



Appeal Decision

Hearing held on 19 July 2017

Site visit made on 19 July 2017

by Susan Ashworth BA (Hons) BPL MRTPI

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

Decision date: 9th August 2017

Appeal Ref: APP/X1355/W/16/3165621

Land to the west of Briardene, Cadger Bank, Lanchester, Durham DH7 0HE

- 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 BDW Trading Limited against the decision of Durham County Council.
 - The application Ref DM/15/03222/FPA, dated 16 October 2015, was refused by notice dated 1 July 2016.
 - The development proposed is residential development of 52 dwellings with new access and associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the Council's decision was issued, some plans have been amended to provide consistency. I have dealt with the appeal on the basis of the most up-to-date set of plans.
3. During the course of the appeal the Section 106 agreement was progressed by the main parties and a final engrossed version was before me before the start of the hearing, which I have taken into account. That version of the Agreement was signed and completed on 19 July 2017. I will turn to it later in my decision.

Main Issue

4. The main issue in this case is the effect of the proposal on the significance of the Longovicium Roman Fort, a Scheduled Ancient Monument.

Reasons

5. The appeal site lies on rising ground on the south-western edge of the built-up part of Lanchester. It comprises 3.5 ha of land, currently used for grazing purposes. The site has a frontage to Cadger Bank, the B6292, and lies immediately adjacent to suburban type houses on Briardene and Cadger Bank to the east. To the north the site slopes down steeply towards Alderdene Burn, beyond which is housing on Foxhills Crescent. Open fields bound the site on higher ground to the west.

6. The site borders the north-eastern boundary of a Scheduled Ancient Monument (SAM) which incorporates the visible and buried remains of the Longovicium Roman Fort and buried remains of its associated settlement or 'vicus', including a Roman road, Dere Street, dating from the mid-2nd century AD. The SAM extends to some 73 ha in total area and lies predominantly on the opposite side of Cadger Bank to the south-west.
7. The site has a well-defined landscape structure, with mature trees and hedgerows to the road frontage and to the side and rear boundaries. A linear group of trees crosses the centre of the site in an east to west direction. Many of the trees on site are protected by a Tree Preservation Order.¹
8. Permission is sought to develop the site with 52 dwellings, 10 (20%) of which would be provided as affordable housing. A single point of access would be provided off Cadger Bank in a similar position to an existing field access. The layout of the development, which would incorporate a mix of detached, semi-detached and terraced properties as set out in the Design and Access Statement, has been informed by the constraints of the site, notably the changes in levels, the presence of a high pressure underground water pipeline and trees.

Policy Background

9. For the purposes of this appeal, the Development Plan comprises the saved policies of the Derwentside District Local Plan 1997 (the Local Plan). Of particular relevance is Policy EN19 which sets out a presumption in favour of preserving important archaeological remains, whether scheduled ancient monuments or not, in situ. Other known archaeological remains of more local importance, the policy goes on to state, will be protected from damage to their features of archaeological interest. Policies EN1 and EN2 of the Local Plan seek to direct development to the existing built-up area and effectively restrict development in the countryside.
10. The Local Plan pre-dates the introduction of the National Planning Policy Framework in 2012 (the Framework), which is a material consideration in my determination of the appeal. In heritage cases such as this, the Framework requires a balancing exercise of harm vs benefits, where harm to or loss of significance of a heritage asset is found. I will return to this matter later in the decision.
11. The Framework also advises that where a Council cannot currently demonstrate a 5 year supply of deliverable housing sites, the housing supply policies of the Local Plan cannot be considered as up to date. In this case the Council acknowledges that it cannot currently demonstrate a 5 year supply of deliverable housing. The restriction imposed by Policies EN1 and EN2 on the location of new housing is relevant to the supply of housing and these policies must now be regarded as out of date.
12. Preparation of a Neighbourhood Plan is being co-ordinated by Lanchester Parish Council. Whilst I acknowledge that significant progress is being made, the Plan has not yet been examined, nor been subject to a referendum, and can be afforded no weight at present. The Lanchester Village Design

¹ Land West of Alderdene Estate, Lanchester 2012 Tree Preservation Order Ref: DER-009

Statement was adopted as Supplementary Planning Guidance in 2004 and is therefore a material consideration, which I have taken into account.

13. The Framework advises that in the absence of a five-year supply of deliverable housing sites, the appeal proposal must be assessed in the context of the presumption in favour of sustainable development set out in paragraph 14. This means that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole, or unless specific policies of the Framework indicate that development should be restricted, including, as set out in footnote 9, those policies relating to designated heritage assets. It is to this matter, the main issue, that I now turn.

