
Appeal Decision

Site visit made on 3 October 2016

by Helen Cassini BSc(Hons) DipTP MRTPI

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

Decision date: 31 October 2016

Appeal Ref: APP/H0928/W/16/3153089

Land at Gillian's Well, Calthwaite, Cumbria CA11 9QH

- 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 Brackenburgh Estate against the decision of Eden District Council.
 - The application Ref 15/0985, dated 23 October 2015, was refused by notice dated 21 April 2016.
 - The development proposed is the residential development of up to 16 units on land to the west of Gillian's Well, Calthwaite.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was made in outline with all matters (access, appearance, landscaping, layout and scale) reserved for future consideration. The appellant submitted a sketch site plan with the application illustrating how up to 16 units could be constructed on the site and the proposed access adjacent to Gillian's Well. As the application is in outline the appellant is not tied to the detail shown on the plan. However, I have treated the plans as indicative of the appellant's intentions and the application has been assessed on this basis.
3. Draft Heads of Terms in relation to section 106 of the Town and Country Planning Act 1990 (as amended) has been submitted with the appeal (hereby referred to as the obligation) and I shall return to this matter below.

Application for Costs

4. An application for costs was made by Mr John Harris of Brackenburgh Estate against Eden District Council. This application is the subject of a separate Decision.

Main Issues

5. The main issues are:
 - (i) whether or not a planning obligation is required to make the proposal acceptable, with particular regard to affordable housing and school transport; and
 - (i) the effect of the proposal on the character and appearance of the area.
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National Planning Policy Background

6. The Government is seeking to significantly boost the supply of housing, as set out in Paragraph 47 of the National Planning Policy Framework (the Framework). Further to this, the Framework at Paragraphs 14 and 49 identifies that there is a presumption in favour of sustainable development.

Reasons

Planning obligation

7. Paragraph 204 of the Framework and Regulations 122 and 123 of the Community Infrastructure Levy (Amendment) Regulations 2015 (the CIL Regs) states that obligations should only be sought where they are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
8. Both the Council and the appellant agree that the proposal generates the need for affordable housing in line with Policies CS6 and CS10 of the CS. From the evidence before me, it is indicated that this will be provided through a planning obligation. On the basis of Policy CS10 of the CS I find that the provision of such housing is necessary to make the development acceptable in planning terms, is directly related to the proposal and is reasonably related in scale and kind to it. The provision sought therefore complies with paragraph 204 of the Framework and Regulation 122 of the CIL Regs.
9. However, no obligation has been executed and consequently the proposal would be contrary to Policy CS10 of the CS as it does not provide an appropriate means to secure affordable housing. In addition, it would also be contrary to paragraph 50 of the Framework which indicates that where the need for affordable housing is identified it should be provided.
10. The Council also seeks a contribution in relation to school transport. I note from the evidence before me that Calthwaite Primary School is projected to be full and is likely to remain so for the foreseeable future. Consequently, the Council is also seeking a contribution towards the transport of primary aged children to High Heskett School which has sufficient space to accommodate additional primary pupils.
11. Policy CS6 of the CS confirms that education contributions may be sought where the implementation of a development would create a need to provide additional or improved infrastructure, amenities or facilities. As the local primary school has no spare places to cater for any additional children, I consider that a financial contribution is therefore appropriate in order to mitigate the effect of the proposal by providing transportation funds.
12. I acknowledge that the appellant has suggested a level of contribution thought appropriate but no final figure has been provided to the Council for their consideration and no mechanism has been provided to secure it. As such I am unable to confirm whether the level of contribution sought satisfies the tests in the Framework and accords with Regulation 122 of the CIL Regs.
13. Furthermore, Regulation 123(3) of the CIL Regs came into force on 6 April 2015 and other than in relation to certain exemptions, such as affordable housing, it prevents the pooling of more than five planning obligations made

since 6 April 2010 towards a specific infrastructure project, or particular type of infrastructure. Neither the Council nor the appellant have confirmed the number of education related contributions made. As such, I therefore am unable to confirm that the contribution sought complies with Regulation 123(3). Moreover, no obligation has been executed with regards to school transport contributions.

