



Appeal Decision

Hearing held on 2, 3, 14 December 2015 and 23 August 2016

Site visit made on 13 January 2016

by **C Sproule BSc MSc MSc MRTPI MIEnvSc CEnv**

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

Decision date: 13 October 2016

Appeal Ref: APP/M9496/W/15/3053101

Dove Dairy, Stonewell Lane, Hartington, Buxton SK17 0AH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Teifion Salisbury, Cathelco against the decision of Peak District National Park Authority.
 - The application Ref NP/DDD/1014/1045, dated 25 September 2014, was refused by notice dated 13 February 2015.
 - The development proposed is demolition of existing factory building and the subsequent construction of total 26 new dwellings including 4 'affordable' and 2 conversion of former factory buildings.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing factory building and the subsequent construction of total 26 new dwellings including 4 'affordable' and 2 conversion of former factory buildings at Dove Dairy, Stonewell Lane, Hartington, Buxton SK17 0AH in accordance with the terms of the application, Ref NP/DDD/1014/1045, dated 25 September 2014, subject to the conditions in the attached schedule.

Procedural Matters and Main Issues

2. A unilateral undertaking under section 106 of the Town and Country Planning Act 1990, from Cathelco Limited to the Peak District National Park Authority, has been provided.
3. The Peak District National Park Authority (NPA) is the local planning authority for the area that includes the appeal site. Three reasons for refusal are included on the NPA's decision notice in relation to the development proposed. Section 3 of the Statement of Common Ground (SoCG) between the appellant and the NPA confirms that the Authority does not wish to pursue the third reason for refusal as further details have been submitted that address the requirements of the NPA's Core Strategy Development Plan Document – Adopted October 2011 ('CS') policy CC1.
4. Consequently, the main issues in this case are considered to be: (a) the effect of the development proposed on the character and appearance of the locality; and, (b) whether the proposed development would be major development in the National Park and if so, whether there are exceptional circumstances in the public interest to justify major development in the Peak District National Park.

5. On the third sitting day of the hearing it was confirmed that a suggested planning condition would seek further bat survey work to determine the possible effect of the development proposed on protected species. I drew the parties attention to paragraph 99 of Circular 06/05 - *Biodiversity and Geological Conservation – Statutory Obligations and Their Impact Within the Planning System* which states that ‘...It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances...’.
6. Subsequent comments from the NPA indicated the reasons why it considered it would be inappropriate to proceed to a decision in the absence of further survey work being carried out. These included that the survey work already carried out had failed to determine the size, nature and importance of a Brown Long-eared bat roost, the extent of their use of buildings and trees on the site, and any mitigation that would be necessary.
7. In determining a recent appeal for land that included the current appeal site, the Inspector concluded (at paragraph 55 of appeal ref: APP/M9496/A/12/2172196) that in that case a planning condition could be used to secure mitigation. However, the Inspector had sufficient survey data before him.
8. In relation to the current appeal, there was no recent survey information to address the deficiencies identified by the National Park Authority. Exceptional circumstances were not demonstrated to justify the use of a condition to address the identified deficiencies in protected species survey information. Accordingly, the hearing was adjourned to enable further protected species survey work to be carried out to ensure that this decision is properly informed.

Reasons

Character and appearance

9. The NPA’s second reason for refusal is in regard to the extent that the proposal would be in keeping with local building traditions and whether it would be sensitive to the locally distinctive character of its landscape setting and the settlement’s overall pattern of development.
10. CS policy DS1 provides the development strategy for the National Park. It directs the majority of new development and 80-90% of new homes into Bakewell and the named settlements. Hartington is one of the named settlements in CS policy DS1 that confirms there to be additional scope to maintain and improve the sustainability and vitality of the community. New build development for affordable housing, community facilities and small scale retail and business premises is acceptable in or on the edge of the named settlements.
11. CS Policy GPS1 seeks to ensure that all development is consistent with the purposes and duty of the National Park. Where this is secured, opportunities must be taken to contribute to the sustainable development of the area.

12. CS Policy GSP2 states that opportunities for enhancing the valued characteristics of the National Park will be identified and acted upon. Proposals intended to enhance the National Park will need to demonstrate that they offer significant overall benefit to the natural beauty, wildlife and cultural heritage of the area and not undermine other core policies. CS Policy GSP2 also states that opportunities will be taken to enhance the National Park through the treatment or removal of undesirable features or buildings, but this must be done in a way that conserves the valued characteristics of the site and its surroundings.
13. Development management principles are the subject of CS policy GSP3 which require all development to respect, conserve and enhance all valued characteristics of the site and buildings that are the subject of the proposal. CS policy L1 requires development to conserve and enhance valued landscape character.
14. Saved policies of the Peak District National Park Local Plan – adopted March 2001 ('LP') include Policy LC4 (Hearing Document 1) which states that where development is acceptable in principle, it will be permitted provided that its detailed treatment is of a high standard that respects, conserves and where possible it enhances the landscape, built environment and other valued characteristics of the area. The policy sets out matters to which particular attention will be paid including: scale, form, massing and orientation in relation to existing buildings, settlement form and character, landscape features and wider landscape setting; along with, design details and materials, landscaping, local amenity and (external) lighting.
15. LP Policy LC5 addresses Conservation Areas by seeking development within the designated area, or its setting, to demonstrate how the existing character and appearance of the Conservation Area would be preserved, and where possible, enhanced.
16. Paragraph 115 of the National Planning Policy Framework ('the Framework') is explicit that great weight should be given to conserving landscape and scenic beauty in National Parks, which have the highest status of protection in relation to landscape and scenic beauty. The conservation of wildlife and cultural heritage are also important considerations that should be given great weight.
17. Hartington is a historic village and the significance of the heritage within it is reflected in almost all of the settlement being included within the Hartington Conservation Area.
18. Excluded from the designation are: a small group of recently built houses next to the car park on the south western edge of the village;¹ twentieth century housing in Bankside towards the northern edge of development in the village; and, a group of dwellings on Stonewell Lane that, along with the summer foliage of the trees around them, screen much of the factory and its buildings in views along Stonewell Lane from the centre of the village.
19. The former cheese factory that is the subject of this appeal also lies 23m outside the Conservation Area.² Stonewell Lane provides access to the factory site, the dwellings referred to above, a water treatment works at the end of the lane and agricultural access.

