
Appeal Decision

Site visit made on 4 February 2025

by **F Harrison BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 25 February 2025

Appeal Ref: APP/X1355/W/24/3355113

**Friars Oak, Mill Farm Road, Hamsterley Mill, Rowlands Gill, County Durham
NE39 1NW**

- 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 Peter and Caroline Chapman against the decision of Durham County Council.
 - The application Ref is DM/24/01516/FPA.
 - The development proposed is the erection of a residential dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development above, removing words that are not acts of development, has been taken from the application form. A revised National Planning Policy Framework (the Framework) was published on 12 December 2024. Both parties were given the opportunity to comment on the changes which I have taken into account, and I have determined the appeal having regard to the revised Framework.

Background and Main Issues

3. The proposal is for a self-build and is exempt from providing Biodiversity Net Gain (BNG). As such, it is necessary for any planning permission to incorporate a means of ensuring that the proposal is constructed in the context of the Self-Build and Custom Housebuilding Act 2015 (as amended) (SBCHA) in order to make the proposal acceptable. The appellant has submitted two signed and dated unilateral undertakings (UU) which I will consider later in my decision. I have also taken into account comments from the main parties on this matter.
4. With this in mind, the main issues are:
 - whether the requirements of BNG are relevant to the proposal and, if so, whether such requirements are met;
 - whether or not the proposal would be in an appropriate location, having regard to the Council's spatial strategy;
 - the effect of the proposal on highway safety; and
 - the effect of the proposal on the character and quality of the landscape, including ancient and semi-natural woodland (ASNW) and trees.

Reasons

Biodiversity

5. For the proposal to qualify for an exemption from mandatory BNG, it is necessary to secure the development as a self-build. While a planning condition is suggested to require the proposed dwelling to be occupied by the person who designed and built it, this would not be enforceable, and thus could not be imposed. The appellant has submitted two UUs seeking to ensure that the proposed development would be a self-build rather than market housing.
6. The UU dated 28 January 2025 (the first UU) is flawed, not least because the drafting is not effective, and it would not do what it is supposed to do. It has also not been correctly executed because it does not identify the owner's address and as such, it is not capable of being enforced under the terms set out in section 106(3) of the Town and Country Planning Act 1990 (TCPA). Consequently, it does not meet the provisions of section 106(1) of the TCPA and there are no powers to discharge it under section 106A. The Council are not therefore bound by the first UU and do not have to enforce it, and in any event, this would be a matter between the Council and the appellant. The first UU therefore carries no weight and is not material to my decision.
7. A second UU dated 11 February 2025 (the second UU) resolves the flaws in the first UU. It contains an address of the owners, an occupation for the witness and removes some erroneous text. The appeal site is part of land registered under title number DU348329 which has a mortgage. The mortgagee has not been included in the second UU. The Council contend that it is necessary for the mortgagee to be party to the deed.
8. As set out at Recital (D) of the second UU, the appellants indicate that while there is currently a mortgagee for the whole of the land within the appellants' ownership boundary, they intend to move from their current property at 24 Mill Farm Road into the appeal development which will require the sale of No 24. At the point at which the UU commences, in other words when the appeal development is occupied that property would be mortgage free. As such, when the deed commences, the mortgagee would fall away and would have no interest in the land. In these circumstances, I am satisfied that the mortgagee would not be required to enter into the obligation.
9. However, TCPA section 106(3) provides that a planning obligation is enforceable against the person entering into the obligation and any person deriving title from that person. In other words, a planning obligation should 'run' with the land. Upon sale of the whole or part of the land the obligation will automatically be binding on successors in title of the original parties to it. It follows that an obligation will not be enforceable against successors in title of those who were not a party to it.
10. Taking this into account, in a scenario where the appellants do not do what they intend and possession of No 24 were to fall to the mortgagee, as they are not party to the obligation, any successors in title could implement an extant planning permission at the appeal site without being bound by the planning obligation. In these circumstances the second UU would not deliver a self-build, and the proposal could become market housing. While this in itself would not result in any harm, a market home is not exempt from BNG. While the risk of the above scenario happening may be low, and is not what the appellants intend, there is still

a reasonable prospect that it could occur. In my mind, this creates some uncertainty that the second UU, in all eventualities, would secure the delivery of that which is promised effectively. Because of these uncertainties, the second UU would not be effective, carries no weight and is not material to my decision.

