



Appeal Decision

Inquiry held on 12, 13 and 14 April 2011

Site visits made on 11, 12 and 14 April 2011

by G D Grindey MSc MRTPI Tech.Cert.Arb

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 3 June 2011

Appeal Ref: APP/M1005/A/10/2142571

Land at Hill Top Farm, Mill Lane, Belper, DE56 1LH.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by The Duncan Group against the decision of Amber Valley Borough Council.
 - The application Ref AVA/2010/0456, dated 4 May 2010, was refused by notice dated 3 August 2010.
 - The development proposed is erection of 75 dwellings together with associated infrastructure including new vehicular and pedestrian access, landscaping and public open space. All matters reserved save for means of access.
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Decision

1. I dismiss the appeal.

Main Issues

2. From my inspection of the site and surroundings and the representations made in writing and at the inquiry, I consider that the decision on this appeal turns on 3 main issues. These are (i) whether the scheme would sustain and enhance the significance of the designated heritage asset – the World Heritage site (WHS), bearing in mind the appeal site lies within the identified buffer zone of the WHS. I must ask a similar question concerning the nearby Belper and Milford Conservation Area (CA). Secondly (ii) whether the appeal site lies within the built framework of the settlement with reference to Local Plan policies H3, H5 & EN1. Thirdly, (iii) whether allowing the appeal proposals would be premature and prejudice the outcome of the Councils preparation of their Core Strategy and Site allocations and whether there are other material considerations which weigh in the balance.

Background - housing land supply

3. As the Statement of Common Ground sets out, it is agreed that the Council cannot demonstrate a 5 year supply of deliverable housing land. In these circumstances paragraph 71 of *Planning Policy Statement (PPS) 3 - Housing* indicates that Councils should consider favourably planning applications for housing, having regard to the policies in *PPS 3* including the considerations in paragraph 69. This represents a substantial material consideration in favour of the appeal development, which needs to be weighed in the overall balance along with other material considerations. I bear this in mind in the assessment of this appeal.

Reasons

Issue (i) whether the scheme would sustain and enhance the significance of the WHS, bearing in mind the appeal site lies within the identified buffer zone and, similarly, whether the scheme would preserve or enhance the character or appearance of the CA.

4. WHSs are places of outstanding universal value, defined as of a cultural and/or natural significance which is so exceptional as to transcend national boundaries and of importance for present and future generations of all humanity¹. *PPS 5 –Planning for the Historic Environment*² is up to date and highly relevant to this appeal. Policy HE9 states that there should be a presumption in favour of the conservation of designated heritage assets and the more significant the designated heritage asset the greater the presumption in favour of its conservation. I bear this in mind, together with the principles in the PPS. The nature of this WHS has been set out in the various appeal proofs; all are aware of its significance and characteristics; I need not repeat the information here.
5. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 refers to the need to pay special attention to the desirability of preserving or enhancing the character or appearance of the Area. This national policy is reflected in Local Plan policy EN27. I need to examine the scheme with that important consideration in mind. *PPS5* is built around a series of policies and policy principles, the overarching aim of which is that the historic environment and its heritage assets should be conserved and enjoyed for the quality of life they bring to this and future generations.
6. For the purposes of this appeal it seems to me that the assessments that need to be done, regarding both the WHS and the CA, are similar; the boundaries are, apparently, the same in the vicinity of the appeal site.³ I say 'apparently' since English Heritage's representative at the inquiry did not have a definitive plan, although its route has been clarified for me since the inquiry closed. I do not think the precise boundary line is a decisive matter, since all were agreed that the appeal site lies within the designated and extensive buffer zone and, at my accompanied site inspection, all were able to see which parts of the WHS and CA were visible from various viewpoints.
7. Circular 07/2009⁴ states that a buffer zone is defined as an area surrounding a WHS which has complementary legal restriction placed on its use and development, to give an added layer of protection. As such, it seems to me that the Council's decision notice which talks of 'justification has not been provided to outweigh the harm which the proposal would have on the buffer zone'⁵ misses the mark. The buffer zone is a 'means to an end' as Mr Kitchen helpfully described it; it does not have a value of its own, it is merely there to provide an extra layer of protection around the WHS. However, the appeal site lies between many public viewpoints and the WHS; as such it is part of the 'surroundings in which a place is experienced; its local context embracing present and past relationships to the adjacent landscape'⁶ - its setting.

