



Core Document I.3.2

**Ascendant: the Elizabeth Landmark
Cold Law, Ray Estate, Northumberland**

Appeal against the refusal of planning permission
Public Inquiry
Rebuttal Evidence
Allen R Creedy MRTPI FIEMA
Planning Policy Matters

Planning Appeal Reference
APP/P2935/W/20/3244389

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1. Rebuttal

1.1 Scope

1.1.1 This rebuttal proof of evidence is submitted, on behalf of the Appellant, in response to evidence submitted: (i) on behalf of Northumberland County Council ("the Council") by Mr Gordon Halliday and Mr David Stokoe; and (ii) on behalf of KTWW by Ms Jean Jones. For the avoidance of doubt, I continue to rely upon my principal proof of evidence (and appendices). I do not seek to deal with every point of disagreement with Mr Halliday and Mr Stokoe (and the other evidence submitted on behalf the Council and KTWW), which will be addressed at the inquiry in due course. I simply address the following points where it may assist the Inspector to receive a written response before the inquiry commences.

1.1.2 First, I note that the evidence of Mr Halliday (CD J.2) now suggests that the Council are relying upon saved policies GD2 and TM4 of the Local Plan even though neither policy forms part of the reason for refusal. Mr Halliday also refers to policy QOP1 of the draft Local Plan, but he accepts that only limited weight should be attached to it at this time. Mr Stokoe also refers to policies GD2 and QOP1. Mr Halliday confirms (at paragraph 8.19 of his proof) that the points he makes in respect of policy GD2 equally apply to policy QOP1 on the basis that they are both design policies. Mr Stokoe does not gainsay this approach. Accordingly, I respond to these comments together when dealing with policy GD2 at paragraph 1.2 below.

1.1.3 Second, I note that Mr Halliday alleges for the first time that less weight should be attached to the Appellant's commitment to implement a Conservation Management Plan ("CMP") (per the Section 106 Agreement dated 1 April 2020) because (he asserts) much of the related ecological benefit would be secured by a separate Environmental Stewardship Agreement ("ESA").

1.1.4 Third, I note that Mr Halliday seeks to question the weight to be attached to the social and economic benefits of the appeal scheme.

1.1.5 I deal with each of these points below.

1.2 Saved Policy GD2

1.2.1 At paragraph 6.12 of his evidence, Mr Halliday refers to that part of policy GD2 upon which he now suggests that he is relying even though this policy is not identified in the Council's reason for refusal. Mr Stokoe refers to this policy at paragraph 3.1.4.2 of his proof of evidence. Policy GD2 is a design policy. It sets out a series of *design criteria* with which development is required to comply. Whilst at paragraph 6.9 of his evidence, Mr Halliday concedes that this paragraph of the policy forms no part of the Council's reason for refusal, he goes on to rely upon it. I refer, in particular, to paragraphs 8.10 – 8.13 of his evidence where he makes a series of design-related criticisms of the appeal scheme.

1.2.2 Moreover, at paragraph 8.24 of his evidence, Mr Halliday reaches the following conclusion:

*'For the reasons set in Mr Stokoe's and my evidence, I consider that the proposed development is inappropriate **both in terms of location and design** and does not meet the very high environmental standards required by planning policies locally and nationally for such an open and relatively unspoilt landscape.'* [my emphasis]

1.2.3 It is clear that Mr Halliday has no mandate from the Council to raise the issue of design under this policy as an objection to the appeal scheme. The design of the sculpture itself and its associated development forms no part of the Council's objection to the appeal scheme. This is clear on the face of the single reason for refusal that relies only on two policies, namely policy NE1 of the Core Strategy and paragraph 170 of the NPPF (later clarified by the Council to be confined to sub-paragraph 170(b)).

1.2.4 This is further confirmed by the Statement of Common Ground dated 3 March 2020 as entered into between the Council and the Appellant. Paragraph 3.9.5 of the Statement of Common Ground states as follows:

'The reason for refusal cites only policy NE1. It is agreed that policies GD2 (TDLP)...do not form part of the reason for refusal in this case.'

