



Appeal Decision

Site visit made on 4 June 2024

by **C Dillon BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 25 July 2024

Appeal Ref: APP/A2335/W/23/3326750

Land east of Fulwood Drive, Bare, Morecambe, Lancashire LA4 6QD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Oakmere Homes (Northwest) Ltd against the decision of Lancaster City Council.
 - The application Ref is 21/01341/OUT.
 - The development proposed is described as "outline application for the development of 129 residential dwellings and creation of new access."
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Decision

1. The appeal is dismissed.

Application for costs

2. The appellant has sought an award of costs against Lancaster City Council (the Council). That application is the subject of a separate Decision.

Preliminary Matters

3. The planning application to which this appeal relates was made in outline with all matters, apart from access, reserved for future determination. I have treated the submitted 'Illustrative Development Framework Plan' as such for the purposes of my determination given the scope of the reserved matters before me.
4. I have relied upon the description of development which was revised at the planning application stage to reflect a reduction in the number of dwellings proposed as that is what the Council's decision was based upon.

Main Issue

5. Although the Council has cited 2 reasons for refusal on the decision notice, given the interconnection between the subjects, the main issue is the effect of the appeal proposal on the 'area of Key Urban Landscape', with particular regard to the setting of the 'Torrisholme Bowl Barrow' which is a Scheduled Monument.

Reasons

6. The appeal site is undulating farmland which is located on the edge of the developed residential extent of Torrisholme and Bare. Falling within one of the designated areas of Key Urban Landscape (KUL) of the district, the appeal site is an undeveloped, roughly grassed area. It forms part of a much wider area which is identified through Policy EN5 of the Lancaster District Part One:

Strategic Policies and Land Allocations DPD (the SPLA DPD) and Policy DM46 of the Local Plan for Lancaster District Part Two: Review of the Development Management DPD (DMDPD). These policies recognise a KUL as open space that has historically played an important role in defining the character of the district; is integral to the built form of the district; and provides a setting for important features or heritage assets.

7. A principal aim of this particular KUL designation is to protect the undeveloped east and south parts of the setting of the Torrisholme Bowl Barrow Scheduled Monument (the Barrow), which the National Planning Policy Framework (December 2023) (the Framework) confirms at paragraph 206 is a designated heritage asset of the highest significance.
8. The appeal site is located just beyond the prominent drumlin on which the Barrow is situated. It comprises part of a field called 'Standing Stone'. Dating back to between the late Neolithic and late Bronze Age periods, the Barrow is a funerary monument comprising a flat topped circular mound of earth and small stones. Significantly, despite some disturbance to this monument by a field boundary on its eastern side and an Ordnance Survey triangulation station on its summit, the Barrow survives reasonably well.
9. The Barrow provides important information on the diversity of beliefs and social organisations amongst early prehistoric communities. Furthermore, as the Barrow is not known to have been excavated, it is likely to contain undisturbed archaeological deposits within the mound and upon the old land surface beneath. This means that it has potential to provide new information about the history and construction of the site and the people who used it.
10. The significance of the Barrow is both archaeological and historic, being mainly derived from its aesthetic, evidential, historical and communal values. Crucially, as a scheduled monument, the Barrow is of national importance.
11. By virtue of its geographic location beyond the extent of the Barrow, the appeal proposal would not directly affect the underground or above ground archaeological interests within the extent of the Monument itself. However, as the appeal site falls within the surrounding landscape in which the Barrow is experienced, it forms part of its more immediate setting.
12. The setting of the Barrow has undergone change over time as this important asset and its surroundings have evolved. In particular, the growth of Torrisholme, Bare and Morecambe and the nearby road and rail routes have substantially altered its landscape setting. However, the remaining largely undeveloped extensive rural context to the northeast, east and south east continues to make a positive contribution to understanding, appreciating and experiencing the historic and cultural significance of this important designated heritage asset, including the rationale for its chosen prominent location. The KUL seeks to ensure that this setting endures by safeguarding the open nature of that land, which includes the appeal site.
13. The appeal site is relatively low lying and forms the northern portion of the KUL, where it is narrowest and constrained by existing development and the railway line. The submitted Illustrative Development Framework Plan demonstrates that it would be possible to achieve a layout for the lower density proposed whereby the new dwellings would be well-contained between the existing built extent of the settlement and the railway embankment. The

proposed built form could be positioned within the appeal site so as not to fall any closer to the Barrow than the existing built edge. An undeveloped foreground would be retained, albeit reduced, between the proposed dwellings and the foot of the hill on which this scheduled monument sits.

