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## Appeal Decision

Hearing held on 19 and 20 October 2016

Site visit made on 20 October 2016

**by John L Gray DipArch MSc Registered Architect**

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

**Decision date: 24 November 2016**

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### **Appeal Ref. APP/M4510/W/15/3139684**

### **Newcastle City Heliport, Railway Street, Newcastle upon Tyne, NE4 7AD**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by MB European Ltd against the decision of Newcastle upon Tyne City Council.
  - The application, ref. 2014/1929/01/OUT, dated 8 December 2014, was refused by notice dated 12 October 2015.
  - The development proposed is the demolition of existing structures and redevelopment for up to 280 dwellings and associated landscaping and engineering works.
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### **Decision**

1. The appeal is dismissed.

### **Applications for costs**

2. An application for costs was made in writing before the hearing by the appellant against the City Council. At the hearing, an application for costs was made by the City Council against the appellant. These applications are the subject of a separate decision.

### **Procedural matter**

3. The City Council, by letter to the Inspectorate dated 17 October 2016 (two days before the hearing), withdrew reason no. 5 for the refusal of outline planning permission, which concerned affordable housing.

### **Main Issues**

4. The four main issues in the appeal flow from the remaining four reasons for refusal. They are:
    - 1) whether there would be clear, safe and suitable access routes to, from and across the site;
    - 2) whether noise emanating from the adjacent gas pumping station could be suitably mitigated against;
    - 3) whether the proposed development could deliver a high-quality locally-distinctive design that would respect important views of the Tyne Gorge;
    - 4) whether the scale of development proposed would cause significant harm to the biodiversity value of the site and, if so, whether acceptable mitigation could be secured.
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## **Reasons**

5. The appeal site forms part of the Forth Yards Development Opportunity Site, allocated for mixed-use development under Policy D3 of the Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne, adopted in March 2015 (the Core Strategy). It is at the western end of a site extending east as far as the King Edward bridge. The principal uses envisaged by Policy D3 are office, leisure and residential. There are six criteria for development to satisfy.
6. The Forth Yards Opportunity Site Development Framework was adopted on 19 September 2016. It refers to various Core Strategy policies and also the Tyne Gorge Study, which sets out principles for accommodating new development. There is an extant planning permission for over 500 dwellings on the land between the appeal site and, very nearly, the Redheugh Bridge – the Calders site; no buildings have been constructed since the final reserved matters approval in 2009 but the approved scheme must provide an indication of what would be acceptable on the appeal site. The Framework addresses the constraints to development of the Opportunity Site, many of them being pertinent to this appeal.

### ***First main issue - accessibility***

7. Vehicular access would be from Dunn Street, on the eastern side of the appeal site, where a previous access point has been long walled up. Pedestrian access could also be from Dunn Street but primarily, and much more likely in practice, via Tyneside Road to Railway Street from the north-eastern corner of the site and to Skinnerburn Road at the south-eastern corner. What was Tyneside Road is closed off along the eastern side of the site but the indicative layout shows it reinstated, as vehicular access to a car parking area over its northern half and as a pedestrian route over its southern half. The Council's principal concerns are the environmental quality of the pedestrian and cycle routes from the site and the distances to bus stops and local facilities.
8. The route from the Dunn Street access is uphill to Scotswood Road along a street which seems always to be heavily parked during the day, the majority of cars being parked partly on the footway and making walking along it difficult, impossible in places. It was said at the hearing that most of the cars belong not to workers at (or visitors to) the employment premises on Dunn Street, Railway Street and adjoining streets but to workers in the city centre, who park there and either walk or take the bus for the rest of their journeys. That seems very likely to be so – but the fact remains that Dunn Street is heavily parked and uncomfortable for walkers.
9. The underbridge on Dunn Street is both awkward for pedestrians to negotiate and visually unattractive. The footway on the east side is narrow and almost impossible to use because of cars parked upon it; and the length and visual quality of the bridge structure render it very unappealing. The footway on the west side passes through its own underbridge – narrow, dark and littered with guano and bird feathers, again very unappealing.
10. The route from the north-eastern corner of the site takes the pedestrian under a long, low and dark underbridge, some 75m long, then across Railway Street and up Maiden Street to Scotswood Road. At present, cars park the length of both sides of the underbridge. Railway Street has employment development along its full length, some of the businesses being, in effect, retail warehouses. The south side of Scotswood Road is the same. It is a busy dual carriageway,

