

**APPEAL BY MULLER PROPERTY GROUP AGAINST THE DECISION OF THE BOROUGH COUNCIL TO REFUSE TO GRANT PLANNING PERMISSION FOR RESIDENTIAL DEVELOPMENT AND ACCESS AT GRAVEL BANK, MUCKLESTONE ROAD, LOGGERHEADS**

<b><u>Application Number</u></b>	<b>17/00787/OUT</b>
<b><u>Recommendation</u></b>	<b>Refusal</b>
<b><u>Decision</u></b>	<b>Refusal, as recommended, by Planning Committee 5<sup>th</sup> January 2018</b>
<b><u>Appeal Decision</u></b>	<b>Appeal dismissed</b>
<b><u>Date of Appeal Decision</u></b>	<b>25<sup>th</sup> January 2019</b>

**The Appeal Decision**

The Inspector identified the main issues to be:

- Whether the proposal would accord with the development plan strategy for the location of housing including having regard to (i) its effects on the character and appearance of the area; and (ii) whether it would provide satisfactory access to shops and services with particular regard to the availability of sustainable transport modes;
- Whether there are any other material considerations that would indicate that the proposals should be determined other than in accordance with the development plan.

***Development Plan Strategy for the location of housing***

*Planning policy context*

- The development plan for the area includes the saved policies of the Newcastle-under-Lyme Local Plan (2003) (NuLLP), the Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy (2009) (CSS) and the Loggerheads Neighbourhood Plan (LNP).
- The appeal site lies outside of the clearly recognisable village envelope and the proposal therefore conflicts with policies H1 and ASP6.
- The Council accepts that policies H1 and ASP6 are out-of-date although it is common ground between the parties that the proposal would run counter to them. The village envelopes referred to in these policies were defined in the context of a local plan that was not intended to meet housing needs beyond 2011. Moreover, the limit of 900 dwellings in policy ASP6 is not based on an up-to-date assessment of housing needs and is at odds with Framework that reflects the Government's objective of significantly boosting the supply of homes. For these reasons, noting that this was also the conclusion reached by the Inspector in the Tadgedale Quarry appeal decision, the Inspector gave policies H1 and ASP6 limited weight.
- The LNP defines the village envelope of Loggerheads within which policy G1 supports new housing development. Outside the village envelope, other housing development is permitted where it would meet certain criteria. None of these apply to the proposed development which therefore conflicts with LNP policy G1 .

*Character and appearance*

- The appeal site comprises a broad, roughly rectangular parcel of land currently occupied by a detached dwelling, its separate garaging and a number of other large buildings. This built development is concentrated in the south-western corner of the site and there are substantial areas of hardstanding within and immediately to the north of it. The remainder of the site comprises a field which rises gently up to the boundary with the neighbouring Tadgedale Quarry site.