1.2.5 It is, therefore, inappropriate for Mr Halliday to seek to re-cast the Council's case in this way.

1.2.6 For the avoidance of any doubt, I consider that the Appellant's evidence demonstrates that the appeal scheme accords with policy GD2 in any event. I refer, in particular, to my main proof of evidence as well as the evidence submitted by Mr Hitchens and Ms Southern. I note that compliance with this policy was also the view of the Council's professional planning officers when they referred the appeal scheme to the Council's Planning Committee with a recommendation that planning permission be granted.

1.3 Policy TM4

1.3.1 Mr Halliday also now seeks to rely upon saved policy TM4 even though (again) he concedes that it forms no part of the Council's reason for refusal (see paragraph 6.9 of his evidence).

1.3.2 At paragraph 6.12 of his evidence, Mr Halliday cites that part of policy TM4 upon which he relies. He then goes on at paragraph 8.15 of his evidence to articulate the nature of the alleged conflict with this policy, namely that the appeal scheme *'would not be absorbed into the landscape'* but instead *'would be a prominent feature in the landscape'*. Again, as a matter of principle, Mr Halliday is seeking inappropriately to extend the reach of the Council's case contrary to the reason for refusal and the Statement of Common Ground.

1.3.3 I did not refer to Policy TM4 in my main proof of evidence because I do not consider that it is engaged by the appeal scheme. It is a policy that relates to *small scale new build tourism development* in the open countryside. It is a permissive policy which provides that planning permission will be granted for such development where three criteria are met.

1.3.4 It appears from Mr Halliday's reliance on this policy that he considers the appeal scheme to be *small scale* for the policy to apply, but his reasoning is unclear. As I read it, this policy was written as a permissive policy to allow for the addition of *small scale new build(ings)*. It is not directly applicable to the appeal scheme which is for the installation of a Landmark piece of sculpture by way of public art. I also note that Mr Stokoe describes the appeal scheme as a *'large-scale monument'* (see paragraph 5.4.3.5 of his evidence) and does not refer to this policy at all.

1.3.5 Even if (contrary to my evidence) this policy is engaged by the appeal scheme, I note that criterion (a) of this policy is a requirement for a development to *'be absorbed into the landscape by taking advantage of natural features such as existing tree cover and/or the topography of the site and surroundings.'*

1.3.6 The appeal scheme can (and would) be *absorbed into the landscape* for the reasons set out in the Appellant's evidence. The sculpture itself, as a landmark, does take advantage of the topography of the site and surroundings (including the surrounding windfarms) to become an appropriate location for a landmark as set out in more detail in the Appellant's evidence. The other associated infrastructure, such as the area for car-parking has all been carefully sited to be absorbed into the landscape in the way I have described in my evidence. I therefore consider the sculpture would respect the intrinsic character of this landscape.

1.3.7 Criteria b and c are not relevant to the appeal scheme.

1.4 Biodiversity benefits

1.4.1 At paragraphs 8.22 and 8.23 of his evidence, Mr Halliday now seeks to diminish the biodiversity benefits which would be delivered by the Section 106 Agreement dated 1 April 2020. This obligation requires the Appellant to implement a CMP as set out in my main proof of evidence. Mr Halliday appends a note from the County ecologist (Mr David Feige) that claims that much of the ecological benefit arising from the CMP may actually be delivered in any event by an ESA. Mr Halliday also alleges that the benefits that would be delivered by the CMP should be discounted as they would be required to make the appeal scheme acceptable.

1.4.2 I do not agree with this analysis for the following basic reasons. I attach to this rebuttal proof a copy of relevant extracts of the ESA.

1.4.3 First, the ESA does not include any of the options cited by the County ecologist (CD J.2.1 [C]). The ESA only provides for the maintenance of the existing grazing regimes. It does not include any of the proactive management 'options' nor any of the 'supplements' claimed by the Council. The County ecologist's assertions to the contrary are simply incorrect and should be given no weight.

1.4.4 Second, the ESA is for a fixed period to 2024 in any event. The County ecologist is simply speculating when he states that further funding opportunities are '*likely to be available*'.

1.4.5 Third, the Appellant's commitment to deliver the CMP runs in perpetuity. Its benefits extend well beyond the scope of the ESA anyway. In particular, the CMP would facilitate a reduction in grazing and a re-wetting of the degraded bog habitat. These measures – secured by a legal obligation given by the Appellant - would deliver a significant ecological benefit that is not (and would not reasonably expected to be) addressed at all in the ESA.

