



Appeal Decision

Inquiry held on 14-17, 21-22 November & 4 December 2023

Accompanied site visit made on 14 November 2023 & Unaccompanied visits to the site and surrounding area including relevant viewpoints on 18-19 November 2023

by Nick Fagan BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd May 2024

Appeal Ref: APP/M4510/W/21/3283989

Plot 12, East Quayside, Newcastle upon Tyne NE1 2PD

- 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 East Quayside 12 LLP against the decision of Newcastle Upon Tyne City Council (the LPA or the Council).
 - The application Ref 2020/0506/01/DET, dated 17 March 2020, was refused by notice dated 31 March 2021.
 - The development proposed is erection of residential development comprising 289 apartments (Class C3), up to 299m² (NIA) ground floor resident amenity/commercial space (Class E/Sui Generis) within a building of between 11 and 14 storeys (including ground floor) with further resident amenity space, storage, associated access, car parking, landscaping and urban realm works as amended by plans received 23 October 2020.
 - This decision supersedes that issued on 6 May 2022. That decision on the appeal was quashed by order of the High Court dated 1 November 2022.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. St Ann's Quay Management Limited were granted 'Rule 6' status at the Inquiry (SAQML). They presented evidence relating to heritage and design, residential amenity and planning.
3. I have taken into account in making my decision the Statement of Legal Principles between the three main parties dated 13 October 2023, which accurately sets out, in particular in its paragraph 23, why the previous appeal decision was quashed. In essence, that the previous Inspector should not have had regard to the non-availability of an alternative design in coming to a view on the level of heritage harm to the Grade I listed St Ann's Church, in terms of her comment that any development (her emphasis) at Plot 12 would affect its setting (paragraphs 70 and 71 of the quashed appeal decision).
4. I acknowledge the LPA and Rule 6 Party's continued disagreement with the previous Inspector's conclusions on the other main issues in this appeal, as indeed they argued at the Inquiry. I have considered all the main issues afresh taking into account all the material changes in the evidence to date, as required by the caselaw set out in the above Statement, whilst also taking into account the successful heritage grounds of the High Court challenge and the dismissal by the Court of Appeal to overturn such.

5. The parties submitted new statements of case and proofs of evidence and there have been new Statements of Common Ground submitted as well as some rebuttal proofs in terms of the redetermination of this appeal, to which I have principally had regard, as well as previous proofs where this has been necessary. All these and the other Core Documents for the Inquiry, to which I have also had regard, are currently available at [Planning Appeal at Plot 12, East Quayside | Newcastle City Council](#) on the Council's website.
6. A signed Section 106A agreement between the Council, the appellant and the owner (Homes England) dated 13 December 2023 has been submitted. This agreement is supplemental to the existing main agreement between these parties dated 18 March 2022. I have taken both the supplemental and main agreement into account in making my decision and, where necessary, refer to them (as 'the S106') below.
7. Immediately following the close of the Inquiry, the National Planning Policy Framework (NPPF) was revised (on 19 December). The three main parties have been given sufficient time to comment on this in relation to the main issues in this appeal, including the opportunity to comment on the opposing sides' submissions. I have taken these comments into account in arriving at my decision. My references to any paragraphs in the NPPF below are obviously references to the revised, current version.

Main Issues

8. The main issues are:
 - (a) The effect of the proposed development, in particular its design, on the character and appearance of the area.
 - (b) Its effect on designated heritage assets.
 - (c) Its effect on the living conditions of future occupants in respect of internal space standards.
 - (d) Its effect on the living conditions of residents at St Ann's Quay, and in the proposed development itself, in respect of daylight/sunlight and outlook.
 - (e) Whether the Council can demonstrate a five-year housing land supply (5YHLS).
 - (f) The benefits of the development scheme and the planning balance.

Reasons

Regeneration Background

9. Newcastle Quayside, like many areas in the country which had suffered industrial decline, was recognised as an area in need of regeneration from about the 1960s. The Thatcher government addressed such industrial decline principally through Development Corporations and Enterprise Zones. The Newcastle Quayside was no exception and was incorporated into the Tyne and Wear Development Corporation set up by Secretary of State Nicholas Ridley in 1987, which included land on both sides of the Wear in Sunderland as well as both sides of the Tyne, although none of it within Gateshead Borough, totalling 2,374 hectares. The appeal site became vested in the Corporation.

10. Borne out of this, the Newcastle Quayside Masterplan by Terry Farrell and Partners was published in 1989 for the Tyne and Wear Development Corporation which set out a vision to create a new district in Newcastle.
11. Over the subsequent decades this area has been regenerated from its historic industrial past into a highly successful well known modern, vibrant area with commercial and residential uses and a wide paved footpath and cycleway to the riverside. The Quayside contains the Malmaison hotel conversion along with substantial office buildings, the Crown Court and St Ann's Quay, the large residential apartment block adjoining to the west. There is also good connectivity with the Gateshead Quayside via the Millennium Bridge and access to cultural venues such as The Baltic art gallery and The Sage performing arts venue, now known as The Glasshouse.
12. Known as 'Plot 12' the appeal site forms a notable gap site which has been vacant for over 20 years. Along with Malmo Quay to the east, the site represents the last area within the Masterplan to be developed along the Quayside.
13. Today the appeal site is in a reasonable condition as an open, vacant area of land of around 0.72 hectares located on the northern bank of the River Tyne. Spanning two levels between City Road to the north on an upper plateau and the Quayside to the south, the site includes a steep grassed embankment which conceals a large structural retaining wall. The level difference between the upper and lower plateaus is around 15 metres. It is clearly a site waiting to be developed but its current character and appearance are inoffensive.
14. The site also includes an area of broadly flat hardstanding to the south along the Quayside. There is also an area of flat hardstanding at City Road, extending behind St Ann's Quay, of which the eastern wing overlooks the site. Outside of the site boundary, St Ann's Stairs are located to the east, giving access between City Road and the Quayside. Residential development known as Mariners Wharf on the Quayside itself and High Quay above it facing City Road lie beyond immediately to the east.
15. The original Masterplan envisaged a hotel/conference/leisure centre at the appeal site which never came to fruition. Later, planning permission was granted in 2002, subject to securing a planning obligation, for residential units, office, food and drink uses and a multi-storey car park but again this never materialised. In 2016 an application for a 10-16 storey building including 124 apartments was withdrawn (the Adderstone scheme).
16. A Planning Brief for the site was published in 2018, setting out design and planning considerations for a residential led mixed-use development at the site. The appeal proposals were submitted in March 2020 and revised in October 2020 in terms of height, design, position on the site and a reduction in residential units from 292 to 289. The development would be a Build to Rent (BTR) scheme and would also include storage areas, communal living and workspace areas, a rooftop outdoor area, and a secure ground level car park and cycle store. Potential commercial elements would be to the ground floor, fronting the Quayside. A Pocket Park would also be created to the rear along City Road, along with other wider landscaping measures.
17. No affordable housing contributions are proposed due to viability matters, largely due to remediation costs associated with the retaining wall. This is,

however, subject to an overage clause in the S106, should that position change.

Planning Policy Context

18. The development plan comprises the 'Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne 2010-2030', adopted in March 2015 (the CS) and the 'Newcastle upon Tyne Development and Allocations Plan 2015-2030' adopted in June 2020 (the DAP). The Council have published a Tall Buildings Supplementary Planning Document (2006).
19. Other material considerations include the Planning Brief for the site (referenced above) as well as the Urban Landscape of the Tyne Gorge document, from 2003 (the Tyne Gorge Study).
20. Before the Inquiry was the 'Newcastle Quayside Masterplan Progress Report' which was published in 1991 and in 1992 Terry Farrell published a 'Newcastle Quayside Statement in Support of Application and Masterplan Guidelines' document. Both documents reference the original Farrell Masterplan, which was not itself before the Inquiry and which I have not seen, but in essence both appear to be progressions of it. Each document clearly relates to the development of the Quayside and contains analysis of the area and broad principles to be applied. I have taken both the 1991 and 1992 documents into account as material considerations in my analysis below.
21. Also relevant is the NPPF, the National Design Guide (NDG) (January 2021) and Planning Practice Guidance (PPG). The above list is not exhaustive and other documents are also referenced below. Aside from relevant development plan and national policies, all these other documents are relevant to a greater or lesser degree as set out below.

