.
38. Although the conversion of the listed building might help preserve some of its special architectural and historic interest (though mainly restricted to its external appearance), the new-build element of the proposal would have a significant and detrimental effect on the special interest and settings of both the listed building and the conservation area, destroying much of what the new-build element purports to set out to protect. The other considerations in favour of the proposal would not clearly outweigh the substantial harm to the Green Belt. The proposal would conflict with Saved Policies EN2, EN24, EN27,

H12 and H5 of the Amber Valley Borough Local Plan 2006, which seek similar aims to those sought by the Framework, and there are no material considerations that warrant a decision other than in accordance with it. The adverse impacts significantly and demonstrably outweigh the benefits in this case, and specific policies in the Framework, including those relating to Green Belt and designated heritage assets, indicate that development should be restricted.

39. For the reasons given above, and having taken into account all matters raised, I conclude that both appeals should be dismissed.

Cullum J A Parker

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Jon Millhouse	Agent
Nigel Tate	As Costs Quantity Surveyor
Craig Eaton	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Rae Gee BA(Hons), DipTP, PG UD, MRTPI	Principal Planning Officer, AVBC
Paul Warren	Heritage Officer, AVBC

INTERESTED PERSONS:

Paul Sharpe
Neil Morton