- a main approach to the city centre, with a separate service road for the employment businesses on its south side.
11. In essence, and as the Opportunity Site Framework points out, these are presently visually unattractive and uninviting routes for pedestrians. They are likely also to be thought threatening – they would be virtually deserted after business hours and are not overlooked or naturally policed. That even applies to the route along Skinnerburn Road which, although very attractive and with a riverside walkway, must be little used at night-time.
  12. It is also true that the routes north from the appeal site would be relatively uninviting because of the walking distances involved. It is over 500m to the stops for east-bound buses (towards the city centre) from the site boundary at either the Dunn Street or Tyneside Road accesses to the appeal site; and it is not far short of 900m to the nearest convenience store, on George Street. Those may be acceptable distances in principle but they become less so when taking into account the additional distances from the dwellings to the site boundary and the environmental quality of the walk (uphill from the appeal site, along streets with employment or business development and with the significant physical barrier of Scotswood Road to be crossed).
  13. The underbridges on Dunn Street and Tyneside Road are capable of visual improvement and better maintenance and could be made much more inviting for pedestrians. These routes, though, would remain largely unused in the evenings and at night, which would be a deterrent to walking to or from development on the appeal site. The development would also remain relatively isolated, unless or until development on the Calders site came forward.
  14. In fact, the Opportunity Site Framework says that the site is not currently accessible for residential use until the link road from the adjacent Calders site is delivered. The proposed access from Dunn Street, to which there is no objection in principle, suggests that may not be correct – but the value in environmental terms of having routes through a developed Calders site is unmistakable given the nature of those north from the appeal site along Dunn Street and Tyneside Road; so too is the value of the public transport linkage that would flow from the bus route proposed through the Calders site.
  15. Routes across the appeal site do not appear to raise any significant problem. The indicative layout shows the vehicular access from Dunn Street running across the site to the former Tyneside Road, from where a public transport connection with development on the Calders site would be possible. The layout also shows pedestrian/cyclist routes from the north-east and south-east corners. Given this, no harm should arise from leaving on-site details to the reserved matters stage.
  16. To sum up on this first main issue, lengths of the presently unattractive and uninviting routes north that would provide pedestrian access to and from the appeal site could undoubtedly be improved. It is not at all clear, however, how that could be brought about, even though the appellant maintains a willingness to see appropriate improvements undertaken. The works would be to highways outside the appellant's control, or to bridges owned by Network Rail, which means that legal agreements would seem to be necessary; but there can be no guarantee either that satisfactory agreements could be reached or that they would include all that might be considered necessary. Accordingly, a condition in this respect on an outline planning permission is impracticable; a positively-worded condition cannot precisely specify what needs to be secured

and a negatively-worded condition is inappropriate because it is simply not known if Network Rail would agree to what would likely be required as improvements.

**Second main issue – noise**

17. There is a gas pumping station at the northern edge of the appeal site, accessed from Tyneside Road across the north-eastern corner of the site. It operates continuously and emits a distinctive noise continuously, varying in intensity with the demand for gas. The building is the equivalent of two storeys high, with brick walls at ground floor level and profiled cladding to the upper parts and roof. The noise emitted appears louder from the east- and west-facing façades than from the south-facing gable. The noise contour plan shows that external levels in what is largely a car parking area on the indicative plan would vary from as much as 75dB at the perimeter fence to, generally, 60dB or 65dB at the façades of the buildings.
18. The indicative plans show that it is possible to design at least some of the buildings so that access corridors and stairways would face in the general direction of the pumping station and habitable rooms would face away. It is theoretically possible, therefore, that the apartments would not require special noise mitigation measures. The apartments in Block 2 of the indicative scheme appear to have living/dining/kitchens the full width of the building but the main south-facing windows would not need acoustic treatment. The same cannot be said of Block 4 on the indicative layout, which has east- and west-facing apartments off a central corridor. Having to have mechanical ventilation and windows which, in effect, could not be opened because of the noise from the pumping station would give a severely constrained, if not unacceptable, residential environment; and the requirement for mechanical ventilation would also mean an unsustainable design. It would be possible to adopt a different design, or layout, for this block – but, compared with the indicative scheme, that would seem to mean a fairly significant reduction in the number of dwellings in that part of the site.
19. Irrespective of the design of the buildings, there is also the external environment to be considered. The area may be largely car parking on the indicative layout but, simply on the evidence of the appeal site visit, noise levels there would be uncomfortably, continuously and unacceptably high.
20. The obvious solution is mitigation at source; and Northern Gas seems amenable to the idea, provided that whatever was done was at the appellant's expense. That would not only give acceptable noise levels in the north-eastern part of the site, it would also remove the need for mitigation in the design of the buildings. At present, however, there is no guarantee that the necessary mitigation could be physically achieved, or that it could be achieved at a reasonable cost to the developer.
21. Accordingly, on this second main issue, it appears that external noise could not be reduced to an acceptable level for what is, even as car parking, a residential environment. In addition to that, it appears either that some apartments would have unacceptable living conditions because of the mitigation required (which itself would be unsustainable) or that the number of dwelling on the north-eastern part of the site would have to be significantly fewer than in the indicative scheme. A negatively-worded condition seeking noise mitigation at source would be inappropriate because it is not known if acceptable mitigation