Effect of the proposal on the significance of the Scheduled Ancient Monument

14. Scheduled Ancient Monuments are historic assets of the highest significance and the Framework makes it clear at paragraph 132 that significance can be harmed or lost through alteration or destruction of the heritage asset or through development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification.
15. The SAM, which identifies an important part of the history of the village, is clearly of significant value to the local community and I note particularly the work of the Lanchester Partnership/ Friends of Longovicium over many years in developing an understanding of it.
16. The proposed development would take place adjacent to but outside the SAM. The main parties agree that the site lies within its setting. Given the close physical relationship between the two I have no reason to disagree.
17. It seems to me that the site contributes positively to the significance of the heritage asset in two main ways. Firstly, it reflects the original remote setting of the Fort and vicus. The Fort was strategically positioned on high ground with commanding long range views in all directions. The settlement was nestled just below it and the complex as a whole was isolated and surrounded by open countryside. Whilst I accept that elements in the landscape may have changed over time, there is little built development immediately adjacent to it and the SAM is still largely surrounded by open countryside. I understand that the SAM is unique in that respect in the county, and indeed the country, as other similar Monuments have been built over or very near to. On its east side, this spur of the SAM is separated from the built-up area only by the appeal site.
18. Secondly, the site has a tranquil character which enhances the experience of the asset by providing a reflective environment. That tranquillity, to my mind, assists in appreciating the abandonment of the settlement and the subsequent emergence of a new, entirely separate, settlement in the valley. Whilst I accept that the site is privately owned with limited ability for the public to access it, the site and its relationship with the SAM can be seen in longer range views including from land to the north-west, from Newbiggen Lane, including from the Margery Flatts community allotments and orchard.
19. The development of the site would extend up to the common boundary of the SAM. As such the built-form would result in the loss of the space between the

asset and the village, diminishing its open setting and the reflective qualities of the space.

20. I acknowledge the presence of modern day features in the wider landscape including, in long range views, telecommunications equipment and turbines. At shorter range the road, the busy B6296 passes through the site. I also accept that field patterns have changed over time and do not now reflect the landscape of the Roman period. However, notwithstanding these changes, the significance of the countryside setting and elevated hilltop position of the fort and vicus remain apparent.
21. Geo-physical surveys and trial trenching on the site have revealed a series of buried ditches which indicate plot boundaries laid out in a manner similar to those found within the SAM itself. There is a suggestion that the larger of the ditches, which runs for around 80m, may have been the boundary of the settlement and is therefore of some considerable significance, although the parties disagree on the matter. These remains clearly do not fall within the designated area and are therefore non-designated heritage assets. However, paragraph 139 of the Framework indicates that non-designated heritage assets of archaeological interest that are demonstrably of equivalent significance to scheduled monuments, should be considered subject to the policies for designated heritage assets.
22. The archaeology within the site is clearly part of the settlement associated with the Roman fort and therefore makes a contribution towards its completeness and the public's understanding of it. It is therefore of archaeological interest. I acknowledge that it is not necessarily practicable for an entire area shown to contain archaeological remains to form part of a SAM. In this case Historic England recently considered extending the SAM to include the site, but on the evidence before them at that time, declined. However, it seems to me that the fact that the buried remains are present on the site is an attribute that contributes positively to the monument's significance. The development of the site would result in the loss of all buried remains there.
23. I accept that the remains in situ have been degraded by historic ploughing and by the presence of the water main which runs across the site. Nevertheless they are still clearly apparent. I also understand that, as a result of the acidic nature of the soil, artefacts and objects are not well preserved. Nevertheless, it seems to me that they contribute to the understanding of the extent and nature of the vicus. I am not persuaded that the proposed written scheme of investigation which would include methodology for the recovery and recording of archaeological remains, and the provision of an exhibition, would adequately mitigate against the loss of the remains in situ.
24. For these reasons taken together, the proposal would cause harm to the significance of the SAM, contrary to Policy EN19 of the Local Plan as set out above.
25. In terms of the approach in the Framework, there is some debate between the parties as to whether the identified harm equates to less than substantial or substantial harm. Substantial harm is a high test, equating to something approaching demolition or destruction. The development would not result in the destruction of the whole of the Monument's setting as space and open views would still be present around it. Nor would it impact on any remains within the SAM itself. I therefore agree with the appellant that harm to the

significance would be less than substantial. However, less than substantial harm does not mean less than substantial objection. In terms of the Framework such an assessment requires a balancing exercise to be undertaken and I will turn to this matter later.