14. I accept that both the Council and appellant agree that an obligation is necessary in terms of affordable housing and transport for education and that draft Heads of Terms have been submitted to and accepted by the Council. Nevertheless, the Procedural Guide – Planning appeals – England 2015 clearly states¹ that an executed and certified copy of the obligation should be received no later than 7 weeks from the appeal start date and I am not obliged to delay my decision to wait for a completed obligation.
15. In the absence of an obligation, the question which arises is whether this matter could be dealt with by condition. However, the Planning Practice Guidance (PPG) advises that a positively worded condition should not be used to require payment of money or other contribution. It also advises that a negatively worded condition limiting the development that can take place until an obligation has been agreed is unlikely to be appropriate other than in exceptional circumstances such as in the case of more complex and strategically important development, where there is clear evidence that the delivery of the development would be put at risk². Such circumstances do not exist in this case and I therefore find that this matter cannot be dealt with by condition.

Character and appearance

16. The appeal site is located on the northwest edge of the village of Calthwaite, which is designated as a Local Service Centre. The site consists of an 'L' shaped plot, which is currently used for grazing. Clear boundaries exist with the western boundary consisting of a number of mature trees and a mixed hedgerow, with a curved stone wall, with a well set into it, which is known as Gillian's Well, making up the eastern boundary. The northern and southern boundaries consist of mature hedgerows.
17. The site is located directly behind and adjacent to semi-detached, 2-storey dwellings on Pennine Way, situated on the west side of the village road. The dwellings on Pennine Way are of a modern design and have average sized rear gardens which back onto the proposed site. Dwellings located on Laikin View are also of a modern architectural style and are located a short distance from the appeal site, on the east side of the village road.
18. I am mindful of the fact that the site has been the subject of a previous planning application³ for a larger residential development which was withdrawn in August 2015. As such, I am aware that the appellant has aimed to address the concerns raised by the Council in relation to the initial application and the number of proposed units was reduced from 27 to 16. In addition, a Landscape and Visual Appraisal was also produced following concerns relating to potential landscape impacts.

¹ Procedural Guide – Planning appeals – England 2015 : Deadline for receipt of planning obligations – section N.2

² Planning Practice Guidance ID 21a-010-20140306

³ Council reference 15/0517

19. The indicative sketch site plan illustrates that the proposed units would only extend the existing settlement boundary by one plot to the rear of the existing dwellings on Pennine Way. Whilst the current dwellings on both Pennine Way and Laikin View are linear, the intensity of the proposed and layout would be in keeping with the residential development in proximity to the site. As such, I do not consider that the scale of the concentration of built development proposed on the site would be harmful to the existing character of the locality.
20. I acknowledge the concerns raised relating to the proposed location of the development, both in terms of being at the edge of the village and the elevated position of the field, which rises up approximately 5 metres from the rear of properties on Pennine Way, up to the ridgeline which forms the western boundary of the site. The Landscape and Visual Appraisal (LVA) produced on behalf of the appellant acknowledges that some views of the proposal would be possible between the houses on Pennine Way and also when approaching the village from the north.
21. However the proposed 20 metres landscape buffer, which would consist of native tree and shrub species, along the northern and north eastern boundaries would, given time, screen the proposal both in terms of views from the lane to the north and from the western boundary.
22. Moreover, the relocation of the proposed units on the western boundary further down the slope would enable a greater level of integration into the existing landscape, particularly when seen in the breaks between the dwellings on Pennine Way.
23. As all matters are reserved, the principle of residential development on the appeal site can only be considered. I acknowledge the loss of the agricultural land to the rear of the site. However, I find that the submitted indicative plan and the LVA clearly demonstrate that, subject to reserved matters, the proposal would cause limited harm to the character and appearance of the area. The proposal would, to my mind, appear as an addition to the existing dwellings on Pennine Way. Consequently, the proposal would not compromise the design aims of Policy CS18 of the CS.