11. Policy 41 of the County Durham Plan (2020) (CDP) includes a requirement that proposals minimise impacts on biodiversity by retaining and enhancing existing biodiversity assets and features and provide net gains for biodiversity. No minimum percentage net gain is specified. The Ecological Impact Assessment and Bat Activity Survey concludes that the provision of one in-built bat box and additional tree planting would give a small net biodiversity gain over the existing site. In doing so the proposal would accord with CDP Policy 41 and the provisions of Framework Paragraph 187 that seeks a net gain in biodiversity. However, while the proposal would provide a better-quality natural habitat than there was before development there is no clear indication that this would meet the 10% BNG statutory requirement.
12. To conclude on this main issue, the requirements of BNG are relevant to the proposal and it has not been demonstrated that requirements have been met. The proposal would therefore fail to meet the statutory provisions of Schedule 7A of the TCPA (as inserted by Schedule 14 of the Environment Act 2021) requiring development to deliver a BNG of 10%.

Location

13. CDP Policy 6 recognises that future opportunities may arise for additional development and sets out the circumstances in which development on unallocated sites may be acceptable. Hamsterley Mill does not have a settlement boundary. In these circumstances the development of sites outside the built-up area but well related to a settlement will be permitted subject to several criteria. The supporting text to this policy explains that the physical and visual relationship of the site to the existing built-up area will be a key consideration when assessing whether a site is well-related to a settlement.
14. The appeal site is adjacent to the rear gardens of properties that front Lodge Close within the main built-up area of Hamsterley Mill. Even though these gardens are deep and despite the woodland setting and any protection afforded to trees within the Hamsterley Mill Estate, the appeal site has a physical relationship with the main built-up area. In coming to this view, I have taken account of the shared boundary between domestic curtilages and the continuous pattern of development of large, detached houses set within generous plots. Although the appeal site cannot be seen from the A694 on approach to the main built-up area of Hamsterley Mill, I observed the properties located on Lodge Close which are on higher ground from several vantage points within the appeal site. As such, the appeal site also has a visual relationship with the settlement.
15. Within this context, Mill Farm Road creates a gradual transition between the edge of the main built-up area of Hamsterley Mill to the west and the more densely wooded land to the east. Consequently, the appeal site does not have the characteristics of the open countryside and is neither physically nor visually disconnected from the built-up area.
16. Mill Farm Road is an adopted single carriageway road with a speed limit of 20 miles per hour. There are no footpaths but there are wide grass verges in places

where pedestrians could move safely onto, should there be a passing vehicle which would not be travelling at speed. In addition, the route is well lit by regular streetlights. It would provide a convenient route to the A694. From the junction with the A694, for those that would choose to walk, it would be a short distance on a lit footpath to the nearest services at the Lintzford Garden Centre. There is also a footpath for the majority of the short route to the nearest bus stop.

17. Notwithstanding that Hamsterley Mill itself has limited services and facilities, and while opportunities for sustainable travel patterns would be limited, they would nevertheless be sufficient for the scale of development proposed. Future occupiers would not be solely reliant upon private vehicles and the proposal is located such that it provides appropriate, direct routes for walking and bus access.
18. The proposal would introduce a contemporary dwelling at the site which would inevitably change the character and appearance of the area. However, the scheme would respond appropriately to the site's context with regard to materials and architectural approach. Owing to the generous plot size of No 24, its subdivision would ensure that the original vision for the area of quality dwellings in a woodland setting would be maintained.
19. Therefore, I conclude that the proposal would be in a suitable location, having regard to the Council's spatial strategy and would accord with CDP Policies 6 and 21, which amongst other things, require development on unallocated sites to be well related to a settlement, have good access by sustainable modes of transport with clear links to existing services and facilities together with existing routes for the convenience of all users. Given my findings above, CDP Policy 10 which relates to development in the open countryside has not been determinative.

