

Appeal Decision

Hearing held on 18 August 2016

Site visit made on 18 August 2016

by M Seaton BSc (Hons) DipTP MRTPI

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

Decision date: 01 June 2017

Appeal Ref: APP/Q9495/W/16/3145115

Greta Gardens, Crow Park Road, Keswick, Cumbria, CA12 5EL

- 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 Mr Roy Carthy (Your Housing Group) against the decision of Lake District National Park Authority.
 - The application Ref 7/2015/2281, dated 26 November 2015, was refused by notice dated 4 February 2016.
 - The development proposed is the change of use of Greta Gardens from Class C3 use to Class C2 use.
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Procedural Matters

1. The planning appeal was originally programmed to be determined under the written representations procedure. However, it was subsequently concluded that the matters raised would be more appropriately considered at an oral event, and the procedure for the appeal was as a consequence altered by the Planning Inspectorate.
2. Since the submission of the planning appeal, the Council has submitted further documents and updates in connection with progress on the emerging Development Plan. These documents and publications include the *Allerdale Borough Council Consultation Draft Housing Strategy 2016-2021; Improving Lives – Improving Housing July 2016 (the Housing Strategy)*, and the subsequent *Final Draft* of the same document, and the *Allerdale Borough Council Housing Study May 2016 (the Housing Study)*. The main parties have been provided with the opportunity to address and comment on these documents during the course of the appeal process.

Decision

3. The appeal is dismissed.

Main Issue

4. The main issue is whether the proposed development would be in accordance with local and national planning policy, having regard to local housing needs.

Reasons

5. The appeal site accommodates an Extra Care Apartment Scheme consisting of a mix of 69 one-bedroom, 'one-bedroom plus', and two-bedroom apartments, in a three-storey building. The scheme was granted planning permission in
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2012, and was completed in 2014. The development is located close to Keswick town centre, and also incorporates in addition to the availability of 24-hour care, communal support facilities on the ground floor including a restaurant, residents lounge, treatment room, and hairdressers. The development provides car parking and secure recreation space.

6. The appeal has been submitted solely on the basis of a change of use from a Class C3 (*Dwellinghouses*) use to a Class C2 (*Residential Institutions*) use. The submitted evidence indicates that the appeal proposals would not involve any internal or external alterations. Whilst I have noted the Council's submissions in respect of the precise nature of the proposed change of use applied for, and I would accept that the end use was not specified in the description of development, it is clear from the evidence that both the existing and proposed uses would provide for a Residential Extra Care Scheme. I have assessed the proposals on this basis.
7. The parties have drawn my attention to the policies of the Development Plan, which includes and is comprised of the *Lake District National Park Core Strategy October 2010* (the Core Strategy) and *Lake District National Park Allocations of Land (Local Plan Part Two) November 2013*. In refusing planning permission, the Council explicitly referred to Policy CS19 of the Core Strategy in the reason for refusal, which seeks to support the provision of new community, education and health facilities and services in rural service centres and villages, where; *there is evidence of a local community need; and they are in locations that are closely related to the area they will serve*. I am also mindful that Policy CS02 of the Core Strategy sets out that development generally should be of a *scale and nature appropriate to the character and function of the location in which it is proposed and contribute towards meeting the needs of the local community*.
8. The established convention set out at Section 38(6) of the *Planning and Compulsory Purchase Act 2004*, is for planning applications to be determined in accordance with the Development Plan unless material considerations indicate otherwise. The appellant contends that the Council has placed reliance upon a policy which is silent in addressing the needs of older people, as is required by paragraph 50 of the National Planning Policy Framework (the Framework), and as also expressed in more detail in the national Planning Practice Guidance (the PPG) at Reference ID: 2a-021-20150326. As a consequence, it is contended that the Council does not have an up-to-date Objectively Assessed Need (OAN), and that the Housing Policies should be considered to be out-of-date and silent on the need for housing for older people.
9. I have also had regard to the appellant's submission within the Statement of Common Ground (SoCG) that despite the Council's reference to Core Strategy Policy CS18, that it is not relevant to the proposals as it does not specifically deal with housing for older people.
10. I do not disagree that the language of the two policies does not explicitly refer to housing for older people, but also note that there is no suggestion within the policies that any listed references to types of housing or community, health and education facilities should be regarded as comprehensive or closed in nature. Furthermore, there is very limited detail to the submissions on OAN, and even if the Council were unable to demonstrate an up-to-date OAN, I am mindful that paragraph 50 of the Framework still requires the mix of housing to be

based on current and future demographic trends, market trends and the needs of different groups in the community, as well as ensuring that the type, tenure and range of housing that is required in particular locations, reflects local demand. I find this to be generally consistent with the clearly established principle within the Core Strategy, that in assessing development within the National Park, that it must be on the basis of whether it meets a local community need.