¹ The Protection and Management of WHSs in England, English Heritage Guidance Note

² Published 2010

³ confirmatory e-mail from Amber Valley of 15 April 2011.

⁴ Circular 07/2009 on the Protection of World Heritage Sites

⁵ AVA/2010/0456 reason for refusal 1

⁶ English Heritage Conservation Principles

8. As the Practice Guide⁷ to *PPS5* states, understanding the significance of the heritage asset will enable the contribution made by its setting to be understood; this will be the starting point. The appeal site is an irregularly shaped parcel of land on the east side of Belper, with only a minor frontage onto Mill Lane; the majority of the land proposed to be developed would lie behind the frontage development of Mill Lane and behind the limited number of single-depth existing buildings along Kirk's Lane too. The main point that both English Heritage (EH) and the Council make is that the appeal site is a part of the open, small-scale fields that contribute to the surrounding rural landscape and that these are a part of the setting of the WHS. I agree.
9. It seems clear to me that the 'unique cultural landscape of industrial buildings, related housing, canal, road and railway architecture' are 'set for the most part in a **green landscape**'⁸ [my emphasis]. 'The engineering structures through which the River Derwent and its tributaries provided power for the mills still exist and the **natural landscape** [my emphasis] setting of the industrial settlements remains largely intact'⁹. The 'relationship of the industrial buildings and their dependant urban settlements to the river and its tributaries and to **the topography of the surrounding rural landscape** has been preserved'¹⁰ [my emphasis].
10. It seems to me that at the very heart of the designation of the WHS is that this minor, essentially rural little river valley had the new [as it was then] industrial factory system superimposed upon it. Hence the elements of the green natural landscape that remain, close to the heart of Belper are a very important part of the setting and indeed the meaning or significance of the WHS. The appeal site and the rest of the abutting open land alongside the Coppice Brook and The Park represent a tongue of green, natural landscape that weaves into the eastern side of the settlement and, to my mind, forms an intrinsic part of understanding the setting of the WHS – the associative connection between the historic events that happened here and its wider surroundings.
11. On my site inspection with the main parties elements in the landscape near the edge of the WHS, like the old school building with tall chimneys, were identified. I saw how the open fields, trees and stone walls on the appeal site formed an un-built foreground to mid-distance views particularly when viewed from Kirks Lane footpath, and that above Cherry House Farm. The whole area between Bullsmoor, Nottingham Road, Park Side, Mill Lane, Kirks Lane and Pinchom's Hill is crossed by a surprising number of well-used public footpaths. It is from these that I consider persons can and *do* 'experience' the local context of the WHS, embracing its present and past relationships with the adjacent landscape.
12. It seems to me that the green, open setting of the WHS here at the appeal site is an important element of the whole. Its physical self and its historical relationship with the WHS are freely accessible and visible to anyone who wishes to contemplate the significance, meaning and interest of the WHS. As such, the development of the site would fundamentally alter this.
13. This is not just a wish to arrest the town's development in the form in which it happens to exist in 2011¹¹, as Mr Kitchen submitted, there will be other sites

⁷ March 2010, paragraphs 118 onward

⁸ Derwent Valley Mills WHS Management Plan 2007

⁹ Derwent Valley Mills WHS Management Plan 2007

¹⁰ Derwent Valley Mills WHS: Statement of Outstanding Universal Value 2001

¹¹ Mr Kitchen's proof, paragraph 5.12

where the same arguments would not apply. But on this site, no matter how well designed the development scheme, the intrusion of 75 dwellings into the fore-ground of views towards the WHS would add built development here and would affect the ability of viewers to appreciate the significance of the heritage asset. The loss of the green open natural landscape setting here would not make a positive contribution to the heritage asset, or better reveal the significance of the asset – quite the reverse. I therefore find conflict with government policy as set out in *PPS5* and Local Plan policies EN29.