Character and Appearance – Design

22. The proposed development would comprise a C-shaped building which would be 14 stories with the wings fronting the Quayside creating a private courtyard podium deck area at first floor level. The design is in a blocked format with interlocking masses which have vertical visual breaks to emphasise the individual blocks. The flat roofscape would also be stepped. The materials palette comprises of buff and grey bricks, grey/silver cladding, Corten cladding and curtain walling. Windows would be black framed and large areas of the elevations would be glazed.
23. CS Policy CS15 identifies broad place-making principles, including the need for development to respond to the unique character and importance of the River Tyne, its tributaries and its setting. CS Policy UC12 sets out criteria as part of ensuring high quality locally distinctive places in terms of architecture and public realm. This includes providing strong urban frontages and an appropriate urban grain reinforcing continuity and enclosure at a walkable urban block scale. The supporting text also makes reference to proposals working with the unique topography and landscape, architecture and public realm to create distinctive quality buildings befitting their setting comparable with other major European cities.
24. CS Policy UC13 also seeks to avoid development which would cause significant harm 1) from or across or into the Tyne Gorge, 2) from defined major movement corridors/routeways, and 3) of designated heritage assets, other

distinctive landmark buildings and structures. The Tyne Gorge Study is also referenced in the supporting text. In particular, views along the Tyne Gorge, from major movement corridors and of major landmark structures and buildings are stated to be unique to the Urban Core and such views must be carefully managed to protect the visual experience. The site lies within the Tyne Gorge and Urban Core and adjoins City Road, a major movement corridor.

25. DAP Policy DM20 sets out further detailed place-making criteria to be used. These include demonstrating a positive response to topography, natural and built landscapes, enhancing the appearance of the city from major movement corridors and making efficient use of land by promoting higher densities where appropriate, taking account of the character of the area and location.
26. Paragraph 139 of the NPPF is clear that development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design¹ taking into account any local design guidance and supplementary planning documents.
27. The NPPF seeks to achieve well-designed places and has further bolstered its design emphasis in the latest revision, stating that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve (paragraph 131). Paragraph 135 sets out criteria, including ensuring that developments are visually attractive as a result of good architecture, layout and effective landscaping and are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change, establish or maintain a strong sense of place, and optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development.
28. As set out in the NDG, the fundamental principles for good design are that it is: fit for purpose, durable and brings delight. It further states '*We can identify its activities and users, the quality of detail, materials, construction and its potential flexibility. We can also make judgements about its beauty.*'
29. When taken together, the development plan contains strong design policies and is supported by a raft of local design masterplans and guidance (discussed above) as part of ensuring the Quayside is a lively and attractive place. National policy and guidance also has a major emphasis on design.
30. The influence of the Farrell Masterplan, as it evolved, is evident along the Quayside. However, developments cannot be fully said to have faithfully followed this, St Ann's Quay as a large-scale building being the most obvious example of a different design approach taken. The Planning Brief is detailed and sets out principles for development based on the more recent context of the site.
31. There was disagreement between the opposing sides as to whether the Council's Tall Buildings SPD was applicable, the appellants maintaining that the proposed building did not meet the SPD's own definition of a tall building: '*any structure that breaks the skyline and/or which is significantly taller than its surrounding built fabric.*'

¹ The National Design Guide (NDG) and National Model Design Code

32. Whilst it would be hard to say that the proposed structure is significantly taller than St Ann's Quay, that is only one of the surrounding buildings. It is unarguably significantly taller than Mariners Quay and most of the other buildings in the surrounding area. Whether a building breaks the skyline obviously depends on where you are viewing it from, but there is little doubt that it would break the skyline from at least the Landscape and Visual Impact Assessment's (LVIA) Viewpoints (VPs) 11-15. For these reasons I consider the SPD to be relevant guidance.

Footprint

33. A central principle of the Masterplan was the formation of a linear arrangement of buildings, set back from the Quayside edge, to allow unobstructed pedestrian access along the Quayside and to allow an appreciation of the curve of the Tyne, with buildings following the natural contours of the land. This is a relatively gentle curve, but it is apparent in the streetscene and care has been taken in locating the building footprints as the Quayside was developed eastwards.

34. The hotel/conference centre building on this site proposed in the Masterplan was always envisaged as an end-stop at this point, beyond which to the east would be smaller scale residential buildings, like Mariners Quay and High Quay. This building was always envisaged as projecting out further towards the river walkway than the buildings to its west, with a wing also projecting back towards City Road to act as an urban design end-stop to the view up St Ann's Street in the 1992 Masterplan.

35. The Planning Brief developed but altered this end-stop design by suggesting two separate buildings on an upper and lower plateau similar to High Quay and Mariners Quay, with a green corridor running between them.

36. There is of course no reason for the proposed building on the site to exactly follow the footprint of the indicative buildings in either the Masterplan or the Planning Brief. But what is noticeable about its footprint is that its northern elevation follows the rear building line of St Ann's Quay offset from City Road, such that it cannot form an urban design end-stop at the top of St Ann's Street; and, that its westerly spur towards the river extends further forward such that it would breach the build line indicated on the Planning Brief linking the south eastern corner of St Ann's Quay with the south western corner of Mariners Quay.

37. I consider these elements of the footprint to be unsuccessful in urban design terms. I understand the view of the previous Inspector when she said that the flank wall of the rear projecting spur indicated on the 1992 Masterplan would have been unsuccessful as an end-stop because it was merely an incidental flank elevation. But that very much depends on how that elevation is treated and how the whole building is aligned. The current footprint of the northern face of the building is also situated considerably below the level of City Road down the slope of the site, which would lend it an oddly unfortunate recessive appearance, which I address below.

38. The build line on the Quayside specified in the Planning Brief is important, and I disagree that the projecting western spur of the building should be allowed to breach it, especially given the rather bland flat-roofed nature of this spur as it steps down towards the river. It should be set back further from the quayside.

I acknowledge that the site is a pinch point where the gap between City Road and the quayside is at its narrowest point. But maintaining a wide pedestrian and cycle thoroughfare along the Quayside is vitally important in urban design terms and there is no reason why the building should grandstand itself by breaching the Planning Brief's build line.

Scale and Massing

39. Significant concern was raised by the Council and SAQML, along with the many local representations made in response to the sheer scale and massing of the proposals. As part of the amended scheme, the height was reduced by 6 metres, or the equivalent of 2 storeys, and the eastern nib of the building was excised, although fierce opposition to its scale and massing remains.
40. The skyline along the Quayside, and indeed beyond, is varied in character due to topography of the area and due to the varying heights of both modern and historic buildings. As experienced today, the Quayside contains a number of individual tall buildings which increase in scale and height, with St Ann's Quay being the tallest along the run. Plot 12, as an open and banked site, allows for appreciation of the topography of the Gorge. The smaller scaled residential development at Mariners Wharf and High Quay behind provide layering and allow for an appreciation of the topographical changes along the Gorge.
41. Beyond this to the east, the Quayside becomes much more open with small scale buildings, although there are a number of proposals for taller buildings and structures such as the tower proposed for the Malmo Quay development. However, Malmo Quay is a larger and much deeper site and so its context is substantially different, so any tall building on that site cannot realistically be used to justify a tall building here.
42. Opposite, on the Gateshead side of the river, there are also large-scale high buildings including the Baltic and the Sage which sits high up on the Gorge side. The historic bridges closer to the city centre give a sense of scale to the Gorge, including Tyne Bridge and the High Level Bridge, as well as the Swing Bridge and the Millennium Bridge which are accessed from the Quayside. The appellant also points to the now permitted proposed high-rise development on the Gateshead side, in particular the McAleer and Rushe scheme, which will undoubtedly be seen from this side of the river.
43. But these existing buildings and bridges are very much part and parcel of the iconic historic nature of the Tyne Gorge and do not in themselves justify a building of greater mass and scale on the appeal site in excess of St Ann's Quay. The McAleer and Rushe scheme has a very different topographical context on the flat land on that side of the river, on a site without such a fine grain urban historic context, allowing much more free rein to create a modern high rise building.
44. The scale of the proposed building would exceed that envisaged by the two Masterplans, even the 1991 version which detailed a major building; the 1992 version specified 6-7 storeys only. The Tyne Gorge Study also identifies large scale development as a threat to the character of the Gorge. Responding to the current character, and in respect of the presence of St Ann's Quay (which is also higher than the Masterplans suggest), the Planning Brief provided guidance on height, suggesting that it should be comparable with that of

St Ann's Quay and not exceed its eaves, which again the development would not meet.

45. In wider viewpoints from the bridges and from the west, and indeed from the southern bank of the river, the building's scale and rather bulky massing would not be particularly noticeable in the urban panorama. But it would be much more apparent from VPs 7-15, and very prominent from VPs 11-15.
46. Indeed, close-up VPs 11 and 12 from St Ann's cemetery and the north side of City Road show its excessive scale compared to that of St Ann's Quay and High Quay. This scale would seem particularly prominent from here because of the sheer mass of this part of the building, the tallest and bulkiest part of it, which is not helped by the generally unrelieved and un-orchestrated nature and expanse of the building's large northern elevation.
47. From VPs 13-15, the longer distance views from the east, the scale and sheer mass of the building would be very prominent. Indeed, its scale and mass would be much greater than the scale and mass of the intervening buildings (including Mariners Wharf and High Quay) from those VPs as well as the buildings on the Quayside behind it (including the 'rack of lamb' building at 112 Quayside and the Malmaison Hotel) such that it would appear like a slab, cliff face or wall. In other words, its scale and mass in viewpoints from the east would be at odds with the majority of the existing buildings; St Ann's Quay also has a greater scale but at least its eastern elevation and rooftop design have been elevationally orchestrated by balconies and setbacks such that its mass is not as jarring as the proposed building's would be from these eastern viewpoints.

