

Appeal Decision

Site visit made on 28 February 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 April 2017

Appeal Ref: APP/T9501/W/16/3165383

Burnbank Farm, U5040 Greenhaugh to Dunns House, Tarsset, Hexham NE48 1LY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Messrs. Walton against the decision of Northumberland National Park Authority.
- The application Ref: 16NP0053 dated 25 May 2016, was approved on 9 September 2016 and planning permission was granted subject to conditions.
- The development permitted is construction of five two storey detached dwellings including new access from highway and internal circulation roads.
- The conditions in dispute are Nos 4, 5, 9, 17, 18 and 20 which, (with the reasons given for each condition), state that:

Condition 4

- (4) Prior to the construction of the first dwelling, a hard landscaping scheme to include details of all landscaping and hard surfacing on the site shall be submitted to, and approved in writing by, the Local Planning Authority. The scheme shall include specific details of proposed materials and locations for hard landscaping and in all external areas of the site. The hard landscaping shall be carried out in accordance with the approved details.

Reason: In the interests of protecting the visual character of the area in accordance with policies 1, 3 and 20 of the Core Strategy and the NPPF.

Condition 5

- (5) Prior to the construction of the first dwelling, a soft landscaping scheme to include details, including exact locations, species and specifications of all trees, shrubs and other soft landscaping on the site shall be submitted to, and approved in writing by, the Local Planning Authority. The soft landscaping shall be carried out in accordance with the approved details.

Reason: In the interests of protecting the visual character of the area in accordance with Core Strategy Policies 1, 3 and 20 and the NPPF.

Condition 9

- (9) No development shall take place until a programme of archaeological evaluation has been carried out by a suitably qualified archaeological professional and submitted to and approved in writing by the local planning authority. If the results of this evaluation deem it to be necessary, then an archaeological trial trenching comprising of 5% of the area of the site to be developed should also be carried out, with the results of this submitted to and approved in writing by the Local Planning Authority.

Reason: In order to ensure that there is no unacceptable risk to potential or unknown archaeology on the site and to ensure that cultural heritage of the historic village of Greenhaugh is not adversely affected by the development, having regard to Core Strategy policies 1, 3 and 18 and the NPPF.

Condition 17

(17) The development hereby permitted shall not be commenced until a scheme to deal with any contamination of land or pollution of controlled waters has been submitted to and approved in writing by the Local Planning Authority and until the measures approved in that scheme have been implemented. The scheme shall include all of the following measures unless the Local Planning Authority dispenses with any such requirement in writing:

- a) A desk-top study carried out to identify and evaluate all potential sources of contamination and the impacts on land and/or controlled waters, relevant to the site. The desk-top study shall establish a 'conceptual site model' and identify all plausible pollutant linkages. Furthermore, the assessment shall set objectives for intrusive site investigation works/ Quantitative Risk Assessment (or state if none required). Two full copies of the desk-top study and a non-technical summary shall be submitted to the Local Planning Authority without delay upon completion.
- b) If identified as being required following the completion of the desk-top, a site investigation shall be carried out to fully and effectively characterise the nature and extent of any land contamination and/ or pollution of controlled waters. It shall specifically include a risk assessment that adopts the Source-Pathway-Receptor principle, in order that any potential risks are adequately assessed taking into account the sites existing status and proposed new use. Two full copies of the site investigation and findings shall be forwarded to the Local Planning Authority without delay upon completion.
- c) Thereafter, a written method statement detailing the remediation requirements for the land contamination and/ or pollution of controlled waters affecting the site shall be submitted and approved by the Local Planning Authority, and all requirements shall be implemented and completed to the satisfaction of the Local Planning Authority. No deviation shall be made from this scheme without express written agreement of the Local Planning Authority. If during redevelopment contamination not previously considered is identified, then the Local Planning Authority shall be notified immediately and no further work shall be carried out until a method statement detailing the scheme for dealing with the suspect contamination has been submitted to and approved in writing by the Local Planning Authority.
- d) Two full copies of a full closure report shall be submitted to and approved by the Local Planning Authority. The report shall provide verification that the required works regarding contamination have been carried out in accordance with the approved Method Statement(s). Post remediation sampling and monitoring results shall be included in the closure report to demonstrate that the required remediation has been fully met.

Reason: To ensure that any contaminants within the site are dealt with in an appropriate manner to afford protection to the public, in accordance with Core Strategy Policy 3 and the NPPF.

Condition 18

(18) If during development contamination not previously considered is identified, then an additional method statement regarding this material shall be submitted to and approved in writing by the Local Planning Authority. No building shall be occupied until the method statement has been submitted to and approved in writing by the Local Planning Authority, and measures proposed to deal with the contamination have been carried out.

