

APPEAL BY RENEW LAND DEVELOPMENTS LIMITED AGAINST THE DECISION OF THE COUNCIL TO REFUSE OUTLINE PLANNING PERMISSION FOR THE ERECTION OF UP TO 128 DWELLINGS AT TADGEDALE QUARRY, MUCKLESTONE ROAD, LOGGERHEADS

<u>Application Number</u>	15/00015/OUT
<u>Recommendation</u>	Approval subject to prior securing of various planning obligations
<u>LPA's Decision</u>	Refused by Planning Committee 12th January 2016, following site visit
<u>Appeal Decision</u>	Appeal allowed and planning permission granted
<u>Costs Decision</u>	Application for a partial award of costs against the Council - refused
<u>Date of Appeal and Costs Decisions</u>	22nd March 2017

The appeal decision

The full text of the appeal decision is available to view via the following link
<http://publicaccess.newcastle-staffs.gov.uk/online-applications/plan/15/00015/OUT>

(as an associated document) and the following is only a brief summary.

The Inspector concludes that the main issues in this case are:

- i. Whether the proposed development would be sufficiently accessible, by a choice of means of transport, to jobs and services in the surrounding area;
- ii. Whether sufficient information has been submitted regarding ground conditions to demonstrate that the site is suitable and deliverable for housing development as proposed; and
- iii. The balance, having regard to relevant national and local policies, between any benefits and any harm which may arise from the proposal.

In allowing the appeal, the Inspector makes the following comments:

Policy context

- The proposal would conflict with Saved Policy H1 of the Local Plan (LP) and Policies SP1 and ASP6 of the Core Spatial Strategy (CSS).
- The Council has accepted that it can only demonstrate between 1.90 and 3.97 years supply of specific, deliverable sites for housing development. In such circumstances, paragraph 49 of the Framework requires that relevant policies for the supply of housing should not be considered up to date. As they guide and restrict the locations in which housing should be developed, Saved Policy H1 and Policies SP1 and ASP6 all constitute relevant housing policies in this context.
- Furthermore, the village envelopes referred to in Policies H1 and ASP6 were originally defined in the context of a Plan which was not intended to meet housing needs beyond 2011. The lack of a 5 year land supply indicates that they are incompatible with the aim set out in the Framework of boosting significantly the supply of housing. The limit of 900 dwellings in Policy ASP6 is not based on any up to date assessment of housing needs. As they restrict housing development in some settlements and prevent others from expanding, irrespective of the sustainability impacts of individual proposals, H1 and ASP6 are at odds with the Framework and limited weight is attributed to them.

- Policy SP1 of the CSS also forms part of a strategy which the Council has indicated is undeliverable however it does not preclude steps being taken to boost the supply of housing outside the urban areas. Moderate weight is attributed to this Policy.
- As relevant housing policies are out-of-date, paragraph 14 of the Framework advises that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole.
- The proposed Stoke-on-Trent and Newcastle-under-Lyme Joint Local Plan is at a very early stage and it carries very limited weight.
- The Framework stresses the importance of neighbourhood planning to local communities. However, it is likely to be some time before the Draft Loggerheads Neighbourhood Plan completes its statutory processes. Due to its early stage it carries limited weight.

Transport accessibility

- The appeal site is located just outside the village of Loggerheads which is designated as one of the 3 key rural service centres in the district. The village centre provides a Co-op food store and several other services.
- Whilst the walking route to the village centre crosses several highways, except for the A53 these are not sufficiently busy to present substantial barriers to pedestrian movement. To facilitate the crossing of the A53, a new pedestrian crossing and speed reduction measures would be provided. Whilst there are gradients along the route from the site to the village centre they are not excessive. The route would also benefit from a proposed pedestrian refuge and link to the proposed dwellings at the southern end of the appeal site, and adequate lighting and footways. Cycling would also be a practicable alternative for trips from the site to various locations in the area.
- A large proportion of children living within the proposed dwellings would be likely to use St Marys CE Primary School due to their location within its catchment area. Whilst the route to this school along Rock Lane is pleasant when the weather is good, it is also unlit, isolated and poorly surfaced in places and involves crossing Eccleshall Road. Whilst the 'walking bus' may be re-instated this would rely on various factors such as the availability of volunteers.
- However, it is noted that a high proportion of the pupils of St Marys CE Primary School currently travel from outside its catchment and a large proportion of these trips are likely to be by motorised transport. Trips from the appeal site to the school would be likely to be shorter than many of the journeys made by out-of-catchment children.
- All services within the village would be closer to the dwellings than the distance of 2km referred to in Manual for Streets and identified as a 'preferred maximum' for schools in the Institution of Highways and Transportation document 'Guidelines for Journeys on Foot'. The distances are indicative only and no guidance concerning walking distances to services has been set out in national planning policy since the former Planning Policy Guidance 13: Transport was replaced in 2012 and even that did not set firm thresholds.
- None of these points mean that these documents are immaterial to the decision and the references made to them are noted.
- In terms of access to services such as bulk food and comparison goods shopping, most evening entertainment, secondary and further education and hospital visits, occupiers of the proposed development would rely on trips outside Loggerheads. However, there is a range of food shopping available only about 8km away at Market Drayton and many shopping and other services available both there and in Newcastle town centre, to and from which there are regular daytime buses.
- Occupiers of the proposed development would also, however, rely heavily on daily commuting trips to work locations outside Loggerheads. The length of bus journeys to many employment locations combined with the walk at the beginning and end of each day is likely to discourage bus use.
- Whilst the Framework Travel Plan is likely to reduce single car occupancy commuting to some extent, its effects in this regard are likely to be limited.