¹ Paragraph 3.2.8 of the Parish Council's Statement of Case confirms this to be Parsons Close

² The distance given on page 1 of the NPA Officer's report on the application

20. Buildings that provide employment opportunities, or have done so in the past, are evident in this landscape, but the former cheese factory is distinctive due to its scale. Factors such as the extent of the developed area of the factory site, the massing of its buildings, which include a prominent stack and other fairly recent structures, and its proximity to the village, cause the former cheese factory to be a very significant and discordant element in many views of the village, the historic heritage within it and of the landscape around it.
21. The disused former cheese factory communicates the importance of the employment it previously provided to the local economy. However, it is already showing obvious signs of disuse following its closure in 2009 and there is no reason to believe that this trend will diminish. Its redevelopment is therefore required to conserve and enhance Hartington and its historic character.
22. The NPA Officer's report on the proposal notes the appeal site to sit within a valley surrounded by a gently undulating landform and areas of high, undulating and occasionally steep sloping hills that are typical of the limestone landscape within the National Park. That is how I found the landscape during my time within and around the locality and when travelling to and from it. Trees and woodland, along with stone walling, create a logical structure within the countryside that often responds to landscape features.
23. In certain views the tree belts around the former cheese factory have a form and regularity, coupled with the relative flatness of the valley floor in this location, which causes them to appear as planted screening. The appeal scheme is shown to reduce this to provide stands of trees that would be expected to reflect other areas of the village, while maintaining a line of trees between the proposed dwellings and the footpath that runs northwards from Stonewell Lane to the east of the factory buildings. This would maintain the recreational value of the footpath.
24. The unilateral undertaking includes an obligation for a Landscape Management Plan that is defined as a document that would deal with the provision and/or retention (as appropriate), management and maintenance of the trees and tree planting belts within the applicant's ownership. It would be supplemented by suggested planning conditions that would address the provision of Areas Returned to Greenfield and a general landscaping condition that would ensure no landscaping is overlooked as Areas Returned to Greenfield and trees are provided.
25. The application's Design and Access Statement notes the village to be formed around a nucleated hub and spoke arrangement generated by the roads and lanes which radiate from the village. Comparisons are made with the patterns of development in the nearby National Park settlements of Alstonefield, Monyash, Wetton and Warslow.
26. In common with other villages, the centre of Hartington provides a 'hub' that contains a church, village green, larger dwellings, and a public house, with larger farm buildings, a manor house and more recent development towards the edge of the village. An aerial view of Hartington shows the appeal site currently to be a large rectangular area of development that, through the form and scale of the factory, is a discordant element of this pattern.

27. The NPA's internal consultation on built environment noted that redeveloping within the footprint of the factory would cause there to be development on only one side of Stonewell Lane and a gap between the appeal proposal and the remainder of the village. It is likely that the appeal scheme would be perceived as a discrete area within the village due to the nature of the factory site, Stonewell Lane and the layout of existing development. Nevertheless, the agricultural access would be maintained around the development and the proposed estate road running through the centre of the housing would draw views into the development from Stonewell Lane.
28. Both the residential scale of the development proposed and the increased permeability that would be provided through the appeal site, contrast with the massing of the existing industrial buildings. In addition, I found Hartington's rural (and to a certain extent its historic) character to be reinforced by the presence of undeveloped fields within the settlement. There are also locations where development is principally on one side of the highway, but not to the same extent as that proposed in this case. In any event, the location of the appeal scheme responds to the existing developed area and in this respect it would enhance the locality.
29. The appeal scheme would remove the rectangular shape of the brownfield land and reduce its developed footprint by returning two large areas of the appeal site to greenfield land. An area of land to the north of the appeal site is also shown to be returned to greenfield.³
30. An internal consultation within the NPA suggested that the proposed new buildings should all have a 35 degree roof pitch. During the adjournment for the bat survey, the appellant produced drawings that would provide such a roof angle on the proposed buildings and these were made available for comments to be made on them.
31. The NPA Officer's report on the application noted: the application's design and access statement indicates that the form and massing of the proposed dwellings is based on the 18th century houses in the centre of the village, which have wide gables and steep roof pitches; and, a reduction in roof angle from approximately 42 to 35 degrees would reduce the visual impact of the development.⁴
32. No evidence has been produced to demonstrate that a roof pitch of 35 degrees is a characteristic of the village that should be pursued in relation to the appeal scheme. Its use within the proposed development would diminish the scheme's link to existing development within the Conservation Area, and in this respect, set it apart from built forms and roof angles that are evident within the Conservation Area. Consequently, the roof pitches that were the subject of the Council's decision on the application are those being considered in the determination of this appeal.
33. Both limestone and gritstone have been used as the principal material in the construction of building walls in the Conservation Area. Proposed houses would have exterior elevations of principally limestone construction with gritstone quoins, dressings and openings, timber doors and windows, and a variety of

³ Paragraph 5.32 of the appellant's statement notes there to be 2ha of brownfield land within the appeal site, and 0.6ha of hardstanding would be returned to greenfield

⁴ Page 41 of the NPA Officer's report on the application to Planning Committee 13 February 2015, and pages 17 and 36 of the application's design and access statement

