

TOWN AND COUNTRY PLANNING ACT 1990

APPEAL BY DEVONPORT ESTATES

LAND AT COLD LAW, STIDDLEHILL COMMON, NEAR RIDSDALE,

RAY ESTATE, NORTHUMBERLAND NE65 7DZ

APP/P2935/W/20/3244389

CLOSING SUBMISSIONS ON BEHALF OF

NORTHUMBERLAND COUNTY COUNCIL

PRELIMINARY MATTERS

1. It is helpful to address four preliminary matters.
2. First, the Reason for Refusal (“**RR**”) accurately reflects both the basis for and scope of the Council’s decision to refuse. That decision is founded on the policies cited. Nothing in the Council’s evidence has suggested otherwise.
3. What that evidence does reflect is that the current appeal needs to be determined in accordance with the development plan *as a whole* - as put to and agreed by Mr Halliday (“**GH**”), and confirmed by Mr Creedy (“**AC**”) in evidence in chief (“**eic**”) & cross-examination (“**xx**”) - unless material considerations indicate otherwise. This requires an assessment in particular of whether or the extent the development plan as a whole contains policies that pull in a different direction, so far as the proposal is concerned, from that referred to in the RR.
4. The Appellant has complained about both the presence of reference in GH’s evidence (and subsequently xx of AC) to development plan policies other than Tynedale Local Development Framework Core Strategy 2000 (“**CS**”) Policy NE1 (G1¹) - and also the absence of such

¹ References thus are to the Core Docs.

reference (viz CS Policy BE1(g)). And this is an example, with respect, of seeking to have it both ways.

5. The Council has made it abundantly clear that its necessary discussion of policies other than CS Policy NE1 has been undertaken on this basis, and that it does not seek to invite dismissal of the appeal based otherwise than upon breaches of CS Policy NE1 & NPPF.
6. Second, officers advised that planning permission be granted. Members disagreed, however, after a site visit - which included taking in some of the viewpoints (“VPs”) identified in the Landscape & Visual Impact Assessment (“LVIA”) - and debate following further representations on behalf of the Appellant and objectors. There has been no suggestion that refusal did not follow informed debate. The minutes also plainly reflect that members struck a planning balance (see C5).
7. Third, GH has come in for criticism for instructing a landscape architect other than Stephenson Halliday. There is, however, no substance in that criticism. (i) The relevant representative of that Firm was simply no longer available when GH endeavoured to revert to him. (ii) The requirement for a more detail concerning the evaluation of the LVIA (delivered in summary terms) was justified in light of the “centrality” (GH [5.5] & xx) of the landscape issue for the second application. (iii) Most important, the approach to others seeking assistance in light of Stephenson Halliday’s unavailability was made with an open, not closed, mind. There is/was nothing in this criticism.
8. Fourth, there is no dispute between the Appellant and the Council that the relevant development plan policies are all up-to-date in accordance with NPPF (AC xx). There is no need, then, to revert to that matter. Relevant policies from the Northumberland Local Plan Pre-Submission Draft (G4) (“NLP”) are referred to below notwithstanding that limited weight continues to attach to them. These confirm the direction of travel of future development plan policy. They are more up-to-date than relevant development plan policies, and AC

considered (in xx) that considerable weight should attach to compliance or non-compliance with them.

MAIN ISSUE

Preliminary matters

9. The main issue in this appeal concerns whether or the extent to which the proposal fails to recognise the intrinsic character and nature of the countryside in this location contrary to NPPF [170(b)] and CS Policy NE1. Or putting this another way, whether this is an appropriate location for the landmark as proposed.
10. Ms Southern (“**RS**”) confirmed, by reference to her [2.1.11], that a distinction is to be maintained – and the LVIA sought to do this - between (a) objective assessment of the magnitude and effect of change to landscape character, and (b) reference to subjective positive or negative responses to the artwork (RS xx). The focus here should primarily be on (a) above, though acknowledging the range of responses that people may have to the artwork at (b).
11. Finally, consideration of both landscape character and visual impacts are essential features of the appraisal required by the RR. This is so notwithstanding that the RR refers to the former alone. RS confirmed that this was so in xx (Day 4), explaining it by reference to the importance of intervisibility.