can be achieved or, if it can, whether the costs would be acceptable as part of the overall development scheme.

**Third main issue – design**

22. This ought, primarily, to be left to reserved matters. However, outline planning permission should not be granted unless there is confidence that the site can, one way or another, satisfactorily accommodate the number of dwellings proposed. That is “up to 280”, so the wording gives an element of flexibility – but the number enabled by an outline planning permission cannot be so far reduced as to be tantamount to a development very different to what was applied for. It is the visual impact of development on the Tyne Gorge, the subject of a specific Study referred to in the adopted Opportunity Site Framework, that prompts greater consideration of the design and scale of development than might otherwise be appropriate at this stage.
23. The Principles for Accommodating New Development set out in the Tyne Gorge Study include, amongst other things, to ensure that any new development maintains a close relationship with the topography and visual linkages with the river and to consider increasing native vegetation cover as a natural backdrop to the western end of the Gorge. The Opportunity Site Framework elaborates on these; again amongst other things, development should step down appropriately with the topography and the sloping escarpment edge should be kept free from development, in part to provide vistas and a pedestrian route along the top of the escarpment.
24. If development on the appeal site were to relate visually to what has been approved on the Calders site, it is unlikely that new planting on the site itself could be high enough to provide a backdrop; however, the vegetation on the north side of Scotswood Road ought adequately to secure what is sought. The indicative scheme, though, extends over the escarpment edge by a significant amount. The townhouses would be split-levelled in section, extending down the escarpment slope; the apartment blocks at the south-east and south-west corners of the site would have roughly the same building line, somewhat forward of that in the approved Calders site scheme. This would be at a point when the Gorge itself is widening out and the escarpment slope is becoming more gentle, suggesting that bringing the building line forward would run contrary to the topography and could well be inappropriate. In addition, the indicative apartment block at the south-east corner of the site would be taller than the Calders site scheme when the topography might suggest that that, too, would be inappropriate.
25. It is an illustrative scheme, however, not a firm proposal. It was suggested at the hearing that the townhouses are “land hungry” and could be replaced by apartments. It is unclear, nevertheless, that the likely reduction in the total number of dwellings caused both by setting the buildings back at least to the top of the escarpment and by reducing the height of the indicative corner blocks could be made good by having apartments instead of townhouses.
26. On this third main issue, therefore, there are design considerations which suggest that, on the indicative layout, the number of dwellings might have to be reduced significantly, albeit difficult to gauge by how much. At the same time, it is, of course, a purely indicative layout; and it is understood that the mix of dwelling types could be changed to compensate for such a loss. While layout and appearance should be left to the reserved matters stage, it is

nevertheless appropriate now to give due consideration to whether the quantum of what is proposed could, in fact, be provided on the appeal site.

