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# Appeal Decision

Site visit made on 17 December 2012

**by Mr A Thickett BA(Hons) BTP MRTPI Dip RSA**

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

**Decision date: 23 January 2013**

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**Appeal Ref: APP/R0660/A/12/2179033**

**Land off Sheppenhall Lane, Aston, Cheshire, CW5 8DE**

- 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 Newlyn Homes Ltd against the decision of Cheshire East Council.
  - The application Ref 11/2818N, dated 27 July 2011, was refused by notice dated 12 April 2012.
  - The development proposed is the erection of 43 dwelling houses (including 5 affordable houses) and creation of new access to Sheppenhall Lane.
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## Decision

1. The appeal is allowed and planning permission granted subject to the conditions set out in Schedule 1 at the end of this decision.

## Main Issue

2. The appeal site comprises part of a field on the southern edge of Aston. Aston is a small village in the open countryside. The appellant accepts that the proposed development conflicts with Policy NE.2 of the Borough of Crewe and Nantwich Replacement Local Plan 2011 which exercises strict control over development in the open countryside. The National Planning Policy Framework (NPPF) resists isolated new housing in the countryside unless, amongst other things, it constitutes appropriate enabling development to secure the future of heritage assets.
3. The appellant argues that the conflict with the Policy NE.2 is outweighed by the planned use of the funds raised by the proposed development to aid the restoration of Combermere Abbey. The main issue is whether the conflict with local policy designed to protect the countryside is outweighed by the enabling nature of the development with regard to the restoration of Combermere Abbey.

## Reasons

*Combermere Abbey, its significance and the works required to the north wing*

4. The NPPF states that local planning authorities should have a positive strategy for the conservation of the historic environment including for heritage assets most at risk through neglect, decay or other threats. In doing so the NPPF advises that heritage assets are an irreplaceable resource and that they should be conserved in a manner appropriate to their significance.
5. Some residents question the importance of Combermere Abbey but it is a Grade I listed building with associated outbuildings listed at grade II\* and

grade II. English Heritage describes the Abbey as a complex building of many historic layers and considers it to be of exceptional significance. An Abbey was founded on the site in 1133 becoming a residence following dissolution, which included the conversion of the early 16<sup>th</sup> century Abbots Lodgings into the primary residence. New half timbered wings were added in the mid 16<sup>th</sup> century with further remodelling in the 17<sup>th</sup>, 18<sup>th</sup> and 19<sup>th</sup> centuries.

6. The first floor library is part of the Abbot's accommodation; it dates back to 1502 and is described by English Heritage as '*one of the finest late medieval open hall roofs in the country*'. That roof is hidden behind a plasterwork ceiling inserted in 1539 which is in itself remarkable. The house also boasts what English Heritage consider to be an '*outstanding screen from 1580 (which) reflects early renaissance work*' and a chimney breast and ornamental plasterwork which incorporate heraldry and portraiture which dates back to 1563. The house also contains a large oil painting from the 1720s, a print from the same period and other artwork which record some of the main phases in the historical development of the Abbey.
7. The north wing of the Abbey was built in the 17<sup>th</sup> century and remodelled in 1820 in advance of a visit by the Duke of Wellington. Having visited the Abbey and considered its history, I agree with English Heritage that the north wing '*is a significant part of the development of Combermere and is a prominent element in providing balance to both the principal elevations of the house*'.
8. The north wing has been on English Heritage's Building At Risk Register since it was introduced in 1998 and is category A, the highest priority for remedial action. The erection of a scaffold frame which supports a roof over the wing has reduced the rate of decay but English Heritage's Structural Engineer and Historic Buildings Architect inspected the wing in May 2012 and found it to be in imminent risk of major structural collapse. At the time of my visit, steelwork was being fitted inside the wing to stabilise the structure. In light of my observations, I have no reason to doubt the conclusion of English Heritage that should the north wing collapse it '*would almost inevitably bring down parts of the hall and library with it, including some surviving parts of the medieval abbey*'.
9. The extent of the work necessary to bring the north wing into a state of good repair has been assessed by the appellant's conservation accredited architect and estimated to cost £2m. That schedule of work was assessed and accepted by English Heritage's Historic Buildings Architect and the costs assessed by the Council's Quantity Surveyor who considered them to be in line with current market rates<sup>1</sup>. From my observations, I have no doubt that the works required are extensive and, in the absence of any technical evidence to the contrary, see no reason to question this figure.
10. A Section 106 agreement, agreed and signed by the Council, is submitted with the appeal and precludes the commencement of the proposed enabling development until that sum is paid into an account to be managed by the Council and used for the restoration works. There can be no doubt, in my view, that Combermere Abbey is exceptional and a nationally important heritage asset. It is argued by some that as the house is in private ownership, its restoration will only benefit the current owner and her successors. I

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<sup>1</sup> Council Officers' report to Strategic Planning Board

consider the protection, restoration and preservation of this significant historic asset for future generations to be of considerable public benefit.