Architectural Design

48. The Farrell Masterplans set out the need for building bases to form edges to public spaces and that the tops of buildings should create a visually rich and interesting skyline, and I consider that they have generally done so. Both the Quayside within the Central Conservation Area and the East Quayside are environments containing buildings of high architectural quality.
49. There is undoubtedly a pattern along the modern Quayside of buildings with defined bases, middles and articulated roofs. The bases, typically of sandstone or reconstituted stone, successfully define the public realm edge. The middles of most of the East Quayside buildings exhibit different degrees of success of 'hole-in-wall' architecture² and string course, cornices and parapets which generally give them a notable horizontal aspect, with the Court building having a more particular vertical emphasis. The roofscapes can best be described as architecturally 'fun' with curved roofs or particular detailing as in the 'rack of lamb' building.
50. The spurs of the appeal building sit on columns or pillars/stilts adjacent to the Quayside. Pillared post-war brutalist buildings in the city were of generally poor design, very unpopular and now mainly demolished. I am not suggesting that the proposed building is comparable to such brutalist buildings, although the pillars are at odds with the solid public realm of the other Quayside buildings. More fundamentally, they seem here to be a device for allowing more

² Agreed by the two main parties' design witnesses as describing buildings where the dominant/predominant face of the building is the brick or stone wall, with punched windows through, which can be any shape (circle, rectangle or square).

- residential units on the upper floors of these spurs, which heightens the mass of the building along the Quayside giving it a top-heavy appearance next to the riverside walkway/cycleway and breaches the Planning Brief's build line.
51. There would be a strong vertical emphasis to the building with long panels of brickwork, alternating with glazing, all recessed behind projecting brick slip edge details. Vertical panels of dark curtain walling are used as part of the blocked design to break up the massing. Some areas of hit-and-miss glazing pattern are used to the rear main block to both the City Road and Quayside elevations.
52. Many examples of Whittam Cox schemes elsewhere in the country were cited in the appellant's Design and Access Statement and in Mr Riley's Proof and he seemed to be alleging that such verticality is somehow a given principle in the design of contemporary tall buildings. I reject the latter allegation and in terms of the various examples cited, all these seem to demonstrate is that Whittam Cox have a preference for such verticality in the design of their buildings. But that is irrelevant in the context of the Newcastle Quayside, where the buildings generally have a horizontal emphasis, which very much contributes to their successful design. The overt verticality of the appeal building is at odds with the area's character and appearance, and in my view, only serves to emphasise that it would be out of scale with adjoining buildings.
53. As set out above, the City Road elevation would rise up 14 floors from some way down the slope of the embankment, making its base appear weak and unresolved in design terms because it would drop below the perceived ground plane as highlighted by the Design Review Panel (DRP). This elevation is not only tall compared to neighbouring buildings such that it would break the skyline, but is largely bland and unarticulated: there are no inset or projecting balconies, the individual framing elements will only have a depth of 450mm and the majority of this elevation only a depth of 102mm between the windows and brick panels. The hit-and-miss glazing would give some horizontal emphasis to this elevation but not enough. The general impression would be of a bulky bland elevation unrelieved by any substantial setbacks or other interest, in marked contrast, for example, to other buildings on the Quayside including St Ann's Quay.
54. The development would have a flat roofscape, which certainly has no element of fun or interest in it, compared with many of the other modern Quayside buildings including St Ann's Quay, in contrast to the suggestions of the DRP. Certainly, compared to the existing buildings that would surround it, its roofscape is uninspired and would not match the interest or design quality of the roofscapes of the other buildings on East Quayside; I consider it would therefore fail to address the sky in any meaningful way.

Context

55. Paragraph 3.7 of the Patterns of Experience Character Assessment of the Central Conservation Area³ is apposite in the context of the redevelopment of the appeal site. It states: '*Approaching from the south, there is [therefore] little to prepare one for the panorama of Newcastle arrayed like a capriccio of history, commerce, welfare and enterprise, all revealed in an instant.*' Although this document is dated (1996) and assesses the Central Conservation Area

³ INQ9

located to the west of the site, it is still relevant in-force planning guidance. Moreover, this statement is as true today if not truer than the date it was written. It describes the iconic view of the Tyne Gorge which suddenly appears in all its fantastic splendour when one crosses the river on one of the high-level bridges, as I did on the train the day before the Inquiry commenced.

56. The East Quayside is a part and parcel of this panorama, and a highly successful one due in no small part to the Farrell Masterplans that have created a successful new part of the town with a thriving pedestrian thoroughfare along the river, encompassing the heritage and history of the Quayside whilst respecting the topography of the Tyne Gorge and the original warehouse building plots and the 'chares' between them. The success of the Newcastle Quayside is in large part due to the high quality of the East Quayside's urban design, both that of the individual buildings and the public realm between and in front of them. Whether it is 'the jewel in the crown of Newcastle' is a moot point – but it is certainly one of them. Hence the appeal site, as one of the last remaining development sites, must have a high-quality well designed building fit for such an iconic place in one of Europe's great regional cities.
57. Both the Farrell Masterplans and the Planning Brief contextualise the site as part of the Quayside to the west within the Central Conservation area. Whilst not planning policy, these guidance documents are therefore very important. I agree with Mr Stowell that the analysis in the Brief of this local context could have been used as a baseline study for the wider context of the site but yet it hasn't been. As a result, all the appellant's evidence suggests that the building's design has been justified by reference to the scale of St Ann's Quay and the need to achieve a certain number of BTR apartments to ensure the scheme's financial viability. That approach would seem to be at odds with the NDG's paragraph 40, which stresses the importance of context in design.

Design – Conclusions

58. A fair amount of (rather fruitless) time was devoted at the Inquiry to arguing whether the building should exhibit the highest quality, higher quality or merely high-quality design. What is clear to me is that this is one of the last redevelopment sites on the regionally iconic Quayside in a very prominent location, which will function to a large extent as an end-stop before the lower scale buildings to the east, and that consequently it deserves a well-designed building worthy of its unique and special context, the Farrell Masterplans and the Planning Brief. I appreciate that this is not an easy task, but the building proposed in this appeal is not that building.
59. There is no reason why the proposed building must be taller than St Ann's Quay, or otherwise grandstand itself. Viability considerations do not outweigh its design shortcomings or its consequent harms to the character and appearance of the area.
60. For all the reasons set out above the building would not be well designed, would not respect its context and would not be worthy of this important site. It would not, in my opinion, be beautiful. Accordingly, it would fail to comply with CS Policies CS15, UC12 and UC13, DAP Policy DM20, NPPF paragraphs 129, 131, 135, 137, 138 and 139, the NDG, the Council's Tall Buildings SPD (particularly criteria 5 and 6), and relevant local guidance in the form of the Tyne Gorge Study, the Farrell Masterplans and the Planning Brief for the site, as well as the conclusions of the DRP.

Heritage

61. St Ann's Church, a Grade I listed building (LB), is located to the north of the site, in an elevated position above City Road, which forms the only gap between the appeal site and the Church graveyard. The Grade II listed Sailors' Bethel is located in an elevated position above the Quayside to the east of the site, between City Road and Horatio Road. The site is also located between, but not within, the Lower Ouseburn conservation area (CA) to the east and the Central CA which covers the City Centre, to the west.

St Ann's Church

62. Dating from 1764-68, St Ann's Church was built by William Newton, a prominent local architect, and replaced a previous chapel on the site. It has an understated classical design and is a rare surviving example in Newcastle. It is of sandstone construction and has a rectangular plan form and pedimented western elevation with clock tower and elegant spire above, and a pedimented porch. It is set in a graveyard (locally listed) which slopes down towards City Road and is bounded by a stone wall and railings. It is undoubtedly one of the City's most important listed buildings, and its importance to the riverside is highlighted by numerous references to it in the Tyne Gorge Study.
63. Historically the Church served the community working along the Tyne. It was originally set in an isolated position, but its setting evolved as industry expanded in this area and with the development of the Quayside with railways and warehousing giving rise to intervening development. Today the Church is surrounded by modern buildings. Due to its position on the top of the plateau, above City Road, it has a visual presence in the wider area; its tower is visible across a long distance as a backdrop as part of the Newcastle skyline. The graveyard also offers verdant relief from the built-up townscape along this main transport route. St Ann's overlooks the Quayside across Plot 12, and although accidental and unplanned, clear views of the Church are enjoyed from this area and have been for a considerable number of years.
64. Based on the above analysis, the Church has architectural significance as a fine example of a Georgian Church and historic significance, derived from its association with William Newton, and its association with the Quayside. Its setting very much contributes to its significance as a landmark building and its visual connection with the Quayside and cityscape. As a cleared site, Plot 12 falls squarely within the setting of this asset.
65. The effect of development at Plot 12 upon St Ann's Church has long been recognised; the masterplan documents, the Tyne Gorge Study and Planning Brief all reference it. Indeed, the Planning Brief specifically highlights that *'The site contributes to the setting of Saint Ann's Church.....It is acknowledged that any proposals for development on this site would result in a level of harm to the setting of Saint Ann's Church. Any proposal for development of this site should look to ensure that the level of harm is considered as 'less than substantial.'*
66. The Heritage Impact Assessment (HIA) submitted with the application also considered there to be less than substantial harm to St Ann's Church, albeit to a minor level, arising from the development within its setting, which was the appellant's case at the Inquiry. The Council and SAQML's case is that the proposed building would cause a moderate degree of less than substantial

harm, and indeed this is also the view of Historic England (HE), the statutory consultee.