- Saved NuLLP policy N19 is one of a series of policies that have been framed to reflect the categorising of the landscapes of the county contained in a Supplementary Planning Guidance Document (SPG) – Planning for Landscape Change (2000). For SPG landscape policy objective purposes, the appeal site falls within the Landscape Maintenance category. Saved policy N19 seeks to maintain the high quality and characteristic landscapes within this category and development will be expected to contribute to the SPG-derived objective. The policy goes on to say that it will be necessary to demonstrate that development will not erode the character or harm the quality of the landscape.
- The area around and including the site has the distinctive character of an undulating valley landscape and outside the built confines of Loggerheads and the nearby village of Mucklestone, it is sparsely developed. The site is separated from Tagedale Quarry by a boundary hedgerow of non-native Cypress. This only serves to amplify the change in character between the developed and disrupted landscape within the quarry site and the pastoral landscape beyond.
- The site clearly reads as part of the wider rural valley landscape in views from along Mucklestone Road, Rock Lane to the north and also further away from along the A53 to the south. It forms a key component of the valley landscape below a more pronounced area of higher land within and around Loggerheads. The appeal site shares a greater affinity with the pastoral, verdant and mostly undeveloped landscape than to the quarry site or the built-up area.
- In the aforementioned views from Rock Lane, there is a farm complex in the foreground beyond which the site and its buildings are also clearly visible. The grouping of buildings on the appeal site and their overall scale, design and materials gives them much the same appearance as those within the neighbouring farm complex and there are no clear distinguishing features to mark them out as an industrial complex. The casual observer would take them to be agricultural buildings and the site therefore has the semblance of a complex of farm buildings set within a rural landscape.
- Whilst the landscape in this area is not afforded any statutory protection or considered to be a valued landscape for the purposes of the Framework, it is nonetheless an attractive landscape as a result of the landform, mature trees and hedgerows.
- As already mentioned, the policy objective for this landscape is one of landscape maintenance, which is the second highest category on the quality scale in the Planning for Landscape Change SPG. It is acknowledged that the SPG is now of some age however many of the features that contribute to the assessment of quality within the SPG are still found within this landscape. Whilst the appellant disputes the SPG's value because of its age, there is no clear indication 'on the ground' that the character of the landscape has markedly changed in the time since the SPG's publication. Notably also, the SPG states that the wider surrounding landscape to the south, east and west is an area of highest landscape sensitivity. Where the SPG objective is one of landscape maintenance, it says that substantial emphasis should be placed on ensuring the development blends unobtrusively into the landscape and does not lead to the loss of features characteristic of it. In so doing, the SPG is not placing a blanket restriction on development and is not therefore at odds with the Framework. Therefore the SPG is given significant weight.
- Saved policy N17 seeks to ensure that development is informed by and is sympathetic to landscape character and quality appropriate to the respective SPG landscape policy categories. Saved policy N17 also sets out a set of criteria against which proposals with landscape and visual implications will be assessed.
- It is common ground between the parties that saved policy N17 does not provide an embargo on development that would result in landscape and visual harm. The policy's wording is clearly informed by the Planning for Landscape Change SPG's policy objectives and a decision must therefore be taken on the level of any harm and whether that would fall within the realms of being unacceptable. Saved policies N17 and N19 do not therefore place a blanket restriction on development and align closely with paragraph 170 b) of the National Planning Policy Framework (the Framework) which says that planning policies and decisions should contribute to and enhance the

natural and built environment by recognising the intrinsic character and beauty of the countryside.

- The Inspector accepted that views towards the site from Rock Lane are restricted to two points along that lane however it was evident that this is a quiet lane that provides a route between Loggerheads and Mucklestone. It is therefore attractive as a recreational route in addition to providing a route from Loggerheads to St Mary's school in Mucklestone and it seems likely that those using this route would stop and take in the pleasing views across the wide valley landscape where they become available i.e. from the two key viewpoints referred to in the evidence by the parties.
- The proposed development would intervene in these views to disrupt the appreciation of the rural valley landscape. It would also appear as a stark and unwelcome change to the agricultural character and appearance of the site which currently plays an important role in separating the adjacent quarry site and the built environment of Loggerheads from the rural area.
- From along Mucklestone Road on the approach to Loggerheads, because of the existing roadside hedgerows, the proposed development would only come into view at close quarters. However, at this point there is no sense of the presence of any significant built development and the proposed dwellings on rising land would appear isolated from the rest of Loggerheads. This would be the case even if the development of the quarry site was to take place because of the screening provided by the existing Cypress boundary hedge. The Inspector considered that the proposed development would appear incongruous and visually intrusive in the rural landscape in views from along Mucklestone Road. Whilst these views would be localised, the change to the rural character of the site to a large urbanising development would be sufficiently adverse to result in very considerable harm.
- Views from along the busy A53 would be of a transient nature, although the significant gaps in the hedgerows along the northern side of the road would allow vehicle passengers to see across the valley towards the site. However, there is a belt of trees stretching along the valley on a roughly east-west axis that prevent any clear prolonged views of the site. Accordingly, because of this and the distance involved, there would be no significant visual harm in these views.
- Whilst only illustrative, the submitted masterplan presumably gives a reasonable indication of the expected ratio of built development to open space. The Inspector was not persuaded that development on the site, with landscaping would still not be open view from Mucklestone Road.
- It was argued by the appellant that the requirements in the Newcastle-under-Lyme and Stoke-on-Trent Urban Design Guidance Supplementary Planning Document (2010) (SPD) are matters properly to be considered at reserved matters stage. Most of the evidence at the Inquiry focussed on the Built form character section of the chapter on the rural environment. I agree with the appellant's interpretation of this part of the SPD. However, good design goes beyond merely considering the appearance of the development itself and should properly include wider considerations of how it fits into the settlement and the landscape. This is clearly expressed in the preceding Rural environment section of the SPD. The Inspector found that it would not and thus the proposal also runs counter to the Urban Design SPD.
- For the above reasons, notwithstanding that the appeal application is in outline only, the Inspector was not satisfied that the development of this site, which provides an important setting for the village and forms part of the attractive rural landscape, would not cause serious irrevocable harm to the character and appearance of the area. Thus, the proposal would conflict with saved NuLLP policies N17 and N19.
- For the same reasons, it would conflict with CSS policy CSP1 which says that new development should be well designed to respect the character, identity and context of Newcastle and Stoke-on-Trent's unique townscape and landscape. This includes its rural setting and the settlement pattern created by the hierarchy of centres. It is therefore relevant in the consideration of outline applications.
- CSS policy CSP4 seeks to protect, maintain and enhance the quality and quantity of the plan area's natural assets. A key element of the policy is the requirement that the location, scale and nature of all development delivered through the CSS avoids and mitigates adverse impacts and wherever possible, enhances the plan area's