- In summary, the proposal would be sufficiently accessible to a range of services and would reduce reliance of St Marys CE Primary School on out of catchment children. It would also, by providing a safer and more convenient pedestrian crossing across the busy A53 close to Loggerheads village centre, help encourage walking within the village. However, its heavy reliance on private car use for daily commuting trips, together with the distance likely to be covered by these, lead to the conclusion that it would conflict to some extent with the provisions of Policy SP3 of the CSS and the Framework related to this matter.

Ground Conditions

- Much of the appeal site constitutes a former sand and gravel quarry which was used for landfill between the 1930s and 1990s.
- Interested parties have set out a case that the proposals are based on a lack of understanding of the extent and nature of contamination within the site. The Environment Agency (EA) indicates that it has no objections in principle to outline planning permission being granted subject to conditions. Given its role as a statutory consultee with a remit covering land contamination issues, the advice of the Agency must carry substantial weight.
- Although the EA raised concerns about the Appellant's Phase II Geo-Environmental Site Investigation, their concerns related to whether the information was sufficient to justify the discharge of its recommended conditions, rather than to the question of whether outline permission should be granted. The fact that the EA considers it necessary to impose conditions does not indicate that the development would cause excessive risk to the environment.
- Further risks to the delivery of the proposed development have been raised, including the extensive works that will be required and the costs of those works, but none of the points mean that the proposal is not deliverable in principle. It is considered likely that some of the development at least on the southern part of the site where less re-contouring would be required could be completed within 5 years of outline permission being granted.
- Sufficient information has been submitted regarding ground conditions to demonstrate that the site is suitable and deliverable for housing development as proposed. The proposal would not conflict with the development plan in relation to this matter and would be consistent with the relevant provisions of the Framework and PPG.

Other considerations

- The Council has questioned how much of the site satisfies the definition of previously developed land (PDL) in Annex 2 of the Framework. The transport depot appears to fall within the definition in annex 2 and there is little evidence to show that the housing needs of the Borough can be met without greenfield sites being developed. The proposal as a whole would not be inconsistent with the encouragement given to the re-use of PDL in the Framework and Policy SP1 of the CSS.
- The Parish of Loggerheads Housing Needs Assessment (HNA) identifies that the permitted potential supply of housing in Loggerheads equates to 9.8 years of demand. However the Framework requires housing land supply issues to be assessed over a housing market area as a whole i.e a much broader area.. Whilst the HNA refers to housing projections for the Borough, both these and the HNA will be subject to further assessment as the proposed Joint Local Plan and Loggerheads Neighbourhood Plan progress. The findings of the HNA do not outweigh the shortage in the 5 year supply which is identified within the Borough.
- The development would generate substantial traffic movements however there is no substantive evidence that there would be resultant harm to highway safety and the proposal would lead to the removal of movements of hgvs associated with the current transport depot use..
- The eastern edge of the appeal site can be seen from the grounds of the Grade II Listed Building at White House Farm, however this is a considerable distance to the east of the site and mature landscaping and other buildings exist along the boundary

of the site. As a result, the proposal would not adversely affect the setting of White House Farm.

- With the exception of its south eastern tip, the boundaries of the site are not contiguous with the current built up area of Loggerheads. In plan form the site would protrude notably into the countryside from the existing settlement and the proposal would have an urbanising effect. However, it would secure the removal of the HGV yard and buildings and any permission would be subject to approval of details of design, layout and landscaping. The proposal as a whole would have a neutral effect on the character and appearance of the area.