1.4.6 Fourth, as set out in my main proof of evidence, these benefits were explicitly endorsed and welcomed by the County's ecology officer in his consultation response dated 19 February 2019 (CD B. 8). I note this response was copied to Mr Feige. These benefits are also assessed in the Appellant's ecology report (CD A.12).

1.4.7 Fifth, there is no basis to reduce the weight to be attached to the CMP, either by virtue of the ESA, or otherwise, simply because they are a consequence of the appeal scheme. To the contrary, the CMP would deliver significant ecological benefits and enhancements which would not occur but for the appeal scheme. Considerable weight should therefore be attached to them as part of the overall planning balance. Such benefits arising from the CMP should not be discounted from the planning balance simply because the Council require them as part of the Section 106 Agreement. Mr Halliday is incorrect to suggest otherwise.

1.5 Economic benefits

- 1.5.1 At paragraphs 8.28 to 8.40 of his evidence, Mr Halliday now seeks to diminish the economic, tourism and employment benefits which would be delivered by the appeal scheme. Mr Halliday asserts that only very limited weight should be given to the: additional spending; GVA; and full-time jobs which would be delivered and their regional importance. He also seeks to qualify the support given by the Council's tourism manager as referred to in my main proof of evidence. At paragraphs 26-35 Ms. Jones alleges the appeal scheme would harm existing tourism businesses.
- 1.5.2 I do not agree with these analyses for the following reasons.
- 1.5.3 First, as set out in my main proof of evidence, the significant economic benefits which would arise have been further evidenced by independent expert consultants, Frontline Consulting (CD I 3.1). In so doing they have highlighted that the Landmark would help to retain and increase local spend, notably as the tourism sector pivots and focuses on a significant increase in the 'staycation' market. They also demonstrate the local economy has not been immune to COVID and requires an economic boost.
- 1.5.4 Secondly, the Appellant's evidence demonstrates that the Landmark will complement the many and varied public art installations already in Northumberland and support the delivery of the Northumberland Economic Strategy. In doing so, the Landmark would be one of a number of such installations, rather than being a '*substantially visited singular attraction*'. Evidently, it would be an asset and add value to the (tourism) industry. On this, I agree with the Council's Tourism and Visitor Economy Manager (CD I.2) and I note the strong support of the Council's portfolio holder for Arts, Heritage and Culture.
- 1.5.5 Thirdly, as demonstrated (for example) by the experience of Northumberlandia and Kielder, it is neither fair nor accurate to assert that the introduction of new public art leads to a reduction in the patronage of an area by visitors. To the contrary, it would establish a new attraction and increase numbers to existing tourist attractions all to the benefit of the local and regional economy. By way of example, it is clear that part of the success of Kielder over the last 25 years is to offer a mix of sports and arts activities for family visitors and tourists in that area, where cycling, walking and water sports are promoted alongside public art and Observatory without the one diminishing the other. In the area to the south of Cold Law (between the 2 large windfarms) there are established sporting activities with climbing, fishing and boating with camping. The Landmark would complement these activities as both a cultural and family offer.
- 1.5.6 The same points are relevant to refute Ms Jones's concerns, but there is also inconsistency in what she suggests. For example, at paragraph 33 Ms Jones complains about events attracting unpredictably large numbers of people to the area, and elsewhere she refers to the Landmark being visited by significant numbers of people. Yet on the other hand she expresses concern that there will be no economic benefits from the Landmark.
- 1.5.7 Ms Jones also expresses concerns about lighting of the appeal scheme; but to be clear, the scheme does not include lighting, nor are events proposed.
- 1.5.8 For the various reasons set out in the Appellant's evidence as a whole, I consider that considerable weight should therefore be attached to the economic benefits as part of the

overall planning balance. The concerns that there would not be such benefits, or concerns about the adverse economic impact of the appeal scheme on existing businesses and tourists are unjustified and unevidenced.

