
Appeal Decision

Hearing Held on 22 October 2019

Site visit made on 23 October 2019

by Sarah Housden BA (Hons) BPI MRTPI

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

Decision date: 6th January 2020

Appeal Ref: APP/A4520/W/18/3217280

Mangos Waters Edge, Trow Lea, South Shields NE33 2JH

- 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 Mr Kevin Brogan against the decision of South Tyneside Metropolitan Borough Council.
 - The application Ref ST/0740/16/FUL, dated 22 July 2016, was refused by notice dated 28 August 2018.
 - The development proposed is 'demolish existing public house and construct 23 residential apartments in one three storey development with detached garage blocks, car parking, boundary treatments, detached bin store and vehicle access/egress'.
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Decision

1. The appeal is dismissed.

Application for costs

2. At the hearing, an application for a partial award of costs was made by Mr Kevin Brogan against South Tyneside Council. This application is the subject of a separate Decision.

Procedural Matters

3. The Council submitted a Community Infrastructure Levy (CIL) Compliance Statement by email on 21 October 2019. However, I did not receive the document until after the hearing had closed. In the interests of fairness, I offered the appellant an opportunity to comment on the document and I have taken account of the CIL Compliance Statement and the appellant's comments on it in coming to my decision.
4. Consultation on the Regulation 19 version of the new South Tyneside Local Plan finished on 11 October 2019. However, the plan has not yet been submitted for examination and having regard to paragraph 48 of the National Planning Policy Framework (the Framework) I concur with the parties' position that it has limited weight in the determination of this appeal.
5. A completed Unilateral Undertaking (UU) pursuant to section 106 of the Act was submitted by the appellant on 3 October 2019. The legal basis and

execution of the UU were a matter of dispute between the parties and I deal with the UU later in my decision.

6. The fourth reason for refusal in this case relates to the absence of provision for affordable housing which is required by Policy SC4 of the Local Development Framework Core Strategy (2007) (CS). However, the completed UU includes provision for affordable housing in order to address this reason for refusal and I deal with this matter later in my decision.

Main Issues

7. The main issues in this case are:

- Whether or not the appeal proposal would be acceptable in the 'undeveloped coast zone' having regard to its effect on character and appearance; and
- The effect on the significance of the Grade 2 listed Trow Rock Floating Platform (the Floating Platform).

Reasons

Character and appearance

8. The appeal site is located at the southern end of the South Shields promenade and foreshore and comprises a disused public house with living accommodation on the first floor, a small 'concession' unit and outdoor seating area facing the promenade and areas of car parking to the rear and side. Vehicular access to the site is via the A183/Coast Road and Trow Lea which also serves the public car park adjoining the appeal site and terminates at the northern edge of The Leas Local Wildlife Site (LWS). From the evidence before me and based on what I heard at the hearing, active commercial use of the premises ceased some time ago. The building and site have an untidy and unkempt appearance with evidence of vandalism and fly tipping at my site visit.
9. The spatial strategy for South Tyneside in CS Policy ST1 is to support development that reflects the scale and functions of the main towns including South Shields and maximise the re-use of previously developed land in the built-up areas. CS Policy SC1 seeks to focus and promote development within the built-up areas in accordance with the spatial strategy.
10. Although the appellant considered that there was some uncertainty on this point, the Proposals Maps provided by the Council at the hearing show the site within the 'undeveloped coast' notation on the CS Proposals Map and the Local Development Framework Site Specific Allocations Proposals Map (2012) (SSA). CS Policy EA2 seeks to conserve and enhance the character of the coast as a high quality natural environment and as a resource for biodiversity and recreation. The South Tyneside Landscape Character Study (2012) includes the site in Landscape Character Area (LCA) 27 'South Shields Foreshore' which contains the main tourist attractions and is adjacent to LCA 28 'The Leas', an extensive area of undeveloped coast which

includes large areas of publicly accessible open space between the cliff edge and Coast Road.