- roofing materials. As such, they would be sympathetic to those in the Conservation Area, but would not seek to be a faithful reproduction. Nor would the proposed layout express the level of historic, organic growth over time that is evident within the Conservation Area.
34. Even so, there would be sufficient variety in the built forms, roof heights and the layout proposed for the development to be a clearly sympathetic addition to the historic village.
 35. Concerns have been raised regarding house designs with accommodation on three floors. There are buildings in the centre of the village that have elevations and dormers that indicate three floors of accommodation. The proposed three storey dwellings would have their upper floor accommodation in the roof void with gable windows. This is a feature within the Conservation Area and the proposed two storey elevations under the roof void accommodation would ensure the designs do not appear to 'challenge' the examples of elevations with three storey fenestration that are found in the nearby 'hub' of the village.
 36. Specific concern has been raised regarding the proposal for plot 1. It would be a particularly large dwelling. A revised proposal for plot 1 was brought forward during the processing of the application and was the subject of the NPA's determination. The Officer's report on the proposal noted that it would be seen as the largest and tallest building in the development, and it would stand apart from the remainder of the proposed housing by being to the west of the agricultural access road running through the western part of the former dairy.
 37. The NPA Officer's report on the application notes the revised plot 1 design to have the massing and form of a traditional farmhouse with a lower single storey section extending out to create an L-shape. Even so, the report considered the proposal to be too large and a condition was suggested to resolve this.
 38. Plot 1 would be on the site of tanks and treatment works for the former dairy with the adjoining former car park that runs along the remainder of the western side of the agricultural access returned to greenfield. Removing plot 1 from the scheme would cause the development to result in an uncharacteristically abrupt linear edge to the village in that location that would be reminiscent of the rectangular massing that preceded it. It might also leave existing redundant structures in place without a solution for their removal.
 39. The plot 1 house design that is the subject of this appeal would present a long building frontage that would terminate views out of the estate road through the centre of the development. As a single dwelling it would be a very significant structure, but it would protrude less to the west than the withdrawn revision that was shown to the hearing. In addition, the frontage and massing that would be created by the plot 1 proposal would display features and a scale that would be reflected in blocks elsewhere in the development.
 40. Plot 1 would differ from these blocks by being larger and by not being subdivided into a number of dwellings. However, by its design and materials it would be read as part of the development. It would also reflect the presence of a number larger residences and associated buildings around the edge of the village and its Conservation Area.

41. Surface water drainage would be the subject of a condition. It is understood that the proposal would develop a swale on the southern side of Stonewell Lane. This would involve the remodelling of greenfield land to create an open brook feature, but there would appear to be no reason to doubt that this could be done in a manner that is sympathetic to the established character of the countryside around the village.
42. Accordingly, it is apparent that the design, materials and layout of the proposal would be an appropriate form of development for the appeal site. It would address the existing industrial massing on the appeal site to appear as an organic residential extension of the historic village that is sympathetic to its characteristics and the landscape around it.
43. By reducing the extent of development on the appeal site and returning previously developed land to greenfield, the appeal scheme would enhance the *upper valley pastures* landscape character type in which it sits.⁵
44. There are a number of listed buildings within the Conservation Area as shown on page 11 of the Design and Access Statement. The appeal scheme would remove a highly visible industrial stack of a contemporary design and construction from the setting of these listed buildings, which are very much older and integral to the historic character of the Conservation Area. Given the type, scale, layout and design of the appeal scheme, and that it would be sympathetic to the character of the historic village, it would preserve the settings (and therefore the significance) of the listed buildings in the locality.
45. For these reasons the appeal scheme would provide considerable enhancement to the setting of the Hartington Conservation Area to better reveal the significance of the heritage asset, the character and appearance of which would be preserved.
46. Therefore, the proposed development would cause no harm to heritage assets in the locality. There would be clear benefit from the appeal scheme to the character and appearance of the area through: the reduction in the massing of the built forms on the appeal site; increased permeability; a significant reduction in the area and rectangular footprint of brownfield land in this location; and, the release of areas of the site back to greenfield land that, along with landscaping, would expand the characteristic countryside around the village and reinforce the organic form of the settlement and the scenic beauty of the National Park.
47. In regard to the matters set out above, the appeal scheme complies with CS policies DS1, GPS1, GPS2, GPS3 and L1, LP Policies LC4 and LC5, and the relevant parts of the Framework.

Major development

48. In addition to matters referred to above, CS policy GSP1 states that major development should not take place within the Peak District National Park other than in exceptional circumstances, and that major development will only be permitted following rigorous consideration of the of the criteria in national policy. National planning policy is now contained within the Framework, which does not provide a definition of '*major development*'.

⁵ Character type of the *Peak District National Park Landscape Strategy 2009-2019* as shown in Figure 3 of the application's Landscape and Visual Impact Assessment

49. Part 1 paragraph 2 of Statutory Instrument 2010 No.2184 - *The Town and Country Planning (Development Management Procedure)(England) Order 2010* provides a definition of "major development". It is clear that the proposed 26 new dwellings,⁶ on a 2.56ha site, would fall within this definition.
50. However, parties have referred to *Deborah Jane Aston and Westcott Meadow Action Group Limited v The Secretary of State for Communities and Local Government, Mole Valley District Council and Taylor Wimpey UK Limited [2013] EWHC 1936 (Admin)*. The judgement concluded that: the phrase 'major development' should not have a uniform meaning for policy, procedural rule or Government guidance, but rather be construed in the context of the document in which it appears.
51. As noted above, Framework paragraph 115 states that great weight should be given to conserving landscape and scenic beauty in National Parks. Framework paragraph 116 indicates that planning permission should be refused for major developments in National Parks except in exceptional circumstances and where it can be demonstrated they are in the public interest. Consideration of such applications should include an assessment of: the need for the development and the impact of permitting or refusing it on the local economy; the cost of and scope for developing elsewhere outside the designated area, or meeting the need in some other way; and, any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.
52. At present, the appeal site detracts significantly from the landscape and scenic beauty of the National Park and the factory is no longer required for the purpose that it was constructed to fulfil. Given the prominence of the appeal site in this National Park landscape that includes Hartington and the valley around it, redeveloping the site in the manner proposed would be an act of major development.