14. From my site observations and the evidence before me, I have assessed there would be intervisibility between the Barrow and the appeal site. In terms of outward views from the monument itself, the extent of existing housing development would appear as a slightly different edge and the openness of the KUL would be reduced accordingly. From northerly vantage points, views over the appeal site towards the Barrow would continue to be experienced within a mixed urban and rural context. However, the remaining unfettered nature of this part of the existing foreground setting would be reduced, thus curtailing the extent to which the Barrow could be enjoyed within an open setting. The degree of visible built form, and in particular the new roofscape, would be more pronounced in those inward views.
15. From my site observations the appeal proposal would have a low adverse effect on the KUL overall in terms of its contribution to the character of the adjoining urban area. This is because it would assimilate as an extension to the adjoining built form and would be well-contained between that existing built edge of the settlement and the railway line.
16. The appellant has assessed that the appeal proposal would preserve and enhance the open nature of 'the most important parts' of the KUL further to the south. However, the KUL includes all land which has been assessed as being important in terms of its particular purpose as part of the preparation of the development plan. Policy EN5 of the SPLA DPD and Policy DM46 of the DMDPD make no differential in terms of any variance in the importance of its constituent parts. Rather, these policies require that development proposals preserve the open nature of the area and the character and appearance of its surroundings.
17. The Barrow would continue to be experienced and appreciated as an important cultural feature at the summit of the hill. There is potential at the reserved matters stage to secure a layout which enables improved public views of the Barrow from within the appeal site. The proposed interpretation board would enhance the understanding of the heritage significance of the Barrow and could be secured through a suitably worded planning condition.
18. Nonetheless, it remains that the appeal scheme would cause a further reduction in the open, undeveloped component of the setting of the Barrow. It would also cause a change to the character and use across the appeal site, regardless of the proposed positioning of the developed and landscaped areas.
19. Overall, the appeal proposal would not preserve the open nature of the KUL. In doing so, the proposed land take would weaken the integrity and extent of this remaining undeveloped setting. In turn, there would be a significant reduction in the contribution which the open nature of the appeal site currently makes to the authenticity of how the remaining emotive and evocative links to the past are experienced. It would also impinge on the appreciation and understanding of the rationale for the location of the Barrow; a decision which is reflective of the beliefs and social organisations amongst early prehistoric communities. This would affect the ability to appreciate the significance of the Barrow. From my site observations and appreciation of the significance of this nationally

- important designated heritage asset, it would have a greater adverse effect on the remaining open setting of the Barrow than the appellant's evidence purports. Consequently, the proposed change would undermine the heritage related purpose of this particular KUL designation.
20. Overall, the appeal proposal would not preserve the setting of the 'Torrisholme Bowl Barrow' scheduled monument. In doing so, the appeal proposal would harm the aesthetic, evidential and historical values of the monument and its nationally important archaeological and historic significance.
 21. In the context of the Framework, in view of its permanence, nature and extent, the harm would be less than substantial. Nonetheless, in line with the Framework, in assessing the impact of the proposed development on the significance of this designated heritage asset, I give great weight to the conservation of the Barrow as a nationally important scheduled monument of the highest significance. In doing so, I attribute considerable importance and weight to the identified less than substantial heritage harm.
 22. The Framework recognises that the significance of heritage assets can be harmed or lost through development within their setting and that any such harm should have a clear and convincing justification. The Framework also requires that the less than substantial harm to the Barrow is weighed against the public benefits of the proposal.
 23. In terms of public benefits, the appeal proposal would significantly boost the supply of housing in this particular part of the Council's jurisdiction. In view of the acute housing land supply shortfall, this is a substantial public benefit.
 24. The appeal scheme provides opportunity for the Council to secure an appropriate housing type, mix and scale at the reserved matters stage. This could significantly improve the current open market housing offer in Morecambe by providing quality new homes for a range of different household groups including families, young people, single people, retired households and older people down-sizing from family homes. This is a significant public benefit.
 25. The submitted viability evidence confirms that the proposal could support the provision of 27% of proposed dwellings as affordable units. Although this is slightly below the 30% policy target, the benefit of providing 35 affordable homes within the appeal site is a substantial public benefit.
 26. In line with the importance that the Framework gives to economic growth, the creation of employment opportunities during the construction phase and revenue generation thereafter is a significant public benefit.
 27. The proposed interpretation board would further reveal the significance of the scheduled monument and further public views of it could be secured from within the site. The proposal would also secure long-term biodiversity net-gain opportunities and the provision of a multi-purpose area of public open space. Each of these outcomes are moderate public benefits.
 28. In weighing the heritage harm to the Barrow against all of these public benefits, the harm to the significance of the scheduled monument would not be outweighed. Consequently, the appeal proposal would not accord with the national policy approach to the historic environment. As there is a clear reason for doing so, the provisions of paragraph 11d(i) of the Framework direct the refusal of the appeal proposal.