distinctive natural assets and landscape character. The proposal would therefore conflict with CSS policy CSP4.

#### *Access to shops and services*

- Loggerheads is designated in the CSS as one of 3 key rural service centres. The village centre contains a Co-op food store, a library, a public house, an Indian restaurant and other facilities elsewhere within the village. Both Loggerheads and Mucklestone have a primary school. In addition, there is a bus service that provides links to Newcastle-under-Lyme and Market Drayton although this only runs during the day.
- Policy SP1 of the CSS sets out a series of principles around the concept of 'targeted regeneration'. The two key aspects of this policy are (1) and (7). SP1(1) sets out the locations where new housing will be primarily directed towards whilst SP1(7) prioritises the use of previously developed land where it can support sustainable patterns of development and provide access by transport modes other than private motor vehicles.
- There remains dispute between the parties on the matter of previously developed land although the appellant accepted that this aspect of its case attracts only limited weight. CSS policy SP1 does not prohibit development on previously developed land (PDL) and the site is, in part, within that category. Taking the buildings and areas of hardstanding together, the Inspector concurred with the appellant's view that about a quarter of the site comprises PDL. There is no clear and substantive evidence that the rest of the site would fall under the banner of 'under-utilised' and the proposal is in overall conflict with CSS policy SP1.
- Policy SP3 sets out a number of principles related to movement and access. Amongst other things, the policy seeks to improve accessibility and social inclusion through the provision of sustainable linked communities which have a range of services and facilities and which are connected to major employment and service centres and the green space network. It also seeks to maximise the accessibility of residential development to services and facilities by walking, cycling and public transport.
- The Inspector in the Tadgedale Quarry appeal considered the proposed development in that case to be sufficiently well located to the shops and services within Loggerheads although at that time the bus service also ran during the evening.
- The Statement of Common Ground sets out distances between various parts of the site and the services in Loggerheads. All of the dwellings would be substantially further from the Co-op store and the other services around it than the 800m distance identified as typically characterising a walkable neighbourhood in Manual for Streets (MfS). However, at the furthest point away, all shops and services in Loggerheads would be within the preferred maximum of 2km which is also referred to in MfS. Only the primary school and church in Mucklestone would exceed this distance. Were the Tadgedale Quarry site not to be developed, the distances to Mucklestone would be greater as the internal route through that development would not exist. However, the distances in MfS are indicative and do not provide firm thresholds and neither does any other relevant planning document.
- Whilst the distances involved would be at the very limits of what could be considered reasonable for walking, it would nonetheless be possible for able bodied and reasonably fit people to access the local shop on foot and cycling would also be an option. In practicality, these trips would only allow for top-up shopping so it is likely that some journeys to the local shop and other services in the village would be made by car. However, they would be of limited duration.
- Nevertheless, the Inspector concurred with the findings of the Inspector in the Tadgedale Quarry appeal that occupants of the proposed development would have to travel further afield for things such as bulk food and comparison goods shopping, most evening entertainment, secondary and further education and hospital visits. Some of these trips could be made by bus during the daytime and other services would be accessed less frequently. However, given that the nearest larger settlement of Market Drayton is about 8km away, it would be likely that the majority of trips to the

higher order services it provides and for daily commuting elsewhere would be made by private motorised transport.

