



Appeal Decision

Hearing held on 18 June 2024

Site visit made on 18 June 2024

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2024

Appeal Ref: APP/M9496/W/24/3337477

Marquis of Granby, Hathersage Road, Sickleholme, Bamford, Derbyshire S33 0EB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Marquis of Granby (Peak Park) Limited against the decision of Peak District National Park Authority.
 - The application Ref is NP/HPK/1222/1563.
 - The development proposed is the construction to re-establish an L-shaped building including landmark East elevation of former Marquis of Granby to provide 21 open market apartments and construction of separate terrace of 3 affordable houses with associated car parking and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matter

Whether major development in a National Park

2. The National Planning Policy Framework (the Framework) sets out at paragraph 183 that when considering applications for development in a National Park (NP), permission should be refused for major development other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. Footnote 64 sets out that whether a proposal is major development for the purposes of paragraph 183 is a matter for the decision maker, taking into account its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated or defined. It does not follow that because the appeal proposal is major development as defined in the Planning (Development Management Procedure) (England) Order 2015 that it must automatically be deemed to be major development in a NP.
3. The appeal proposal is a residential development of 21 apartments and 3 terraced dwellings on a relatively small site positioned on a valley bottom. At its maximum height it would be three storeys. The Authority does not suggest that it would have a harmful impact other than with respect to the two matters set out on the decision notice at reasons 2 and 3 and which form the main issues in this appeal. These relate specifically to the impact the proposed development would have on the character and appearance of the area in which it would be located, and to whether there would be adequate provision made for affordable housing. The statutory purposes of NPs are to conserve and

enhance the natural beauty, wildlife and cultural heritage of the NP and to promote opportunities for the understanding and enjoyment of the special qualities of the NP by the public.

4. When assessing whether a NP development is major or not, the bar is set high in that there must be a significant adverse impact on those purposes. Having had regard to the nature, scale and setting of what is proposed on the basis I have set out above, and given the main issues of dispute, in my judgement any impact that arose could not reach the threshold of being considered to have a significant adverse impact on the NP purposes. On this preliminary point I find therefore that the appeal proposal does not represent major development in a NP.

Main Issues

5. The main issues are the (i) the effect of the proposal on the character and appearance of the area, with particular regard to scale, massing and design, and (ii) whether the proposal would make adequate provision for affordable housing.

Reasons

Character and appearance

6. The appeal site formerly accommodated the Marquis of Granby hotel, but all previous buildings have now been demolished. What appears to be the spoils associated with those works have been piled along part of the Hathersage Road frontage and within the site. From views on the approach to the site from the south-east in particular, and also when close to its frontage, these mounds appear as dominant and alien features in the landscape. Although much of the rest of the site is screened by boundary walling and hedging, the wall is showing signs of being in a poor state of repair in parts, which allows some vision through and of the despoiled site. Views into the site can also be taken from the north-west through the gap where the western entrance to the site is located. As a whole, the site as it exists at the present time makes a negative contribution to the character and appearance of the surrounding area, in what in its prevailing form is a rural landscape.
7. The site is within the Derwent Valley character area as set out in the Landscape Strategy and Action Plan 2009. More specifically it falls within the '*Riverside Meadows*' landscape character type which is described at a broad level as a mainly unsettled landscape with occasional farmsteads and some modern development. Although the Authority refers in its reason for refusal to the scale, massing and design of the residential development being wholly out of keeping with the established built tradition and residential character of the Hope Valley, it does not set out any details as to what it considers the character of the valley to be in that respect. Instead, its concerns set out in its Committee Report and Statement of Case relate more closely to matters relating to the scale, massing and design of the proposed apartment building in the immediate surroundings in which it is found.
8. In terms of the block that would provide for the proposed apartments, the development would reinstate the landmark main Marquis of Granby building to its east side. At its western side there would be a building of a matching height and with a north elevation of similar proportions. In between these two

elements on the north elevation would be two large, twin gabled blocks, albeit with a lower eaves height and with accommodation incorporated within their roof spaces. Recessed lobbies and stairwells would link between both each block and the two end buildings. The height, width and overall massing of those two middle blocks along with the links between them would serve to make for a visually imposing development and taken together with their somewhat unremarkable overall design, would give the proposal the appearance of an urban apartment block in an area which is predominantly rural in its character. This impact would undermine the visual positives that would arise from the rest of the built development in particular that associated with the reinstatement of the original main hotel building.