**Fourth main issue – biodiversity**

27. Some of the open and relatively level parts of the site contain species-rich grassland which provides good conditions for the dingy skipper and small heath butterflies, both of which are priority species under section 41 of the Natural Environment and Rural Communities Act 2006. The species-rich grassland gives the site district ecological value while the recorded numbers of butterflies also give it district value for butterfly assemblage. That said, the site is allocated for development by Core Strategy Policy D3 and it is inevitable that substantial areas of the species-rich grassland must disappear – for whatever mix of the appropriate uses the site were to be developed. The escarpment slope does not and could not provide alternative habitat – it is clear from what grows there at present that soil conditions are very different from those on the apparently filled or levelled ground on which the grassland grows.
28. One relatively simple and logical solution, which would tie in reasonably well with what is said above about the building line, would be to set development back from the top of the escarpment to maintain an area of species-rich grassland and, at the same time, a measure of connectivity in the Strategic Green Infrastructure Network. If that were to be, say, 10 metres wide, it would have a significant impact on the numbers of dwellings – because the building line for the development would be around 20 metres back from where it is shown on the indicative layout. That would mean that the indicative layout would probably have to change substantially and, even substituting apartments for townhouses, it seems almost inevitable that the total number of dwellings that would be possible on the site would be significantly fewer than would satisfy the application description of “up to 280”.
29. Another benefit of setting development further back from the escarpment edge would be to afford more appropriate conditions for breeding birds and bats.
30. One possible area for mitigation, though perhaps rather isolated, would be the site of the former gasholder. At present, however, it is outside the appellant’s control and there is no guarantee that the land could be acquired or, if it were, that it could actually provide appropriate mitigation.
31. To sum up on this fourth main issue, the scale of the development proposed does not appear to offer appropriate scope for biodiversity mitigation. There may well be other layout options; but the indicative layout remains a useful guide to the scale of development proposed – and that scale does not give comfort that appropriate mitigation could be provided with a development of up to 280 dwellings.

**Overall conclusion**

32. No single one of these four main issues is itself determinative of the appeal. In principle, development of the appeal site would be sustainable. The Forth Yards Opportunity Site would not have been allocated in the Core Strategy if it was not considered sustainable. The appeal site, however, is at the very western end of that site and loses something if other parts, particularly the Calders site, are not also developed. There is some merit in the appellant’s argument that development on the appeal site would kick-start regeneration of the wider area; on the other hand, it is somewhat isolated on its own, which brings disadvantages.

33. From the first main issue, the relatively poor accessibility of the site is the main one of those disadvantages. It is true that the appearance or environmental quality of the routes themselves could be improved – although, at present, there is no certainty at all of how or when that might be achieved. Even given enhancement, however, the site would remain remote from local facilities, perhaps less in the simple terms of distance than in the nature of the routes, with the ‘barrier’ of the Scotswood Road to be crossed. The existing bus routes, on Scotswood Road, are similarly towards the limit of what one might reasonably expect residents of the proposed development to walk – but, if the Calders site were developed, there is the clear expectation that a bus route would pass through that site, and possibly also the appeal site, rendering development a very much more sustainable proposition.
34. On the first main issue, therefore, the conclusion must be that accessibility is relatively poor and, absent significant environmental improvements, both unappealing and potentially threatening. As such, the appeal proposal would not achieve what is sought by Core Strategy Policies CS1 (criterion 8), CS13 (criterion 3), CS15 (criterion 1.iii) and UC12 (criterion 2). It fails Policy CS3 only by virtue of omission, although allocation of the Forth Yards site by Policy D3 should overcome that; at present, however, there is no provision to secure the improvements set out in criteria 1.i and 1.ii of Policy D3. The proposal also conflicts with saved Unitary Development Plan (UDP) Policy EN1.1 (criteria D and, to an extent, C), though it is unclear exactly how Policy H4 is contravened.
35. The other three main issues are all to do with whether “up to 280” dwellings could be built on the site while catering appropriately to noise, design and biodiversity constraints. This was an outline application but there must come a point when a number significantly below 280 would mean a development which was not that applied for. Given that 280 must be taken as something representing the appellant’s considered aspiration for the site (confirmed to a great extent by the design work which has obviously gone into the indicative scheme), anything less than around 90% of that figure may reasonably be taken as failing to match the application description.
36. On noise, it may be possible to provide adequate mitigation at source – but not so certain that a negative condition could adequately deal with the problem. The alternative appears to be a substantial amendment to Block 4 in the indicative scheme – but that could significantly reduce the number of dwellings provided therein. There does not appear to be conflict with the actual terms of Core Strategy Policies D3, CS15 or UC12 but, at present, the appeal scheme runs contrary to Policy CS14 (criterion 1.iii). Regarding the policies saved from the UDP, there does not appear to be any conflict with the actual wording of EN1.1 and H2 is aimed at existing residential areas potentially affected by new development; but there is conflict with POL8 and the associated Development Control Policy Statement (DCPS) 22, even if the latter is now somewhat dated.
37. The design issue is essentially about the Tyne Gorge, a matter which is capable of being considered now rather than at the reserved matters stage. There must be doubt about the number of dwellings that might be lost from the indicative scheme if it had to be amended to set buildings back to, or beyond, the top of the escarpment and to reduce the height of some (primarily those in the south-east and south-west corners) to sit more comfortably in the topography or alongside the approved scheme for the Calders site. This may largely be something for reserved matters (the latter might not need to be