The proposal

12. Mr Jarrett (“**MJ**”) explained that the proposal had evolved to one for a landmark on Cold Law before he was instructed, and without independent input specifically to inform the choice of site and/or nature of the project so far as planning or landscape character assessment (inc. the Northumberland Landscape Character Assessment (“**NLCA**” at G6-9)) was concerned (MJ xx).

13. Cold Law is a relatively subservient hillock (it is a plinth for this purpose), and MJ explained that the drive for height from the outset arose from a view that the landmark should be at an “*equitable height*” to Wanney Crag and the Queen Victoria cairn. The desire for height was reinforced by the wind turbines in the background (MJ xx).
14. It appears that the drive or desire for height was communicated to Mr Hitchens (“**SH**”) as a requirement for a “*significantly*” tall structure visible from the A68, with provision for public access to the site (SH [3.3.3]). He explained that the proposal is to be “*striking*” and “*eye-catching*” (SH [5.2.2]), and that these characteristics would be achieved by a structure both tall and leaning – a form not known in natural form (SH xx & rx).
15. SH’s favoured sentence (“*Imagine that a giant ...*” [5.2.1]), his confirmation that the proposal achieves what he refers to as a synergy with Hepple Heigh and the Queen Victoria Cairn and that his images show visitors to scale, all confirm the great scale of the proposal - three times the height of the Angel of the North - that results from the brief.
16. It is the effects of the scale of the landmark itself, the ancillary components of the scheme and the attraction of visitors to a relatively remote or tranquil location – balanced against the benefits of the scheme - that clearly lie at the heart of the refusal of planning permission. The Statement of Common Ground (“**SoCG**”) reflects this clearly (see L1 [2.7.2]).

Landscape Character Assessment

Landscape sensitivity

17. It is not inappropriate to remind oneself of SH’s own views on the intrinsic character and nature of the backdrop against which it is intended that the proposal he has designed it to be experienced. He recognises that the landscape is fairly open, relatively tranquil, both beautiful and stunning – “*I love it*” (SH xx).
18. All or most of the Key Characteristics of Landscape Character Type 8: Outcrop Hills & Escarpments (“**LCT 8**”) are present within the vicinity of the appeal site (a strong correlation:

Mr Stokoe ("DS") etc). Craggy outcrops and simple landform are also clearly present (RS xx; see G6 [4.78, .82 & .91]. The hills themselves are an important recreational resource, with tourist centres close by in other Landscape Character Areas ("LCAs") – though sites such as Cragside, a National Trust property, are within this landscape (G6 [4.84]). Key qualities identified in Part B of the NLCA (except sweeping moorlands) are present within the vicinity of the appeal site (RS xx by ref G7 [5.114]).

19. The guiding principle of management requires that change be sympathetic and sustainable, and that key qualities may still require a degree of protection (RS xx by ref G7 [5.1.14] & [2.1.4 (Box 2.1)]). These qualities include not only physical landscape features but the relative remoteness of this area – one of the least populated in one of the least populated English county (AC App. 2 [1.2.2]).
20. So far as development guidelines are concerned, sensitivity to skyline structures is not confined to views from the National Park and recreation provision is to be sensitively designed to respect the surrounding landscape context (RS xx by ref G7 [5.122 – 123]). Contrary to RS [6.1.33], the NLCA guideline does not contemplate or seek to exercise control over tourism development within this LCT (AC acknowledging in xx that G7 distinguished between recreation & tourism). The fact that this is so reflects that tourism is not identified as a Force for Change, at G7 [5.114], in this relatively remote location.
21. Reference has been made to the modesty of LCA 8g (Sweethope & Blackdown)'s relative ranking and the possibility that NLCA and/or that ranking should be revisited following the development of windfarms at Ray Wind Farm & Green Rigg Fell.
22. LCA 8g's ranking does not detract from the attraction of its landscape and reflects rather that Northumberland features much glorious landscape even outside the National Park (RS xx).
23. Reference to the basis upon Ray Farm was granted permission with reference to viewpoints within the Study Area does not suggest that permission was granted on the basis that it

would materially change the existing landscape character of that area. Neither is this suggestion raised in the LVIA. The appeal site is clearly separate from windfarms and situated in more open landscape at the northern edge of LCA 8g, where there are strong visual linkages with local landform and the escarpment ridgeline. Finally, assuming the criteria as existing, the appeal proposal has the potential to both improve (Views & landmarks, Recreation) and harm (Remoteness) the ranking of LCA 8g in any review, in any event. It is the County's contention, however, that the proposed man-made landmark would detract from natural landmarks, i.e. the crags or rocky outcrops.