11. The South Shields Foreshore Masterplan (2008) ('the Masterplan') identifies the appeal site together with the adjacent public car park for 'car park improvements'. I have no further details of how, when or by who the car park improvements would be delivered. The Gypsies Green Site Study (GGSS) sets out proposals for the disused recreation stadium to the north of the appeal site and adjoining area but does not include specific proposals for the appeal site. I see no reason to disagree with the common ground between the parties that the Masterplan and GGSS are material considerations in the determination of this appeal.
12. Although the site is within the 'undeveloped coast' in the CS and SSA, the appellant disputes that the appeal site and its immediate surroundings have an undeveloped character due to the presence of the public house building, the access road, the adjoining public car park, lighting columns, signs and other public realm features in the area. The appellant considers that the undeveloped stretch of coast starts at 'The Leas' LWS immediately to the south of the appeal site and that the proposal would be seen as a replacement of existing development rather than an encroachment into the undeveloped coast.
13. However, the appeal site is physically detached from the main built up area along the foreshore to the north of Colman's Seafood Temple and from the residential development to the west of the Coast Road. When viewed from viewpoint D in the appellant's Landscape and Visual Technical Note (LVTN), the view towards the coast is open and undeveloped. The existing public house building is screened by the topography of the intervening landform and due to its lower ground level relative to the main road appears gradually into view when approaching the site along Trow Lea. Due to the small scale of the separate building 'elements' which make up the existing public house, it has a modest, low key appearance. It also has a 'double fronted' layout with principal elevations facing towards both Trow Lea and the promenade.
14. From the promenade to the north, the existing public house building and adjoining public car park are viewed within the context of the coastline and open areas of grassland between the cliff edge and Coast Road. The appeal site and adjoining public car park have a developed appearance, but they are isolated from the main built up area of South Shields within an area which is undeveloped, open and natural in character. The existing condition of the appeal site is apparent from close views but does not have a wider adverse effect on the character and appearance of the undeveloped coast.
15. The proposed apartment building and garage block would have a combined footprint of 891 m² and the apartment building would have a ridge height of 10 metres. Its linear form would follow the alignment of the coast and a 'stepped' form has been incorporated at either end to reduce its bulk and visual impact.
16. However, due to a combination of its height, length and alignment across the full width of the site, the proposed apartment building would have a much more prominent and imposing appearance compared with the existing public house. When viewed from the promenade to the north, from the open

grassland to the west and south and from Trow Lea, the building would appear unduly prominent and conspicuous within the surrounding area.

17. The proposed contemporary and nautical design is intended to echo a tradition of frontage seaside development. However, the use of pale render and the extent of fenestration and glazing in the east elevation would emphasise the building's prominence and create a stark and intrusive appearance. When approaching from Trow Lea, the large expanse of the walling in the rear elevation of the building together with the garage blocks would appear oppressive and unwelcoming.
18. Proposed boundary treatments for the site include stone walling and planted areas, details of which could be secured by means of a planning condition. However, this would not mitigate the visual impact of the proposed building which would appear unduly prominent and stark when viewed from public vantage points in the undeveloped coast, including from the Public Right of Way (PROW) to the south. It would have a significant adverse effect on the open and undeveloped character and appearance of the coastal landscape. It follows that I do not agree with the findings of the appellant's LVTN that the effect on the key viewpoints would be moderate and that the effect on LCAs 27 and 28 would be minor – moderate.
19. The planning history of the site includes permission for the conversion of the existing public house to three dwellings in 2013¹ and for the erection of a detached house on the site in 2014². Based on this, the appellant indicates that residential development has been found to be acceptable in principle in this location in the past within the context of the policies referred to above. However, as the permissions for residential development have lapsed, I attach limited weight to them as a material consideration in this case. Furthermore, I have no further information about the balance of considerations which informed the decisions in those cases and whether or not they are comparable with the circumstances of the appeal scheme before me.
20. Residential development on the site would not undermine the delivery of the GGSS and Masterplan. However, for the reasons outlined above the proposed development would be harmful to the character and appearance of the undeveloped coast and would not conserve or enhance it as required by CS Policy EA2. There would be further conflict with CS Policy ST2 and Policy DM1 of the Development Management Policies (2011) (DMP) which amongst other things, seek a high standard of design so that new buildings and their settings make a positive contribution to the local area.