1.6 Social benefits

- 1.6.1 At paragraph 8.12 of his evidence Mr Halliday makes reference to opposition to the design of the Landmark and he now appears to criticise the considerable public consultation that was carried out by the Appellant. For the reasons set out in more detail elsewhere, I consider that this criticisms is unjustified by reference to what occurred. Whilst the creation of public art of this kind can generate controversy (as identified Mr Jarratt), Mr Halliday makes no reference to the public support the appeal scheme also enjoys, to which I have referred in my evidence, including from the Council's portfolio holder for Arts, Heritage and Culture (CD I 3.1 [3]).
- 1.6.2 I consider the public consultation carried out by the Appellant was appropriate and engaged properly with the local communities, as set out in the evidence of Mr Jarratt. In addition, it is unsurprising that a bespoke piece of art, such as that that has been designed by Mr Hitchens, engages public opinion about its design and stimulates debate. I do not consider this is a consideration that weighs against the appeal scheme in planning terms. To the contrary, the appeal scheme has been designed to be seen and, for the reasons set out in the Appellant's evidence, would successfully encourage public participation both in an appreciation of the Landmark itself (as a piece of public art) but also the wider landscape.
- 1.6.3 I remain of the strong view that the Landmark would be a unique, outstandingly high quality and bespoke public commemorative art installation to both stimulate discussion and promote cultural and social engagement and to enhance the area. Mr Halliday is incorrect that the social benefits should be afforded only limited weight. To the contrary, considerable weight should be given to these benefits.

2. ESA Extracts

2.1 Environmental Stewardship Agreement (AG00567451)

- 2.1.1 Set out below is the front page and extracts from three pages of the ESA. These relate to that land within the ESA which is also subject to the Section 106 Agreement. This land extends to 58.31ha and is referred to in the ESA as land parcel NY93842294 and is shown on page 10 below.
- 2.1.2 Details of the management prescriptions relating to this land can be seen on page 9 below.
- 2.1.3 The plan which forms part of the ESA and which refers to the appeal site is also reproduced below, the legend to the plan clearly shows there are none of the options or supplements claimed by Mr Feige.

ENVIRONMENTAL STEWARDSHIP
ENTRY LEVEL / HIGHER LEVEL
STEWARDSHIP AGREEMENT
DECLARATIONS



Department
for Environment
Food & Rural Affairs

Environmental Stewardship (Leeds)
PO Box 4895
Slough
SL1 0FW



DECLARATION 1 - Agreement Acceptance

- (a) Name:
Terrance Devonport
- (b) Business name (name to which payment will be made):
Devonport Farms
- (c) Main correspondence address:
Devonport Farms
The Ray Estate
Kirkwhelpington
Newcastle upon Tyne
Northumberland
NE19 2RG