14. Regarding the CA and in the absence of any appraisal of character or appearance of it prepared by the Council, it seems to me that the CA is drawn widely - so as to include most of the settlement and River valley - that its significance, as a heritage asset, must be assumed to be similar to that of the WHS. I found that the nearest parts of the CA to the appeal site had the predominant character of tightly packed urban cottages in Mill Lane/Parkside/ Nottingham Road, often in a fairly formal rectilinear or grid-iron layout. In many of these locations it is clear that the frontage development is only single house in depth, with views of the open land, including the appeal site, setting beyond. In as much as the appeal development would be seen from parts of the CA, the looser, more meandering, suburban layout shown in the illustrative plans would be very different, and could not be said to preserve the character or appearance of the setting of the CA. I therefore find some conflict with Local Plan policy EN27.

Issue (ii) whether the appeal site lies within the built framework of the settlement with particular reference to Local Plan policies H3, H5 & EN1.

15. The key here is the text of policy H3 which states 'planning permission will be granted for housing development **within** the built framework of the following urban areas' – including Belper [my emphasis]. H5 is the opposite, with the text: 'outside the built framework of settlements planning permission will not be granted for housing...etc'. Paragraph 3.44 of the Local Plan states 'the most sustainable locations will be within the built framework of urban areas and larger villages (defined as 'the limits of continuous or contiguous development forming the existing built up area of a settlement'). Policy EN1 concerns development in the countryside and in the written justification for the policy refers to *PPS 7 – Sustainable development in Rural areas*. So the question is whether the appeal site falls within or outside of the built framework, as so defined.
16. I have already described the appeal site as having only a minor frontage onto Mill Lane; the majority of the land proposed to be developed would lie *behind* the single-depth-frontage development of Mill Lane and *behind* the limited number of single-depth existing buildings along Kirk's Lane; it is simply not within, or contained by, existing development.
17. Indeed, I note Mr Pritchard's evidence accepts that the appeal site is 'behind' the existing residential development along Mill Lane and Kirk Lane¹² and goes on to claim that this 'touching' or nearness would bring the appeal site within the built framework of Belper. But this seems only to apply the definition from Local Plan paragraph 3.44 quoted above. The text of the policy (which I highlight above) is that H3/H5 compliant development must be **within** the built framework. Mr Pritchard's cannot be a satisfactory interpretation, otherwise any amount of open countryside could be brought within the ambit of policy

¹² Mr Pritchard's proof paragraph 3.25

- H3, provided one part of the boundary touched the rear curtilage of an existing building on the edge of a settlement. This could be regardless of circumstances, as here, where the majority of the length of the rest of the site boundary abuts UN-built land. This cannot be right.
18. It seems clear to me that the appeal site does not lie **within** an uninterrupted, connected or unbroken part of the development forming the existing built up area. It has open land abutting the majority of its boundary, with fields to the north, north-east and south-east. It is neither contained or confined by limits or boundaries nor in the inner or interior part of a space or region (OED – definition of ‘within’).
19. I have carefully examined Mr Rech’s evidence and the Landscape and Visual Analysis but find much to disagree with. I do not accept that, for example, ‘character area 1’ (which includes the appeal site) is ‘visually affected and almost entirely surrounded by the adjacent urban fringe’¹³, when it is an area of predominantly open grazing land, with stone walls, trees and hedges. There appeared to me to be a distinct difference between the tightly developed urban edge and the open un-built parts, and no particular visual urban influence leaking into the open area. It is most certainly not ‘almost entirely surrounded’ by the urban fringe since it is open to the north, east and south-east over to Pinchom’s Hill and Sandybed Lane.
20. In contrast I seek to examine this question in a straightforward way and return to the text of the policy and particularly the phrase ‘**within** the built framework’. The appeal site does not fall to be considered as within the limits of continuous or contiguous development forming the existing built up area of the settlement and hence would not meet the terms of Local Plan policies H3 or H5. Policy EN1 accords with *PPS7* and seeks to protect areas of open countryside from new building development. If developed as shown, the built appeal site would be an obvious extension of built development out into the open countryside, and would not accord with these policies. Development of the site would not be within the terms of the Local Plan policies or *PPS 7*.