24. This discussion confirms that the sensitivity of the local landscape is clearly high, and that this is not in any sense a "worst case" assumption (per RS).

Magnitude of change/Level of Effect

25. There are very significant differences between DS & RS so far as the identification of magnitudes of change are concerned (see DS App. A). DS's assessments are to be preferred for these reasons.
26. The Landscape Institute's Guidelines for [LVIA] ("**GLVIA**") (H4) [5.49] provide guidance on how judgments on magnitude are to be generated. RS [6.13] & Rebuttal [1.2.18-21] set out RS's consideration of this matter, and this is dominated by consideration of the absence of removal of trees & hedges and the limited footprint of the site affected (5.33%). GLVIA [5.49] also advises, however, that account is to be taken of aesthetic & perceptual aspects of the landscape altered and changes to the key characteristics, i.e. those key qualities at G7 [5.114] (RS agreed). These are important additions to the appraisal.
27. GLVIA [5.50] then confirms the importance of assessment of effects at a range of clearly defined geographical stages. Whereas RS has considered the magnitude of effects at site level, effects at the level of the immediate setting of the site have not been considered separately from those at a level comprising LCA8g & part of LCA 8f (Harwood Forest).

28. The results have been assessments that do not acknowledge the fundamental change to the site area as described by DS in his column "*Rationale*" (DS Appendix A) and resulting level of effects. Neither are the results representative of the magnitude and level of effects over the wider areas considered (including, indirectly, the other LCAs referred to) - in contrast (again) with the descriptions provided by DS.

Visual Impact Assessment

29. RS agreed that it is reasonable to expect that any one visual impact assessment would be internally consistent. GLVIA [6.39] advises that judgments concerning the magnitude of visual effects need to take account of (inter alia) the scale of the change in the view including the proportion of the view occupied.

30. It is readily apparent that the proposal occupies a markedly lower proportion of the view from VP 7, and yet RS attributes the same Magnitude and Level of Effect as at VP 1 (precisely the same) and VP2 (closely similar). These reflect under-representations from VPs 1 & 2, that the assessment does not have the internal consistency it should, and that it starts out from a low or under-representative base.

31. Beyond that, RS's evidence to the inquiry does not acknowledge/grapple with the LVIA's multiple acknowledgements of adverse impacts (RS xx). The LVIA specifically defines such effects as concerning situations where the effect would result in a deterioration of the baseline situation: [2.1.46].

32. DS's "key VPs" are nos. 1, 4, 7, 14, 15. RS adds VPs 2 & 10 to this list. Both witnesses described those views, and their descriptions are not repeated here. They are matters for consideration on the site visit.

33. The conclusion of the LVIA in respect of all of these key VPs except nos. 10 & 14 is that the residual effects on visual amenity are "*adverse*" (though "*theoretically*" in respect of VPs 1 & 2). RS's discussion of visual effects refers to different receptors responding positively or negatively to the landmark (echoing the repeated qualification within the LVIA

that the proposal is likely to be perceived as a positive addition by many receptors). It is agreed, however, that the fact that this is so does not remove or substitute for objective findings as to effect, adverse or otherwise.

34. RS's evidence does not, however, acknowledge/grapple with these adverse conclusions concerning key VPs, and does not therefore explain how it is that she concludes that the appeal scheme will not harm the landscape and visual baseline (RS [8.1.8]).
35. AC's evidence that the proposal does not cause *any* harm viewed from *any* viewpoint (confirmed in xx) is also, with respect, not tenable in the context of the LVIA analysis.
36. DS's findings on the visual effects are set out in summary under "Rationale" within his Appendix A. His written evidence does not refer to the prospect that viewers of the landmark will view it positively or negatively as a piece of artwork. He confirmed in evidence, however, that he had done, i.e. that he had not assumed that effects would be adverse. So, F.1 [1.1.14] recognises the requirement for adaptation from a standard approach assuming that impacts are adverse, and DS App. A Table A1.1 Note 2 records that "*The criteria and terminology used in the SGLVIA to determine level of effect have been adopted for consistency and ease of comparison*". The issue at the heart of the appeal is the juxtaposition of the artwork with the landscape (DS [5.2.2.2]). DS's findings are commended in preference to RS's.