Reason: To protect the environment and ensure that the remediated site is reclaimed to

an appropriate standard, in accordance with Core Strategy Policy 3 and the NPPF.

Condition 20

- (20) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (or any other Order revoking or re-enacting the Order), no development permitted by Class E of Part 1 of the Order shall be carried out without the approval of a formal application to the Local Planning Authority.

Reason: To prevent subsequent development from resulting in an overdevelopment of the site, or causing harm in terms of neighbouring residential amenity, visual amenity or from impacting upon the special qualities of the National Park, in accordance with Core Strategy policies 1 and 3 and the NPPF.

Preliminary Matters

1. As will be clear below I have altered and amalgamated conditions 17 and 18. The parties were given opportunity to comment on this matter prior to my determination of the appeal.
2. The development was screened under the Environmental Impact Assessment Regulations and it was determined that it did not require an Environmental Statement. I have no reason to disagree with that screening.

Decision

3. The appeal is allowed and the planning permission Ref: 16NP0053, dated 25 May 2016, for construction of five two storey detached dwellings including new access from highway and internal circulation roads at Burnbank Farm, U5040 Greenhaugh to Dunns House, Tarsset, Hexham NE48 1LY granted on 9 September 2016 by the Northumberland National Park Authority, is varied by deleting conditions 17, 18 and 20 and substituting for conditions 17 and 18 the following condition:

Condition 17

- 1) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and 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. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation, including timescales for the work to be carried out, shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within ten days

of the report being completed and approved in writing by the local planning authority.

Application for Costs

4. An application for costs was made by Messrs. Walton against Northumberland National Park Authority. This application will be the subject of a separate Decision.

Main Issue

5. The main issue in this case is whether each of the conditions satisfies the tests for conditions in that they are required to be:
 - (a) Necessary;
 - (b) Relevant to planning and the development to be permitted,
 - (c) Enforceable;
 - (d) Precise; and,
 - (e) Reasonable in all other respects.

Reasons

6. The appeal site is part of an agricultural field located at one edge of the modest settlement of Tarsset, within the Northumberland National Park. The scheme for which the Council granted planning permission subject to conditions is set out in the header above. The appellant has appealed a number of the conditions which are attached to that grant of planning permission.

Conditions 4 and 5

7. As the site is currently an open field it has no particular features or landscaping other than a stone boundary wall along the site frontage and side nearest to the existing village development.
8. Even though condition 6 requires a hedge to the northern boundary, it is critical that a comprehensive landscaping scheme is provided so that the development can begin to be assimilated into the surrounding countryside and be visually linked with the existing settlement. The Landscape and Visual Impact Assessment photographs provided with the planning application demonstrate how exposed the site is in longer distance views. Moreover, close up it is clear that a good degree of harmony between the plots of this development, in terms of hard and soft landscaping, will be important to help assimilate the site with this small and cohesive settlement.
9. Landscaping is a significant factor in the success of development schemes, as acknowledge by the Development Plan policies and the National Planning Policy Framework (the Framework). Indeed it is a standard reserved matter in outline application schemes. In this particularly sensitive National Park Location it is especially important.
10. The requirement for a comprehensive scheme does not prevent subsequent owners from adding to or altering their planting so it does not stifle future occupiers. I have noted the suggestion that these might be self-build units but

that was not suggested in the initial application and, in any event, self-build dwellings could still accord to any landscaping scheme just as they would for the approved house type.

11. Thus, I have no doubt that these conditions are necessary, relevant to planning and the development to be permitted, enforceable, precise and, reasonable in all other respects. Conditions 4 and 5 shall remain.

Condition 9

12. This condition relates to an archaeological programme of evaluation to be undertaken on the site with subsequent trial trenching should it be found to be necessary. This is a condition precedent to work commencing. As the appellant acknowledges part of the site is identified within the 'Village Atlas' incorporated into the Historic Village Atlas Supplementary Planning Document (SPD) as being archaeologically sensitive. Although this document does not appear to be a current planning document it is a material consideration.
13. These archaeologically sensitive areas are identified specifically as likely to contain archaeological remains on the basis of map and documentary evidence or proximity to known sites. There is no substantiated evidence before me to demonstrate that this mapping based exercise was not accurate or robust.
14. Whilst the appellant suggests that the archaeologically sensitive area is only a small area and would be used as garden in the approved scheme, it is a reasonably large area, covering much of the front garden for two of the five plots.
15. Given the edge of settlement location adjacent to an area identified for archaeological sensitivity I consider that it is both reasonable and necessary to seek a proper investigation of the site prior to commencement of work. The trial trenching would only be required if the initial works identified a need for this to take place. This is pragmatic and reasonable.
16. The appellant suggests that the author of the Village Atlas, considers it unlikely that there is archaeology on this site. However, this is hearsay evidence reported in an email and so a matter to which I do not attach material weight. The proposed housing, once undertaken, would be likely to result in development that would remain for a considerable period and might result in other minor development that would not require planning permission. The opportunity to properly assess archaeology is limited and, should archaeological remains be found, relates to a finite resource hence the alternative to having this condition precedent is to refuse planning permission and for the assessment to be undertaken prior to planning permission being granted. However, I am satisfied that this need not happen as the condition is relevant to planning and the development to be permitted, enforceable, precise and, reasonable in all other respects. Condition 9 shall remain.