Issue (iii) whether allowing the appeal proposals would be premature and prejudice the outcome of the Councils preparation of their Core Strategy and Site allocations and whether there are other material considerations which weigh in the balance.

21. In recent months there has been a somewhat confused planning environment; the abolition of regional strategies and the government’s commitment to return decision making on planning and housing to local councils, followed by the Cala Homes judgement which re-instated regional strategies and then the second challenge by Cala Homes which confirms that the intended abolition is a material consideration in planning decisions. As a result Amber Valley has chosen to ‘step back’ (as Mr Thorley put it at the inquiry) from the preparation of the Core Strategy documents and re-visit local issues. Informal public consultation is expected throughout 2011 with a draft Core Strategy published for formal public consultation in early 2012¹⁴.
22. I must examine government advice on the issue of ‘prematurity’ found in *The Planning System: General Principles*. This states that, where a DPD is at the consultation stage, with no early prospect of submission for examination then refusal on prematurity grounds would seldom be justified because of the delay

¹³ Landscape and Visual Analysis paragraph 2.14

¹⁴ Statement of Common Ground paragraph 5.3. – 5.6

which this would impose in determining the future use of the land in question. We are some way off even this stage. *General Principles* goes on to say that, where an application is refused on grounds of prematurity, the local planning authority would need to demonstrate clearly how the grant of planning permission would prejudice the outcome of the DPD process. I do not find that the Council has done this other than expressing a wish to re-examine all issues of development over the coming year, leading up to a draft Core Strategy for Consultation.

23. Hence, despite the significant issues that will need to be resolved regarding the amount of housing and its location around Belper and indeed Borough-wide, dismissing the appeal on the grounds of prematurity is not justified taking into account the government's published guidance.

Other Material considerations

24. My attention was drawn to the Nailer's Way decisions¹⁵ but I draw a distinction between the appeal before me and those. The Inspector for the Nailer's Way appeals described that site as 'one of the best green field locations in Belper for the additional housing now required'. I understand that the site had already been found suitable for housing development by another Inspector, at the Local Plan Review, albeit not required for development at that time. It is rarely that direct parallels can be drawn between one site and another and in this instance there are significant differences in terms of location and characteristics such as to preclude any meaningful comparison. Those appeals do not, therefore get me further forward.
25. My attention was drawn to the inclusion of the site in the Council's Strategic Housing Land Availability Assessment (SHLAA), with a phrase that the site is 'potentially suitable'. But this does not advance any analysis, it is simply an indication of a quick desk-top preliminary investigation. It is one of many sites doubtless put forward; it does not mean all or any of them will be chosen once given further consideration and/or information.
26. At the inquiry much was made of the fact that the appeal land, together with adjacent land, has been left as white land and excluded from the green belt since the publication of the South & South East Derbyshire Green Belts Local Plan 1983. It was suggested that the boundaries were deliberately widely drawn to accommodate future expansion and that this must have a bearing on the appeal site. But paragraph 5.10 of that Local Plan states that 'it should be stressed that the exclusion of an area of land from the green belt does not necessarily imply that it is available for development. Sites for development will be allocated in district Plans where these are being prepared'. I am also mindful that this old Plan pre-dates the designation of the WHS by very many years and we are in a very different planning environment now. I do not give this significant weight.
27. My attention was drawn to the Local Plan allocation for new business and industrial development at Bullsmoor – the ER3 site - which lies generally to the north-east of the appeal site and is undeveloped. The policy requires an approved development brief before any proposals here are permitted, to address landscaping and how it addresses the WHS. An email trail reveals that an application had been submitted in 1998, but never determined¹⁶, and there