*The enabling development*

11. The proposed development comprises the erection of 43 dwellings on the southern edge of Aston. A new permissive footpath would be created within the grounds of Combermere Abbey which would also link existing public rights of way. The proposed development would, through the Section 106 agreement, provide an increased level of public access, opening the Abbey to for a minimum of 40 days a year, the gardens for a minimum of 6 days a year and opening the Abbey and grounds for an additional two days a year to allow two local Parish Councils to hold events.
12. The English Heritage publication '*Enabling Development and the Conservation of Significant Places*' provides guidance on the matters to be considered where enabling development, which would not normally be granted planning permission, is being considered. Aston is about 3 miles from Combermere Abbey. The English Heritage guidance includes a reference to case law which determined that the land benefiting from enabling development need not be in close proximity to it<sup>2</sup>. The guidance goes on to say that; '*Distant sites have the obvious advantage of avoiding harm to the significant place or its setting*'.  
*Enabling Development and the Conservation of Significant Places*
13. From my observations of the Abbey and its grounds, I agree with Council officers that; '*It is difficult to see how new development could be achieved at Combermere that did not damage the historic landscape. It is this that provides the justification for the 'off site' location of the proposed development*<sup>3</sup>. Given the distance between the appeal site and the Abbey, the proposed development would not have an impact on the heritage value of the Abbey or its setting. For the same reason, it would not lead to the fragmentation of the Abbey and its estate or impact on its management. In this regard the current proposal is different to an earlier scheme for 100 houses on the Combermere Estate which my colleague found would '*materially detract from the historic and landscape interest of the asset, and would materially harm its setting*<sup>4</sup>.
14. English Heritage is satisfied that there are no other sources of funding that have not already been explored by the current owner and that funds raised from charitable foundations, grants and businesses on the estate are inadequate to repair the north wing<sup>5</sup>. I have no doubt that the businesses on the estate, including the farm land, provide long term funding for the maintenance of the estate. The Council indicate that agricultural land in the area can make in excess of £10,000 per acre<sup>6</sup> and the sale of land could raise a significant sum. However, the disposal of farm land or any of the businesses on the estate could threaten the sustainability of the estate in the long term in addition to leading to its fragmentation.
15. The current owner has a good track record with regard to the restoration of the Abbey including the library, Game Larder (resulting in it being removed from the at risk register) and the stable complex. I have no reason to believe that the state of the north wing is a result of deliberate neglect. In light of the

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<sup>2</sup> Paragraph 1.1.5 *Enabling Development and the Conservation of Significant Places*; Northumberland County Council v SoS for the Environment 1989 JPL 700.702

<sup>3</sup> Council Officers' report to Strategic Planning Board

<sup>4</sup> Appeal reference: APP/K0615/A/04/115047

<sup>5</sup> Council Officers' report to Strategic Planning Board

<sup>6</sup> Council Officers' report to Strategic Planning Board

likely dire consequences should the north wing collapse, I am satisfied that the restoration works are necessary to secure the long term future of the Abbey.

16. Local residents argue that the Abbey should be sold to someone with the means to carry out the restoration without the need for any enabling development. I agree with English Heritage (and Council officers) that this runs the risk of artefacts, such as the 1720 painting, which is an important contributor to the importance of the Abbey as a place, being lost. The sale of art work to fund restoration is likely to have the same harmful impact. The current proposal would allow the Abbey to be kept in the family which would hopefully mean such artefacts remain in situ. I consider, therefore, that the proposed enabling development is necessary to resolve the inherent needs of the Abbey rather than its current owner.
17. The Council and English Heritage commissioned an independent financial appraisal of the proposed enabling development. That report concluded that the proposed enabling development is the minimum necessary to raise the £2 required to repair the north wing<sup>7</sup>.
18. Local residents argue that not all avenues have been exhausted and one of my colleague's criticisms in 2005 was that there were alternatives that had not been fully explored. The Council accepts in the Statement of Common Ground that there has been a lengthy search for alternatives with no sites found to be more suitable than the appeal site and that '*there is no obvious alternative, which would address all of the Council's concerns*'. English Heritage does not have the funds to restore the north wing and, in light of the likely adverse consequences of disposing of the estate, either in whole or in part and in the absence of any reasonable, costed alternative before me, I conclude that the proposed enabling development is necessary to secure the repair of the north wing.