Other matters

Conservation Area

26. The site lies in close proximity to the Lanchester Conservation Area, the boundary of which includes a spur encompassing two older properties on the opposite side of Cadger Bank which are set within mature treed grounds. The Conservation Area is a substantial one and incorporates the village centre and areas of open space. The setting of the spur of the Conservation Area on Cadger Bank is dominated by built-development – by detached houses opposite and by a modern residential estate behind it. The appeal site, which is on the opposite side of the road, makes only a limited contribution to the significance of the Conservation Area in visual terms in marking the transition between the open countryside and the built up area.
27. The layout of the proposed development has been well designed to take account of its context. I note that the stone boundary wall would be retained and the frontage dwellings would be set well back from the highway behind an area of public open space, incorporating a footpath and additional planting. Trees along the site frontage would be retained.
28. On that basis I am satisfied that the proposal would preserve the character and appearance of the Conservation Area, and as such would meet the requirements set out in s72 (1) of the Planning (Listed Buildings and Conservation Areas Act 1990.

Accessibility

29. Lanchester is classified as a 'Local Service Centre' with reasonable provision of services and facilities. Being beyond the current edge of the town, it is inevitable that the site will be somewhat further from facilities and services within the built-up area than existing residential areas. Whilst the distance of 600m from the village centre is not in itself unreasonable, the long, steeply sloping nature of the hill would prohibit certain sections of the population from accessing the village on foot or bicycle. The nearest bus stop is in the village centre and a local community bus service is infrequent and runs on a voluntary basis only. It therefore seems to me likely that some residents will necessarily rely on the car for transport both into the village and over longer distances for employment or other services.
30. However, whilst opportunities for walking and cycling to facilities are less than ideal, such a situation is not unusual in a rural area. It is likely that sections of the existing population living on the hill already rely on a car for such journeys. There is no evidence to support the concern that occupants of the affordable units will not have access to a vehicle. Consequently the issues raised are not in themselves sufficient to rule out the development.

Countryside Character

31. The village as a whole is largely concealed in the valley although I noted at my site visit that there are some areas that protrude and are visible on the slopes

of the hills that surround it. The site lies beyond the limits of the existing settlement and is within the countryside. It is well defined and visually contained by mature trees and differs in terms of its physical appearance to the more expansive open areas of countryside beyond. The site, whilst attractive, is not subject to any particular landscape designation whereas land to the south of the B6292 is defined as an area of High Landscape Value.

32. The development would undoubtedly change the character and appearance of the site. It would no longer be an area of green at the urban edge. However, the road which passes it lies at a slightly lower level such that views into it from passing traffic would be limited. Moreover, the landform is such that views of it on approaching the settlement from the west would also be limited.
33. The site is visible in longer range views including some vantage points on Newbiggen Lane including the community allotments and from the opposite side of the valley. From such vantage points, the development would appear as an urban intrusion into the countryside thereby resulting in a degree of visual harm to the character and appearance of the area. However, the retained groups of mature trees and the areas of open space as well as the low density of development and its irregular layout, and mitigation in the form of additional planting, would all assist in softening the impact of the development in longer range views.
34. Consequently I conclude on this issue that harm to the character and appearance of the countryside would be limited.

Drainage

35. Local residents have drawn my attention to various concerns regarding drainage and flooding. I am not aware that the site itself is subject to flooding and I note that the proposals would, in effect, reduce the run-off rate to reduce the risk of flooding downstream. I have taken into consideration concerns about the design and visual impact of the outfall proposed on Alderdene Burn, however, I am satisfied that had I been minded to allow the appeal, the matter could have been controlled by planning condition.

Highways, parking and pressure on services

36. I have taken into consideration the local residents' concerns about highway safety, particularly at the junction of the proposed development with Cadger Bank. I note, however, that adequate visibility splays taking account of vehicle speeds can be provided along Cadger Bank. The Highway Authority has raised no highway objection to the proposal.
37. The proposal will result in additional traffic on the highway network, including additional traffic at the road junctions in the town which, anecdotally, already suffer from traffic congestion. However, given the modest size of the development such an increase in traffic in the context of existing road usage is unlikely to be significant. The proposal includes provision to widen the footpath along Cadger Bank. Whilst I have noted concerns about the size and speeds of vehicles, including goods vehicles, using the highway there is no technical evidence before me to suggest that a reduced carriageway width or an increase

in traffic associated with the development would be a danger to highway safety.

38. I have noted concerns about existing pressure on local services and parking in the village. However, again, there is no detailed evidence before me to support the issues raised and it seems to me that additional demand from 52 houses is likely to be limited.