67. In light of the scale of the development and its location on the Quayside I consider a moderate level of harm would be caused to the significance of the Church, as derived from its setting. This is because the appeal site's openness permits the last remaining open vista of the Church to the river, which is crucial to being able to appreciate its historic and cultural relationship with the Tyne, as evinced by HE, not least since it is one of the historic landmarks that punctuate the central section of the Tyne Gorge. No satisfactory reason to counter HE's view was put forward by the appellant's heritage witness. In particular, his argument that the visibility between the Church and the river – a key aspect of its setting – does not make any notable contribution to its significance, is a weak one. A departure from HE's view requires '*cogent and compelling reasons*' as set out in relevant caselaw⁴, but there are no such reasons here.
68. While the current open aspect to the Quayside is only a consequence of the site clearance, this is a view that has been open and enjoyed for a significant period which the development will visually disrupt. The curtailment of this view by industrial development in the nineteenth century does not in itself justify redevelopment or regeneration doing the same thing, as is set out in HE's Tall Buildings Advice Note 4, paragraph 4.14⁵.
69. The positioning of the development would retain a framed open view of the Church from the Quayside to the east of the proposed building. But this would be to a considerably lesser degree than what is currently experienced, including in terms of kinetic views from the Quayside walkway. The visual link from the Church, across the graveyard to the Tyne River would also be retained, but albeit also considerably reduced by the width and mass of the proposed building.
70. The building would be set back from the City Road frontage and separated from it by the pocket park, but this would not be very deep, and the soft landscaping would be minimal and ineffective in screening the bulk of the highest part of the development, which would rise up nine storeys from the City Road ground level. The general flatness of this bulky unarticulated elevation would undoubtedly exacerbate the height, width and overall mass of the building's north elevation, as demonstrated by the VP11 photomontage.

Sailor's Bethel

71. This is a former seamen's nonconformist chapel built in 1875 and extended in 1900 to incorporate a Sunday School room. It is of brick construction with a hipped slate roof, with a tall lead covered flèche on belfry, and ashlar stone dressings. Historically it was used as a place of worship for seamen working and living in the area. It also has links with Danish sailors who used it to stay in while cargo was unloaded and later becoming a Danish Church after the Second World War. It is a Grade II LB.
72. Given its elevated position, the asset is visible from a number of vantage points from along the Quayside giving it a landmark quality, although less so than St Ann's Church due to its more modest scale. It is particularly prominent,

⁴ *Visao Ltd v SSHCLG* [2019] EWHC 276 (Admin)

⁵ INQ14

however, when travelling west along City Road, where it is positioned at the junction with Horatio Road which leads down to the Quayside and the chapel end elevation with its steep roof and canted gable walls are appreciable. The backdrop of the city skyline lies beyond, predominantly with modern tall built developments, including St Ann's Quay directly behind.

73. Accordingly, significance is derived from its architectural form and historic association with the Tyne River and the related industry. Its elevated setting on the upper plateau of City Road, and vehicular access point down to the Quayside also makes a positive contribution to its architectural and historic significance.
74. Intervisibility between this asset and the current undeveloped nature of Plot 12 is limited. However, the scale of the development would mean that there would be a marked change to the wider setting of the building with the proposed building appearing within the background in the skyline. Along City Road, and particularly at Glasshouse Bridge in VP15 the development would appear behind the Bethel, masking the existing backdrop of St Ann's Quay and at a greater height. While still some distance away from the Bethel, the building would obviously be nearer to it than St Ann's Quay by the width of the site. The east elevation of the building would, as explained above, also be considerably larger in scale and mass than St Ann's Quay and appear more like a cliff face. This is a busy transport route into the Centre and thus would be experienced by a number of people.
75. The prominent flèche of the Bethel would still be seen from this VP projecting above the building and its distinctive roofline would still be readily distinguished. However, the mass, bulk and height of the new building, particularly the highest northern part of it on City Road, would, even taking into account the gap between the two buildings, appear somewhat overwhelming and disrespectful of the Bethel and its setting, which is an important part of its architectural and historical significance, as exemplified by the L.S. Lowry painting. Consequently, I consider the proposed building would cause a moderate degree of less than substantial harm to the Sailor's Bethel.

Central Conservation Area

76. The CA is a large area covering the City Centre and complex in character reflective of the many periods of growth and development. This includes buildings and structures relating to the Roman and medieval core of the historic town, Georgian development of 'Grainger Town' and expansion during the industrial revolution including the development of infrastructure including the railway and Tyne Bridge. Twentieth century development also adds to the diversity and evolution of the cityscape in the CA. Together these developments have influenced the form, scale, pattern, character and appearance of the CA.
77. The Tyne Gorge provides a particularly important setting to the CA with significant views into the CA with its topography, density and variety of building types readily appreciable. Views out of the CA, including from the historic listed bridges across the River along the Quayside also form part of its setting.
78. The Quayside area covered by the Farrell Masterplans is outside of the CA, while it is predominantly a modern area, given the Quayside's proximity to the CA and views into and out of it, it makes a positive contribution to the setting

of the CA, as an area of further evolution of the City, as I set out above. Plot 12 as a vacant site is a neutral factor in the setting.

79. The proposed development and particularly its scale would be visible from the CA and in the Tyne Gorge, particularly from Tyne Bridge and the Swing Bridge (VPs 2 and 3). It would be particularly visible from the east with the backdrop of the buildings within the CA behind it, notably from VPs 12-15. From all these VPs, which form the significant setting of the CA within the Tyne Gorge, the harmful scale, mass, design character and appearance of the building, as explained above, would appear overly visually prominent and at odds with the historic buildings in the CA as well as with the other more recent buildings on the East Quayside, which also form part of its key important setting.
80. In particular, its bulk and prominent slab-like eastern elevation when viewed from VPs 13-15 would appear particularly inappropriate when viewing the curve of the river with the historic buildings of the CA in the background in conjunction with the excessive scale and mass of the new building. Nonetheless, the appeal site is some way away from the CA boundary and I consequently determine that it would have a low degree of less than substantial harm to the significance of the CA.

Heritage Conclusions

81. I have found that the proposed development would cause a moderate degree of less than substantial harm to St Ann's Church and Sailor's Bethel, and a low degree of less than substantial harm to the Central CA. As such there would be conflict with CS Policy UC14 which seeks to sustain and enhance the significance of heritage assets and their setting and DAP Policy DM16 which requires the conservation or enhancement of the setting of heritage assets.
82. I deal with the heritage balance in NPPF paragraph 208 in the Planning and Heritage Balance section below.

