

Appendix 12: Appeal Decisions relating to OUV

In recent years a number of Planning Appeals have taken place in the Derwent Valley Mills and Cornish Tin Mining World Heritage Sites and been refused on World Heritage grounds.

The following paragraphs have been lifted out of the inspector's statements, as they may provide useful precedents for future planning decisions and appeals. Headings have been added to provide indicators as to themes.

Darley Abbey

Appeal A Ref: APP/C1055/W/15/3137935. Appeal B Ref: APP/C1055/W/15/3141117. Land off North Avenue, Darley Abbey, Derby DE22 1EZ. The development proposed in both cases was a residential development of up to 49 dwellings and areas of open space.

Inspector Alan Novitzky BArch(Hons) MA(RCA) PhD RIBA. Decision date: 22 July 2016. Appeal dismissed in both cases.

Integrity and Authenticity

Paragraph 12. Regarding the integrity of the WHS, the Statement (of OUV) notes that the relationship of the industrial buildings and their dependent urban settlements to the river and its tributaries and to the topography of the surrounding rural landscape has been preserved, especially in the upper reaches of the valley, virtually intact. In relation to authenticity, it notes that the overall landscape reflects well its technological, social and economic development and the way the modern factory system developed within this rural area on the basis of water power.

Attributes

Paragraph 13. Its attributes include what is described as a 'relict' industrial landscape, where late 18th century and early 19th century industrial development may still be seen in an 18th/19th century agricultural landscape containing evidence of other early industrial activity such as hosiery, iron founding, nail making, quarrying, lead mining and smelting.

Appreciating the WHS as a whole

Paragraph 20. It is important to appreciate the WHS as a whole, rather than simply the various mill clusters and their associated buildings. This means the complete 24km stretch of the Derwent Valley including the river, other watercourses, the landscape, and the built environment such as farmsteads supplying the factory workers, and religious buildings, whether listed or not.

Protecting the remaining open landscape

Paragraph 26. The appeal site, as part of the WHS setting, contributes to the open, agricultural nature of the WHS within which early industrial activity took place. Although some remodelling of the land may have taken place, this appears to be relatively superficial since the basic profile of the side valley is clear, and medieval ridge and furrow field patterns are evident to the south. Although other parts of the buffer zone are heavily urbanised, it is important to protect the remaining open landscape and the designation provides protection against further damage.

Designated heritage assets

Paragraph 35. Paragraph 14 of the NPPF tells us that where the development plan is absent, silent or relevant policies are out-of-date, planning permission should be granted unless specific policies in the NPPF indicate development should be restricted. Section 12 of the NPPF contains policies relating to designated heritage assets which indicate development should be restricted.

Protection from minor but cumulative changes

Paragraph 36. Paragraph 138 of the NPPF notes that not all elements of a World Heritage Site will necessarily contribute to its significance. Nevertheless, overall, the WHS represents an asset of very high value. Although the appeal site represents a small fragment of the 24km long WHS, the proposals' local harm

should not be under-rated when considering the effect on the WHS as a whole. It should not lie below that of a similar effect on a much smaller world heritage site, otherwise such reasoning could lead to the proliferation of similar harm throughout the WHS. Planning Practice Guidance (PPG)9 endorses the principle of protecting a World Heritage Site from the effect of changes which are relatively minor but which, on a cumulative basis, could have a significant effect.

Hill Top, Belper

Appeal Ref: APP/MIOOS/A/10/2142571 Land at Hill Top Farm, Mill Lane, Belper, DES6 1LH. The development proposed is erection of 75 dwellings together with associated infrastructure including new vehicular and pedestrian access, landscaping and public open space. All matters reserved save for means of access.

Inspector G D GrIndey MSc MRTPI Tech.Cert.Arb. Decision date: 3 June 2011. Appeal dismissed.

Relationship with rural landscape preserved

Paragraph 9. It seems clear to me that the 'unique cultural landscape of industrial buildings, related housing, canal, road and railway architecture' are 'set for the most part in a green landscape'. 'The engineering structures through which the River Derwent and its tributaries provided power for the mills still exist and the natural landscape setting of the Industrial settlements remains largely intact. The 'relationship of the industrial buildings and their dependant urban settlements to the river and its tributaries and to the topography of the surrounding rural landscape has been preserved'.