Other matters

Provision of housing

53. The appellant highlights that the evidence base for the NPA housing policies is out of date, and that the housing market area that includes Hartington and this part of the NPA does not have a 5 year housing land supply. Reference was made to the Inspector's comments in appeal ref: APP/P1045/A/14/2218952, but that decision concerned a site that lies outside the NPA.
54. The NPA has confirmed that any need for market housing that arises within the NPA area is addressed by the Councils that provide housing outside the National Park. Given the very clear planning objectives set out in the Framework for National Parks, and that specific Framework policies indicate that development should be restricted in National Parks,⁷ relevant NPA policies for the supply of housing still attract great weight in this case.
55. CS policy HC1 is unambiguous that: housing will not be provided solely for market demand; housing land is not allocated within the development plan; and, provides the exceptional circumstances where new housing can be accepted. These exceptional circumstances include: addressing eligible local

⁶ That would provide two units in former factory buildings

⁷ For example, Framework Footnote 9 and paragraphs 14, 115 and 116

needs; providing for key workers in agriculture, forestry or other rural enterprises; being required to achieve the conservation and/or enhancement of valued vernacular or listed buildings, or in settlements listed in CS policy DS1. As such, CS policy HC1 is consistent with the Framework and its objectives for National Parks. Hartington is one of the settlements listed in CS policy DS1.

56. The case made in support of the appeal relies on the provision of affordable homes. Reference has also been made to Starter Homes, but these do not form part of the scheme proposed. At the hearing the District Council's Rural Housing Enabler confirmed: there to be many challenges that have prevented affordable homes being provided in the locality; and, that the proposed affordable housing would meet part of the identified local need (for eight dwellings).⁸
57. It is apparent that: the market housing proposed would be necessary to clear the site and bring forward the affordable homes and the areas returned to greenfield; and, these matters could not be addressed by development elsewhere outside the designated area.
58. Other sites in the village have been referred to as possible locations for affordable housing,⁹ but it has not been shown that these sites would be likely to come forward and the owner of the largest alternative site, the District Council, was represented at the hearing.
59. Accordingly, this is an exceptional circumstance where new housing can be accepted as it is required in order to achieve the conservation and/or enhancement of a settlement listed in CS policy DS1, and it complies with CS policies HC1 and DS1.

Economic impacts

60. The appeal scheme would result in economic benefit through the economic activity associated with the construction and occupation of the proposed dwellings. In accordance with Framework paragraph 19 (and 28), rural economic growth initially through construction jobs and the sale of construction materials, and then the ongoing expenditure during occupation of the houses, attracts significant weight in favour of the appeal scheme.

Social impacts

61. The proposed dwellings would result in a 17% increase in the village.¹⁰ The current scheme lacks the community facilities (and business units) included within the previous proposal. However, the affordable homes would meet an identified need and would be of social benefit to the locality. Occupation of the family sized dwellings proposed would be expected to support local services, including the local school.
62. Some of the proposed houses could be occupied by people who commute long distances to their work. The houses could also be occupied by people who work from home or have employment in the locality. Therefore, it has not been demonstrated that a development of the size proposed would be likely to result an unacceptable level of unsustainable travel patterns. Any that would

⁸ As shown in the *Hartington Parishes Housing Needs Survey Results - April 2014*

⁹ Paragraph 80 of the NPA's Statement of Case

¹⁰ Paragraph 1.3 of the Parish Council's *Summary Statement of Case*

be likely to occur, need to be considered within the context of the environmental, social and economic impacts set out in this decision letter.

Flooding

63. LP Policy LC22 states that development will be permitted provided that adequate measures are included to deal with the run-off of surface water from the site, and such measures must not increase the risk of a local watercourse flooding. These requirements are reflected and provided with greater detail in CS policy CC5 – *Flood risk and water conservation*, and the policies are consistent with the Framework and PPG.
64. The Flood Risk Assessment accompanying the application and the addendum to it confirms the appeal site to lie within Flood Zone 1 in an area with less than a 1 in 1000 year probability of fluvial flooding. However, there is a risk of flooding from overland flow if the culvert running past the appeal site from the centre of village is overwhelmed by heavy rainfall. In such circumstances the risk of flooding would be expected to affect existing properties within the village.
65. The NPA Officer's report sets out the options considered for the drainage from the appeal site. Appendix 1 to the SoCG contains the Environment Agency's response in relation to the appeal scheme and it raises no objection that would suggest a suitable drainage solution could not be provided for the appeal scheme. This is borne out by the circumstances of the site, the extent of the appellants' landownership and the existing drainage features in the locality.
66. If this appeal were to be allowed, a condition would require a scheme to address the drainage of the proposed development. Given the details provided at this stage, this would be expected to protect future occupiers of the appeal site and reduce the risk of flooding within the village for the appeal scheme to comply with LP Policy LC22 and CS policy CC5. This would contribute to the sustainable development of the area as sought by CS policy GSP1.

Highway safety

67. The Highway Authority raised a number of concerns regarding the proposed layout and design details that could prevent adoption of the proposed estate streets. Amendments through the latest revisions to drawing number (08) 02 have addressed the Highway Authority's parking concerns at plots 9, 10, 20 and 24 and steps in the highway boundary. It indicates that agricultural access would continue to be provided across the site, with sufficient off and on street car parking opportunities to ensure enough carriageway width to maintain the agricultural access.
68. Paragraph 32 of the Framework states that "... *Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe...*". There is no reason for refusal in relation to highways matters, but the Highways Authority has requested that a planning obligation be imposed to address any traffic management measures that might be identified as necessary following development. There is no support for such an approach within current planning guidance, and relevant legislation is quite clear that a planning obligation may only constitute a reason for granting planning permission where it would be: necessary to make it acceptable in

planning terms; directly related to the development; and, fairly and reasonably related in scale and kind to the development.

69. In relation to highway safety, no harm has been demonstrated, nor has it been shown to be likely from the development proposed.