Planning obligation

- The submitted planning obligation includes provisions relating to affordable housing, open space, education and sustainable transport.
- The affordable housing, open space and education elements satisfy Regulation 122 of the Community Infrastructure Levy Regulations . The education contribution would also comply with Regulation 123.
- The obligation also requires the owner to pay a sum of £6,300 to Staffs County Council to cover the costs of monitoring the submitted Travel Plan. The submission of reports demonstrating progress against targets set out in the Travel Plan can be required by condition and the highway authority activities such as those required to monitor reports would be part of its normal functions. This element does not satisfy the test of being necessary to make the development acceptable in planning terms set out by Regulation 122.
- The obligation also requires the owner to pay a sum of £5,000 to SCC to be used for the provision of access to the primary school by sustainable modes of transport which is an important part of the overall planning balance and this element of the obligation would meet the Regulation 122 tests.
- The obligation also requires the owner to pay to the County Council a County monitoring fee of £437.50. It is not clear how this money would be spent on activities which fall outside the County's normal monitoring functions and therefore the Inspector was not satisfied that it would meet the Regulation 122 tests.

Planning balance and conclusion

- The proposal would make a substantial contribution of up to 128 dwellings to the housing land supply and as a result would make a notable contribution to the Government's objective of significantly boosting the supply of housing, within a district which currently lacks a 5 year deliverable supply of sites.
- There is no substantial evidence that the shortfall in the Council's housing land supply will be addressed in advance of the proposed new Joint Local Plan which is unlikely to be in 2019. Any large sites brought forward via the Local Plan process may also have substantial 'lead in' timescales. These points emphasise the benefits of bringing forward the appeal site at the current time.
- 25% of the dwellings would be affordable which would make a substantial contribution to meeting the need for such housing in the Borough. It could also help to meet the needs of households in Loggerheads. The proposal could contribute to providing a mixed and inclusive community.
- Substantial weight is attributed to the contribution that the proposal would make to widening the choice and availability of housing in the area.
- Limited weight is attributed to the increase in household retail expenditure which is likely to be modest compared to overall expenditure flows. Construction jobs and spending is attributed limited weight as they would be for a temporary period.
- The proposed development would make a notable contribution to pupil numbers in local schools but there is no evidence that the schools would otherwise be unviable so limited weight is attributed to this.
- The proposed development would result in the further investigation and remediation of a contaminated former landfill site which is considered to carry limited weight as

the evidence does not show that the site poses a substantial risk to public safety of the environment in its current form.

- Whilst the proposal would provide public open space and play facilities, these would be primarily to meet the needs of its future residents rather than the wider community and so limited weight is given to this.
- Against the proposal it is found that due to its heavy reliance on car use for daily commuting trips and the distance likely to be covered by these, it would conflict to some extent with national and local policies relating to sustainable transport. However, it would be sufficiently accessible to a range of services.
- Having regard to these findings, it is not considered that the adverse effects of granting permission would significantly and demonstrably outweigh the benefits of doing so. The proposal would contribute to the economic and social dimensions of sustainable development and whilst it would have adverse environmental effects it would also lead to environmental benefits including the remediation of the contaminated site.
- Whilst the proposal would conflict with some aspects of the development plan, material considerations, including the positive outcome of the balancing exercise required by paragraph 14 of the Framework, indicate that permission should be granted. Taking account of these points, the proposal would constitute sustainable development and the appeal is allowed.

The Costs Decision

The Costs decision letter records the submission by the appellants and the response by the Council. The letter is available in full to view via the above weblink. The case for the appellants was made on the following grounds:-

- The Council's decision is *inconsistent* with its officer's advice and members had no reasonable grounds to disagree with officer advice.
- The appellant's evidence on accessibility was based on nationally recognised thresholds which had informed many appeals, and the Council did not cite any alternative nationally recognised standards against which to judge the proposal.
- The Council's approach is *inconsistent* with its approval of development on Mucklestone Road (the Muller site) (15/00202/OUT) and the recommendation of its officers to approve a development at Eccleshall Road (16/00866/DEEM4). Having approved the Muller scheme it was not open to Members to *reasonably* refuse the appeal proposal on transport accessibility grounds.
- The decision to refuse permission was *inconsistent* with its identification of the appeal site as being developable for housing in its Strategic Housing Land Availability Assessment (SHLAA) documents, the Site Allocations and Policies Local Plan Issues and Options Paper (2012) and the Stoke-on-Trent and Newcastle-under-Lyme Joint Local Plan Issues Consultation Document (2016). One of the key tests in determining whether a site should be included within a SHLAA is whether the site is accessible
- The Council's refusal of permission was *ill-founded and unjustified*. Loggerheads is a designated rural service centre which it has identified as having a wide range of services and being in an accessible location.