9. Given these factors and the prominent location in which the north elevation would appear opposite the junction of Hathersage Road with Sickleshome, the proposed development would result in significant harm to the character and appearance of the area. Although the development would be set well back into the site, behind a stone wall and with landscaping to the site frontage, the scale, massing and design of the central part of the scheme would remain readily apparent, and dominant, within the street scene. I have had regard to the Landscape Visual Impact Assessment March 2024 (LVIA) submitted with the appeal and do not disagree with the thrust of its findings, including that there would be visual benefits from the proposed landscaping which would be sensitive to the landscape character type. However, even with a compliance with Policy L1 of the Core Strategy 2011 (CS) and Policy DMC1 of the Development Management Policies 2019 (DMP), where they seek to conserve and enhance the landscape, my concerns as to the design of the proposal are not overcome.
10. I acknowledge that the existing built development in the immediate locality, which includes an industrial unit and petrol filling station, cannot be said to be visually sensitive to its immediate surroundings and that there would be a benefit in bringing forward development on a site which has a negative visual impact on the area. However, the presence of the other existing development and the state of the appeal site at the current time are not considerations which would justify the permitting of a new development that would itself cause harm. My attention has also been drawn to the recent Bike and Boot Hotel development which is located nearby to the appeal site. Whilst there are some similarities there are also notable differences in the design approach which affect both its scale, massing and overall impact. I am not therefore persuaded that it is similar in impact to that which would arise from the appeal development.
11. For these reasons, the proposed apartment building would fail to accord with Policies GSP1, GSP2 and GSP3 of the CS and with Policies DMC3 and DMH6 of the DMP where they collectively seek to promote good design and to safeguard character and appearance. There would also be a conflict with the Framework where it seeks to achieve well-designed and beautiful places.

Affordable housing

12. The main parties are in agreement that the appeal site is previously developed land. Having reference to the written submissions and to my own observations during my site visit, I have no reason to take a different view on that matter. That being the case, Policy DMH6 of the DMP is of direct relevance to the

consideration of the development proposal. This policy permits the re-development of previously developed land to dwelling use and sets out two criteria. The second criterion makes reference only to land which is inside or on the edge of a Core Strategy Policy DS1 settlement. Subject to viability considerations, this criterion requires that an element of the housing addresses local need for affordable housing potentially including starter homes or custom or self-build housing provision.

13. Bamford is a DS1 settlement but it has no defined settlement boundary. The main parties agree in their Statement of Common Ground that the appeal site is not inside or on the edge of Bamford. Whilst Bamford railway station is located close to the appeal site, its positioning relative to the settlement was almost certainly dictated by the lie of the land at the bottom of the valley. Aside from the station, the central area of Bamford in which its shops and main facilities are, or were, concentrated is some way away from the appeal site. The settlement is also physically detached from the appeal site, not just in terms of distance but by the absence of a continuous built form and by the intervening fields. I too therefore find that the appeal site is not inside or on the edge of Bamford.
14. That being the case criterion 2 of Policy DMH6 does not apply to the appeal development. On a straightforward reading of the policy, this can only mean that it does not place any policy requirement to provide affordable housing on the appeal site, as previously developed land not inside or on the edge of a DS1 settlement. Otherwise, there would be no logic or purpose in criterion 2 expressly setting out a specific scenario where affordable housing is required on a previously developed site. The Authority considers Policies GSP1, GSP2 and DS1C of the CS to also be relevant to the consideration of affordable housing provision, but none of those policies directly address affordable housing or set out any parameters as to when it would be expected to be provided. That is in contrast to Policy DMH6 which does set out such parameters on a previously developed site such as the appeal site.
15. Policy HC1 of the CS states that provision will not be made for housing to meet open market demand and that housing land will not be allocated in the development plan. It also sets out a number of exceptions where new housing can be accepted. The policy wording is somewhat unclear as to how it should be applied to development that includes both an element of open market housing and affordable housing. But it remains that there is a separate policy which, in principle, permits the redevelopment of previously developed land not inside or on the edge of a DS1 settlement to dwelling use as fully open market housing. Section 38(5) of the Planning and Compulsory Purchase Act 2004 states that in instances where a policy contained in a development plan for an area conflicts with another policy in the development plan the conflict must be resolved in favour of the policy which is contained in the last document to become part of the development plan. Therefore, the conflict should be resolved in favour of Policy DMH6 of the DMP.
16. Discussion also took place at the hearing on viability matters relating to the affordable housing offer that has been made by the appellant. In light of my findings on the development plan position and there being no policy requirement to provide affordable housing as part of the appeal scheme, the matter of whether it would be viable to provide the 3 units offered by the appellant or the 5 units plus £50,000 sought by the Authority becomes an