Green landscape that remains is very important

Paragraph 10. It seems to me that at the very heart of the designation of the WHS is that this minor, essentially rural little river valley had the new (as it was then) industrial factory system superimposed upon it. Hence the elements of the green natural landscape that remain, close to the heart of Belper are a very important part of the setting and indeed the meaning or significance of the WHS. The appeal site and the rest of the abutting open land alongside the Coppice Brook and The Park represent a tongue of green, natural landscape that weaves into the eastern side of the settlement and, to my mind, forms an intrinsic part of understanding the setting of the WHS - the associative connection between the historic events that happened here and its wider surroundings.

Green, open setting is an important element

Paragraph 12. It seems to me that the green, open setting of the WHS here at the appeal site is an important element of the whole. Its physical self and its historical relationship with the WHS are freely accessible and visible to anyone who wishes to contemplate the significance, meaning and Interest of the WHS. As such, the development of the site would fundamentally alter this.

Paragraph 13. The loss of the green open natural landscape setting here would not make a positive contribution to the heritage asset, or better reveal the significance of the asset - quite the reverse.

Blackbrook

Appeal Ref: APP/M1005/W/19/3233180 Land off Ashbourne Road, Blackbrook Easting: 433074 Northing: 3477. The development proposed is an outline application for the development of 7 dwellings at Land off Ashbourne Road, including associated access.

Inspector Andrew McGlone BSc MCD MRTPI. Decision date: 30 September 2019. Appeal dismissed.

Protection of Setting

Paragraph 11. The protection of the WHS's setting is particularly important, because of the critical significance to the Property's Statement of Outstanding Universal Value (SOUV) of the location of the mills and their associated settlements, within a rural landscape, arrested in time.

Contributing to the Setting

Paragraph 12. The site, which is not in the centre of Blackbrook as the appellant suggests, does contribute to the rural character of the locality and the approach to the WHS even though it does not affect views into or out of the WHS.

The Buffer Zone

Paragraph 15. Although the Buffer Zone is not itself a heritage asset, its role is to protect the setting of the WHS. Having regard to Framework paragraph 196 the harm to the setting of the WHS would be less than substantial. Even so, this still amounts to a harmful impact which adversely affects the significance of the WHS as a designated heritage asset.

Chacewater

Appeal Ref: APP/D0840/W/16/3153632 Land South of Chacewater Hill, Chacewater, Cornwall TR4 8JT. The development proposed was outline planning application for 57 dwellings, the provision of public open space and associated works. All matters except access left as reserved matters.

Inspector R J Jackson BA MPhil DMS MRTPI MCMI. Decision date: 14 December 2016. Appeal dismissed.

Highest heritage significance

Paragraph 12. The (National Planning Policy) Framework makes clear in paragraph 132 that in considering the impact on the significance of a designated heritage asset great weight should be given to the asset's conservation and the more important the asset the greater the weight. It is clear that WHSs are of the highest heritage significance.

Protect from inappropriate development

Paragraph 13. The Planning Practice Guidance (the PPG) sets out that planning decisions should conserve the OUV, integrity and authenticity of each WHS. They should protect the WHS from inappropriate development and from the effect of changes which are relatively minor but which, on cumulative basis, could have a significant effect.

No attribute should be given greater weight than another

Paragraph 18. It seems to me that the WHS is made up of all its attributes and that none should be given greater priority than another; it is an integral whole. Thus the fields of smallholdings are important to an overall understanding of the WHS as they show miners often had second areas of work.

Legibility of remaining landscape highly important

Paragraph 19. As the Statement of OUV makes clear the landscapes of Cornwall and west Devon were radically reshaped during the eighteenth and nineteenth centuries and will have overwritten the pre-existing landscape to a greater extent. The legibility of the remaining smallholding fields is therefore highly important in understanding the significance of the WHS. In addition, to my mind, the radical reshaping gives greater importance to any pre-existing field patterns that were retained as part of the 'new' integrated landscape.

Cumulative effect of losses undesirable

Paragraph 21. The appellant makes the point that the appeal site does not represent the whole of a former smallholding. However, to discount the importance of the remaining fields would allow for the cumulative effect of the loss of historic record leading to an overall significant effect, which is specifically noted as being undesirable in the PPG as referred to above.

Scale of harm and cumulative effect

Paragraph 25. (It is) necessary to determine whether the harm represents substantial harm or less than substantial harm to the heritage asset within the terms of the Framework. The PPG makes clear in making this assessment an important consideration would be whether the adverse impact seriously affects a key

element of its special architectural or historic interest. It is the degree of harm to the asset's significance rather than the scale of the development that is to be assessed.