¹⁵ APP/M1005/A/10/2125188 & 2125194

¹⁶ Email of 7 April 2011 from Paul Stone, Document 16

- appears to have been no pressure to progress the allocation until only very recently when a draft development brief has been prepared and sent to the Council.
28. Even this Development Brief states that an Employment Land Review of March 2008 comments that the 'viability of Bullsmoor is severely questioned because its access is poor; it is poorly located and situated and lacks prominence'. This seems to confirm the poor quality of the ER3 allocation site and hence the lack of any interest, until recently, of taking up the allocation. I further understand that it was similarly allocated in the previous Local Plan but was not developed.¹⁷ The Report of the Inspector into the Local Plan Review expressed concern about the allocation and opined that the Council would be wise to give further consideration to the allocation in view of the buffer zone created to protect the WHS.
29. In the event, it would appear that the Council were minded to drop the allocation but re-instated it to avoid a challenge from the land-owner on the basis that the Council had not put forward sufficient evidence to support the allocation at the Local Plan inquiry. Counsel advised that if the site were to be re-allocated it would avoid the need for a modifications inquiry and significant delay and additional costs¹⁸. While I do not dispute its allocation in the Local Plan it is overly optimistic to seek to treat this site, for planning purposes, as if it were part of the built up area as the appellants argued. In particular I am not convinced by the somewhat circular argument that, if the open countryside policy EN1 does not apply to the ER3 site then the ER3 site must be within the built framework.
30. Mr Edmond submitted in closing that the landowners are 'committed to delivering' development of the site. However, I have no convincing evidence that the ER3 site will be developed in accordance with the Local Plan allocation, merely the sudden drafting of a development brief, after some 13 years at least of inactivity. In fact development seems even less likely since the economy is fragile and there appear to be many other better quality sites in more favourable positions which could be developed in preference to this one. I give this limited weight.
31. It is abundantly clear that a great many local residents prize views of the site in its present form; they cherish its natural character and appearance and I saw a great many persons walking the many footpaths near to the site. They value the site as a tranquil and natural, open space; there was a good deal of local opposition to the proposals. But the extent of local opposition is not in itself a reasonable ground for resisting development. To carry sufficient weight, opposition should be founded on valid planning reasons, supported by substantial evidence¹⁹.
32. An executed Section 106 Agreement was submitted at the inquiry. The S106 refers to healthcare contributions; the provision and maintenance of on-site open space and education contributions. I consider that these contributions meet the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 and that the S106 could be taken into account in assessing the acceptability of the appeal scheme. In addition, we discussed possible conditions to be imposed should I granted planning permission for the scheme;

¹⁷ Mr Thorley's appendix RT12 to proof

¹⁸ See details in Mr Thorley's appendix RT12

¹⁹ Circular 03/2009

including that 30% (23 dwellings) of the housing on site should be affordable housing, with which the appellants were in agreement.²⁰ There was no dispute at the inquiry that the need for affordable housing in the area is 'compelling and acute'.²¹ Hence the offer of 30% of the total units as affordable housing is a further point in its favour.