29. In overall conclusion to this main issue, the appeal proposal would harm the area of Key Urban Landscape, with particular regard to the setting of the Torrisholme Bowl Barrow which is a scheduled monument of the highest significance.
30. The KUL designation and its supporting policies, Policies EN5 and DM46, do not distinguish between designated and non-designated heritage assets. The appeal scheme would undermine the purpose of the designated KUL given that it would not preserve the open nature of the designated area. Consequently, there would be a clear conflict with both Policy EN5 of the SPLA DPD and Policy DM46 of the DMDPD.
31. In terms of compliance with Policy DM39 of the DMDPD, the proposed interpretation board would better reveal the significance of the Barrow. However, overall the appeal scheme would not enhance the setting of this Scheduled Monument. Nonetheless, given its positive wording, and as the proposal is accompanied by detailed supporting heritage evidence, I find no conflict with Policy DM39. Policy DM42 of the DMDPD requires that developments should conserve or enhance the elements which contribute towards the significance of a Scheduled Monument. As the identified harm has not been clearly justified and outweighed by the public benefits of the proposals there would be conflict with that policy.

Other Matters

32. The Standing Stone field system within which the appeal site is located is recorded in the Local Historic Environment Record. The main parties agree that a suitably worded planning condition would secure a scheme of fieldworks to ensure the identification and recording of any non-designated assets present. From the evidence before me, there is no basis to dispute the common ground reached that subject to such a planning condition, the potential existence of non-designated heritage assets within the site would not represent a constraint to the proposed development so as to conflict with Policy DM41 of the DMDPD.
33. Whether Policy EN3 of the SPLA DPD is of relevance is disputed. This is because the appeal site is shown on Inset 1 of the adopted version 2020 of the Strategic Policies and Land Allocations Map to be bound by Policy EN3 as open countryside; Policy EN5 as part of the KUL; and also within the urban area boundary for Morecambe. The supporting text of the SPLA DPD, at section 1.5 clearly states that although the Local Plan does not have an urban area boundary policy, an urban area boundary is shown on the policies map and is intended only to be helpful in delineating the land within the district which is not subject to Policy EN3. However, it is also clear that the urban boundary has no adopted policy status. This contradiction and uncertainty could only be remedied through a future Local Plan review. In terms of this appeal, my findings on the main issue would be unchanged irrespective of whether or not the appeal site was intended to be bound by Policy EN3 of the SPLA DPD as the appeal proposal would not preserve the open nature of the KUL.
34. For the purposes of my own determination of this appeal, the most important policies are therefore Policy EN5 of the SPLA DPD and Policies DM39, DM41, DM42 and DM46 of the DMDPD.
35. The Council has confirmed sufficient differentials between the appeal scheme and the other planning application referred to by the appellant. Whether or not

the Council has reached decisions on other sites which run counter to the common stance in respect to the KUL and heritage matters that I have reached in this particular instance does not justify the harm that I have found. Neither does it diminish the resulting conflict with both the development plan for the area and the Framework.