Living Conditions – Internal Space Standards

83. DAP Policy DM7 states that the design of all new homes will be required to meet the Nationally Described Space Standards (NDSS)⁶. At the time the LPA made its original decision to refuse the application, this policy was not applied due to a one-year transition period (i.e., to June 2021) to give residential developers a reasonable period to factor in these standards into the design of their dwellings in accordance with national planning guidance.
84. This is set out in DM7's supporting text, DAP paragraph 4.3.2. Although that text makes clear that the requirement to comply with NDSS will not be applied to reserved matters applications where the outline permission was determined (or resolved to be determined) before the end of the transition period, it makes no mention of situations akin to this where applications have been refused and appealed. Hence, the Council referred the application back to its Planning Committee in December 2021 following the initial appeal and imposed an additional third refusal reason citing a failure to comply with NDSS contrary to Policy DM7, which had come into force in the intervening period.
85. I can understand why the appellant feels aggrieved by this, because it designed the scheme on the basis of the requirements in place at the time, which did not

⁶ Appendix 3 of Mr Pedley's Proof

- then mandate NDSS requirements. Nonetheless, NPPF paragraph 135 f) requires high standards of amenity for existing and future occupants, and reference to the NDSS is contained within a footnote to this.
86. NDSS were published in March 2015 and set out a number of minimum gross internal size requirements that new build dwellings should meet, including overall floorspaces for different sized dwellings and numbers of occupants. The purpose of NDSS and Policy DM7 is to ensure that residents do not live in undersized homes, as part of high-quality design. It is also noted that these specify minimum space areas (my emphasis) and thus should not be a ceiling. Repeated lockdowns due to the Covid-19 pandemic has also highlighted the need for private space within units.
87. The scheme has a mixture of unit sizes from 1 to 3 bedrooms. The 2- and 3-bedroom units meet the minimum floorspace requirements in Table 1 of NDSS and there is no suggestion that the other standards set out in paragraph 10 of NDSS are breached. However, in contention here are 163 proposed 1-bed units. These would meet the gross internal floor area for 1-person occupation but would be breached were 2 people to permanently occupy the unit as the flats would be 46m² and the minimum standard requires 50m². In this regard, 56% of the proposed units would breach this standard and the development would conflict with DM7. That is a considerable proportion.
88. This is not disputed by the appellant, who accepted that NDSS applies to BTR dwellings, but argued that the failure to comply here was nonetheless justified for four reasons. First, because other high quality BTR schemes have been recently built in the City which also breach NDSS standards. Almost by definition, such an argument is nonsensical. NDSS standards can be required by policy, subject to the necessary transition period as has occurred in Newcastle. Policy DM7, which applies to all tenures and house types including BTR schemes, was found to be sound, justified and deliverable in the DAP Examination. Given that NDSS standards are minimum standards that are considered necessary to provide reasonable amounts of internal living space, it stands to reason that schemes with dwellings which do not comply with them have insufficient floorspace.
89. The Forge, a BTR scheme in Newcastle built before the LPA's requirement for NDSS, was highlighted by the appellant as a very popular in-demand scheme. That may well be so, but that could simply be because of its rent levels; the fact that flats in The Forge are in demand may simply mean that they are relatively affordable, but that does not indicate that they have good levels of private living space.
90. Mr Pedley mentions six other BTR schemes across the country that also fail (bar one) to comply with NDSS but are apparently very popular with residents. My same comment applies to those schemes. Additionally, I know nothing about the quantity or quality of the communal space provided in those schemes or of the local planning policies that were assessed when deciding to grant permission for them. That is bar the last one (Example 7), Blackhorse Mills in east London, which apparently has an impressive amount and quality of communal facilities – and, tellingly, actually complies with NDSS.
91. Second, that the aggregate space of all the units would exceed the NDSS requirements in total. I discount that argument because the fact that residents of the 2- and 3- bedroom apartments will have more space than NDSS will not

provide the substantial proportion of the overall residents of the scheme living in the 1-bed flats with a high standard of private living space and therefore overall amenity, contrary to DM7 and to NPPF paragraph 135 f). By a substantial proportion I mean all residents in the 163 1-bed flats who would live in them with someone else. Whilst I accept that some of these flats may well be occupied singly, I must assume that most will be occupied by two people, if only because I consider it impractical, unenforceable and excessively interfering in the residential rental market to try and limit their occupancy by condition to one person, even if the appellant would allow that.

92. Third was the appellant's argument regarding fire lobbies. Buildings over 11 storeys must be provided with sprinklers and hence have no need for a fire lobby at the entrance to flats, but there is no suggestion in NDSS that this enables 4m² of (fire lobby) floorspace to be deleted from the NDSS requirement for such flats. In any case, even if a fire lobby did have to be provided in each flat, it could still form an entrance hall and provide useful private useable space for residents, so this is an inherently weak argument.
93. The appellant's fourth and main argument relates to the alleged unique nature of BTR developments, in particular that residents who occupy them do so because of the communal amenity space provided: that they don't just rent a flat in the building but the building itself and all its facilities.
94. I accept that the communal facilities offered by this BTR scheme would be a factor that prospective occupiers would consider in deciding whether to occupy it. But most people looking to rent a flat in this or any block of apartments are likely to be most concerned with the private space that they would occupy and uniquely control, and so the availability of communal space in the building is a secondary consideration of less importance. That is even more likely if the prospective occupants are intending to work from home, which is increasingly likely these days, where peace and quiet is often desired or required. Indeed, as Chapter 4 of the Urban Land Institute's BLT Best Practice Guide (the BLT Guide, Revised September 2018)⁷ states – written, incidentally, by Mr Pedley himself – in situations where a 1-bed flat is occupied by a couple with a home worker, the 50m² minimum floorspace should be exceeded (my emphasis).
95. For this reason alone, and irrespective of the amount of communal space available to residents in the building, I consider that the failure of the 1-bed flats to meet NDSS to be unacceptable in that all 163 such units would have insufficient and sub-standard amounts of floorspace necessary to provide high standards of amenity for their occupiers. BTR schemes are not exempt from having to comply with NDSS in the City.
96. Having said that, the communal space has its own drawbacks. When the scheme was revised the original 531m² internal communal space was reduced to 277m², as set out in the first and second Design and Access Statements (DASs) (not taking into account the commercial floorspace on the ground floor). But the number of residential units was only cut by 3, from 292 to 289. That suggests to me that adequate communal space was sacrificed in order to produce a better financial return for the overall scheme, which is unsurprising given its current acknowledged marginal viability.

⁷ CD PKL/RP/2/2

97. The 277m² internal communal space is on three of the floors. 152m² would be in the central part of the ground floor accessed from the main entrance to the building facing the Quayside. Either side of this area are shown on the plans two additional units described as 'Residential Amenity/ Commercial': these together comprise the 299m² referred to in the description of the development as 'Class E/Sui Generis' floorspace above. They are shown on the plans as having solid walls separating them from the central 152m² purely 'Residential Amenity' floorspace.
98. I accept that the developer may choose to use these two units as additional residential amenity for occupiers by deciding not to separate them from the central 152m² by solid walls or partitions, which would not require any additional permission because it would be a minor internal alteration to the plans. That would be so even if some or all of this space was to be occupied by, for example, pop-up retail or take-away food concessions also available to members of the public coming into the space.
99. However, the scheme as it stands and as set out in the above development description, allows for these two units to be occupied (and sub-let to) separate uses falling within Class E of the Use Classes Order. If that occurred, these units would be likely to be physically separated from the central residential amenity area, if only because their tenants would require security and control over their own floorspace, even if, for example, there was access between them during set hours. This would be the case if, for instance, they were to be occupied by commercial coffee shops, grocery shops or restaurants.
100. If that were the case, these areas could not be described as communal amenity space for residents, even though residents would be entitled to use them in the same way that the general public would. Given that the latest DAS indicates that this is going to be their use, which is set out in the development description and is figured as providing a rental income in the appellant's viability assessment, I must assume that this could happen.
101. 36m² of communal floorspace would allegedly comprise the lobby area on the 4th floor of the building. That amount of space would clearly be insufficient to provide any meaningfully useful space for a gym or co-working facilities, not least since this lobby would have to act as a fire exit from the building onto City Road.
102. 90m² would be situated on the 11th floor next to a landscaped external area on the flat roof of the eastern spur of the building. It was suggested that this space could accommodate a private bookable dining area. If that was the case, then clearly it would only be available to the person or people who had booked it for a specific function and not residents in general at any one time. It could of course be used as a communal working area or as a gym. But its use for any of these purposes would require an investment in kitchen facilities, desks, furniture or gym equipment, none of which appear to have been set out in any costs plan, which is a concern in view of the appellant's acknowledgement that the scheme is already 'under water' in terms of its viability.
103. The occupiers would also have access to 796m² of external amenity space. In addition to that on the 11th floor flat roof area, this would be provided at 1st floor level by the landscaped podium in the central area between the two spurs of the building, as well as the pocket park next to City Road. In practice the back of the 1st floor podium space would be shaded in the winter for the

majority of the day, notwithstanding that they would meet the BRE guidance (see below), and the areas adjacent to the flats in the spurs seem to be indicated as private amenity areas for those units (which diminishes the 796m²). I also note that the BLT Guide does not advocate northern aspect 1-bed units unless external amenity areas have good solar orientation; the majority of the units facing City Road on all floors of the building would be 1-bed single aspect flats.