Agreement number: AG00567451

Vendor number: 285246

PART 2A
Parcel based options summary

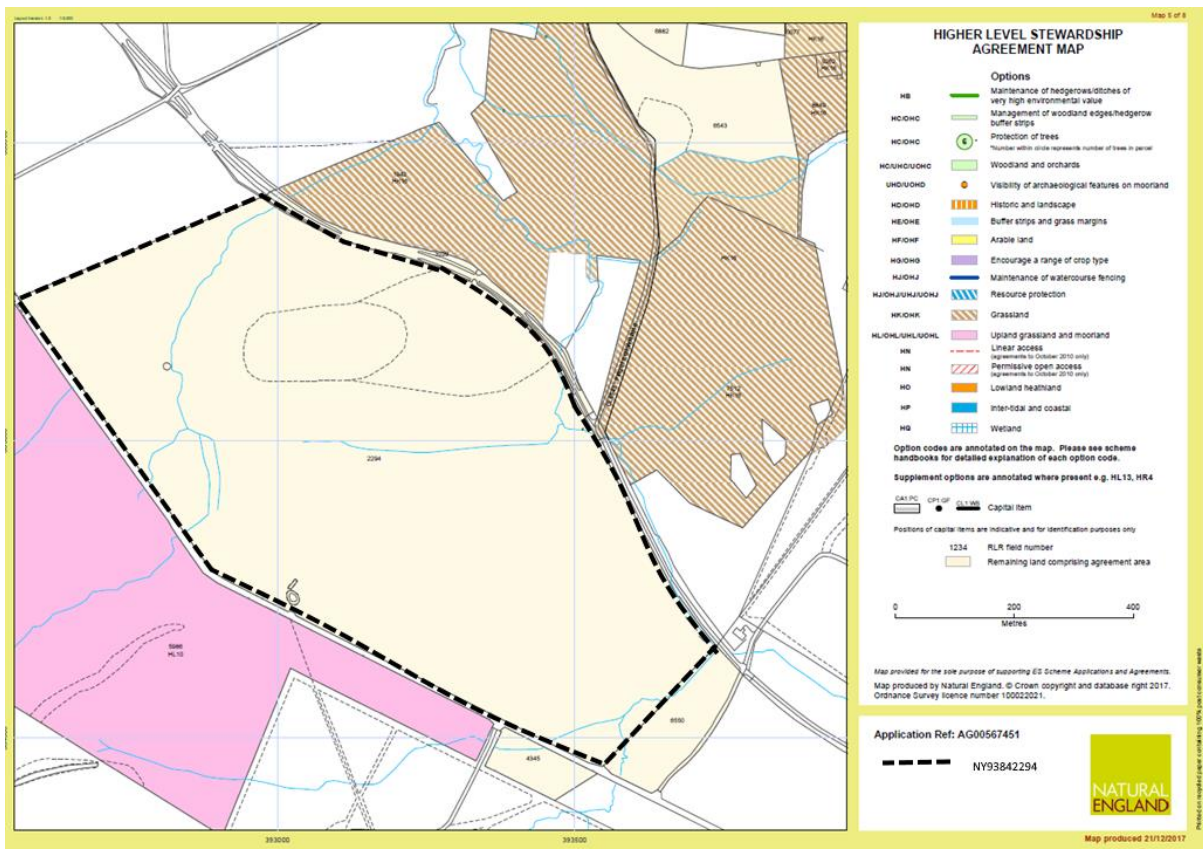
RLR field number	Field name	RLR field size (ha)	OPTIONS					
			Code	Description	Quantity (ha/100m/no.)	Start date	End date	Duration (years/ months)
NY92869949		0.42	UX2	Grassland and arable	0.42	01/07/16	30/09/24	8 Years 3 Months
			UC22	Woodland livestock exclusion	0.42	01/07/16	30/09/24	8 Years 3 Months
NY92869967		5.72	UX2	Grassland and arable	5.72	01/07/16	30/09/24	8 Years 3 Months
			UL20	Haymaking	5.72	01/07/16	30/09/24	8 Years 3 Months
			A13	Non payment option - permanent grassland for Article 13	5.68	01/07/16	30/09/24	8 Years 3 Months
NY92879216		2.06	EL2	Permanent in-bye grassland with low inputs: SDA land	1.87	01/10/14	30/09/24	10 Years
			UX2	Grassland and arable	1.98	01/01/19	30/09/24	5 Years 9 Months
			A13	Non payment option - permanent grassland for Article 13	1.97	01/10/14	30/09/24	10 Years
NY93842294		58.31	EL6	Moorland and rough grazing: ML land only	58.00	01/10/14	30/09/24	10 Years
			UX3	Moorland	58.31	01/10/14	30/09/24	10 Years
			UD13	Maintaining visibility of archaeological features on moorland	4	01/10/14	30/09/24	10 Years

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PART 2A
Parcel based options summary

RLR field number	Field name	RLR field size (ha)	OPTIONS					
			Code	Description	Quantity (ha/100m/no.)	Start date	End date	Duration (years/ months)
			UL18	Cattle grazing on upland grassland and moorland	58.00	01/10/14	30/09/24	10 Years
			A13	Non payment option - permanent grassland for Article 13	58.00	01/07/16	30/09/24	8 Years 3 Months
NY93844345		1.12	UX3	Moorland	1.12	01/10/14	30/09/24	10 Years
			A13	Non payment option - permanent grassland for Article 13	1.12	01/10/14	30/09/24	10 Years
NY93846550		2.42	UX2	Grassland and arable	2.27	01/07/16	30/09/24	8 Years 3 Months
			A13	Non payment option - permanent grassland for Article 13	2.27	01/07/16	30/09/24	8 Years 3 Months
NY93851942		17.61	EL2	Permanent in-bye grassland with low inputs: SDA land	16.88	01/01/17	30/09/24	7 Years 9 Months
			UX2	Grassland and arable	17.11	01/07/16	30/09/24	8 Years 3 Months
			A13	Non payment option - permanent grassland for Article 13	16.90	01/07/16	30/09/24	8 Years 3 Months
			HK16	Restoration of grassland for target features	15.09	01/01/17	30/09/24	7 Years 9 Months
NY93853029		1.43	UX2	Grassland and arable	1.43	01/07/16	30/09/24	8 Years 3 Months

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Key

--- NY93842294