Planning Balance

36. The harm to the open nature of the appeal site that would arise from the proposed encroachment into the KUL would conflict with Policies EN5 and DM46. Furthermore, the appeal proposal would not preserve the setting of the Torrisholme Bowl Barrow, a nationally designated heritage asset of the highest significance. That harm has not been justified in line with the national policy approach to heritage and, as such, the Framework directs refusal of the proposal. Moreover, the absence of such justification presents conflict with Policy DM42 of the DMDPD.
37. Although there is no conflict with Policies DM39 and DM41 and there are no other technical constraints before me, in view of the nature and level of the unjustified harm and the subsequent local policy conflict, I conclude that the appeal proposal conflicts with the development plan taken as a whole. Irrespective of the housing land supply shortfall, the weight to be afforded to the conflict with policies EN5, DM46 and DM42, as most important policies for this appeal, is not reduced given their consistency with the national policy approach to heritage assets.
38. Overall, there are no matters before me, including the acute shortfall in the housing land supply position, which indicate that a decision taken contrary to the development plan would be justified.

Habitat Regulations

39. In view of my findings, it is unnecessary for me to undertake an Appropriate Assessment.

Conclusion

40. For the reasons given above, and having had regard to all matters raised, I conclude that the appeal should be dismissed.

C Dillon

INSPECTOR



Costs Decision

Site visit made on 4 June 2024

by **C Dillon BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 25 July 2024

Costs application in relation to Appeal Ref: APP/A2335/W/23/3326750 Land east of Fulwood Drive, Bare, Morecambe, Lancashire LA4 6QD

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Oakmere Homes (Northwest) Ltd for a full award of costs against Lancaster City Council.
- The appeal was against the refusal of planning permission for development described as "outline application for the development of 129 residential dwellings and creation of new access."

Decision

1. The application for an award of costs is refused.

The submission by Oakmere Homes (Northwest) Ltd

2. The applicant considers that the Council has acted unreasonably by failing to substantiate its reasons for disengaging the tilted planning balance when refusing planning permission. It is argued that this has delayed development which clearly should have been permitted, having regard to the development plan, national policy and all other material considerations. Furthermore, the applicant believes that this has caused unnecessary and wasted time and expense in pursuing an avoidable appeal.
3. In particular, the applicant considers that the Council has failed to substantiate both resulting reasons for refusal for the purposes of the appeal. The applicant believes that the Council's evidence at appeal is not a detailed, objective 'on the ground' assessment of the landscape and heritage effects of the proposed development on the Key Urban Landscape (the KUL) designation and the relationship of the setting to the significance of the designated heritage asset. Furthermore, the applicant argues that this evidence is not specific to the appeal site and outline scheme; having being taken from the Local Plan evidence base which was prepared at a high level and to assess a much larger potential development site.
4. The applicant also points out that the Council does not challenge the assessment of the importance of Torrisholme Barrow, in terms of its heritage values and significance, set out in the applicant's heritage evidence. The applicant argues that the Council also does not adequately explain, and evidence, the rationale for its weighting of the benefits of the proposed development and highlights some weightings which they believe are not credible and contradict the committee report. The applicant considers that the Council's evidence is silent on why the weight given to the less than substantial harm should be justifiably increased. It is asserted that the Council's case has

been changed to attempt to retrospectively justify the planning committee decision.

5. Furthermore, the applicant argues that the Council's approach is especially unreasonable as the planning committee carried out the same decision-making exercise in connection with another application and concluded that the relevant heritage policy test at paragraph 208 of the National Planning Policy Framework 2023 (the Framework) was passed and therefore the tilted balance prescribed in paragraph 11(d) of the Framework was applied. The applicant is of the view that this resolution to grant planning permission in that case established that the great weight to be given to less than substantial heritage harm was outweighed by the significant weight to be given to the delivery of 116 market and affordable homes in the context of a 2.1 year housing land supply. The applicant argues that it is not reasonable and credible for the Council to make conflicting decisions on the application of paragraph 208 of the Framework when using identically weighted heritage harm and public benefit input data.
6. For these reasons, the applicant respectfully requests a full award of costs is made.