104. Of more concern, again, is Mr Pedley's own guidance in Chapter 4 of the BLT Guide that states 6-10m² per dwelling should be provided for shared external amenity space with good solar orientation. As a minimum, according to the Guide, at least 1,734m² should therefore be provided for 289 dwellings: 796m² is considerably short of that. On that basis I can only conclude that the private external amenity space to be provided would be to an unsatisfactory level that breaches such guidance.
105. In terms of other circulation arrangements in the building I note the BLT Guide states that lift lobbies should be naturally day-lit with good ventilation. That would not appear to be the case. The two sets of lifts are not naturally lit and are hidden away at the rear of the building accessed down narrow corridors from the main ground floor frontage of the building.
106. The appellant also argues that BTR developments like this are flexible in that residents can easily and quickly move from, say, a 1-bed flat that is too small for their needs, to a larger flat. In other words, the BTR model is responsive to occupier demands and, in any case, no one is compelled to live here. I appreciate that switching flats may take place relatively quickly if a renter's particular choice is available, certainly compared to selling and buying a flat. But many people will be constrained by their economic circumstances, and hence be forced to live in a 1-bed flat, even if they are a couple and work from home. The needs of such people for sufficient private space are arguably more important than those able to live in 2- or 3-bed units, simply because their options are more constrained. It is therefore even more important that the 1-bed units in the scheme should meet the NDSS minimum floorspace standards.
107. Finally, I cannot help but compare the floorspace of the units and the communal floorspace and facilities available to residents in Blackmore Mills, which Mr Pedley uses as one of his exemplars, with the appeal proposal. I appreciate that the amenity offer in that scheme may be 'exceptional', and that there are 479 apartments there as opposed to only 289 here. But in that scheme, all the units meet NDSS, it has 1,292m² of internal communal facilities including a gym, lounge areas, private dining rooms, and externally a swimming pool and a tennis court. By contrast, more than half the units in the appeal proposal would fail to meet NDSS, there would only be 277m² of internal communal floorspace with an unknown and uncosted amount of facilities, and the external amenity areas boast no such attractive leisure facilities.
108. For these reasons I conclude that the appellant's justifications for failing to meet NDSS, which is a requirement of DAS Policy DM7, are wholly insufficient. Additionally, for all the above reasons, the proposed development would not provide high standards of amenity for its future occupants, contrary to NPPF paragraph 130 f). I appreciate the internal layout of the scheme will have to be redesigned in order to meet NDSS, but that is a reflection of current policy.

Living Conditions – Daylight/Sunlight and Outlook

109. SAQML (not the Council) object to the proposed development on the grounds of sub-standard daylight and sunlight to rooms within the flats at St Ann's Quay and the proposed flats in the proposed building. The evidence concerning this has been re-assessed by SAQML and the appellant using the revised, 2022 edition, of the Building Research Establishment's (BRE) '*Site layout planning for daylight and sunlight: a guide to good practice*' (BR209). This document, and its predecessor version, were written by Dr Paul Littlefair, SAQML's expert witness in this appeal.
110. The parties agree that the guidance within this document is not mandatory and should not be seen as an instrument of planning policy⁸. Although SAQML accept that BR209 advocates a flexible approach in dense obstructed urban situations, it argues that the loss of daylight would be excessive in this case essentially because of the site's openness to the river and to City Road and the cemetery of St Ann's Church on its northern side. The appellant disagrees because the site lies within Newcastle's 'Urban Core', a dense urban area, and it has always been a development site expected to accommodate a substantial building, as documented above.
111. Policy CS14 of the CS requires development to prevent any negative impacts upon residential amenity and, in requiring a good standard of residential amenity, DAP Policy DM23 states that development which would have an unacceptable adverse impact upon residential amenity of existing or future occupants of land and dwellings will not be allowed. DM23 also states that development will be assessed to ensure it will maintain a good standard of daylight, sunlight, outlook and privacy for all existing and future occupants of buildings.
112. As previously stated, NPPF paragraph 135 requires high standards of amenity. NPPF paragraph 129 states that when considering applications for housing, authorities should take a flexible approach in applying policies or guidance relating to daylight and sunlight, where they would otherwise inhibit making efficient use of a site (as long as the resulting scheme would provide acceptable living standards).

St Ann's Quay

113. I inspected several flats (with and without balconies) on several floors of St Ann's Quay that overlook the appeal site to the east at the accompanied site visit, in which I was able to see their deep floor plans. Most of them had a single easterly aspect.
114. The Planning Brief noted the effect of proposed development on St Ann's Quay as an issue and suggests an offset of circa 21m to ensure sufficient separation distance is provided so as not to harm amenity or adversely impact upon daylight / sunlight, and outlook for existing and proposed residents. That separation distance is met by the proposed development, and I am satisfied that while the outlook would change, there would be no loss of privacy and the outlook would not be adversely affected.

⁸ ROTH6 - Daylight, Sunlight and Overshadowing - Statement of Common Ground and Areas of Disagreement dated 17 November 2023, which sets out all the issues on this subject (the SoCG).

115. The figures/measurements contained in the SoCG's corrected Table 1 (Appendix 1) are agreed between SAQML and the appellant. These figures assess, in relation to daylight, Vertical Sky Component (VSC) and Daylight Distribution (DD), and in relation to sunlight, the Annual Probable Sunlight Hours (APSH). It is agreed that these are, in terms of effects on St Ann's Quay residents, the most relevant measurements in terms of whether the guidelines in BR209 are met.
116. To assess the impact on the amount of daylight entering existing buildings, BR209 uses the VSC on the window wall and sets out two guidelines for such VSC:
1. If the vertical sky component at the centre of the existing window exceeds 27% with the new development in place, then enough skylight should still be reaching the existing window.
 2. If the vertical sky component with the new development is both less than 27% and less than 0.8 times its former value, occupants of the existing building will notice the reduction in the amount of skylight, the area lit by the window is likely to appear more gloomy, and electric light will be needed for more of the time.
- 59 out of the 101 relevant windows analysed in St Ann's Quay would meet the VSC guidelines and 42 (42%) would not.
117. BR209 also gives guidance on DD in existing buildings, based on the areas of the working plane which can receive direct daylight before and after. If this area is reduced to less than 0.8 times its value before, then the distribution of daylight in the room is likely to be adversely affected, and more of the room will appear poorly lit. 27 out of the 67 relevant rooms analysed in St Ann's Quay would meet the guidance and 40 (60%) would not.
118. SAQML argue that the retained daylight levels would be unusually low for windows at 3rd and 4th floor levels in St Ann's Quay. 25 windows would have a relative loss of light more than double the recommendation (0.6 or less) and 28 rooms would have a DD impacted more than double the recommended guideline. I have no doubt that the overall effect on daylight to the flats in St Ann's Quay facing east onto the appeal site would be significantly adverse. Undoubtedly, part of this harm is caused by the fact that the proposed building is higher and bulkier than St Ann's Quay itself.
119. For sunlight, BR209 recommends that if the centre of the window can receive more than one quarter of APSH, including at least 5% of APSH in the winter months between the vernal and spring equinoxes, then the room should still receive enough sunlight. If the window would receive less than this, and have a reduction to less than 0.8 times its current value and a reduction of more than 4% of APSH over the year, it would not meet the guideline.
120. In assessing loss of sunlight in this way, BR209 only takes account of windows facing within 90° of due south, but the elevation of St Ann's Quay facing the site is oriented slightly north of due east and would therefore not technically be covered by the guidelines. Of course, if the windows in this elevation were to have been assessed, it would seem likely that many of them would suffer a significant loss of morning sunlight resulting from the proposed building on the appeal site.

121. Rooms facing towards the Quayside do face within 90° of due south but would of course not directly face the proposed development. Predictably, these rooms, apart from one main living room window on the third floor, will continue unimpeded to receive sunlight in accordance with the guidelines. 38 out of 39 relevant affected windows would meet the guidelines and only 1 would not.

Future Occupants

122. Owing to the 21m distance between the new building and St Ann's Quay the outlook of habitable rooms facing west would be satisfactory and there would be no unacceptable impact on the privacy of future occupiers. Equally, there would be no harm to outlook or privacy between the inward facing units in the southern spurs of the building looking across the first floor landscaped podium.

123. The relevant sunlight and daylight guidelines for new buildings are Spatial Daylight Autonomy (SDA) and Sunlight Exposure (SE), in line with BS EN17037 (the EN) and the UK Annex to BS EN17037 (the Annex) that are both referenced in BR209. The figures/measurements for SDA and SE contained in the SoCG's Table 2 (Appendix 3) are agreed between SAQML and the appellant.

124. For daylight, the most relevant measurement in the EN is whether 50% of a room's area would meet the recommended 300 lux. In total, 391 out of the 705 rooms analysed (or 55%) would not meet this guideline; in terms of living/kitchen/diners analysed, 161 out of 288 (or 56%) would not; and 230 out of 417 (55%) bedrooms would not. In terms of the Annex, 106 out of 705 rooms (15%) would not meet the required guidelines, including 80 out of 288 living/kitchen/diners (28%) and 26 out of 417 bedrooms (6%).

125. For sunlight, the BS and BR209 recommend that a space should receive a minimum of 1.5 hours of direct sunlight on the spring equinox with cloudless conditions. In total 283 out of the 705 rooms analysed (or 40%) for this recommendation would not be met.

126. These figures suggest that the levels of sunlight and daylight to a good proportion of the building's apartments would be less than satisfactory. It appears to me that this is because the way in which the building has been designed with its southerly projecting spurs and the layout of the apartments, including on all but one floors many flats with a single northerly aspect.