Paragraph 26. The International Council on Monuments and Sites (ICOMOS) Guidance on Heritage Impact Assessments for Cultural World Heritage Properties (2011) sets out an approach to judge the scale or severity of impacts or changes taking into account their direct and indirect effects and whether they are temporary or permanent, reversible or irreversible. The cumulative effect of separate impacts should also be considered. It then goes on to note that the significance of the effect of change, that is the overall impact, on an attribute is a function of the importance of the attribute and the scale of change.

Permanent and irreversible harm, no matter the percentage of WHS affected

Paragraph 27. If permission were to be granted it would have a direct effect on the legibility of the smallholding, as a key attribute of the WHS, and would be permanent and irreversible. Whatever the precise percentage there has been a significant reduction in the number of surviving smallholding boundaries in the area since the 1840s. This increases the importance of the remaining smaller fields which are an integral part of the overall authenticity and integrity of the WHS. Even taking into account that the appeal site is only a very small percentage of the overall WHS I therefore conclude that the severity of the impact would represent a major change and would have a major adverse effect as smallholdings represent a key attribute of the WHS.

Demonstration needed that substantial harm is necessary

Paragraph 28. That being the case the proposals would represent substantial harm to the significance of the heritage asset, and, in line with paragraph 133 of the Framework, permission should be refused unless it can be demonstrated that the substantial harm is necessary to achieve substantial public benefits that outweigh that harm, or all of four criteria apply. These four criteria are not applicable to this case.

Callington

Appeal Ref: APP/D0840/W/17/3168774 Valley View, Callington Road, Callington PL17 8AZ. The development proposed was described as the 'erection of detached dwelling with associated parking and landscaping'.

Inspector Thomas Bristow BA MSc MRTPI. Decision date: 7 June 2017. Appeal dismissed.

A need for appropriate design

Paragraphs 18/19. I conclude that the proposal would be detrimental to the appreciation of the mineworkers' cottages, harming to the historic integrity of the WHS. However the extent of this harm would be relatively limited and less than substantial; only a small element of the WHS would be affected, and the contribution of the mineworkers' cottages to the WHS compromised rather than negated. I now turn to consider the benefits of the proposal in order to establish whether, considered as a whole, the proposal is appropriate.

Paragraph 20. If implemented the proposal would result in the creation of a new home in Cornwall, consistent with the support for new housing given in general terms within the Local Plan, where the housing requirement is expressed as a minimum level, and with that of the Framework. However the benefit in this respect would be confined to a numerical addition rather than in terms of appropriate design.

Integrating development appropriately

Paragraph 21. Neither the support in the Local Plan or Framework for housing is at the expense of ensuring that all development integrates appropriately with its surroundings. I also acknowledge that the delivery of a new home would result in social and economic benefits in supporting employment during construction and as future occupants would make use of nearby services and facilities. However such benefits would inevitably be modest in respect of one new home.

Hayle

Appeal Ref: APP/D0840/W/15/3006077 Land South of St George's Road, Hayle. The development proposed was a residential development of 222 dwellings, associated public open space and the provision of land to facilitate the expansion of Penpol Primary School.

Inspector Stephen Roscoe BEng MSc CEng MICE. Decision date: 04 May 2016. Appeal dismissed.

Management Plans, Integrity and Authenticity

Paragraph 12. In terms of integrity, the WHS reflects how mining transformed the urban and rural landscapes and encapsulates the extent of these changes. The management plan however warns that the WHS may be vulnerable to the possibility of incompatible development. The management plan advises that the WHS has, in general, high authenticity in terms of the location and form of surviving features.

Protection of attributes

Paragraph 13. The UNESCO inscription identifies criterion against which the significance of the WHS was judged, and the physical attributes which represent these. The management plan advises that the protection of these attributes is key to the management of the WHS.

Experiencing an asset and understanding historic relationships

Paragraph 16. I now turn to consider the setting of this part of the WHS. PPG₂ advises that the importance of setting can be expressed by the way in which we experience an asset and our understanding of the historic relationship between places. Both main parties agree that the appeal site generally lies within the setting of the WHS. Indeed, in the Inquiry, the appellant accepted that the immediate setting of the WHS included the greater part of the appeal site, if not all of it, and I agree with this interpretation.

