

“ASCENDANT”

TOWN & COUNTRY PLANNING ACT 1990

**TOWN & COUNTRY PLANNING (INQUIRIES PROCEDURE) (ENGLAND) RULES
2000**

APPEAL BY

VISCOUNT DEVONPORT

PLANNING INSPECTORATE REFERENCE: APP/P2935/W/20/3244389

LPA REFERENCE: 19/00247/FUL

**APPEAL RELATING TO REFUSAL OF PLANNING PERMISSION FOR
CONSTRUCTION OF A PUBLICLY ACCESSIBLE LANDMARK, COMMISSIONED TO
COMMEMORATE QUEEN ELIZABETH II AND THE COMMONWEALTH**

LAND AT COLD LAW KIRKWHELPINGTON

APPELLANT’S OPENING STATEMENT

1. It is a huge privilege to present this appeal. *Ascendant* is a breathtakingly brilliant new sculpture to raise the spirits and to inspire. It would be a magnificent landmark to enhance the landscape which has so inspired its artist, Simon Hitchens and its patron, the Appellant.
2. The title *Ascendant* is apposite. Like the singular form of the piece itself, this one word embodies its rich meanings: the elevated structure of the sculpture itself, a slice from the hill in which it sits; the ascension to the throne of Queen Elizabeth II and the reign of the longest-serving monarch this country, and now the world, has ever known; the rich diversity of the Commonwealth under one broad name; the physical geography of the landscape around; and the lifting of the aspirations of the whole area in which its sits, whether culturally, economically or socially.

3. The prospect of this work of art offers solace at a particularly bleak moment for our generation from which we are (hopefully) just emerging. But it is an artistic triumph which should be welcomed at any time.
4. Planning is necessarily dominated by mundane reality of development required to meet functional needs. Such development is obviously important and necessary in its own right. But it is preciously rare for development to come forward with the sole purpose of enhancing the artistic, cultural and heritage traditions of our country that has formed such a rich vein of our history in the past. That is precisely what this scheme is. There is nothing commercial in its conception or evolution. It is the commission of art for art's sake to commemorate the Queen and the Commonwealth in a very special way.
5. Sadly, most public art (ie art that can truly be enjoyed by all) is often only that secured as part of wider functional development proposal. Conditions can sometimes be imposed, normally reflecting the recognised importance of cultural well-being in a sustainable world, to secure public art within a commercial development scheme. In such cases, no one every truly doubts the obvious merits as to the principle of such public art. The merits of the works themselves (often unknown when they are secured) are assumed. That is because public art is recognised as a virtue in its own right. The works that are subsequently delivered may often be controversial, thought-provoking and divide opinion. But the delivery of art into the world we inhabit is a life-sustaining objective. It is sustainability epitomised - securing places in which we live that give inspiration for the future.
6. In this scheme, however, public art is not being secured as some required benefit to mitigate commercial development. It is the entirety of the scheme itself.
7. Those who practice regularly in the planning system know well how instinctively resistant people are to change. It is often an instinctive reaction. History demonstrates that this is never more so the case than for the creation of new landmark works of art. No doubt it is something to do with the inherent innovation or novelty of the art itself, combined with fear of change to a familiar landscape, that prompts such a predictable reaction that repeats itself again and again. We understand that people have such fears. But what are now some of the most cherished and iconic landmarks that have ever been created also prompted such fears and objection at their inception, be it from age's past, such as Nelson's Column, or recent times as for the Angel of the North. The latter is an

illustrative case in point – objected to by over 2,000 people and supported by just 3, now that it has been realised it is zealously protected as a source of pride by the communities that so vehemently opposed it from the outset.

8. Unsurprisingly, therefore, Ascendant has provoked some controversy as well. Its intended visibility and form as a landmark will naturally bring change. The prospect of such change is viewed by objectors to the scheme in a negative way. Yet it is a testament to its beauty and virtue that even at this inception stage you will hear and read of those who are as passionate in its support as those who profess opposition.
9. It is, perhaps, a mark of any great work of art that is truly innovative (something that the NPPF celebrates) that it does inspire reactions. Art must engage its viewer in some way if it is to have any purpose. Perhaps it would have been a real mark of failure of the principles of artistic endeavour if it had provoked no controversy at all?
10. For the vast majority, however, we have no doubt that this interaction with Ascendant will ultimately be a hugely positive experience. Its very presence will draw people in to visit not just the work itself, but also the landscape in which it sits. You will hear evidence from the hugely experienced Matthew Jarratt in the success of such pieces in having this effect, including those located in far more sensitive landscapes such as the Northumberland National Park. You will also hear evidence as to the undoubted economic and social benefits that delivery of such art brings through enhancing tourism in the area.
11. It is recognised that it is difficult to quantify precisely the full extent of those economic benefits. Each such tourist attraction operates individually in respect of its specific location. There, is however, no dispute between the Appellant and Northumberland County Council that there will be such benefits. The only dispute is as to their extent and the weight they should carry in the determination of this appeal. We have no absolutely no hesitation in inviting you to attach significant weight to them. Input to the economic and cultural life of Northumberland, as well as this specific locality, is so important for places to thrive.
12. It is fair to say that the planning system is not naturally geared to assessment of landmark artwork proposals of this kind. However the proper application of section 38(6) of the Planning and Compulsory Purchase Act 2004 (requiring determination in accordance with the development plan unless material considerations indicate otherwise) is required and it