Daylight/ Sunlight – Conclusions

127. For the above reasons I conclude, based on the number of flats and therefore occupiers that would be affected in both St Ann's Quay and future occupants of the proposed building, that there would be an adverse effect on the living conditions of residents. Consequently, the development would conflict with CS Policy CS14, DAP Policy DM23 and NPPF paragraph 135 in that the affected residents would not have a high standard of amenity in terms of sunlight and daylight that fail to meet the BR209 guidelines.

128. But the site lies within the Urban Core of the City and it has always been earmarked for a significant development, as per the Farrell Masterplan(s) and as indicated in the previous Inspector's decision. I agree with the statement in paragraph 117 of her decision *'that any development at Plot 12 would undoubtedly have an effect on St Ann's Quay, a point acknowledged by SAQML.'* I agree that efficient and optimal use of this development site must occur, as per NPPF paragraph 129 c).

129. However, whilst I would not expect the development to meet all the relevant guidelines in BR209 for the above reasons, I consider that its design, in particular its height and mass, which would be considerably greater than that of St Ann's Quay, means that the numbers of rooms and flats in their entirety that fail to meet the relevant daylight and/or sunlight standards, in both St Ann's Quay and in the proposed building, would be excessive.
130. I consider that a building of a different design, with less height and mass and a different footprint, could be designed for the appeal site which would strike a better balance between achieving acceptable standards of daylight and sunlight for both buildings whilst still making efficient and optimal use of this longstanding development site, the Quayside's 'missing tooth'. In that respect I differ from the previous Inspector's view that the balance of such considerations falls in favour of the appeal scheme. On the contrary, the above reasons demonstrate why it is unacceptable in terms of sunlight and daylight considerations.

Five-year housing land supply (5YHLS)

131. The appellant acknowledges that the Council has a 5YHLS, calculated by reference to the CS's requirements in Policy CS10.⁹ This is because, although the CS was adopted more than five years ago in 2015, its policies were reviewed in March 2020 and were found to not need updating. I agree that the Council can demonstrate a 5YHLS, even if a 5% buffer is still included as a requirement (although this is no longer an NPPF requirement) and without taking account of any cumulative oversupply in the plan period.
132. However, the appellant claims that this review is itself in reality outdated because within key cities like Newcastle local housing need is subject (since January 2021) to a 35% uplift and that, in effect, the Council is trying to game the system by relying on its 2020 CS review, which preceded this change in government policy. It claims that this is a material consideration that should be given considerable weight, because the Council's calculation of HLS does not address this real local housing need figure.
133. I acknowledge that if this 35% 'urban uplift' figure were to be added onto the Council's housing requirement, then the Council would not have a 5YHLS. Clearly the contribution of the proposed development to this updated definition of the City's housing need is a material consideration. However, that does not gainsay the current policy position set out above, acknowledged by the appellant, that the Council can technically demonstrate a 5YHLS. Added to this is the fact that the Council has delivered in excess of 3,300 additional homes above the CS housing requirement up to 2022/23 and the DAP's housing allocations of approximately 4,200 homes (in Policy DM5) provide approximately 100% above the residual CS requirement.
134. Notwithstanding the appellant's acknowledgement that the Council does have a 5YHLS, it nonetheless appears to persist in challenging the likely build-out/delivery rates for three of the sites set out in the Council's 2023 Housing and Economic Land Availability Report: South of Pottery Lane, Cuthbert House and the Scotswood Development Area. Having considered all the detailed evidence put forward by both sides I consider the Council's evidence to be

⁹ Appellant's Closing Submissions, paragraph 121

detailed, thorough and sufficient to show that the build-out trajectories for these sites would be reasonably likely to occur.

135. The appellant also suggests that 450 units should be deducted from net supply because of the loss of student accommodation. But I consider that the Council, in Mrs Verlander's evidence, has adequately explained how losses of student accommodation in addition to planned demolitions of existing dwellings have been taken into account in identified losses within the Council's HLS calculation.
136. I conclude that there is a 5YHLS, given that the 35% 'urban uplift' figure is not a current requirement for the Council according to NPPF paragraph 77 and footnote 42. I address the materiality of the Council's failure to meet this uplifted figure in the Planning Balance below.

Planning and Heritage Balance

Overview of Harm

137. I have found that the proposed building would not be well designed, would not respect its context and would not be worthy of this important site, nor would it be beautiful. Accordingly, it would fail to comply with CS Policies CS16, UC12 and UC13, DAP Policy DM20, NPPF paragraphs 129, 131, 135, 137, 138 and 139, the NDG, and relevant local guidance.
138. I have found that the proposed development would cause a moderate degree of less than substantial harm to St Ann's Church and Sailor's Bethel, and a low degree of less than substantial harm to the Central CA. As such there would be conflict with CS Policy UC14 which seeks to sustain and enhance the significance of heritage assets and their setting and DAP Policy DM16 which requires the conservation and enhancement of the setting of heritage assets.
139. I conclude that the appellant's justifications for failing to meet NDSS, which is a requirement of DAS Policy DM7, are wholly insufficient. Additionally, for the above reasons, the proposed development would not provide high standards of amenity for its future occupants, contrary to NPPF paragraph 130 f).
140. I conclude, based on the number of flats and therefore occupiers that would be affected in both St Ann's Quay and future occupants of the proposed building, that there would be an adverse effect on the living conditions of a substantial number of residents both in St Ann's Quay and in the new building itself in terms of substandard sunlight and daylight. The development would conflict with CS Policy CS14, DAP Policy DM23 and NPPF paragraph 135 in that the affected residents would not have a high standard of amenity in terms of sunlight and daylight that fail to meet the BR209 guidelines.

Benefits

141. The appellant has set out a list of what it considers to be a number of public benefits of the proposed development in Section 7 of Mr Emms's Proof. The Council does not consider all these to be benefits. The ones it does consider to be benefits it attaches less weight to than the appellant.
142. In terms of economic benefits there would be the £49.3m of construction related costs into the local area, supporting 375 direct FTE construction jobs and 440 indirect/induced FTE jobs in the supply chain and related services per

- annum for 2 years. Once occupied the dwellings would generate £1.6m of one-off first occupation spend and £4.9m of ongoing net additional expenditure per annum in Newcastle, with the potential to support 75 new FTE jobs in local shops and services. If the ground floor commercial floorspace were occupied for such this could generate 5-20 FTE jobs and support 2-10 FTE supply chain jobs. I attach substantial weight to these economic benefits because the appeal site is a development site in a highly sustainable location, and the majority of these benefits would realistically occur with respect to any likely well-designed building on the site.
143. However, Council Tax revenue and increased Business Rates would not be a benefit because they would be used to address a corresponding increase in residents' and commercial tenants' demands on local services. New Homes Bonus Payments would be a benefit, to which I attach moderate rather than substantial weight, given that the Council has a 5YHLS. I attach no weight to the alleged 'retention of young professionals and key workers within Newcastle' because there is no certainty that this BTR scheme would be occupied by such people, albeit that may be its intended market.
144. In terms of the social benefits, I attach moderate rather than substantial weight to the delivery of the new apartments within this highly sustainable location, again on the basis that the Council has a 5YHLS. It is very unlikely, for the reasons explained above, that the Council cannot demonstrate a 5YHLS. But if it could not, I accept that this benefit should be given substantial weight.
145. I cannot attach any weight to the appellant's allegation that the proposal will deliver a high quality new residential development, simply because the proposed building would not be well designed, would not respect its context and would not be worthy of this important site.
146. Turning to the environmental benefits, I disagree that the proposal would acceptably fulfil the Farrell Masterplan, introduce a well-designed landmark building or enhance the setting of St Ann's Church for the above reasons. I attach limited weight to the new publicly accessible pocket park because realistically it is only likely to be generally used by occupiers of the development. I attach moderate rather than substantial weight to the 22.5% biodiversity net gain (BNG), on the basis that such a percentage of gain is minimal given that most of the site's footprint would be covered by built development.
147. Improvements to St Ann's Churchyard and St Ann's Stairs would be secured by condition and obligation. The churchyard is in need of maintenance and improvement, including to the retaining wall to City Road and the railings, and as such this would be a significant benefit. The works to St Ann's Stairs, as set out in the revised draft condition agreed on Day 6 of the Inquiry, would only be repairs to the timber treads, handrail and lighting columns (a maximum of £90k), rather than a wholesale redevelopment as envisaged by the Planning Brief. I only therefore attach moderate weight to this benefit. I attach no weight to any of the other S106 contributions, since these are only necessary to mitigate the scheme and make it acceptable in planning terms.
148. Finally, unlike the previous Inspector, I attach no weight to the fact that the appeal site is in public ownership. Homes England is not a joint applicant or appellant and is not providing any funding for the proposed development or taking any part in carrying it out. I am assuming that the scheme is

deliverable, as the appellant suggests, or else they would presumably not have pursued this appeal, but in common with most planning applications, that is a neutral factor, especially since no detailed evidence was given by the appellant regarding the timeframe for the scheme's deliverability or whether it is in fact 'fully funded'.