Transient trees

Paragraph 17. In terms of the relationships between the various elements of historical development which remain in the mill complex and Millpond Avenue area, visibility is restricted by tree growth. This growth somewhat masks the interlinking and integrity noted above. Much of this vegetation lies within the mill complex and ropeworks Scheduled Ancient Monument (SAM) and appears to be self-seeded. In time, I consider that this vegetation is likely to become incompatible with the preservation of the SAM, and this is likely to lead to its removal.

Paragraph 18. Indeed, during the Inquiry, Historic England (HE) referred to it as being transient. This is the case notwithstanding the absence of evidence of any current intention to remove the vegetation or any current risk to the SAM. In the context of the NPPF, para 17 aims to conserve heritage assets so that they can be enjoyed by future generations. My assessment of the above interlinked relationships will therefore take into account the potential removal of this vegetation.

Paragraph 20. The appellant has also suggested that existing vegetation on the appeal site near to the WHS boundary could be reinforced to provide screening. Again though, I do not consider that this should be taken into account as a long term feature in terms of setting due to the difficulty in guaranteeing its long term retention.

Blurring past evidence

Paragraph 24. The proposal would introduce a scale of development that would be incompatible with this part of the WHS. It would result in some loss of the legibility of the edge of the historic town. The appellant's heritage assessment accepts that 'the evidence from the past would become blurred although not entirely illegible'. Legibility would however be compromised, and the proposal would affect the strong visual clue of the restricted valley bottom nature of the industrial settlement. Whilst the important story would remain, it would be significantly modified in terms of changes to its immediate setting.

Dominating the setting

Paragraph 25. The proposal would also be elevated above the Millpond Avenue area of the WHS and, as such, would tend to dominate the immediate setting of this part of the WHS. This would result in the loss of a positive and important contributor to the immediate setting of this part of the WHS and to the significance of the WHS as a whole in relation to the management plan. The loss would affect the ability to appreciate the significance of the part of the WHS, and have an adverse impact on its OUV.

Paragraph 29. Assessing the proposal against Step 3 in the HE document the Setting of Heritage Assets – Good Practice Advice in Planning 3, it would: cover the majority of a hillside in close proximity to the WHS; lie above a SAM, which is described later in this decision, in the landform; and affect a key potential view of the SAM from the Millpond Avenue area. The proposal would therefore be prominent, dominant, conspicuous, compete with and distract from the WHS and would represent a suburbanising land use change.

Appreciating cultural aspects

Paragraph 30. In terms of the International Council on Monuments and Sites (ICOMOS) methodology for assessing impact on World Heritage Sites, which is accepted as being appropriate by both main parties, the proposal would change the setting of this part of the WHS. This would be such that the built heritage attributes which convey the OUV of the WHS would be significantly modified. This would particularly be the case in relation to mining settlements and social infrastructure status, which are important elements of significance. There would also be considerable changes to the area that would affect appreciation of the cultural aspects of the WHS. Moreover, these considerable changes to the setting would affect the archaeological character of the WHS. I therefore consider that the scale of change would be moderate.

Scale of adverse impacts

Paragraph 31. When combined with the very high significance of these WHS attributes, this moderate scale of change would result in an overall adverse impact in the large to very large ICOMOS category. It would however tend towards large, as HE suggested in the Inquiry, but this is still a matter to which I have given considerable importance and weight.

Paragraph 33. It is also of note that the large to very large category is not the highest of the ICOMOS overall impact categories, and the proposal would not result in any material changes within the WHS itself. Hence, I am satisfied that, in terms of the NPPF, the harm would be less than substantial. The large overall adverse impact does however give a strong presumption against the grant of planning permission, and I therefore give this matter very significant weight.

Paragraph 34. In terms of WHS Management Plan policies, the proposal would not protect or conserve the setting of the WHS in conflict with Policy P3 and would adversely affect the OUV of the WHS in conflict with Policy P8. Furthermore, the proposal would not respect the setting of the WHS in conflict with Policy C2 and would not maintain the historic character and distinctiveness of the landscape as required by Policy C7.

ICOMOS assessment re impact on setting

Paragraph 35. Turning now to other relevant matters, the appellant argues that indirect effects, such as on setting, should generally be less than direct effects. The ICOMOS methodology however generally does not reduce the value of significance of setting in the moderate category of built heritage impact and, notwithstanding the appellant's suggestion, I can see no reason to do so here. Firstly, it would appear to be contrary to the ICOMOS assessment method. Secondly, the interrelationship between the components of the WHS, which is necessary for its significance, accentuates the importance of the setting as the appreciation of the WHS is gained from a wider view. Thirdly, the appeal site is the only remaining element of open countryside in a number of views from this part of the WHS. Any development on it should therefore respect the WHS. Furthermore, setting as such would always lie outside the WHS and setting features in the ICOMOC methodology, even if it is, as the management plan puts it, to provide 'additional historic context'.