academic one. That is because, even if it could be demonstrated that a higher offer would be viable, I have found that there would be no policy requirement to provide it at such a level.

17. In conclusion on this main issue, the proposed development, with or without its affordable housing offer, would not conflict with Policy DMH6 of the DMP in terms of there being no necessity to meet with the requirements of criterion 2 of the policy. The decision notice also refers to policies GSP1 and HC1 of the CS, however with regard to the former I have found that the policy does not specifically reference the provision of affordable housing or set out any specific requirements for it, and with respect to the latter the conflict must be resolved in favour of Policy DMH6 of the DMP. For reference, what has been offered would meet the at least 10% provision of affordable housing that is set out in the Framework, so no conflict can be found in that respect either.

Other Considerations

Fallback

18. Planning permission was granted in 2007¹ for the redevelopment of the appeal site to provide thirty five two bed apartments, nine one bed apartments with restaurant, bar, meeting room, leisure and service functions within a hotel and creation of new vehicular and pedestrian access. A number of subsequent applications were made to vary the permission, resulting ultimately in an amended permission² that allows for either 44 non-permanent residential apartments or for conventional hotel accommodation of 126 letting rooms within that approved development. It is common ground between the main parties that a lawful commencement of that permission was made, and that the permission remains extant and capable of implementation at any point in the future.
19. In order to establish whether a fallback position is a material consideration, the courts have set out there should be a greater than a theoretical possibility that the alternative development might take place, or in other terms a real prospect of the fallback being implemented. The appellant states that if this appeal was not to be successful they would return to the extant permission, pointing to the flexibility of the extant scheme which allows for the possibility of 44 non-permanent residential apartments without any restriction on occupation periods, to recent developments in the locality which they consider to be innovative ways to bring forward viable C1 use class development, and to a lack of protection for C1 uses in the development plan.
20. However, having previously maintained that the fallback would be unviable, the appellant has provided nothing substantive to evidence that that it would in fact now be a viable proposition. The fallback would be a different offer than the appeal proposal, as it is restricted by condition to be occupied only by holiday makers and travelling guests, albeit with no restriction on lengths of stays. Even if the 44 non-residential apartments were sold off individually as the appellant suggests would be possible, they could not be sold on an unrestricted basis directly comparable to a C3 dwelling. There is also the matter that the fallback includes the provision of a health spa, banqueting facilities and a restaurant. Therefore, whilst the appellant contends that there

¹ NP/HPK/0506/0454

² NP/HPK/0309/0245

is no material difference in the nature of the use of the fallback and proposed scheme, to my mind the difference in use is material, alongside there being a notable difference in the quantum of development. Those are factors that are likely to impact on the relative viability considerations of the respective schemes.