149. In summary I attach the following weight to the benefits:

- Substantial weight to the economic benefits, the £49.3m construction costs generating a total of 815 construction and related jobs through the build-out, and to the £4.9m of net additional annual expenditure by the scheme's residents. The New Homes Bonus would attract moderate weight, though substantial weight if no 5YHLS can be demonstrated.
- Moderate weight to the social benefits of 289 new apartments in terms of boosting the supply of residential units in the City, although substantial weight if no 5YHLS can be demonstrated.
- Moderate weight overall to the environmental benefits: comprising moderate weight to the BNG of 22.5%, significant weight to the improvement works to St Ann's Churchyard, and moderate weight to the repair work to St Ann's Stairs.

Balance

150. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations determine otherwise. The NPPF makes clear that the planning system should be genuinely plan-led. NPPF paragraph 208 also requires that less than substantial harm to a heritage asset should be weighed against the public benefits of the proposal.

151. Beginning with heritage, any harm to heritage assets should be given great importance and weight, although greater weight can be afforded to the public benefits. The benefits, as outlined above, would comprise public benefits for the purpose of this balancing exercise.

152. Weighed against these public benefits is the moderate degree of less than substantial harm to St Ann's Church and Sailor's Bethel, and the low degree of less than substantial harm to the Central CA, to which I am required to give great weight by NPPF paragraph 205. Section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990 states that special regard must be given to the desirability of preserving listed buildings or their settings. Caselaw has established that '*considerable importance and weight*' should be given to the conservation of heritage assets and that there is a strong presumption against granting planning permission for development which would fail to preserve the setting of a LB.¹⁰

153. The above public benefits, even if substantial weight is given to the delivery of the new housing units including the economic benefits of such, do not outweigh this harm to the designated heritage assets. Indeed, they would not outweigh the harm to the setting of the Grade I listed St Ann's Church on its own, regardless of the harm to Sailor's Bethel and the Central CA. Hence the proposal fails the heritage balance.

¹⁰ *Barnwell Manor [2014] EWHC Civ 137* and *Forge Field v Sevenoaks District Council [2014] EWCA 1895*

154. Added to the heritage harm is the harm to the character and appearance of the area, the failure to achieve NDSS and to provide adequate sunlight and daylight for many residents in both the new building and St Ann's Quay, all contrary to development plan (DP) policies and national policy in the NPPF. The conflict with these important relevant DP policies means that the proposed development would fail to accord the DP as a whole.
155. Notwithstanding that the appellant accepts that the Council 'technically' has a 5YHLS, I accept that its 2020 CS Review does not take into account the 35% 'key cities' uplift to its housing need. If this was taken into account or the Council's assessment of its supply was found to be significantly over optimistic, I accept that the Council could not demonstrate a 5YHLS. But I have factored this into the balance exercise by attributing, as a maximum, significant weight to the above economic and social benefits of the proposal.
156. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise¹¹. In terms of the overall planning balance, the above benefits – the material considerations raised by the appellant – come nowhere near to justifying the grant of planning permission contrary to all the above policies.
157. Even if there was no 5YHLS and some or even all of the above DP policies were to be considered out-of-date, the harm to designated heritage assets would still be contrary to the policies in NPPF Chapter 16, which would provide a clear reason for dismissing this appeal, as per NPPG paragraph 11 d) i).

Conclusion

158. For the reasons given above and having taken into account all other matters raised, I therefore conclude that the appeal should be dismissed.

Nick Fagan

INSPECTOR

¹¹ NPPF, paragraph 2

APPEARANCES

FOR THE APPELLANT: *Paul Tucker KC aided by Constanze Bell (both Kings Chambers) instructed by Harvey Emms called:*

- Nick Riley BA BArch (Hons) PG Dip, RIBA – Board Director, Whittam Cox Architects – Design
- Nick Bridgland MA (Hons), MA, FSA Scot, IHBC, MCIfA – Heritage Director, Lichfields – Heritage
- Russell Pedley BA DipIArch MA RIBA FRSA – Co-Founder and Director, Assael Architecture Ltd – NDSS
- Harvey Emms BA(Hons) MRTPI – Head of Office, Head of Public Sector (North) and Senior Director, Lichfields – Planning & Balance

FOR THE LOCAL PLANNING AUTHORITY: *Anjoli Foster (Landmark Chambers) instructed by Emma Priest, Solicitor, Newcastle City Council (NCC) called:*

- Mike Stowell BA(Hons), BArch, ARB, – Partner and Equity Member of Farrells (London) LLP – Design
- Charlotte Coyne BA (Hons), DipTP, MRTPI – Historic Environment Officer, NCC – Heritage
- Samuel Thistlethwaite BA (Hons), MSc, MRTPI – Managing Director of IC Planning Ltd – Planning & Balance

FOR THE RULE 6 PARTY (ST ANN'S QUAY MANAGEMENT LTD, SAQML): *David Hardy (CMS Cameron Mckenna Nabarro Olswang LLP) called:*

- Peter Mc Guckin BSc BPhil CMLi – Retired Landscape and Urban Designer – Design
- Louise Richley – Director, St Ann's Quay Management Ltd
- Maria Ferguson MRTPI – Managing Director, Maria Ferguson Planning Ltd – Heritage

Although they did not appear to give evidence at the Inquiry, I took into account, in respect of the sunlight and daylight issue, all the evidence of Toby Rogan-Lyons DipServPrac (Director of Neighbourly Matters Team at Lichfields) for the Appellant and Dr Paul Littlefair MA PhD CEng MCIBSE FSLL (Associate Director, Lighting at the BRE) for the Rule 6 Party.

I also took into account in respect of HLS the evidence of Mrs Kathy Verlander BSc DipTP MRTPI for the Council although she did not formally present evidence because the parties all agreed that I could deal with this matter solely by reference to the various written submissions, including those of Harvey Emms for the appellant.

INTERESTED PARTIES:

- Mrs Gail Slater, St. Ann's Quay flat owner and resident
- Mrs Elaine McKeith, as above
- Representatives of Northumberland and Newcastle Society
- Mr Andrew Facer, St Ann's Quay flats owner

End of Appearances List

DOCUMENTS SUBMITTED AT OR SHORTLY AFTER THE INQUIRY

- 2ND INQ 01 – Written submissions of Mrs Gail Slater
- 2ND INQ 02 – Written submissions of Mrs Elaine McKeith
- 2nd INQ 03 – Written submissions of Northumberland and Newcastle Society dated 9 August 2023
- 2nd INQ 04 – The Council’s Opening Submissions including Appearances List
- 2nd INQ 05 – The Appellant’s Opening Submissions including Appearances List
- 2nd INQ 06 – SAQML’s Opening Submissions
- 2nd INQ 07 – Map showing boundaries of Central Conservation Area
- 2nd INQ 08 – Redacted/amended version of Mr Pedley’s Proof of Evidence handed to me on Day 5 of the Inquiry
- 2nd INQ 09 – Updated Appendix 4 (Form & Layout) to Mr Pedley’s Proof showing the whole of Chapter 4 of Urban Land Institute’s: Build to Rent, A Best Practice Guide, edition 2, March 2016
- 2ND INQ 10 – Written submissions of Andrew Facer, owner of two flats in St Ann’s Quay overlooking the appeal site
- 2ND INQ 11 – Additional email related to deliverability of consented scheme at Pottery Lane submitted by Mrs Verlander relating to the HLS issue.
- 2ND INQ 12 – Web page from NCC relating to Central Conservation Area
- 2ND INQ 13 – A4 plan & elevation showing details of fenestration (reveals etc) (Drwg No A-21317) given to me on Day 6 AM of the Inquiry
- 2ND INQ 14 – Agreed proposed Condition 28 relating to St Ann’s Stairs given to me on Day 6 AM of the Inquiry
- 2ND INQ 15 – The Council’s Closing Submissions
- 2ND INQ 16 – The Appellant’s Closing Submissions
- 2ND INQ 17 – SAQML’s Closing Submissions
- 2ND INQ 18 – Signed Supplemental S106 Agreement dated 13 December 2023
- 2ND INQ 19 – Submissions by SAQML relating to revised NPPF dated 22 January 2024
- 2ND INQ 20 – Submissions by the Appellant relating to revised NPPF dated 22 January 2024
- 2ND INQ 21 – Submissions by the Council relating to revised NPPF dated 23 January 2024
- 2ND INQ 22 – Email by the Council dated 23 January querying the Appellant’s approach to HLS
- 2ND INQ 23 – Email response to the above by the Appellant dated 27 January 2024

End of Documents List