Protected species

70. Daytime bat inspections were carried out during 2011 and 2014 that confirmed potential features that could be used as roosts in three of the buildings on the appeal site and the presence of a bat roost. Further bat surveys were recommended to be carried out and these occurred in June and July 2016. They recorded bats commuting and foraging across the appeal site, and a single bat was seen to enter one of the buildings which was considered to be a day roost.
71. The resulting report recommends that alternative roosting opportunities be included in any new buildings. Also, birds would be expected to be present on the appeal site and are protected when nesting. If this appeal were to be allowed, a planning condition could be used to address these matters.

Viability

72. The inquiry in regard to the larger 2011 proposal addressed viability issues in some detail.¹¹ Viability is not a specific reason for refusal in this case, but the matters addressed above include issues that affect the potential viability of the current scheme.
73. Paragraph 173 of the Framework states that: pursuing sustainable development requires careful attention to viability; and, the costs of requirements to be applied to development, such as affordable housing, should provide competitive returns to a willing land owner and developer to enable development to be deliverable. It is the NPA's view that the viability of the proposal is marginal at best, while the Parish Council considered that a smaller scheme of 14 dwellings could deliver the 4 affordable homes with 17% return on development cost.¹²
74. The NPA notes that the appellant's *Summary of Development Costs* indicates that the development would only achieve a return of investment of 14.5%, which is considerably less than the 20-25% that would often be sought.¹³ This is based on the current market value of the site rather than the price paid for it. In this regard, the appellant may incur a loss, but the correct basis has been used for the viability assessment, which is recognised by the NPA.¹⁴
75. The appellant has considered the build costs and factored in contingencies for new build and conversions.¹⁵ Although build costs per m² are noted to be significantly higher in comparison to the previous scheme, Mr Winters was not involved in the previous scheme and details have been provided of the factors that have fed into the build costs provided for the current proposal.¹⁶

¹¹ Appeal ref: APP/M9496/A/12/2172196

¹² Paragraph 4 of the NPA's statement of case, and paragraph 3.1.10 of the Parish Council's Statement of Case

¹³ Page 17 of the NPA's Statement of Case

¹⁴ Paragraph 74 of the NPA's Statement of Case

¹⁵ Contingencies were confirmed to be typically 7% and 15% on new builds and conversions respectively

¹⁶ Hearing Document 2

76. These factors include the detached nature of the houses proposed and features that would be included within them. Hearing Document 2 provides a range of building costs that have been sourced from the Building Cost Information Service (BCIS) for differing house types. Both the compatibility of these price ranges to the appeal scheme and the matters omitted from them,¹⁷ have been explained by the appellant. The appellant's evidence has explained the appropriateness of its build costs.
77. The Parish Council's appraisal indicates that it has followed RICS guidance. However, it is not based on a worked up scheme to show the cost of roads, services and site works. Nor is it clear that it takes into account the use of stone and the inclusion of other features, or makes sufficient provision for service provision. While the Parish Council's appraisal has sought to use the appellant's sale prices, these prices include items omitted from the appraisal's costs. These matters cause me to consider the appellant's viability evidence to be more robust.
78. The Parish Council has also looked at, amongst other things, past house sales as an indicator of the housing market in the area, noting that smaller houses are more likely to sell, which was supported by the NPA. However, the appeal scheme would be offering new build houses. It is not apparent that the difficulty referred to in relation to selling existing higher priced dwellings in the locality is representative of the market for new builds, or that the asking prices of the examples referred to were appropriate to the market conditions.
79. Evidence confirms that the level of market housing proposed is necessary to enable the clearance of the appeal site, and the delivery of the affordable homes within the scheme and the areas of the site that would be returned to greenfield. It is apparent that the appeal scheme would maximise the proportion of affordable homes within viability constraints to comply with CS policy HC1.
80. The acceptability, or otherwise, of the appeal scheme is dependent on the case put forward in support of it, including the public benefits. This proposal differs significantly from that in regard to the previous scheme for this site.¹⁸ Each application and appeal is considered on its own merits, and if the appeal scheme were to be allowed, that principle would apply to any attempt to modify it.
81. In any event and while the NPA's concerns are noted, given the particular circumstances that apply to this proposal, it has not been shown that the viability of the appeal scheme would be likely to cause a developer to seek to reduce the public benefits that have put forward to justify major development in the National Park. The scale of obligations has not been shown to threaten the ability of the appeal site to be developed viably.

Whether a split decision is necessary

82. In relation to the acceptability of the design for the dwelling on plot 1, correspondence from the appellant, dated 21 January 2016, suggests that a split decision could be issued that omits plot 1 from an otherwise acceptable scheme. For the reasons above I have found the plot 1 proposal to be

¹⁷ For example, roads, drainage, services and garages,

¹⁸ Appeal ref: APP/M9496/A/12/2172196

acceptable and therefore, the possible need for a split decision does not arise in this case.

Alternative forms of development

83. During the hearing sessions the Parish Council noted its wish to see the site acquired (by Compulsory Purchase Order) to provide affordable housing and other facilities when they are needed. However, it is not clear how likely that outcome would be, and in any event, the current appeal must be determined on its own merits.

Neighbourhood Plan

84. Paragraph 216 of the Framework states that from the day of publication decision-takers may give weight to relevant policies in emerging plans according to: the stage of preparation of the plan; the extent to which there are unresolved objections; and, the consistency of the relevant policies in the emerging plan with the Framework.
85. Reference has been made to work on a Neighbourhood Plan for the village, which included preparing alternative development scenarios for the appeal site that would be consulted upon. However, the work is at a very early stage. Draft policies have yet to be submitted or examined and the extent of any unresolved objections is not known. As a result, very limited weight can be attributed to the objectives of the Neighbourhood Plan described to the hearing.