Trow Rock Floating Platform

21. Although the first reason for refusal includes reference to the Floating Platform, it does not indicate that the proposed development would cause harm to the designated heritage asset. Nonetheless, I must make my own assessment in order to comply with the duty set out in Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which requires

¹ Reference ST/1133/13/FUL

² Reference ST/0455/14/FUL

me to consider the impact of the proposal on the Floating Platform's special architectural and historic interest and setting.

22. Located approximately 150 metres to the east of the site, the Clarke Maxim Disappearing Platform was constructed in 1887 for experimental military purposes. It comprises a cylindrical mass of concrete sunk deeply into the ground with a gun and emplacement atop a 'floating' metal platform (since removed). Trials found that the raising and lowering of the platform was too slow for effective defence purposes. The current gun emplacement is a replica of the original.
23. The structure has a prominent cliff top position and this together with the open grassland areas around it contribute to its isolated, spacious and natural setting and thereby to its significance. The gun's visibility from wider vantage points is in contrast to its original historical function to 'disappear' from enemy view. However, its role in coastal defences and as an experimental military device confer an important historic and cultural significance.
24. When approaching from the north along the promenade and A183/Sea Road, the gun emplacement and concrete structure form a distinctive feature glimpsed in long distance views of the coastline. When viewed from this direction, a clear physical separation between the proposed apartment building and the Floating Platform would be retained. I concur with the conclusion in the appellant's Heritage Assessment (HA) and addendum that from this direction the appeal scheme would not impede views of the Floating Platform nor encroach upon its setting.
25. However, when viewed from the grassland areas to the west and south of the appeal site, by reason of its length and alignment the southern end of the proposed apartment building would be seen in close proximity to the Floating Platform and would encroach into the space around it. From the grassland area to the south of Gypsies Green, due to its height, the proposed building would obscure the existing view of the Floating Platform.
26. The appeal scheme would reduce the physical separation between the Floating Platform and existing built development and would obscure important views of it. There would be material harm to the Floating Platform's isolated and natural setting and thereby to its significance. It follows that I do not agree with the conclusion of the appellant's HA and addendum that the visual impact of the proposal on the setting of the heritage asset would be no greater than that associated with the existing public house.
27. Considerable importance and weight attaches to the harm that would be caused to the setting of the Floating Platform as a designated heritage asset. The proposal would conflict with DMP Policy DM6 which seeks to ensure that development protects, preserves or where possible enhances the historic, cultural and architectural character of heritage assets and their settings.
28. The impact would be relatively limited and the harm to the Floating Platform identified above would be less than substantial. The Framework makes clear in paragraph 196 that where a proposed development would lead to less than substantial harm to the significance of a designated heritage asset, the

harm should be weighed against the public benefits of the proposal and I return to this in the overall planning balance.