Conditions 17 and 18 Contaminated Land

17. Condition 17 relates to the need for a desk top study for land contamination, what needs to be done if it is found and how that is then officially signed off as a resolved matter. Condition 18 deals with unexpected contamination in the event this arises.

18. On the basis of a GIS mapping system, the Authority has identified that the site has potentially been contaminated. The image provided by the Environmental Protection Officer identifies the southern part of the site as being part of a former smithy. This is the type of use that can be contaminative.
19. The appellant has produced maps showing a similar shaped area for contamination but in a different location which they have annotated. However, there is no direct evidence to justify accuracy of the appellant's suggested re-plotted contamination risk area. Moreover, the Environmental Protection Team appeal response explains that areas of contamination may not simply relate to the building. In fact it explains that '*A common practice associated with Blacksmiths was to deposit forge ashes in gardens as a supposed growth enhancer. It is understood that there were allotments in the field opposite the blacksmiths which now form part of the development site.*' Indeed, this explanation would fit with the GIS area of contamination concern.
20. As such, it is both necessary and reasonable to seek proper assessment of the site which may or may not need on-site works (and indeed subsequent works if contamination is found – even that which is unexpected) in order to safeguard public health and particularly the well-being of the future occupiers of the proposed houses. I note that contamination is an issue which, to be properly dealt with, needs to be assessed at the outset (condition 17) such that it is necessary to be a conditions precedent. The alternative would be to refuse planning permission. These conditions, taken together, are not unduly onerous as the assessment could be limited to desk-top work if this is adequate and only seek investigative work where it is identified as needed and require remediation only where contamination is found. Such work would, if needed, be both relevant to the development proposal and planning.
21. On the evidence before me I consider that these conditions, in principle, are both necessary and reasonable. However, these conditions have overlapping elements. Further, condition 17 is not precise for instance in saying 'adequately assessed' and 'without delay upon completion'. As such I shall vary condition 17 and delete condition 18 in the interests of avoiding repetition. Thus, whilst reworded the intention and purpose of the conditions will remain such that the appeal only succeeds in as far as rewording it is required. Further, I shall impose the condition in a revised form which deals with what is needed but removes imprecise and unclear wording that arises in the condition as set out by the Authority. Although the condition as provided to the Authority (see Preliminary Matters) was clear in that the approved details, including where unexpected contamination is found, are for the Authority to approve and require timescales for works to be carried out and for those timescales to form part of the approval of remediation measures, I have further clarified this point in terms of unanticipated contamination. The condition places control firmly within the Authority's power in terms of agreeing what is required and when it is required to be carried out and sets a final date for the verification report.

Condition 20

22. This condition refers to the right to erect outbuildings under permitted development rights. It seems the Authority's greatest concern is the potential erection of garages to serve these dwellings as none are provided within the

development scheme. In particular, the Authority raises concern that land levels could make such additions visually intrusive and unneighbourly.

23. The National Planning Practice Guidance (PPG) explains that conditions restricting the future use of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances.
24. Whilst the Authority notes the landscape and amenity importance of the locality within a National Park, it is evident the Government considered such circumstances in setting out permitted development rights which are more restricted than in locations without special landscape or other designations. Land levels vary throughout the country, and this site does not have any exceptional change in heights. Thus, I do not find anything exceptional in this site to justify restricting permitted development rights. As such, I conclude that the appeal against condition 20 should be allowed.

Overall Conclusions

25. I conclude that conditions 4, 5 and 9 are all necessary and reasonable and satisfy the tests for conditions. As such they shall remain as part of the permission.
26. Conditions 17 and 18 require rewording and can be combined into one condition. Conditions 17 and 18 shall be deleted and replaced by a new condition 17.
27. Condition 20 is not necessary or reasonable and shall be deleted.
28. For the reasons set out above and having had regard to all other matters raised, I shall allow the appeal by deleting conditions 17, 18 and 20 and adding a new condition 17 all other conditions shall remain.

Zoë HR Hill

Inspector