21. In terms of the other developments referred to, it does not necessarily follow that just because development within the same use class is viable elsewhere in the NP that a specific development within that use class would be viable in other places, especially if its individual characteristics and offer are different. Those developments have also added to the amount of C1 accommodation available in the NP, and there is nothing before me to suggest what level of demand there would be for further such accommodation. The suggestion that the fallback may be built out and then a change sought to C3 use would be a strategy that would carry almost certainly a prohibitive amount of risk unless the C1 use was itself viable, even if current planning policy offers no protection for C1 uses.
22. In conclusion, the appellant has provided no comfort that the previous approved scheme, which would be materially different to the appeal scheme and which they have previously stated would be unviable, would now be viable. This would be a fundamental necessity to support their assertion that they would implement the fallback. I pay further regard to the fact that the appellant has actively pursued C3 development on the site via a number of recent planning applications and this appeal, that they have not provided any substantive evidence of moves taken to explore or recommence the extant scheme other than a very brief reference to a tender package, and that there is no suggestion of interest from any other party in bringing a C1 development forward.
23. Taking all of those considerations together and with the benefit of only very limited evidence to the contrary having been provided, I am not satisfied that there is a real prospect that the extant permission would be recommenced and built out if this appeal were to be unsuccessful. Therefore, I do not afford weight to the matter of the previous permission and the fallback.

Market housing and affordable housing

24. The proposal would bring forward 21 market housing units in the proposed apartment block. The appellant refers to the High Peak Housing and Economic Land Needs Assessment 2022 and the February 2018 Edge Analytics Demographic Forecast which identify a need for new housing in the NP to address potential population decline. There would also be economic and social benefits arising from the provision of new housing, including during the construction period, spend in the economy afterwards and the use of services and facilities such as schools by residents. Furthermore, the appeal site is located in a reasonably sustainable location, close to public transport. In the context that the NP is not subject to housing targets in terms of the delivery of new market housing but that there would appear to be some need for such housing, I afford moderate weight to this benefit.
25. Notwithstanding my findings on the actual policy requirements for affordable housing, it remains that it is proposed to provide three affordable units. This is in the context of what is acknowledged on the decision notice as being an acute shortage of affordable housing. A unilateral undertaking (UU) has been

submitted although the parties are in dispute regarding several aspects of its drafting. I share the Authority's concerns in terms of it being unclear whether the affordable housing would be valued taking into account the effect of the local occupancy restriction, and that there seems to be a certain circumstance whereas those restrictions might be lost. Whilst the Authority has further concern about the enforcing of the deed, my attention has been drawn to another agreement accepted by the Authority which appears to be similarly drafted. There would also be potential to enforce the requirements under the terms of any planning permission granted and the Authority has suggested a condition to that effect.

26. The affordable housing provision goes beyond what is required and would be a clear benefit of the scheme. However, my reservations about some aspects of the UU submitted and the implications those could have on the long term retention of the dwellings as affordable housing mean that I afford this benefit moderate weight.

Biodiversity and sustainable buildings

27. The proposal would bring forward substantial biodiversity benefits, with a biodiversity net gain of 241% net gain in habitat units and a 611% net gain in hedgerow units. This would accord with the aims of Policies DMC11 and DMC12 of the DMP. A Sustainable Construction and Energy Assessment sets out that the proposal would seek to achieve the highest possible standards of sustainable construction including carbon reduction and water efficiency, which would accord with Policy CC1 of the CS. These are matters which offer moderate weight in favour of the proposed development.

Planning Balance and Conclusion

28. Due to its scale, massing and design the proposed apartment building would cause significant harm to the character and appearance of the area. The landscaping benefits, including the redevelopment of a site which detracts from the character and appearance of the area would not outweigh this harm. The moderate benefits associated with the provision of housing, both market and affordable, biodiversity and sustainable construction also would not outweigh this harm.
29. The proposed development therefore fails to accord with the development plan taken as a whole, and there are no material considerations to indicate that a determination should be made otherwise than in accordance with the plan. Accordingly, the appeal should be dismissed.

Graham Wraight

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

David Manley KC – Kings Chambers

Rawdon Gascoigne – Emery Planning

Caroline Payne – Emery Planning

Peter Milner – Milner Commercial

Gary Holliday – FPCR

FOR THE LOCAL PLANNING AUTHORITY:

Adam Maxwell – Development and Enforcement Manager

Sarah Welsh – Policy Planner

Joanna Bunting – Senior Solicitor

Russ Porter – Porter Planning Economics