Highway safety

20. The appellant's Transport Note (TN) indicates that the proposal is predicted to generate approximately two arrivals and two departures across a typical day. These trips would be spread across the day, equating to an average of approximately one new arrival or departure every three hours. This would be in addition to existing vehicle movements along Mill Farm Road which are estimated to be 26 vehicles across a 12-hour period. The Council have not disputed the contents of the TN and I have no clear reason not to take its findings into account. Consequently, existing traffic flow along Mill Farm Road is very light and the proposal would not generate an unacceptable increase in traffic.
21. While the road is not wide enough for two cars and the grass verges are generally demarcated by large stones, it is a no through road, therefore vehicles would be travelling at a slow speed and there is reasonable visibility with intermittent passing places for vehicles and a turning area opposite No 24. Pedestrians and any other users of the route would be able to safely move onto the wide grass verges if there was a passing vehicle. Notwithstanding that interested parties have drawn my attention to an incident involving a bin lorry and a wooden barrier, the TN has reviewed the last five-year personal injury collision data which shows there have been no recorded accidents either along Mill Farm Road or at its junction with the A694.
22. Interested parties are concerned with highway safety which I have carefully considered. However, Framework Paragraph 116 states that development should only be prevented or refused on highway grounds if there would be an

unacceptable impact on highway safety or the residual cumulative impacts on the road network would be severe. Based on the evidence before me, even taking account of additional trips by delivery vehicles to the site, the appeal scheme would not generate an unacceptable increase in journeys to the extent that it would adversely affect highway safety or have a cumulatively severe impact on the road network.

23. The Council indicate that all new developments over five dwellings should be served by a 5.5 metre (m) wide highway, and it is suggested that this guidance should be applied to the appeal scheme. However, and irrespective of the number of existing dwellings served by Mill Farm Road, it has not been clearly shown that the provisions of the highway design guide should be applied to a scheme for one dwelling or that it is appropriate to consider the cumulative circumstances taking account of existing dwellings accessed from the road.
24. It is also suggested that if the appeal scheme were to be allowed, it would set an undesirable precedent for further similar residential development accessed from Mill Farm Road. Notwithstanding that dwellings along this road are located in generous plots, they vary in shape and topography, and as such it is likely that some may not be capable of being subdivided in the same way as the appeal scheme proposes. Accordingly, I do not find that there is a reasonable prospect of similar development being repeated nearby, to the extent that the cumulative effect would be detrimental to highway safety.
25. To conclude, the proposal would not be harmful to highway safety and would accord with CDP Policy 21 which includes a requirement for vehicular traffic generated by new development to be safely accommodated on the highway network. As I have not found the appeal site to be within open countryside and since it does not relate to a permanent rural worker's dwelling CDP Policies 10 and 12 are not determinative in this appeal.

Landscape and trees

26. The appeal site accommodates a number of individual trees that I observed to largely be in a reasonable condition and form which currently contribute positively to the woodland setting of Mill Farm Road and the wider area more generally. The site is adjacent to an area of ASNW that is also subject to a Tree Preservation Order (TPO). For development affecting ancient woodland Natural England advise, amongst other things, that notwithstanding any root protection zone required, a buffer zone of at least 15m between a development and ASNW should be designed into the layout plan where possible, with the view to ensuring that the ASNW is buffered from any remaining possible impacts and that there should be no loss or deterioration to an irreplaceable habitat.
27. The Pre-Development BS5837:2012 Arboricultural Impact Assessment Report (AIA) does not cover the entire red edge site but states at paragraph 2.4 that there are thirty-seven significant individual trees, and four groups within influence of the proposal. Some of the trees surveyed are beyond the boundaries of the site, and this includes trees within the ASNW nearest to the shared boundary. Given the location of the proposed dwelling and the coverage of trees surveyed I am satisfied that the scope of the survey and resulting report is sufficiently robust.
28. From my observations and the AIA Tree Protection Plan (TPP) there are no trees within the ASNW close to the site boundary and no trees from within the ASNW