Other Matters

24. Local residents draw attention to matters relating to flood risk, drainage and highway safety. With regard to flood risk and drainage, although photographs are supplied showing some standing water in proximity to the site, I am satisfied that, as the site falls within Flood Zone 1, drainage of the site could be adequately achieved in terms of flood risk and sewage. I note that the preferred option for attenuated surface water is a watercourse to the northeast of the site and United Utilities have not raised an objection to the proposal, subject to the inclusion of relevant planning conditions. Moreover, there has been no substantiated evidence to demonstrate that there are any highway safety issues which could not be adequately managed and no objection has been received from the Local Highway Authority.
25. Concerns relating to overlooking and privacy have also been raised. However from the indicative layout provided by the appellant, I consider that it would be possible for the proposal to achieve adequate levels of separation which would not result in overlooking or privacy issues.

26. I note various concerns which have been raised about the impact of the proposed scheme on wildlife and ecology but, again, there is nothing before me in this regard which would lead me to conclude the scheme should be resisted on these grounds. A number of local residents have also raised concern with regards to the impact on Gillian's Well. I acknowledge the historical importance of this feature to the village. However from the evidence provided by the appellant, I am satisfied that the feature will remain in-situ and it will be incorporated as a feature of the development.
27. Reference has also been made to a number of existing brownfield sites within Calthwaite which are considered to represent more suitable locations for development. I accept that encouragement is given in paragraph 17 of the Framework to the use of brownfield land for redevelopment. However as limited information has been provided regarding such sites, I cannot be certain that their particular circumstances are the same as, or are very similar to, the appeal scheme. In any event each proposal should be assessed on its own merits, as I have done in this instance.
28. I do not underestimate the importance of the above matters to those involved. However, none of these matters have contributed to my decision.

Planning Balance

29. The Government is seeking to significantly boost the supply of housing, as set out in paragraph 47 of the Framework. As the Council have confirmed that they do not have a five year housing land supply, it follows that, in accordance with paragraph 49 of the Framework, the housing supply policies in the CS are out of date and the fourth bullet point of paragraph 14 of the Framework comes into force. This makes it clear that where relevant policies are out of date permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.
30. Paragraphs 14 and 49 of the Framework identifies that there is a presumption in favour of sustainable development, with the 3 dimensions to sustainable development being social, environment and economic. Socially, the scheme would increase demand for primary school places, but as there is no obligation to ensure that its impact would be mitigated by the funding of school transport to High Heskett School, education provision locally would be significantly harmed. Similarly, whilst new houses would help address the shortage of open market dwellings within the locality, affordable housing to meet the need for such dwellings would not be secured on site. This is an important and harmful omission.
31. In terms of the environment, I accept that the proposal would result in the loss of land currently used for agricultural purposes. However, for the reasons previously given the proposal would only cause limited harm to the character and appearance of the area. Within comfortable walking and cycling distance of the appeal site the village has a primary school, nursery, church and public house. It is also served by a regular bus service to Carlisle and Penrith and the wider range of services and facilities that these settlements have to offer. I therefore consider that the appeal site is in an accessible location for development.

32. I have found that there would be an absence of harm in relation to surface water drainage, flooding, highway safety, living conditions and ecology. However, as this is a requirement for development these are not benefits as such to be weighed in the favour of the proposal. In terms of construction, the units would need to be built in line with current building regulations and so would be energy efficient.
33. Turning my attention to the economic strand of sustainable development, the construction and furnishing of the new units would generate local employment, albeit for a temporary period.
34. Notwithstanding the above identified benefits, the lack of an obligation would result in the proposal failing to deliver appropriate mitigation for the effects of the development. In turn this would result in the proposal causing significant harm to the provision of affordable housing and school transport. These impacts significantly and demonstrably outweigh the benefits when assessed against both the policies of the CS and of the Framework as a whole. I therefore find that, based upon the overall balance of considerations, that the proposal would not constitute sustainable development.

Conclusion

35. For the reasons set out above, and having taken into account all other matters raised, I therefore conclude that the appeal should be dismissed.

Helen Cassini

INSPECTOR