strongly supports what is proposed. For reasons you will hear, this proposal represents development which not only accords with the development plan as a whole, but fundamental principles of sustainable development in the NPPF. Indeed, it would be both surprising and a damning indictment of the planning system if it did not foster and support tourism, culture and the provision of inspirational art works of this kind.

13. In this respect, you will have seen that the proposal has been supported by the full raft of information required for a planning application for development in the ordinary way and has followed the principles of best practice.

14. Before any planning application was submitted there was a comprehensive process of engagement (despite what is claimed) which significantly exceeded anything that would ordinarily occur. Exhibitions of the three alternative design proposals for a landmark were held in 5 local venues over a series of days (extending to 34 in total) at Kirkwhelpington Village Hall, Otterburn Memorial Hall, Corenside Parish Hall, St Cuthberts Church, Corenside and West Woodburn Primary School over a period of 34 days in Summer 2018¹ before the winning design by Simon Hitchens was selected. Community feedback forms provided the opportunity for full engagement and were taken into account. The winning design was also the preferred design by those that commented. The proposal was the subject of extensive local press coverage as well. The Appellant has therefore sought the widest possible engagement with the proposal from the outset.

15. The subsequent planning application was accompanied by a Planning Statement incorporating the Design and Access Statement², with all necessary supporting information and an assessment of the proposal against development plan policies and the NPPF. The supporting information included (amongst other things):

- a. a Transport Statement from SAJ Transport Consultants dealing with the transport implications of the proposal³;
- b. a Construction Strategy Statement and details of how the landmark would be constructed⁴;

¹ See CD A-26 Community Exhibitions and Feedback.

² CD A-3

³ CDA-13 Transport Statement January 2019.

⁴ CD A-4, A-5 and A-6

- c. an Ecological Appraisal by E3 Ecology demonstrating how the proposal will deliver a biodiversity net gain⁵;
- d. a Heritage Assessment in relation to archaeology and heritage assets in the locality by Bamburgh Research Project dated January 2019⁶; and
- e. a Landscape and Visual Impact Assessment by Southern Green Ltd Landscape Architects dated January 2019⁷.

16. Although objectors have sought to criticise the engagement and subsequent publicity process, there is no proper basis for doing so. It should be sufficient for me to refer to you the County Council's own analysis in this respect. In the Committee Report that subsequently presented the planning application, and recommended its approval, the officers dealt in terms with the publicity and consultation that had occurred⁸ quite apart from the Appellant's own pre-application engagement. 90 neighbours were expressly notified of the application. A general site notice was posted on 7 February 2019. A press notice was placed on the same day in the Hexham Courant.

17. As the officers put it in their own report on analysis of all of the consultation responses received: "with the exception of Corenside Parish Council, consultee responses triangulated to suggest that the proposals will not cause harm which would outweigh the wider public benefit" that officers identified in the report. In response to the criticisms of the engagement process made by objectors at the Committee meeting itself, officers correctly advised members that in relation to engagement, they "regarded the applicant as having completed above and beyond what had been required"⁹ and that the local planning authority itself "had also carried out consultation in excess of what was statutorily required, with letters being sent to properties within a 2.5km radius of the application site as there were a number of isolated properties."¹⁰ It is therefore simply inappropriate for criticisms of this kind to be made.

18. In addition, the planning application itself was thoroughly scrutinised by officers of the County Council and statutory consultees, as one might expect. In this regard it is

⁵ CD A-12 Ecological Appraisal January 2019

⁶ CD A-22

⁷ CD E-1 and accompanying appendices (January 2019).