Conclusion on the main issue

37. NPPF (G3) [170] is very clear: decisions should contribute to and enhance the natural and local environment, and should do so by (insofar as relevant here) recognising the intrinsic character and beauty of the countryside. That recognition is a means, so far as that policy is concerned, both contributing to and enhancing the environment referred to. Reading NPPF as a whole including [8] (the environmental objective) forcibly underlines this interpretation. NPPF [170] does not reflect a lower level of ambition than NPPF [8] (and it would be surprising otherwise). Consistent with this approach, NPPF [127(c)] requires that development are sympathetic to local character and history whilst not discouraging

appropriate innovation. GH [8.11] recognised very clearly that the proposal is innovative but disputes its appropriateness to this remote, wild and open landscape.

38. RS was therefore correct to agree (in xx) that full compliance with NPPF requires enhancement. The proposal fails to achieve that because of its scale & height in particular, and the ancillary development and activity associated with its use (involving vehicles & people) in this relatively remote location. The Council does not consider that the cultural and geological associations to which SH has had regard in the design of the proposal mitigate these effects to any degree.
39. CS Policy NE1, at G1, needs to be interpreted and applied as whole. Development in compliance with criterion (g) does not comply with that policy overall if it is at the same time contrary to criterion (a). The Council invites you to conclude, by reference to G1 [5.5], that the proposal does not respect the character and quality of the surrounding landscape and causes unacceptable harm in these respects instead (recognising that that paragraph is not, as AC himself described, absolute and that there are degrees of unacceptability instead). That said, the final sentence of CS [5.5] is also engaged. This particular public art proposal does not reinforce landscape character or enhance its quality. This is so by reason of the impacts of landmark sculpture itself and the activity it will attract to this location. Heavy weight should attach to a conclusion that the proposal is in substantial breach of this up-to-date development plan policy.
40. Turning briefly to other development plan policy, CS Policy EDT1 is agreed to be relevant (SoCG at L1 [3.2.1]) but does not add substantively to the more detailed criteria at Policy NE1 (allowing new tourist development "*where appropriate*"). Policy EDT4 was referred to in error (by SP, not GH).
41. So far as the Tynedale District Local Plan 2000 Saved Policies (2007) (G2) ("**LP**") Policy G2(a) is concerned, the evidence confirms that the proposed structure is not appropriate to the character of the site and its surrounds by virtue of its scale. This does not, again, add substantively to or contradict the criteria within and conclusion that the proposal is in breach of CS Policy NE1. The proposal does not garner support via LP Policy TM4 because, albeit that policy is not confined to "buildings" (as AC suggests), it would only be possible to conclude that it is, as a landmark, "*absorbed into the landscape*" on the basis of a very broad definition of that expression indeed.

42. NLP Policies QOP1 maintains the positive, ambitious approach of NPPF as referred to in the RR (AC agreed in xx that “respect” there is not limited to avoiding harm). NLP Policy ENV3 does likewise but confirms also in particular that the guiding principles and relevant guidelines in the NLCA (G7, at pp.44-45) are to be applied. Reference to these via NLP Policy ENV3 reinforces the weight attaching to them (AC xx).

OTHER MATTERS

Public Art

43. Emphasis on an alleged inability or refusal of members of the public (and maybe members of the Council – though this was not spelt out) to recognise the benefits of public art proposals and landmarks has no substantive role to play in this planning decision. It is confounded in any event by MJ’s acknowledgment of an “*admirable portfolio*” of modern works of public art across the County (MJ xx).

44. The proposal is for public art and will add to the art offer, drawing support from CS Policy BE1 (Gi; GH xx). It will also draw people to the area, and the Council does not advance design criticisms of the proposal (GH xx).

45. The intrinsic beneficial effects of the provision of public art are acknowledged, and DS confirmed that his assessment took these into account. Its potential to be beneficial to its landscape setting was also acknowledged (by DS in particular) and that fact that this is a public art proposal and draws support from Policy BE1 as such is to be placed on the positive side of the planning balance (GH q insp).