Planning obligations

86. The tests of a planning obligation are contained within Community Infrastructure Levy ('CIL') Regulation 122 and are reflected in paragraph 204 of the Framework.¹⁹ These tests are that planning obligations should only be sought where they would be: necessary to make the development acceptable in planning terms; directly related to the development; and, fairly and reasonably related in scale and kind to the development.
87. A unilateral undertaking has been supplied (Hearing Document 5) that makes provision for affordable housing, local occupancy, arrangements for prioritising ('cascading') the type of prospective occupier of the affordable housing and a Landscape Management Plan in relation to trees and tree planting belts.
88. The evidence in this case demonstrates that the planning obligations meet the CIL Regulation 122 and Framework paragraph 204 tests. These obligations ensure that CS policies including HC1, GSP2 and L1 would be met and therefore, the unilateral undertaking provides significant weight in favour of the proposed development.

Conditions

89. A list of possible planning conditions were provided within the SoCG and these provided the basis for the discussions on conditions that might be necessary if this appeal were to be allowed. A condition shall only be imposed if it meets the tests of a condition set out within paragraph 206 of the Framework.²⁰

¹⁹ Of Statutory Instrument 2010 No.948 – *The Community Infrastructure Levy Regulations 2010*

²⁰ Framework paragraph 206 states that "...conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects..."

90. A suggested condition would control permitted rights for a variety of matters. PPG is clear that permitted development rights should only be controlled in exceptional circumstances.²¹ The circumstances of this development within the National Park and its proximity to the core of the Conservation Area that includes almost all of the village and its historic buildings, and the scale of the residential development that would be added to the village, are exceptional to warrant the control of permitted development rights at the dwellings proposed. This would ensure the character of the development is retained and it continues to make a sympathetic contribution to the character of the locality which includes the Conservation Area. Accordingly, the suggested condition controlling permitted development rights would be necessary.
91. Given the range and nature of matters that are the subject of suggested planning conditions, along with the scale and particular circumstances of the development, in this instance a three year commencement would be appropriate and shall be imposed [Condition 1].
92. A condition is imposed which requires the development to be carried out in accordance with the submitted plans [Condition 2]. This is important as the submitted plans and drawings define the scope and extent of the development proposed. It includes the overall balance and location of built development and open space across the site. For these reasons and in the interests of the character and appearance of the locality, a condition is imposed setting an upper limit on the number of dwellings constructed on the appeal site [Condition 3].
93. Hearing Document 3 has been used as the basis for the drawings condition. When the list was introduced to the hearing, it was amended to refer to drawing number (08) 02 E which includes the plot 1 house design determined at the application stage. After that, a revision 'C' drawing was produced that clarified and addressed a number of Highway Authority concerns. These include farm vehicle access with occasional parking, and highway benefits from amendments to plots 9, 10, 20 & 24 and the removal of steps in the boundary. However, revision 'C' includes a revised plot 1 house design that the appellant does not wish to be the subject of this decision. This causes two versions of the *Site Plan Proposed with Roof Plans* drawing to be listed in the condition. The earlier revision 'E' drawing is included only for the plot 1 design determined by the NPA, with the remainder of the relevant details for the *Site Plan Proposed with Roof Plans* shown on the more recent revision 'C' drawing.
94. In the interests of the character and appearance of the locality conditions shall be imposed to address: the retention of the stone built buildings occupying plots 25 and 26 [Condition 5]; the demolition of structures (other than the stone buildings on plots 25 and 26 that are to be retained) and their removal from the site [Condition 6]; construction materials [Conditions 7, 8 & 28]; pointing [Condition 9]; door and window materials [Condition 10]; recessing of door and window frames [Condition 11]; rainwater goods [Condition 12]; gable/eaves finishing [Condition 13]; boundary treatments [Condition 14]; the provision of the Areas Returned to Greenfield with a timing that enables affordable homes to be delivered as quickly as possible [Condition 16]; a scheme to protect trees during demolition and construction works [Condition 21]; the undergrounding of service lines [Condition 24]; external lighting

²¹ Reference ID: 21a-017-20140306

- [Condition 25]; and, a landscaping scheme [Condition 27]. For this reason and those set out above, a condition shall be imposed to control specified permitted development rights [Condition 29].
95. In the interests of the character and appearance of the area, local living conditions, highway safety and providing a sustainable form of development, conditions shall address: the provision of a Construction Method Statement [Condition 18]; and, the area considered unsuitable to use for materials and spoil storage or as a builder's compound which includes a public footpath [Condition 4].
96. To protect the historic environment a condition shall be imposed in regard to archaeology and recording the existing site [Condition 19]. The extent of the programme of work needs to be determined before any development occurs that could harm archaeology.
97. Highway safety will be protected by conditions requiring a scheme for the provision of the roads, footways and related features, and requiring the provision and continuing availability of car park spaces (including garages) and vehicle manoeuvring areas [Conditions 23 & 15].
98. To protect local living conditions a condition shall be imposed to address the times when demolition and construction works occur [Condition 17].
99. In the interests of protecting the natural environment, a condition shall be imposed in regard to protected species [Condition 22].
100. In the interests of protecting the natural environment, and future users of the appeal site and land elsewhere, conditions are imposed in regard to land contamination [Condition 20], drainage and flood attenuation measures [Condition 26].
101. Conditions 18 to 28 concern matters that: are necessary to protect local living conditions and highway safety during development; are necessary to record archaeology and the existing site; are necessary to protect certain species during development; are relevant to the detailed design of the scheme; and as such, require them to be prior commencement conditions.
102. Conditions have been suggested that would require the: submission of a reduced scheme for plot 1; an amended layout to address highway authority concerns regarding parking at a number of dwellings and road widths, which has now been received and publicised; the provision of affordable housing, which is the subject of a unilateral undertaking; submission of amended elevation plans to provide the housing with a 35 degree roof pitch; additional tree planting; details for a temporary diversion of a public footpath that is not required; a scheme for renewable energy technologies and a related noise survey and attenuation measures where none is required. For the reasons above, these conditions are unnecessary and therefore fail to meet the tests of a planning condition and shall not be imposed.