⁸ CD C1-1 Officer Report dated 4 June 2019

⁹ CD C-2 Minutes of Meeting 4 June 2019, page 5 (top bullet point)

¹⁰ CD C-2 Minutes of Meeting 4 June 2019, page 5 (third bullet point on the page).

revealing what that statutory consultation and scrutiny process demonstrates. Amongst other things:

- a. There are no objections to the scheme from the County Archaeologist.
- b. There are no objections from the County Ecologist who confirms the scheme's ability to deliver the biodiversity net gain shown in the ecological appraisal.
- c. There are no objections from the Northumberland National Park, so confirming the absence of any adverse landscape or visual impact upon that designated landscape.
- d. There are no objections from Historic England. This is not a standard short "no objection" letter. To the contrary, it is a detailed response¹¹. The letter confirms that Historic England had "considered carefully the potential impact of this proposal on the designated heritage assets" with its statutory remit and, in particular, the scheduled monuments identified including the prehistoric settlement at the very top of Great Wanney Crag. Having conducted that careful appraisal, Historic England were satisfied that no heritage harm would occur to any of these assets, including Great Wanney Crag. As you will see from reading that analysis, that was based on a considered and objective appraisal of any visibility of the landmark from Great Wanney Crag which we commend to you, as compared with the distorted claims now being presented in evidence by, amongst other things, the County Council's landscape witness.
- e. There was no objection from the Council's Tourism and Visitor Economy Manager. As identified in the Update Report for that Committee meeting, this too was not simply "no objection", but subject to the additional specific advice as to the importance of tourism to Northumberland, an assessment of the landmark's contribution as a sensitive asset in relation to the landscape and environment and its context (in an area with wind turbines in it already). Even though the Tourism and Visitor Economy Manager thought it questionable as to whether it would be a "substantially visited singular attraction", he was clear that "as an unusual feature and point of interest, it would add value to the total visitor offer within the county and as such will contribute directly to ambitions for sustained growth in our

¹¹ CD B-10 Historic England Letter dated 20 March 2019.

economy”¹². He was clearly right to recognise this. His views are matched by the County Council’s portfolio holder on Northumberland County Council for Arts, Heritage and Culture, Councillor Watson, who has expressed very strong support for what is proposed¹³.

19. What is more, the officers did not simply accept what was stated about the application in the LVIA produced by the Appellant. The County Council commissioned its “own independent review of the LVIA submitted by the applicant which concludes that the submission is robust and reaches reasonable conclusions”.¹⁴ That independent reviewed was commissioned from Stephenson Halliday and is set out in a document for the County Council dated May 2019¹⁵. Stephenson Halliday is an independent landscape planning consultancy that reviewed the LVIA and endorsed its methodology and conclusions.
20. The Committee Report itself then sets out the professional officers' analysis of the proposal against the relevant development plan policies and the NPPF in light of all that information, providing an objective, fair and cogent analysis of it to conclude that the proposal was both in accordance with the development plan and the requirements of the NPPF. It therefore recommended approval. Even after the application was then deferred by the Planning Committee and brought back to committee in light of further objections, the same recommendation for approval was made subject to securing the section 106 agreement obligations that had been offered in respect of ecology matters.
21. This is a case where we therefore not only rely upon the professional assessments of the Appellant’s team, but also the County Council’s Director of Planning who, with the County Council’s Senior Planning Officer, jointly presented the proposal and that recommendation. The planning merits of the scheme are, when objectively appraised in that way, compelling.
22. In circumstances such as this, what then of this appeal and the County Council’s refusal? There is only a single reason given and it is very narrow in ambit (despite subsequent unwarranted attempts in the evidence that has been produced by the County Council's witnesses to try and expand any policy basis for it). It is a thin and poorly particularised claim that the proposal “results in development in the open countryside which fails to

¹² CD B-14 Consultation Response from Tourism & Visitor Economy Manager

¹³ CD I-3.1 Creedy Appendix, page 8 of 17, Email from Councillor Watson dated 28 Jan 2021.

¹⁴ CD C-1 Officer Report, paragraph 7.8.

¹⁵ CD E-15

recognise the intrinsic character and nature of the countryside in this location and is therefore contrary to paragraph 170 of the NPPF and Policy NE1 of the Tynedale Local Development Framework Core Strategy.”¹⁶

23. This contention is obviously contrary to the professional assessment of the County Council’s own officers, and the advice they themselves took. The County Council has subsequently confirmed that the reference to paragraph 170 of the NPPF is not a contention that the landscape in question is “valued landscape” for the purposes of paragraph 170(a) of the NPPF. It is undesignated landscape which has been fully considered by officers and by the Appellant in the LVIA which addresses the effects on it. The reason for refusal is confined. More substantively, it does not contain any indication that there has been any proper assessment of the consequential planning balance. Even if members have taken the view that there is some impact on the countryside, or conflict with Policy NE1 (despite the evidence), there is no attempt in the analysis to explain or deal with the benefits of the scheme, including those recognised by their own officers given the importance of tourism and the creation of tourist destinations in the area, and their ability to outweigh such conflict even if it were to arise.