*Would the public benefit of securing the future of the Abbey through the proposed development outweigh the disbenefit of breaching other public policies?*

19. Aston is a small village with limited services and although on a bus route, services are infrequent and most journeys from the proposed houses would be by private car. The proposed development is, therefore, not in a sustainable location.
20. The development of what is currently an open agricultural field would change the character of Sheppenhall Lane but I do not agree with the Council that it would lead to the suburbanisation of a typical country lane. The site adjoins houses and there is a mid 20<sup>th</sup> century estate almost opposite (Sheppenhall Grove). The new estate would extend no further along the lane than the houses opposite and the road does not truly become a country lane until that point. There is variety in the style, size and design of buildings in Sheppenhall Lane and I agree with Council officers that the proposed development would '*sit comfortably alongside the mix of existing development within the area*<sup>8</sup>.
21. Despite arguing otherwise in its appeal statement, the Council accepts in the Statement of Common Ground that the development is acceptable in design terms and accords with Policy BE2 of the Local Plan. The impact of the proposed development would be mitigated by the retention of protected trees

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<sup>7</sup> Council Officers' report to Strategic Planning Board

<sup>8</sup> Council Officers' report to Strategic Planning Board

- and a significant length of the hedge fronting the lane. I do not consider that the proposed development would have an unacceptable impact on the character and appearance of the area.
22. The proposed development is supported by an ecological report and great crested newts have been observed at a pond within 250m of the site. The Council's Ecologist is satisfied that, subject to appropriate compensation and mitigation, the proposed development would be acceptable in ecological terms.
23. The Section 106 agreement includes a contribution to improvements to highway safety and, subject to this provision and other conditions, the Highway Authority has no objection to the scheme. I note residents concerns but, in the absence of any expert submission or technical evidence to the contrary, I see no reason to take a different view. The outlook from neighbouring houses would change but the Council accept that the relationship of the existing and proposed houses complies with its space about dwelling standards.
24. In order to facilitate the delivery of the required funding to restore the Abbey, the provision made for affordable housing and education in the Section 106 agreement falls short of what the Council would normally require. However, the Council does not dispute the conclusions in the officers' report to the Strategic Planning Board that a greater contribution would jeopardise the viability of the scheme (and, therefore, the ability of the enabling development to fund the repair of the north wing). The Council accepts in its appeal statement that meeting its normal requirements for affordable housing and education would require more development.

*The 2005 appeal decision*

25. As indicated above the location of the development and its impact on the Abbey and its grounds would be significantly different. My colleague concluded that the proposal before him would *'contravene not just the letter and broad aims of certain policies; it would jeopardise the achievement of strategic regional aims'*. He also found that it would *'adversely affect the economic and social regeneration of urban areas'*. The Council accepts that it currently does not have a 5 year land supply for housing and that it intends to release sites in the open countryside on the edge of Crewe and other large towns. The NPPF places great store on the provision of a 5 year land supply and although not at all costs and the Council would probably not choose Aston for a release of land, the proposed development would, nevertheless, contribute to providing a 5 year land supply. I consider, therefore, that there are significant differences in circumstances between the case before me and that before my colleague.

**Conditions and Section 106 Agreement**

26. I have considered the suggested conditions and Section 106 agreement in light of the advice in Circular 11/95 and the Community Infrastructure Regulations 2010. Newhall Parish Council question the legality of the Section 106 agreement but I agree with the Borough Solicitor that the proposal is for enabling development designed to secure the future of a heritage asset in the local area and so the planning obligation is a relevant material consideration. There is a need for affordable housing in the area, local schools will be oversubscribed in 2016 and these elements of the Section 106 agreement satisfy the regulations. However, as the Council's Greenspace Officer considers there to be more than adequate public open space in the nearby village of

Wrenbury, I do not consider the requirement for a contribution in this regard satisfies the regulations.

27. I consider it is necessary, in the interests of the visual amenity of the area, to impose conditions relating to materials, landscaping, boundary treatments, bin stores and the protection of trees and hedges. I shall impose a condition to ensure the protection of great crested newts but I see no need to duplicate other legislation protecting nesting birds. Nor do I consider the provision of features that may be used by nesting birds to be necessary to enable the development to proceed.
28. In order to safeguard against the risk of flooding, I will impose a condition relating to surface water drainage. However, I see no need to duplicate the controls of the Building Regulations by imposing conditions relating to foul or combined sewers. I shall, in the interests of highway safety, impose conditions regarding parking and the construction of a footway on Sheppenhall Lane. The Highway Authority may need technical drawings for its own purposes but the details of the access shown on the Planning Layout drawing are adequate for the purposes of granting a planning permission.
29. The Council offer no technical evidence to justify the requirement of an assessment of traffic noise from the A530. The road is around 100m from the site and, walking around the site and its surroundings, I did not find it to be noisy. The site is currently in agricultural use. According to the contamination report submitted in support of the application there is no evidence that the field has ever been developed and the risk of contamination is considered to be low. Consequently, I see no need to require a further assessment.
30. I have neither seen nor read anything to indicate that any external lighting would be over and above that which one would normally expect in any residential scheme and see no reason to require details. Permitted development rights should only be removed in exceptional circumstances. Whilst I consider that exceptional circumstances support the principle of development, nothing is submitted to show that the design or layout of the proposed development are such that permitted development rights should be removed.