Conclusion

103. The level of attendance at the hearing sessions and the views expressed during them highlighted the importance of this site, and proposals for it, to people in the locality.

104. The appeal scheme would enable the remediation of a derelict site that is very prominent and discordant in the National Park landscape that includes Hartington and its heritage assets. Redeveloping the former factory would enhance the character and appearance of Hartington and the National Park. It would enable an identified need for affordable housing in this area to be addressed in part.
105. Developing elsewhere would not meet that need, or the need to remediate a derelict site that through its scale and form detracts from the landscape and scenic beauty of the National Park. The redeveloped site would enhance the landscape and associated recreational opportunities in the National Park. It would contribute to the local economy, and provide social and environmental benefits.
106. For these reasons the appeal scheme complies with CS policy GSP1, GPS2, GPS3, HC1, L1, DS1 and CC5, LP Policies LC4, LC5 and LC22, and the relevant parts of the Framework.
107. In this case, the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits that the appeal scheme would provide.
108. For the reasons above, exceptional circumstances in the public interest exist to justify the development proposed. No considerations have been found to outweigh the identified compliance with development plan and Framework policy. Accordingly, the appeal should be allowed.

Clive Sproule

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:

Project No. 2231 Drawing No. & Revision	Title
(02) 01 A	Location Plan
(02) 02 A	Site Plan Existing
(02) 03 A	Site Plan Existing showing Brwonfield
(02) 04 A	Barn Existing Plans
(02) 05 A	Barn Existing Elevations
(08) 01 A	Proposed Figure Ground Plan
(08) 02 E Revision 'E' 07 01 15	Site Plan Proposed with Roof Plans [In so far as it relates to the plot 1 design that is the subject of this decision]
(08) 02 C Revision 'C' 28 06 16	Site Plan Proposed with Roof Plans [For all matters addressed by the revision 'C' drawing, apart from plot 1 for which revision 'E' applies]
(08) 03 A	Site Plan Proposed with Brownfield
(08) 04 A	Site Plan Proposed with Landscaping
(08)12 A	Proposed Plot 2 House Type
(08)13 A	Proposed Plot 3
(08)14 A	Proposed Plots 4, 5 & 6 Plans
(08)15 A	Proposed Plots 4, 5 & 6 Elevations
(08)16 A	Proposed Plots 7 Type B
(08)17 A	Proposed Plot 8 Type D
(08)18 A	Proposed Plots 9 and 10 Plans
(20)19 A	Proposed Plots 9 and 10 Elevations
(08)20 A	Proposed Plots 11 and 12
(08)21 A	Proposed Plot 13
(08)22 A	Proposed Plot 14 and 15 and 22 and 23
(08)23 A	Proposed Plots 16
(08)24 A	Proposed Plots 17
(08)25 A	Proposed Plots 18

Drawing No. & Revision	Title
(08)26 A	Proposed Plot 19
(08)27 A	Proposed Plots 20 and 21
(08)29 A	Proposed Plot 24
(08)30 A	Detached Garages
(08) 31 A	Barn - Units 25 & 26 Proposed Conversion Plans
(08) 32 A	Barn - Units 25 & 26 Proposed Conversion Elevations
(08) 33 A	Street Elevations Proposed
(08) 34 A	Street Elevations Proposed
(08) 50 A	Proposed Plot 1 [Elevations]
(08) 51 A	Proposed Plot 1 [Plans]

- 3) No more than 26 dwellings including the two units within the retained stone barns are hereby permitted to be constructed within the application site.
- 4) The field immediately to the east of the proposed housing site shall not be used for the storage of materials, spoil, or as a builder's compound.
- 5) The existing stone built buildings occupying plots 25 & 26, as shown on drawing number (08) 02 revision C, dated 28 06 16, and drawing numbers (08) 31 revision A and (08) 32 revision A shall not be demolished, and the conversions shall take place within the shell of the existing buildings with no rebuilding.
- 6) All factory buildings (but not the stone built buildings occupying plots 25 and 26), disused tanks, ancillary plant, walls and hardstanding areas and brownfield land identified for demolition on drawing number (02) 03 revision A shall be demolished and the material removed from the site prior to commencement of the remainder of the development hereby permitted.
- 7) The buildings hereby permitted shall be constructed of natural stone (limestone) and limedash render with natural blue slate, Staffordshire blue natural plain clay tiles or red natural plain clay tiles for roofs, as shown on the approved elevations drawings and shall be retained as such thereafter.
- 8) All lintels, sills, jambs, copings and quoinwork in the development hereby permitted shall be in natural gritstone and shall be provided as shown on the approved elevations drawings and retained as such thereafter.
- 9) All pointing in the development hereby permitted shall be bag brushed and slightly recessed and shall be retained as such thereafter.

- 10) All external doors and windows in the development hereby permitted shall be of timber construction and shall be retained as such thereafter.
- 11) All door and window frames in the development hereby permitted shall be recessed a minimum of 75mm from the external face of the wall and shall be retained as such thereafter.
- 12) All rainwater goods in the development hereby permitted shall be of cast metal and painted black and shall be retained as such thereafter.
- 13) Where coped gables are not approved in the development hereby permitted, roof verges shall be flush cement pointed with no barge boards or projecting timberwork and shall be retained as such thereafter.
- 14) The boundary treatments in the development hereby permitted shall be as shown in drawing number (08) 04 revision A. Boundary treatments that are to be a dry stone wall shall be made of natural rubble limestone. The dry stone walls shall be capped with half-round natural limestone coping stones and shall be up to 1.2m in height. The boundary treatments shall be completed before the dwelling to which it relates is first occupied, and the boundary treatments shall be retained thereafter.
- 15) None the dwellings hereby permitted shall be first occupied until any car parking (including garages) and vehicle manoeuvring areas relating to them have been laid out/constructed and made available in accordance with the approved plans. These car parking spaces (including garages) and vehicle manoeuvring areas shall be used solely for the benefit of the occupants of the dwelling to which it relates. The car parking (including garages) and vehicle manoeuvring areas shall be retained thereafter and kept available for their respective purposes at all times.
- 16) Prior to the first occupation of the open market houses hereby permitted, the areas annotated 'Area Returned to Greenfield' on drawing number (08) 02 revision C, dated 28 06 16, shall be restored to grassland in accordance with a scheme that has first been submitted to and approved in writing by the local planning authority.
- 17) Demolition or construction works shall not take place outside 07:30 hours to 19:00 hours Mondays to Fridays and 09:00 hours to 17:00 hours on Saturdays nor at any time on Sundays or Bank Holidays.
- 18) No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors
 - ii) loading and unloading of plant and materials
 - iii) storage of plant and materials used in constructing the development
 - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - v) wheel washing facilities
 - vi) measures to control the emission of dust, dirt and light during construction
 - vii) measures to protect the water environment during construction