24. The inquiry will explore the written evidence now produced by Mr Halliday and Mr Stokoe which seek to support this single reason for refusal but we say in a misconceived way (and seeking to raise other policies contrary to the agreed position in the Statement of Common Ground). Mr Halliday now seeks to diminish the weight to attach to certain benefits, although not in a way that the County Council ever expressed in its reasoning and ultimately in a way which does a fundamental disservice to other important aspects of the development plan. These include the promotion of public art in Policy BE1 and the importance of tourism and the encouragement of appropriate new development to increase the range, quality and type of facilities in the area as reflected in Policy EDT1. In addition, there is the corresponding promotion of tourism in the NPPF, and the benefits of biodiversity net gain in the development plan and the NPPF itself. There is no material analysis, let alone recognition, of the importance of cultural enhancement through public art at all. Likewise, Mr Stokoe’s analysis essentially involves disagreement with the analysis of Southern Green and Stephenson Halliday, but in ways which fail to reflect the nature of what is proposed and, of course, its positively beneficial effects as a landmark in this location. There are even more problems in this respect in the evidence put forward by

¹⁶ CD C-6 Decision Notice dated 10 July 2019.

KTWW both in relation to planning policy and landscape assessment, but also in relation to matters such as transport, litter or ecology where each such objection is unjustified.

25. You will hear more about the landscape and visual effects of what is proposed, but you will have had an opportunity to familiarise yourself with the landscape and surrounding area to some degree already. Although you may struggle to appreciate this from some of the written materials from the County Council's witnesses or the objectors that refer to the “remoteness” or “wildness” of the landscape, what will become apparent from both the heritage assessments and viewing the landscape itself is how it is a landscape that has involved the interaction between man and nature throughout its history. From the ancient hillforts such as at Great Wanney Crag, to the Roman forts and camps that came afterwards, to many subsequent settlements in the area, through to past and continuing mineral extraction - particularly that in the industrial era – with the former railway that runs below the site itself, now through to forestry plantations and the most recent conspicuous human intervention, the wind turbines in two windfarms that are now highly evident in views, this is a landscape where such interaction is very much part of its heritage. The wind turbines are the latest manifestation, the product of a new and different “revolution” to harness energy from this landscape. They are very much a part of this landscape now and significantly taller than the proposed landmark. They also involve literal revolution in their form, being very evident in views because of their movement and the angle of their blades depending on the wind direction.

26. The use of such a landscape for a new landmark to celebrate some of this heritage could not be more fitting. The ingenuity of the artistic embodiment of such a rich tapestry of history into one simple structure is truly accomplished and spectacular, whether it be the structure itself reflecting both the shape and geology and minerals of the land from which it rises, or the materials reflecting the steel that is redolent both of the colour but geological minerals that were extracted, or the connection with the zenith of the sun so reflecting the history of tri-radial cairns in the heritage of the area, through to the synergy its height creates between Hepple Heugh and the Queen Victoria Cairn as both a physical and symbolic tribute to the Queen and Commonwealth, with its 54 capitals to the south celebrated in the accompanying viewing area. The notion that such an exciting, inspiring and stimulating piece will be harmful to the landscape character is fanciful. You can do little better than look at Historic England’s own analysis of why there would be no impact

to Great Wanney Crag for independent confirmation of what the Appellant's own professional witnesses have concluded, along with the County Council's officers.

27. All of that is before you begin to consider the economic and social benefits that such tourism will bring. To try and minimise these benefits now, as Mr Halliday seeks to do, by comparing them to what occurs in Northumberland as a whole is a travesty of the policy position. Northumberland's tourism attraction is the sum of its parts, to which this scheme will become an integral whole if it is permitted. That is exactly what the officers and the County Council's Tourism and Economy Manager recognised.

28. In light of the evidence you will hear, we will have no hesitation in commending this wonderful scheme to you and inviting you to permit this all too rare, but immensely valuable creative project to go forward. It will undoubtedly become a superb landmark, visited and cherished in its own time as other projects of similar ambition and innovation have done in the past. We humbly urge you to allow it to proceed!

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9 March 2021