The Council's response included that:-

- The proposed development would conflict with the Development plan and that it was a matter of judgement whether other material considerations would outweigh the conflict with the development plan and the Council's approach was *reasonable*
- The assessment of accessibility is *not an empirical or scientific exercise*. Members came to a different view based upon on *local knowledge*
- *Evidence was presented* by the Council to demonstrate the sustainability and accessibility issues, there was a need to correctly differentiate between policy guidance and those referred to by the appellant

- The SHLAA made no particular finding on accessibility and the assessment of accessibility within that process is not comparable with the *exercising of planning judgement* in the context of a planning application by experienced members,
- In comparing sites and decisions it is necessary to recognise the spatial differences between them

In refusing the application for a partial award of costs against the Council, the Inspector made the following comments:

- The proposed development would conflict with Saved LP Policy H1 and Policies SP1 and ASP6 of the CSS and these conflicts are sufficient to mean that the proposal would not accord with the development plan as a whole. Whilst this does not mean that the Council's decision was reasonable, it indicates that it could justifiably withhold permission unless it considered that material considerations indicated otherwise.
- Although Council officers recommended approval on several occasions, and the highway authority raised no objections, the assessment of a proposal's accessibility by sustainable modes of transport is a matter of judgement. The guidance referred to by the appellant is of an indicative nature which should be taken into account alongside other material considerations
- The Council has also brought evidence to support its reason for refusal. For example it has shown that many of the proposed dwellings would be further from facilities in the village centre than the distance referred to in Manual for Streets as typically characterising a walkable neighbourhood, and that they would all be further than the distance of 1000m from the nearest primary schools which is referred to as 'acceptable' by the Institution of Highways and Transportation. It was able to present evidence to demonstrate that Loggerheads has some weaknesses with regard to distances to higher order settlements, the distances involved in most daily commuting journeys from Loggerheads, and that they involve single occupancy car trips. .
- The accessibility of the development to jobs and services would have similarities with the Muller site and the site off Eccleshall Road but the Council has brought evidence to show that the appeal site is further from the village centre and bus stops on the A53 than either of those sites and that although it is closer to St Marys CE School, it is further from Hugo Meynell School.
- The SHLAA report states that the sites identified have only been subject to preliminary assessment and it is also noted that the list of sites was clearly intended to be subject to further consideration following consultation on its contents. The inclusion of the site in the 'long list of strategic sites for potential allocation as part of the 2012 Issues & Options paper did not constitute a clear commitment from the Council that the site is suitable for development.
- Whilst the Council has acknowledged that journeys to some work locations and services outside Loggerheads could be made using the bus services, it has also presented a reasonable case that most occupiers of the proposed dwellings are likely to only make limited use of these services.
- Although the Council has clearly accepted in other cases that relevant housing policies are out of date and should be given reduced weight, this did not make it inevitable that it should grant permission in this case, particularly given the approach in the Framework of maximising the use of sustainable transport solutions. This is even taking account of the approach in paragraph 14 of the Framework that permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
- Having regard to all these points, is the Inspector concludes that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Your Officer's comments

In allowing the appeal, the Inspector acknowledged that the occupiers of the dwellings would be likely to rely heavily on car use for daily commuting trips and that the proposal would conflict to some extent with national and local policies relating to sustainable transport.

However, he concluded that it would be sufficiently accessible to a range of services and overall he considered that the adverse impacts would not significantly and demonstrably outweigh the benefits of the scheme, particularly its contribution towards widening the choice and availability of housing in the area.

The Inspector's conclusions regarding the submitted planning obligation are of note. In particular, he considered that the requirement for a travel plan monitoring sum did not satisfy the relevant CIL tests on the grounds that in his view, the monitoring of such reports would be part of the normal functions of the highway authority. In addition, regarding the requested County monitoring fee he was not clear how this money would be spent on activities which fall outside the County's normal monitoring functions and therefore he did not consider that it would meet the CIL tests. By virtue of the actual wording of the S106 agreement, given the comments of the Inspector, the developer will not be required to pay either the Travel Plan monitoring fee or the County monitoring fee.

The appeal decision was sent to the Highway Authority's officers and lawyers and they maintain the view that both requests are reasonable and meet the CIL tests. They have made reference to another appeal decision in which the travel plan monitoring sum was considered appropriate.

Of note in the Costs decision letter is that although the Council's decision was contrary to the advice of its officers, the Inspector concludes that the assessment of a proposal's accessibility by sustainable modes of transport is a matter of judgement. Importantly, the witness who gave evidence on behalf of the Council presented a reasonable case and the Inspector was satisfied that the Council had brought sufficient evidence to support its reason for refusal (although he was not convinced by that evidence). Furthermore, the Inspector was satisfied that the Council was able to distinguish sufficiently between the location of the appeal site and the location of other sites in Loggerheads that had been permitted, so as not to have acted unreasonably.