- viii) a scheme for recycling/disposing of waste resulting from demolition and construction works
- 19) No demolition or development shall take place until a programme of archaeological work for the development hereby permitted, that shall also record the existing factory buildings and machinery, has been submitted to and approved in writing by the local planning authority. The archaeological work and recording shall be implemented in accordance with the approved scheme.
- 20) No development shall take place until a site investigation has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site, including the timing and phasing of the remediation, to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority before any development begins. The site shall be remediated in accordance with the approved details, including any measures that would form part of the development, such as the provision of gas vents or membranes within buildings and other structures.
- If, during the course of development, any contamination is found which has not been identified in the site investigation, then additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.
- 21) No development shall take place until a scheme to protect trees during demolition/construction works, which shall include an implementation programme, has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved scheme and its implementation programme.
- 22) No development shall take place until a scheme of mitigation for protected species has been submitted to and approved in writing by the local planning authority. The scheme of mitigation for protected species shall be implemented in accordance with the approved details.
- 23) No development shall take place until a scheme for the provision of residential estate roads and footways that shall include details of their construction, layout, levels, gradients, surfacing, means of water drainage, a programme for their provision, the gradients of any access drives leading from the highway and any gates or barriers within 6m of the highway, and details of waste storage and collection arrangements, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved scheme.
- 24) No development shall take place until a scheme for the undergrounding of all service lines within the development hereby permitted has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved scheme.

- 25) No development shall take place until a scheme of external lighting (including any floodlighting) has been submitted to and approved in writing by the local planning authority. Such details shall include the location, height, type, direction and intensity of the illumination. External lighting shall be installed in accordance with the approved details before the development to which it relates is first occupied or brought into use.
- 26) No development shall take place until a scheme for the disposal of surface water and sewage and flood attenuation measures has been submitted to and approved in writing by the local planning authority. No dwelling hereby permitted shall be occupied until the measures approved in the scheme have been implemented.
- 27) No development shall take place until a scheme of hard and soft landscaping works for the development hereby permitted has been submitted to and approved in writing by the local planning authority. The approved scheme of landscaping works shall also confirm which trees are to be retained and which are to be removed, and include biodiversity enhancements that retain the 'Area Returned to Greenfield' on the former car to the south of plot 1 as a hay meadow. Development shall be carried out in accordance with the landscaping works, which shall be implemented as approved and to the timescales within it.
- 28) No development shall take place until a sample panel of stone wall, render samples and roofing materials for the dwellings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 29) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking, re-enacting or modifying that Order), no development permitted by Classes A B C D E H of Part 1 and Class A of Part 2 of Schedule 2 of the order shall be carried out other than that expressly authorised by this permission.

APPEARANCES

FOR THE APPELLANT:

Roland Bolton	Senior Director, DLP Planning Ltd
Claire Plant	Associate Planner, DLP Planning Ltd
Stuart Hodgkinson RIBA AABC SCA	Latham Architects
James Boon	Latham Architects
Nigel Winter	Nigel Winter Associates
Sarah Stone	Peak Ecology
Isabel Frenzel	Rural Housing Enabler, Derbyshire Dales District Council
Alison Clamp	Midlands Rural Housing Association
Teifion Salisbury	Cathelco (the appellant)

FOR THE NATIONAL PARK AUTHORITY:

Chris Fridlington BSc(Hons) MScURP	Planning Manager, Peak District NPA
Adam Maxwell MPLAN	Senior Planner, Peak District NPA
Ian Fullilove BA(Hons) MRTPI	Policy Planner, Peak District NPA
Tom Shiels	Peak District NPA

INTERESTED PERSONS INCLUDED:

David Annat	Hartington Parish Council
Christopher Dullage BSc MSc PhD CEng MICE MStructE	Hartington Parish Council

Elizabeth Broomhead MBE	Hartington Parish Council
Richard Craven	Hartington Parish Council
Janet Bray	Local resident
Robert Gregory	Local Resident
Janet Wigley	Local Resident
Julia Critchlow	Local resident
Ron Critchlow	Local resident
John Dean	Local resident
Andrew Wood	CPRE & Friends of the Peak District
Keith Broadbent	Local resident

Richborough Estates

HEARING DOCUMENTS

1. Peak District National Park Local Plan – adopted March 2001- *Policy LC4: Design, layout and landscaping*
2. Development Appraisal Commentary – Prepared by Nigel Winters MRICS – Former Dove Dairy, Stonewell Lane, Hartington
3. A list of documents and plans for the appeal scheme – DLP reference number: D453
4. Marketing Report for Cathelco Ltd - Bagshaws Residential, dated 19th November 2015
5. Unilateral undertaking, dated 30th November 2015, accompanied by a separately bound copy of the Land Registry *Official copy of register of title – Title number DY449724*
6. A table updating the viability appraisal including the Appraisal Sales Value, Bagshaws Asking Price, Claimed Achievable and Change from Appraisal

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