Paragraph 37. I therefore conclude that the proposal would have a large harmful effect on the significance of the WHS in conflict with Policies P3, P8, C2 and C7 of the WHS Management Plan, and I give this matter very

significant weight. I do however consider that it would represent less than substantial harm in terms of the NPPF.

'Less than substantial harm' – a balancing exercise

Paragraph 50. When the Council refused the planning application which generally duplicated the appeal planning application, it did so against an officers' positive recommendation. In this recommendation, the affordable housing need, which was said to be a substantial benefit of the scheme, did not outweigh the harm to the heritage assets and other local impacts. This was on the basis that there was no significant harm to the assets, which appears to have come from a 'less than substantial harm' finding in the context of the NPPF.

Paragraph 51. In my view however, the purpose of such a finding is to introduce the balancing exercise in NPPF para 134, not to apply a set weight to any harm. I am therefore not satisfied that there is a direct and somewhat automatic relationship between an NPPF 'less than substantial harm' finding and no significant harm, and indeed the Council did not agree with the recommendation. I have therefore not seen anything in the submissions relating to the duplicate application, to lead me to reconsider my views on the weights that I have given to the housing need and harm to heritage assets.

Paragraph 56. I have considered the appeal under the 2nd 'decision taking' bullet point of para 14 of the NPPF, together with the relevant part of footnote 9, as a result of relevant development plan policies being out of date. I have found that there would be less than substantial harm to the significance of the WHS, the SAM, the listed buildings in the vicinity of the appeal site and the Hayle CA. For the reasons set out previously, I have given the large degree of harm to the significance of the WHS very significant weight, the minor to moderate harm to the SAM slight weight, the minor to moderate harm to the significance of the listed buildings slight weight and the minor harm to the significance of the CA slight weight. It is the case that the SAM, the listed buildings and the CA are constituent elements of this part of the WHS. It is however their interaction which creates the WHS which is then afforded the highest level of policy protection; hence the greater level of harm to its significance and the greater level of weight given to that harm.

Justification for harm

Paragraph 57. As a consequence of my finding of less than substantial harm to the significance of designated heritage assets, I now turn to the balance set out in para 134 of the NPPF. In relation to public benefit, I have given the provision of open market and affordable housing significant weight, the provision of heritage interpretation boards moderate weight and the provision of school expansion land, local employment, a linear park and highway safety works limited weight. Having considered all of the above, there is no clear or convincing justification for harm to the significance of designated heritage assets, and I am of the opinion that the harm would clearly outweigh the public benefits of the proposal. In coming to this view, I have also taken into account all other matters raised and that the preservation of heritage assets is desirable.

The World Heritage Convention

When the British Government signed up to the UNESCO World Heritage Convention, its commitment to the protection of UK World Heritage Sites was made very clear, particularly in Article Four: *Each State Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage... situated on its territory, belongs primarily to that State. It will do all it can to this end, to the utmost of its own resources and, where appropriate, with any international assistance and co-operation, in particular, financial, artistic, scientific and technical, which it may be able to obtain.*

Other issues to remember

To ensure the transmission to future generations of the cultural and natural heritage, inappropriate change to the fabric of the attributes should be resisted through the planning system. One of our most challenging tasks relates to

the attribute described as the *'relict' industrial landscape, where late 18th and early 19th century industrial development may still be seen in an 18th/ 19th century agricultural landscape*. As well as providing an important setting for the WHS, that green relict landscape is, in itself, an Attribute which contributes to its OUV.

Surrounding the WHS is a buffer zone. The buffer zone is the immediate setting of the WHS, and provides a defined landscape in which development needs to be small-scale and recessive in order that there are no negative impacts on OUV. The Buffer Zone does not include the entire setting of the WHS – there are areas where large or tall development outside the Buffer Zone could still impact on OUV (such as wind-farms or hi-rise flats)

Paragraph 126 of the National Planning Policy Framework (NPPF) states: “heritage assets are an irreplaceable resource”. This resource, if lost within a World Heritage Site, can lead to the Site being placed on UNESCO’s World Heritage in Danger List, and if the damage is not reversed, can lead to deletion from the World Heritage List.