- done; the former is much more important; and it is unclear how changes in the types of dwellings to be provided could compensate for losses) – but there is sufficient doubt to weigh against an outline permission. As things stand, there is no clear conflict with Core Strategy Policies D3, CS14, UC12 (other than encompassed by CS15 and UC13) and UC14; but there are concerns, not necessarily more than that, with regard to CS15 (criteria iii, iv and v) and UC13 (criterion 1). Similarly, on the policies saved from the UDP, there are concerns in relation to EN2 and EN2.1 (criterion C and as defined by EN2.3) but no obvious conflict with EN1.1 or H4.
38. On biodiversity, the real concern is that a substantial number of dwellings would have to be lost from the indicative scheme to make appropriate biodiversity provision or compensation, sufficient to cast doubt on the ability of other layout options to deliver “up to 280” dwellings. At present, in relation to biodiversity, there is no conflict with the terms of Core Strategy Policies D3, CS15, UC12, UC15 and UC16; but there is conflict with CS18 (criterion 2.i in particular). On the saved UDP policies, EN3, EN3.2 and EN4 seem to be purely about landscape and amenity; OS1 and OS1.1 appear to be about open space only for leisure or recreation but there is conflict with OS1.2 (criterion E); and there is conflict with NC1.7 (criteria B and F), and also NC1.5 and NC1.6 (if the appeal site is deemed to be within wildlife corridor 21).
39. It might well be that the various on-site problems or constraints considered in the second, third and fourth main issues could be overcome by a reserved matters submission. However, the evidence strongly suggests that, one way or another, to resolve all of them satisfactorily would result in a development of far fewer than 280 dwellings, sufficiently so as to go below what might reasonably be understood by the phrase “up to 280”. It might also be that the problems considered in the first main issue, walking distances to local facilities and bus routes notwithstanding, could be resolved by a detailed scheme supported by obligations – but there can be no certainty about the appropriate works coming forward. Given all of these significant doubts, the appeal must be dismissed.

*John L Gray*

Inspector



## **APPEARANCES**

### FOR MB EUROPEAN LTD

Steven Longstaff	Principal Planner, ELG (formerly England & Lyle)
Simon Bell	Director, NORR (formerly Archial)
Amer Waheed	Director, IPRT Transport Planning
Adam Cooke	Apex Acoustics
Charlotte Sanderson	Delta Simons Earl Consultants

### FOR NEWCASTLE CITY COUNCIL (NCC)

Jon Rippon	Team Manager, NCC
Karen Shotton	Planning Officer, NCC
Phil Harrison	Principal Transport Planner, NCC
Laura McDermott	Student Planner, NCC
Anna Browning	Urban Designer, NCC
Angela Wallis	Environmental Health, NCC
Derek Hilton-Brown	Ecologist, NCC

## **DOCUMENTS**

### **Submitted at the hearing**

- 1 Letter from the City Council, dated 17 October 2016, withdrawing reason for refusal no. 5.
- 2 Consultation responses at the application stage (Community Safety Officer, Northumbrian Water, Nexus, Gateshead Council, Environment Agency and Coal Authority).
- 3 Forth Yards Opportunity Site Development Framework, adopted 19 September 2016, with email to Pins dated 3 October 2016.
- 4 Maps showing Walking Accessibility and Public Transport Accessibility from the appeal site.
- 5 Photographs of examples of highways and underbridge improvements.
- 6 Photographs of roads in the vicinity of the appeal site.
- 7 Noise contours forecast with the illustrative development in place.
- 8 Email correspondence with Northern Gas about at-source noise mitigation measures for the gas pumping station.
- 9 Costs application by the City Council.

### **Submitted after the hearing**

- 10 Appellant's written response to the Council's costs application (Document 9).