Planning Obligation

39. The completed planning obligation allows for 20% of the dwellings to be provided as affordable housing as a mix of private rented and discounted sale units. The agreement sets out, amongst other things, the timing for their provision, details of their transfer to an affordable housing provider and, in relation to the discounted units, their procedure for sale. The affordable units would meet a local need identified in the Council's Strategic Housing Market Assessment (2013).
40. In addition, the obligation would ensure the provision of an area of open space within the site in line with Local Plan policy and would provide a mechanism for the submission and agreement of a Maintenance and Management Plan. Furthermore, in order to improve accessibility the obligation would ensure that improvements were made to the footpath along Cadger Bank. In order to mitigate against harm to the heritage asset, the obligation also sets out the timing of the provision of a local archaeological exhibition relating to the site. There are no details before me as to the precise content or location of the exhibition but such details could be included as part of a planning condition were I minded to allow the appeal.
41. I am satisfied that in each of these respects the obligation would accord with the provisions of Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 as being necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind.
42. The obligation also includes a contribution for the provision of road safety signage. There are no details before me as to what such signage would consist of, nor is there any reference to it, or requirement for it, in the appeal documents. Given that the Highway Authority consider the proposal acceptable in highway safety terms, the provision of signage, whilst it may be beneficial, is not necessary to make the development acceptable in planning terms. Consequently in my judgement, this part of the obligation does not meet the test set out in the CIL Regulations.

Planning Benefits

43. The Framework seeks to significantly boost the supply of housing. As set out above, there is no dispute that the Council's 5 year supply is lacking. The main parties agreed at the hearing that supply falls between 4.20 and 4.91 years' worth of housing land supply although I am aware of a more recent appeal decision² which indicated a lower range. The provision of 52 dwellings

² Appeal decision APP/X1355/W/16/3163598 Sedgefield Community Hospital, Salters Lane, Sedgefield, Co. Durham 28 July 2017

including 10 units of affordable housing would therefore contribute to meeting the shortfall in market and affordable housing supply and would accord with paragraph 47 of the Framework in boosting significantly the supply of housing. This lends significant weight in support of the proposal.

44. The development would provide a number of family sized dwellings that may assist in addressing the imbalance in the age of the population. The proposal therefore has some added social benefit. It would also provide some limited economic benefit through employment opportunities generated through the construction phase, by addition to the local economy through the spending power of future residents and by the relatively modest gains of the New Homes Bonus. These social and economic factors add limited weight in support of the proposal.
45. In addition, the proposed footpath improvements, whilst mitigating the less than ideal footpath conditions, would also benefit existing residents. As such it is a benefit of the scheme to which I add limited additional weight in support of the scheme.
46. As set out above, the proposal would provide an archaeological exhibition which would assist members of the public in understanding the nature and significance of the SAM. There is currently an information board in a lay-by close to the site. Nevertheless, the exhibition, which would provide information to visitors in accordance with the aims of Local Plan Policy TO1, is a benefit of the scheme to which I attach limited weight.
47. I accept that the proposals include measures to create and enhance natural habitats adjacent to Alderdene Burn. However, this is a mitigation measure and therefore in itself is a neutral factor in the balancing exercise.

Planning Balance and Conclusion

48. As set out in paragraph 134 of the Framework, where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm shall be weighed against the public benefits of the proposal, including securing its optimum viable use.
49. I have found that the proposal would result in less than substantial harm to the SAM, as a result of harm to its setting and thereby significance for the reasons set out. In addition the proposal would result in the loss of archaeological remains which are a non-designated heritage asset that contribute positively to the understanding of the SAM. The Framework is clear that great weight should be given to a designated heritage asset's conservation. The more important the asset, the greater the weight should be. The SAM is of national importance such that the harm the proposal would cause to it carries substantial weight. In addition there would be limited harm to the character and appearance of the countryside.
50. The public benefits of the proposal are set out above. However, individually, and assessed cumulatively, they do not outweigh the harm I have identified which carries substantial weight.
51. On that basis policies within the Framework indicate that development should be restricted. Moreover, considering the Framework as a whole, the proposal does not amount to sustainable development. Therefore taking into account all other matters raised, the appeal is dismissed.

S Ashworth

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Robert Smith DipTP MRTPI - Peacock & Smith
Dr Patrick Ottaway MA Phil, FSA MCIFA - PJO Archaeology
Mr Robert Sutton MCIFA – Cotswold Archaeology

FOR THE LOCAL PLANNING AUTHORITY:

Mr Steve France BSc (Hons) Dip TP MRTPI MA – Durham County Council
Dr David Mason BA PhD FSA MCIFA – Durham County Council
Ms Carol Dillon BA MRTPI – Durham County Council

INTERESTED PERSONS:

Stephen Bailey Local resident
David Friesner Lanchester Parish Council
Mike Gladstone Lanchester Partnership
Jill Gladstone Local resident
Elaine Hogg Lanchester Partnership
Terri Edwards Local resident
Julia Gillson Local resident
Ron Brown Local resident
T N Hartley Local resident
Brian Masterman Local resident

DOCUMENTS SUBMITTED AT THE HEARING:

1. Letter of objection from Mrs Woodward, local resident.
2. Richborough Estates Supreme Court Judgement and hearing note.
3. Secretary of State appeal decision ref: APP/T3725/A/14/2221613 relating to the development of land at The Asps, Warwick.
4. Presentation to the hearing by Mr Friesner on behalf of Lanchester Parish Council.