Other Matters

29. The site is located in close proximity to a number of sites designated for their biodiversity importance including the Northumbria Coast Special Protection Area (SPA) and RAMSAR, the Durham Coast Special Area of Conservation (SAC) and Site of Special Scientific Interest (SSSI) and The Leas LWS. In addition, the area supports Durham Biodiversity Action Plan (BAP) priority habitats and species and the site is within the coastal wildlife corridor.
30. The Council's Interim Supplementary Planning Document 23 (SPD23) – 'Mitigation Strategy for European Sites' indicates that all developments of 10 dwellings or more within 6km of the boundary of a designated site will be required to contribute towards a mitigation strategy to deal with the impact of increased pressure for recreation arising from new housing growth. The SPD does not, however, cover potential additional effects which must be assessed on a case by case basis.
31. The second and third reasons for refusal relate to a lack of information to enable an appropriate assessment (AA) to be carried out to ensure that the appeal scheme would not have an adverse effect on the integrity of these designated sites. The Council indicated that the appellant had not supplied sufficient evidence to enable a comparison of the levels of recreation activity associated with the commercial use of the appeal premises and the proposed residential use. Consequently, it considered that as an AA of the effect on the integrity of the designated sites could not be undertaken, the precautionary principle should be applied and that planning permission should be refused. Whilst the appellant considers that the Council has adopted a different approach in relation to other recently approved schemes, I am dealing with this appeal based on the circumstances of the case and the evidence before me.
32. The appellant's submitted Habitats Regulations, SSSI and LWS Impact Assessment reports conclude that with the implementation of appropriate mitigation, the proposed development would not result in an adverse effect on the designated sites. However, the mitigation included a covenant to restrict pet ownership by occupiers of the new dwellings and this is no longer proposed as part of the appeal proposal. The appellant's position was that the contribution to strategic mitigation in accordance with SPD23 would be secured through the UU. This would ensure that measures could be introduced to manage residents' behaviour in relation to recreation and pet ownership, for example through leaflets giving advice to purchasers of the proposed dwellings.
33. My view is that there is sufficient evidence before me about the capacity, hours of operation and the location of the public house in relation to designated sites to enable me to make a reasonable assessment of the activity levels associated with its commercial use and compare these with the proposed development. Had my conclusions in relation the main issues in this case been more favourable, it would have been both possible and necessary for me to undertake such an assessment to ensure that the

development would not have an adverse effect on the integrity of designated sites or that any potential adverse effects could be satisfactorily mitigated. However, I am dismissing the appeal for other reasons and since it would not affect my overall decision, it has not been necessary for me to consider this matter further.

34. Local residents expressed concern about the effect of additional traffic movements on the capacity and operation of Trow Lea and whether sufficient parking would be available for new residents. Trow Lea is subject to a Traffic Regulation Order (TRO) to prevent on street parking and the Highway Authority has not objected to the proposal. I am satisfied that had the appeal been allowed, conditions could have been used to secure satisfactory arrangements for parking.
35. There are no PROW passing through the site and the proposed development would not obstruct any PROW in the wider area or public access to The Leas.

The UU

36. The legality of the UU was contested by the Council who also raised a number of detailed points in relation to its execution. The Council's key point was that the appellant's legal interest as leaseholder of the site would not be sufficient to deliver the proposed obligations. The Council considered that in the event of termination of the lease whether by surrender, forfeiture or otherwise, the freeholder and any successor in title would be free from the obligations imposed on the former leasehold interest.
37. The remaining 'unexpired' period of the lease is 92 years. Should a terminating event occur, control of the land would revert to the Council who would have full control over its future development. Whilst I recognise that the current terms of the lease include a clause preventing residential use of the site, a different lease could be negotiated at some point in the future which would be a matter for the Council as the freeholder and any party negotiating revisions to the lease.
38. My conclusion is that the appellant as leaseholder has sufficient legal interest in the site to enter into the UU. The detailed points raised by the Council about its execution could have been addressed by the appellant. However, since I am dismissing the appeal for other reasons, it has not been necessary for me to pursue this further as it would not change the outcome of the appeal.
39. I have considered the UU obligations against the tests set out in the Framework, the Planning Practice Guidance (PPG) and the Community Infrastructure Levy (CIL) Regulations 2010. In relation to affordable housing, the UU is necessary to meet the requirements of CS Policy CS4 and Supplementary Planning Document 4 'Affordable Housing' which require 25% affordable housing on sites of 15 or more dwellings. In this case, the Council considers that a commuted sum towards off site provision would be appropriate. In order to support the re-use of brownfield land, the Framework indicates that affordable housing contributions should be reduced where vacant buildings are being redeveloped. Applying a deduction for the

vacant building credit as set out in the PPG³, the UU provides for a contribution of £190,572.92.