## **Conclusions**

31. My conclusions with regard the impact of the enabling development on the character and appearance of the area, highway safety, residential amenity and the ability to satisfactorily address any other localised impacts (by condition) do not outweigh the conflict with Policy NE.2 of the Local Plan or the appeal site's unsustainable location. The fact that the development would not provide the required level of affordable housing or make the necessary contribution to education also weighs against the appeal proposal.
32. Combermere Abbey is a nationally important heritage asset and it is important, in my view, to ensure its preservation for the benefit of future generations. Key to the Abbey's future is the urgent repair of the north wing and the consequences to this Grade I listed building of not doing could be dire. I consider that it has been demonstrated that the proposed enabling development is the minimum necessary to fund the repair of the north wing. I am also satisfied that the appellant, the Council and English Heritage have

explored alternative sources of funding and that, for the reasons given above, none are considered to be suitable.

33. I consider that the conflict with Policy NE.2 and the failure to provide the required contributions to affordable housing and education is outweighed by the public benefit of securing the future of the Abbey. Further, I find that the special circumstances necessary to justify new housing in the countryside as identified in paragraph 55 of the NPPF have been demonstrated in this case.
34. For the reasons given above and having regard to all matters raised, I conclude that the appeal should be allowed.

*Anthony Thickett*

Inspector

## **Schedule 1**

### **APP/R0660/A/12/2179033**

The appeal is allowed and planning permission is granted for erection of 43 dwelling houses (including 5 affordable houses) and creation of new access to Sheppenhall Lane at land off Sheppenhall Lane, Aston, Cheshire, CW5 8DE in accordance with the terms of the application, Ref 11/2818N, dated 27 July 2011 and the plans submitted with it, subject to the following 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 approved plans listed in Schedule 2 attached to this decision.
- 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the buildings 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.
- 4) No development shall take place until there has been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall include indications of all existing trees and hedgerows on the land and identify those to be retained.
- 5) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 6) No development shall take place until the extent of the hedgerow to Sheppenhall Lane to be retained has been submitted to and approved in writing by the local planning authority. Should any part of the hedge die, be removed or become seriously damaged or diseased within a period of 5 years from the completion of the development hereby permitted it shall be replaced in the next planting season with plants of a similar size and species, unless the local planning authority gives written approval to any variation.
- 7) No development shall take place until details of measures to protect the trees and hedgerows identified to be retained under conditions 4 and 6 above throughout the course of development have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 8) No development shall take place until details of boundary treatments have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.



- 9) No development shall commence until details of a scheme for the disposal of surface water from the development hereby permitted has been submitted to and approved in writing by the local planning authority. No houses shall be occupied until the approved surface water disposal scheme has been completed.
- 10) No development shall take place until details of bin storage facilities have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 11) No development shall take place until details of mitigation measures with regard to great crested newts have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 12) The development hereby permitted shall not be occupied until the parking and vehicle turning areas shown on drawing number 1P1179-PL-01R have been constructed. These areas shall be retained for their designated purpose for as long as the development hereby permitted remains in existence.
- 13) The development hereby permitted shall not be occupied until the footpath on the western side of Sheppenhall Lane shown on drawing number 1P1179-PL-01R has been constructed in accordance with details to be submitted to and approved in writing by the local planning authority.

## Schedule 2

### APP/R0660/A/12/2179033

#### Plans

Planning Layout	1P1179-PL-01/R
Existing Tree Overlay	1P1179-PL-01/M
Tree Survey	3916.01
Landscape Proposals	3916.01/B
Drainage Strategy	TAY/32/100/P2
House Type BA	1P1179-BA-01
House Type BR1	1P1179-BR1-01
House Type BR2	1P1179-BR2-01
House Type BR3	1P1179-BR1-01
House Type CR1	1P1179-CR1-01
House Type CR2	1P1179-CR2-01
House Type CR3	1P1179-CR3-01
House Type KI	1P1179-KI-01
House Type LA (Elevations)	1P1179-LA -01
House Type LA (Floor Plans)	1P1179-LA -01

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