- The appeal scheme would provide for contributions towards the St Mary's Mode Star scheme as part of a Travel Plan. This is supported by CSS policies CSP3 and CSP10 along with saved NuLLP policy IM1 and the DCSPD. This would assist in encouraging access by means other than the car.
- Taking all of this into account and given that the Framework recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, the Inspector considered that the proposed development would occupy a sustainable location. It would therefore accord with CSS policy SP3 and the sustainable transport objectives in the Framework.

### ***Other material considerations***

- The matter of Housing Land Supply (HLS) was discussed at the Inquiry. The Council's evidence was that it has HLS of 5.57 years whilst the appellant considered the Council to have a 3.82 years HLS. The main reason for considering HLS in the context of this appeal is to assess whether the tilted balance in Framework paragraph 11 is engaged via the route of Framework paragraph 73. However, the Council accepts that Framework paragraph 11(d) is engaged because of out-of-date saved NuLLP policy H1 and CSS policy ASP6.
- The Framework indicates that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the Framework policies taken as a whole.
- The development would deliver new homes including a policy compliant level of affordable ones. These comprise social benefits that attract significant weight in the context of a development plan that does not currently reflect an up-to-date housing need. However the Inspector accepts that the emerging JLP may not alter the level of envisaged housing growth albeit it is at too early a stage to provide certainty about how much development might be required in Loggerheads or whether it would need to take place in open countryside. The spatial framework set out in the CSS recognises that directing development in the open countryside comes at the expense of development of more sustainable urban sites
- The appellant accepts that limited weight should be given to the benefits arising from construction jobs, a boost to the local economy and the contribution to pupil numbers, and the Inspector agreed with that. On the environmental side, the provision of new tree and shrub planting could result in some biodiversity improvements. However, this must be seen in the context of the loss of a predominantly green site and the benefits from new planting attract nothing more than limited weight.
- Notwithstanding his conclusions above related to access to shops and services, given that nearly all of the site would be developed with housing and its associated infrastructure, in what is open countryside, the proposal's conflict with CSS policy SP1 attracts at least moderate weight.
- Added to this is the conflict with a number of development plan policies that seek to protect the character and appearance of the area. The harm to this attractive rural valley landscape of which the site forms an intrinsic part would be sufficiently serious to carry very substantial weight against the proposal.
- Case law has established that the circumstances in this case mean that the LNP is out-of-date. However, the LNP represents an expression of how the community wishes to shape its local environment and the conflict with the LNP should be given considerable weight.
- Given that it is already agreed that Framework paragraph 11(d) is engaged via an alternative route, the Inspector considered that he did not need to delve deeply into the matter of HLS. Nevertheless, he considered the level of shortfall in the appellant's suggested worst case scenario as that can affect the weight to be given to the provision of more housing and the policies in the development plan and the LNP. However, even if it were concluded that there is a shortfall in the five-year HLS on the scale suggested by the appellant, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits of the proposal.

## **Conclusion**

- The Inspector found no reasons to take a decision otherwise than in accordance with the development plan and for the above reasons, the appeal did not succeed.

## **Your Officer's comments**

This appeal decision is important in that the Inspector gives a view on the weight to be attributed to policies within the Development Plan relating to the location of new housing. He notes that the village envelopes referred to in both Policy H1 of the Local Plan and Policy ASP6 of the CSS were defined in the context of a local plan that was not intended to meet housing needs beyond 2011, and furthermore that the limit of 900 dwellings in Policy ASP6 is not based on any up to date assessment of housing needs and is at odds with the Framework that reflects the Government's objective of significantly boosting the supply of homes. For these reasons he not only gives conflict with those policies limited weight but he also considers that paragraph 11(d) of the Framework, that which relates to the application of the 'tilted balance', to be engaged. It followed that he would have granted planning permission had he not been satisfied that the adverse impacts of doing so which he identified significantly and demonstrably outweighed the identified benefits, when assessed against the Framework policies taken as a whole. This approach will be taken by your officers in other similar situations.

Whilst the conclusion that he reached that the development would cause serious irrevocable harm to the character and appearance of the area is inevitably a site/proposal specific one, his conclusions with respect to the continued weight to be given to the Planning for Landscape Change SPG notwithstanding its age, saved policies N17 and N19, and the accordance of both the SPG and the policies with the Framework are noteworthy, as is his giving of at least moderate weight to the proposal's conflict with CSS policy SP1.