40. A contribution towards community safety in the form of a CCTV camera to replace the existing camera within the public car park is required by CS Policy ST1. A contribution towards strategic ecological mitigation is required by CS Policies ST1 and EA3, DMP Policy DM7 and SPD23.
41. I am satisfied that had the appeal been allowed, the UU obligations would have been necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. The requirements of Regulation 122 of the CIL Regulations and paragraph 56 of the Framework are satisfied.

Public benefits and the heritage balance

42. The appeal scheme would deliver additional housing in South Shields and future occupiers would have reasonable access to services and facilities by sustainable modes of transport. The delivery of affordable housing would be of particular benefit and based on my conclusions in relation to the UU, I am satisfied that it could be delivered.
43. Economic benefits would accrue from the jobs created during construction, ongoing management and maintenance of the building and spending by new residents on local services and facilities. However, since a commercial re-use of the existing public house would also support the local economy, I attach limited weight to that factor.
44. I have concluded that the existing condition of the site does not have an adverse impact on the wider area. Improvements to the appearance of the building, car park and outdoor seating area and greater public surveillance could be achieved by the re-use of the premises and I therefore give very limited weight to this aspect as a public benefit of the appeal scheme.
45. The UU obligation for a replacement CCTV camera and ecological mitigation would mitigate the impact of the proposed development and are neutral factors in the overall planning balance.
46. The proposal would cause harm, albeit less than substantial, to the setting and significance of the Trow Rock Floating Platform as a designated heritage asset and considerable importance and weight attaches to that harm.
47. Taking all of these matters into account I conclude that the heritage harm that I have identified would outweigh the public benefits in support of the scheme. As such, the proposal would conflict with the provisions of the Framework in relation to heritage assets.

Overall planning balance

48. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the development plan, unless material considerations indicate otherwise.

³ 026 Reference ID: 23b-026-20190315

49. I have concluded that the heritage harm would not be outweighed by the public benefits of the proposal and it would fail to accord with the provisions of the Framework in relation to designated heritage assets. The proposed development would also cause material harm to the character and appearance of the undeveloped coast, in conflict with the policies in the development plan which seek to conserve and enhance its character as a high quality natural environment. Together, these issues weigh heavily against the appeal proposal. The proposed development would be contrary to the development plan, read as a whole and there are no material considerations of sufficient weight to justify a decision other than in accordance with the development plan.
50. Having had regard to all other matters raised, I conclude that the appeal should be dismissed.

Sarah Housden

INSPECTOR

APPEARANCES

FOR THE APPELLANT:	
Mr Dominic Waugh	Fairhurst
Ms Sarah Dyer	Orion Heritage
Mr David Bolt	Fairhurst
Mr John Thompson	Eco North Ecological Consultants
FOR THE LOCAL PLANNING AUTHORITY	
Mr Garry Simmonette	Senior Planning Officer
Mr Ben Broome	Principal Solicitor
Ms Clare Rawcliffe	Countryside Officer
INTERESTED PERSONS	
Ms M Hewitt	Local resident
Ms A Fenwick	Local resident
Cllr I Malcolm	Ward Councillor and Leader of South Tyneside Council

DOCUMENTS SUBMITTED DURING THE HEARING

1. Extracts from Site Allocations Development Plan Document Policies Maps confirming site location and map notations
2. Aerial map showing appeal site in relation to the Northumbria Coast Special Protection Area and RAMSAR site
3. Aerial map showing appeal site in relation to the Durham Coast Special Area of Conservation
4. Aerial map showing appeal site in relation to the Durham Coast Site of Special Scientific Interest
5. Aerial map showing the appeal site in relation to Local Designated Sites – The Leas Local Wildlife Site, South Shields Dunes Local Wildlife Site & Local Geodiversity Site and the Coastal Wildlife Corridor
6. Feeding Birds Locations North Survey Area
7. Note confirming the footprint of the existing public house building with the proposed apartment building
8. Note confirming the appellant's consent to pre commencement conditions
9. CIL Compliance Statement

DOCUMENTS SUBMITTED FOLLOWING THE HEARING

10. Comments on the Council's CIL Compliance Statement submitted by the appellant on 31.10.19