46. However, GH explained that Policy BE1 is a very general policy and its backing for the proposal should not attract substantial or considerable weight because the benefits that would otherwise accrue are negated, in the Council’s view, by the substantial negative effects of siting this piece of public art in this location.

Economy/Tourism

47. CS Policy EDT1 provides positive support for tourism provision within the district both *“where appropriate”*, and to increase the range, quality and type of facilities available to tourists. The weight attaching to this support is therefore subject to consideration of the RR in this instance.
48. Support via LP Policy TM4 is subject to the proposal being considered small-scale, and whereas it is small-scale in the District it is large-scale in the local context (GH xx). It is supported by Policy TM4 only in the event that the absorption criterion at paragraph (a) is met, whereas it is clear that the proposed landmark does not do so.
49. The proposal does not secure support by means of NLP Policy ECN15. Part 1 of that policy lists purposes or activities which planning decisions will facilitate if possible. Part 2 sets out the principles by reference to which that will be achieved. Whether the proposal is to draw support from Policy ECN15 contrary to CS Policy NE15 therefore depends upon a judgment that it falls within criterion (g). It does not: it would not enhance the environment or bring neglected or underused heritage assets back into appropriate economic use.
50. The Council’s Economic Strategy (G10) provides strong support for growing tourism opportunities to deliver industrial growth, with an emphasis on extending stays in the county. At issue, on the other hand, is the weight attaching to the benefit here.
51. The Visitor Strategy has been edited to remove reference to a number of factors that reflect or represents limitations on the potential of the site to generate additional expenditure, viz perhaps 70% of visitors would be existing visitors/tourists to the county (AC xx ref GH Rebuttal [3.2]), the absence of facilities on site, and limited both number and range of accommodation within 5km of the site (GH Rebuttal [3.2]). These are all factors that emphasise the importance of the ERS report over the Frontline report bearing in mind that the former alone endeavours to estimate the additive effect of the proposed development itself.

52. GH accepted the ERS estimates as credible. The ambition, then, is to attract 25,000 vpa by year 3, and secure £3.35m additional spending or £1.43m additional GVA over 10 years, and 8.12 FTE jobs. These are estimated outcomes, not minima (AC xx), and the resulting benefits should be assessed by reference to the range of existing attractions within the county and tourism's contribution to the economy county-wide. These are not significant figures in that context. This is also notwithstanding the effects of the pandemic. These figures reflect recognition that *"it is questionable that the landmark will exist as a substantially visited singular attraction, ..."* (C3 [2.3]). Most particularly, there is limited number and range of accommodation and facilities within 5km of the site to realise the benefits of additional expenditure (AC xx by ref GH Rebuttal [3.2]).

Ecology

53. The Council accepts, in light of the further information and explanation in AC's Rebuttal that the proposal will result in net biodiversity benefit; but consider that this is itself limited and should attract limited weight in the planning balance (GH eic).

Other

54. There will be limited health benefits bearing that visits will overwhelmingly drive or be driven to the site, and wider wellbeing benefits resulting from attracting people into the countryside are tempered by the impact of the proposal upon it. The Council takes no point one way or the other concerning climate change.

CONCLUSIONS

55. The proposal, i.e. the landmark structure, the associated development and activity on site, would result, in the County's view, in very substantial harm to landscape character contrary

to national and up-to-date development plan policy and very substantial weight attaches to that matter.

56. Limited weight attaches to public art provision that is itself harmful to its setting and benefits to health & wellbeing in that same context. The ecological benefits likewise attract limited weight.

57. The quality of the Northumberland's countryside is a key part of the attraction for tourism (a jewel in its crown: G4 (NLP) [10.20]), and tourism is a very important part of the county's economy. The County considers that the proposal's additive economic effects and opportunities to realise economic benefit locally are both limited. It would, moreover, be counter-intuitive to permit tourism development that is itself inappropriately sited and harmful to landscape character on the basis that it would attract additional expenditure notwithstanding.

58. The proposal would therefore fail to perform the positive environmental role that is characteristic of sustainable development (taking account of the ecological benefit referred to above). Its contribution to the social and economic roles would be limited. The County therefore concludes that the proposal does not represent sustainable development overall. It does not benefit from the presumption in favour of sustainable development.

59. The County Council therefore respectfully requests that the appeal be dismissed.

SIMON PICKLES

19 March 2021

Landmark Chambers

180 Fleet Street