The response by Lancaster City Council

7. The Council is of the view that they have exercised their duty to determine the application in a reasonable manner. In particular, the Council draws attention to the fact that committee members resolved to refuse planning permission contrary to the recommendation within the officer report because a different planning balance was reached as more weight was applied to the heritage harm. The Council maintains that the committee report clearly identifies harm and conflicts with the development plan.
8. The Council maintains that the decision to refuse the application was because the planning committee considered that the heritage harm caused by the proposal, including the conflicts with the adopted development plan, were not outweighed by its public benefits. The Council states that the tilted balance did not apply in view of the stance of the committee members as the harm to the significance of the designated heritage assets provided a clear reason for refusing the application. In addition, the Council draws attention to paragraph 3.5 of its appeal statement which states that if a tilted balance is applied, then the harm would significantly and demonstrably outweigh the benefits.
9. Furthermore, the Council considers that the weighing of the benefits against the harm caused by a proposal in terms of both heritage and other harms is a matter of planning judgement. Therefore, it is maintained that the members of the planning committee were entitled to reach a different view on this and could apply different weight to the benefits and harm.
10. In terms of the other application referred to by the applicant, the Council argues that each application has been considered on its own merits and, in that case, it was a full planning application and so all the details of the proposal were known and a shorter timescale for commencement had been agreed. Therefore, the Council disagrees that the benefits of each would be directly comparable.

11. Consequently the Council respectfully requests that the application for costs be refused.

Reasons

12. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
13. In this case, unlike the case officer, the members of the planning committee found that the relevant heritage policy test now prescribed in paragraph 208 of the Framework was not passed, and so the tilted balance was disengaged, and planning permission was refused as the product of a flat balance. I am satisfied that this is because the planning committee members applied greater weight to the identified heritage harm and subsequent conflict with the development plan and reached a different view on that heritage balance.
14. In doing so, it may well be that the Council could have better articulated the reasons why planning committee members gave more weight to the less than substantial heritage harm than the case officer. Nonetheless, the committee did not introduce any other reasons for refusal than those relating to the harm and conflicts that were already set out in detail within the committee report. The decision notice is sufficiently clear as to the reasons for the refusal.
15. Members of the planning committee were entitled to reach a different decision to the case officer. This is not unreasonable particularly in instances where competing matters need to be weighted and balanced when undertaking necessary policy tests. The nature of the Council's evidence differs to that of the applicant, but it was not inadequate. Despite the available evidence from both parties, the balancing exercise still demanded a degree of subjectivity in terms of the importance of the heritage asset and the bespoke nature of the harm, as well as verification through site observations.
16. Furthermore, it does not necessarily follow that less than substantial harm infers an insignificant harm or one which commands a reduced level of weight. Neither is less than substantial harm a static measure in any balancing exercise.
17. In line with the Framework, great weight should be given to the conservation of the Torrisholme Bowl Barrow (the Barrow) as a nationally important designated heritage asset of the highest significance. I am satisfied that this is what the committee members did in undertaking the required heritage balance.
18. In view of the outcome of the balance made between the heritage harm and public benefits, the Council's approach thereafter represents the correct interpretation of the Framework.
19. The Council has confirmed sufficient differentials between the appeal scheme and the other planning application referred to. Whether or not the Council has reached decisions on other sites which run counter to the common stance that I have reached in this particular instance in respect to the KUL and heritage matters does not justify the harm that I have found or diminish the resulting conflict with both the development plan for the area and the Framework.

20. The attribution of weight against competing matters is a matter for the decision maker. In examining the evidence before me in conjunction with my site observations, I have given great weight to the conservation of the Barrow as a nationally important designated heritage asset of the highest significance. In doing so, I have attributed considerable importance and weight to the identified less than substantial harm. Despite attributing greater weight than the Council to some of the public benefits, I have reached the same outcome.
21. As no unreasonable behaviour has been found, there can be no substantiated claim of wasted expense.

Conclusion

22. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

C Dillon

INSPECTOR

Richborough