overhanging the northern boundary of the site. However, the rooting zones of a group of trees (G2-C2) partially extend into the appeal site. The site is currently in use as a grassed domestic garden. In the proposed development, the Council indicate that the dwelling would just be within the 15m buffer zone, and the proposed site plan does not show any development on the remaining land between the ASNW boundary and the proposed dwelling. Taking this into account, the extent of the incursion into the buffer zone would not have a significant adverse effect on the ASNW given that land would remain as domestic garden and so the proposed development would not have significant effects beyond that already experienced.

29. While the Council have concerns that the area between the proposed dwelling and site boundary with the ASNW could change to a more intensive domestic use of outdoor amenity space this is not supported in the evidence, nor has it been clearly articulated what a more intensive use of amenity space would entail. It is my view that the activity within the buffer zone would not be substantially different in scale or nature to the current circumstances and an adequate buffer would be provided between the ASNW and the proposed dwelling to avoid conflict. Furthermore, the TPP has plotted the approximate predicted growth of future tree canopies, which shows no further incursions into the site from the nearest trees in the ASNW. Consequently, the proposal would not result in an adverse impact on the ASNW and so no ASNW would be lost or degraded.
30. There is no substantiated evidence that the proposal would erode the ecological interest of the ASNW or the Pontburn Wood Local Wildlife Site, as such no harm would arise to these qualities of the landscape. Moreover, the proposal would have a negligible impact on bat and bird populations with the imposition of appropriately worded planning conditions. Therefore, the ecological value of the site and surrounding area that contributes positively to the character and quality of the landscape would not be diminished.
31. It therefore follows that nature conservation interests as part of the special qualities of the Area of Higher Landscape Value (AHLV) would be conserved, and no harm would arise to the experience of the landscape as a consequence. The site is generally enclosed and in any event the proposal would be seen in the context of other dwellings. As such I concur with the Council that in all other respects, the proposal would not have an unacceptable effect on the AHLV, including in elevated views from Pontburn Viaduct.
32. Several individual trees within the site boundary are proposed to be removed, none of which are subject to a TPO. The AIA identifies T20 and T21 as category U trees in very poor condition and unsuitable for retention. While T29 is a category B tree, owing to its height and location it is not prominent beyond the immediate locality, public views are limited and as such it has a relatively low amenity value. The remaining trees to be removed are category C trees of low quality and value. While these trees are identified as having a useful life expectancy of more than 20 years and are of some value, the relevant British Standard indicates that category C trees should not be allowed to affect site layout.
33. The Council is concerned about the loss of the trees at the site's eastern boundary with Mill Farm Road which are said to collectively as a group have a high woodland amenity. However, these trees have not been categorised as a group and I have no clear reason to come to a different view and find that these trees

form cohesive arboricultural features either visually or culturally. Despite the location of T36, T35 and T34 adjacent to Mill Farm Road, owing to their poor structural condition and form with broken branches in the crown and taking account of their limited public visibility beyond the immediate locality the amenity value of these trees is low.