33. Local residents raised considerable concerns about existing traffic conditions and the addition of further vehicles generated by the development. I saw for myself various instances of drivers of vehicles having no option but to mount the pavement to make progress along Mill Lane and Parkside because of the narrowness of the carriageway and the routine presence of parked vehicles. This is clearly an unsatisfactory situation. However, I agree with the thoughtful email from Graham Fairs of the Highway Authority²² which explains that, in the overall assessment, it must be demonstrable that the traffic generated by the proposals would result in material harm relative to the existing conditions on the highways hereabouts. Potential peak hour trips would result in an additional vehicle every 2 – 3 minutes along Parkside which in my view would be insufficient reason to dismiss the appeal if all other matters were satisfactory.
34. Others have raised issues concerning the lack of need for the proposed housing, but this is a matter for the developer to decide whether to proceed with a scheme in the face of numbers of unsold houses in the vicinity.

Overall conclusions

35. While dismissing the appeal on the grounds of prematurity is not justified taking into account the government's published guidance, the scheme would accord with *PPS 3* in contributing towards meeting the shortfall resulting from the Council's failure to demonstrate a 5 year supply of housing land, in achieving a good mix of housing across the site and in supplying some affordable housing. However, these matters must be weighed against the scheme's conflict with policy concerning the WHS as expressed in *PPS5* and Local Plan policy EN29. Furthermore, the appeal site does not fall to be considered as within the limits of continuous or contiguous development forming the existing built up area of the settlement and hence would not meet the terms of Local Plan policies H3 or H5 or the restriction on development in the countryside policy EN1. Having weighed these considerations in the balance, some of which are pulling in different directions, I conclude that the scales are tipped against the proposal.
36. I note the recently published Ministerial Statement 'Planning for Growth' but find that the appeal scheme would compromise principles set out in national and local planning policy.
37. I have taken account of all other matters raised but find nothing that changes my decision on the appeal.

Gyllian D Grindey

Inspector

²⁰ Letter from Marrons dated 27 January 2011

²¹ Mr Thorley agreed, in cross examination

²² Of 22 February 2011 to Mike Beavis

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr G Machin	Barrister, instructed by the Solicitor, Amber Valley Borough Council (AVBC)
He called	
Mr R Thorley DipTP MRTPI IHBC	Community Planning Manager, AVBC

FOR THE APPELLANT:

Mr J Edmond	Principal, Marrons
He called	
Mr P Rech BA Phil CMLI	Director, FPCR
Mr E Kitchen BA MA	Director, CgMs Consulting
Mr D Pritchard Bsc MA MRTPI	Director of Planning, Marrons
Mr D Cheetham BA(Hons) MSc FILT MIHT	Regional Director, Waterman Boreham (answering questions only)

FOR ENGLISH HERITAGE:

Ms B Harries	Legal Advisor, English Heritage
She called	
Mrs E Scott BA (Hons) MSc Post Grad Dip	Historic Building Advisor, English Heritage

INTERESTED PERSONS:

Cllr Arnold	AVBC
Cllr L Dorey	AVBC
Ms A Sparham	Local resident
Ms K L Hallam Black	Local resident

DOCUMENTS

- 1 Letter of notification of inquiry & circulation list
- 2 Bundle of 64 letters received (via AVBC) & handed in at inquiry
- 3 Document read by Cllr Arnold
- 4 Document submitted by S Heathcote on behalf of Belper Civic Forum
- 5 2 x letters from Conservation & Design Manager Derbyshire County Council of 18 March & 5 April 2011
- 6 Executed S106
- 7 Opening statement for the appellants
- 8 List agreed conditions & CD of same
- 9 Copy e-mail from Simon May re sitting days & copy of decision
- 10 e-mail from Rob Thorley & corrected Cinderhill document
- 11 Proposed Design code condition
- 12 Committee report, Deb Ltd application

- 13 1:10000 DCC Map re possible line of WHS boundary
- 14 Closing submissions for AVBC
- 15 Closing submissions for the appellants
- 16 Bundle of documents put in by appellants: e-mail trail, draft development brief & 2 concept plans re Bullsmoor site; copy LP policy ER3; photographs taken with 9m flag pole on site and updated set photographs, different season; 'Planning for Growth' Statement of 23 March 2011

PLANS

- A The applications plans: 4240-P-01;02 rev A; 03 rev D

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