34. The AIA concludes that the loss of trees at the site represents a minor initial impact on the site's tree stock. New tree planting is proposed at a ratio of three to one using native species as compensation for the tree removals. While the loss of trees is regrettable, in time, the replacement tree planting and landscaping would ensure that the site continues to contribute positively to the woodland setting of Mill Farm Road and the character and quality of the surrounding landscape.
35. It has been demonstrated that the proposal could be undertaken without causing harm to the retained trees and a condition could secure the maintenance of newly planted trees. Notwithstanding what is shown on the plans with regard to replacement planting, a condition could require the submission of a planting schedule to ensure appropriate tree planting takes place and is in line with the mitigation proposed in the AIA which says that one standard tree and two whips would be planted for every tree removed. I have given careful consideration to local residents' comments who value the trees on the site, but sufficient justification has been provided to support the removal of the trees which will be mitigated through new tree planting.
36. Overall, I conclude that the proposal would not harm the character and quality of the landscape, including ASNW and trees, and would accord with CDP Policies 39 and 40. Amongst other things, these policies require development to conserve the special qualities of AHLV and not result in the deterioration of ancient woodlands. Proposals are required to maintain adequate stand-off distances between woodland and development to avoid conflict and where trees are lost, suitable replacement planting is required.

Other Matters

37. The appeal site is proximate to a Grade II listed building known as Mill House, an eighteenth-century farmhouse with nineteenth and twentieth century alterations. The special interest and significance of this asset primarily stems from its architectural interest and associated appearance, including sandstone rubble with ashlar dressings and quoins. It's setting includes the open garden to the front and the verdant woodland setting of the streetscape within which it is located, including the appeal site. Mill House is set back from the road which is also afforded some screening from the appeal site by tree planting, as such there is generally a physical and visual separation from the appeal site with the architectural interest of the Grade II listed building.
38. There is also the Grade II listed Pontburn Viaduct nearby, a railway viaduct built for the Derwent Valley Branch of the North Eastern Railway, now part of the Derwent Walk. Its significance includes the architectural style and associated appearance and historic interest, comprising wide round arches on tapered piers. Owing to the height of the asset it is prominent from numerous vantage points in the wider area, which makes a valuable contribution to its significance. This includes its woodland setting and the appeal site. Nonetheless, the appeal site is

physically and largely visually separate from the asset, which is not directly experienced from the appeal location.

39. Given the location, extent and nature of the proposal in relation to these listed buildings, I consider that the settings of these designated heritage assets would be preserved and the contribution they make to the assets' significance would not be harmed. This would meet the requirements of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and the provisions in the Framework regarding the conservation and enhancement of the historic environment. I note the Council raised no concerns in this respect either.

Planning Balance and Conclusion

40. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. I have not found any harm with regard to the proposal's location, highway safety or its effect on landscape and trees. While the proposal would accord with the development plan, policy compliance on these matters attracts neutral weight, weighing neither for nor against the proposal. I will now consider whether there are material considerations that would indicate that my decision should be made otherwise than in accordance with the development plan.
41. In view of the shortcomings of the second UU, the self-build status of the proposal would not be secured. The proposal therefore falls to be considered as a market dwelling, and my decision has been made on this basis. While the scheme would deliver some gains to biodiversity in accordance with the development plan, it has not been demonstrated that it would deliver the mandatory provision of a BNG of 10%, in line with the statutory provisions of Schedule 7A of the TCPA (as inserted by Schedule 14 of the Environment Act 2021). Given the nature and scale of the proposal, I give this harm moderate weight.
42. The positive contribution the scheme would make to the supply of housing attracts limited weight given the scale of the proposal and the Council's housing land supply position. There is no clear evidence that the proposal's sustainable design and construction would deliver over and above what is already required by policy or building regulations and so this would be a neutral matter.
43. The proposal would result in some benefits, but it would also cause harm. Weighing the two up is a matter of planning judgement. In this case, the adverse impacts of granting planning permission would outweigh the benefits of the delivery of one dwelling. Accordingly, for the reasons given above, even with the identified compliance with the development plan, read as a whole, the material considerations indicate that this decision should be made otherwise than in accordance with it. Therefore, I conclude that the appeal should be dismissed.

F Harrison

INSPECTOR