11. In respect of whether there is an established local need, I have carefully considered the documents submitted by the parties. These include the Housing Strategy and Housing Study, as well as the *Planning 4 Care Report (2009)*, which addressed the projected need for long term residential care services for older people in Cumbria, and was relied upon as part of the evidence base and justification for the original planning permission for the current facility.
12. Whilst I have had regard to the Council's reservations over the figures of projected demand within the Planning 4 Care Report as a consequence of comments and concerns received from Cumbria County Council, I note that the Council's own Housing Strategy recognises that Allerdale and Cumbria retain a need for specialist housing for older people. It is highlighted that the area possesses a *super-ageing* population which is ageing faster than the rest of the United Kingdom population, with the over 65 demographic predicted to rise by 39.8% between 2015 and 2037. The situation is also reflected in the Housing Study which recognises the issue, and the need for the range of housing options available to older people to be diversified, including through the provision of Extra Care accommodation.
13. In this respect, I consider that the submitted evidence and that which was presented verbally at the Hearing, supports the conclusion that there is an ongoing need for specialist housing for older people, which would include the provision of Extra Care accommodation. I have noted the existing vacancies within Greta Gardens, but I am not persuaded that these are indicative of a lack of demand or need for such facilities within the wider area, but are more likely to be as a consequence of a combination of other factors, including (but not necessarily limited to) the geographical restrictions for occupancy.
14. Nevertheless, despite noting the Council's concerns regarding the appropriateness of the provision of Extra Care facilities within Keswick to serve Allerdale Borough and Cumbria, it is an unavoidable fact that the provision already exists in this location. The effect of the proposals would not impact on the level and physical characteristics of provision on the appeal site, which will remain unaltered as a consequence of the proposals, even allowing for the change of use of the appeal premises. As such, the proposal neither results in the diminution of existing levels of provision, nor seeks to make any additional provision in the area.
15. On the basis that the proposed change of use would maintain the same level of Extra Care accommodation provision within the locality, the key points of difference pertaining to the proposals relate to the appropriateness or otherwise of any restrictions placed upon the occupation of the appeal premises.
16. The existing occupancy of the apartments is restricted by a legal agreement, which specifies that occupation would only be allowed for those aged 55 and over, with a local housing need, and also who meet the requirements of a local

occupancy cascade. This cascade starts with Keswick and its surrounding parishes, but if unsuccessfully marketed for a period in excess of 3 months, allows the consideration of individuals within further limited parishes beyond within the defined *North Distinctive Area*. The appellant has indicated that the geographical occupancy was agreed by the previous applicant when there was evidence of such a local need and the expectation of the services commissioned by Cumbria County Council and referrals from Adult Social Care to fill the units within a 12 month period.

17. The appellant has highlighted that despite marketing of the apartments since August 2013, a significant number of units remain unoccupied. This is indicated to be despite significant interest from applicants who were concluded ultimately to be ineligible as occupants, due to the absence of a geographical connection to the restricted area. I have noted the appellant's indication that an amendment to the wording of the legal agreement has been unsuccessfully sought with the Council thus far.
18. The appellant has indicated that a restriction limiting occupancy to those aged 55 or over would be acceptable in principle. To this end, I have had regard to the submission of a draft condition which has been substantially agreed between the main parties as a means of securing both the occupation of the premises solely as an Extra Care facility within Use Class C2, as well as in terms of the application of an age restriction. I am satisfied that the drafted condition would be a reasonable mechanism to secure this aspect of the future occupation.
19. The appellant does not however consider that an occupancy condition related to geographical location is appropriate for a Class C2 use, stating that it is clearly intended as a means of control for Class C3 housing and that it would be illogical to apply it to Extra Care facilities. However, I am mindful that the appellant clearly accepts that Extra Care facilities form part of the housing offer for older people within the wider mix highlighted at paragraph 50 of the Framework, and other than a general assertion has not sought to justify why a geographical restriction on occupancy should not be equally applicable to a Class C2 use.
20. I would accept the appellant's point that local people would not in principle be prevented from accessing available units in the future, and I consider that it would not be desirable for any significant proportion of the accommodation to continue to remain vacant. However, whilst it may be the case that the occupancy rates could be improved by a certain degree of relaxation of the geographical restriction, the effect of the removal of the occupancy restriction in its entirety would not just allow occupancy from a wider locality within the National Park and Cumbria where the specific need has been identified as arising, but would allow interest on a nationwide basis. The introduction of such a wide occupancy market would sit totally at odds with the appellant's identification of the proposals as having the potential to meet a wider local need, and would not guarantee the effect of releasing existing housing stock within the locality as a means of relieving pressure on urban areas as identified by the appellant as a benefit of the scheme..
21. I have also had regard to the Council's contention that an Extra Care development in Keswick should not cater for a much wider area. However, on the basis of the scale, facilities and staffing and servicing requirements, I

accept that the argument regarding economies of scale and need for proximity to supporting staff is reasonable given the nature of the facilities. I find that such a care model would not be likely to readily lend itself to widespread dissemination on a small-scale basis across a wide area for these reasons.

22. I note that the appellant has cited the absence of any such restrictions on a planning permission for a 50 bedroom Care Home within Class C2 approved in 2014 at High Hill in Keswick. However, the level of detail provided as to the circumstances which were applicable to this earlier scheme is very limited, and it would seem that the circumstances were not directly comparable given that the proposals were for a replacement, albeit admittedly larger, Class C2 facility.
23. I am satisfied that there is a demonstrable need set out within the submitted evidence supporting the provision of Extra Care facilities for older people as part of a wider mix of housing, and to address the future projections of an ageing population within the area. Whilst I have had regard to the evidence submitted as to whether the Council is able to demonstrate an OAN, I am mindful that the requirement for the development to address local need is equally set out within both the Development Plan, and the Framework. In this respect, whilst I am satisfied that a condition would achieve the objective of securing the age of future occupants, I find that the absence of a mechanism securing a restriction on the geographical connection would fail to satisfactorily address local housing need. I therefore find that the proposed change of use would not accord with Policies CS02 and CS19 of the Core Strategy, or paragraph 50 of the Framework.

Other Matters

24. I have had regard to the various written and verbal submissions which have been made during the course of the planning application and appeal related to an assessment as to whether the operational and physical characteristics of the existing use fall within either Class C3 or Class C2. However, I am mindful that the purpose of this appeal is to explicitly address the compliance of a change of use from Class C3 to Class C2 with local and national planning policy, and is not to establish whether the existing building is already being lawfully occupied for a use within Class C2, or that the use is capable of being classified as such in the future. The Council accepted, considered and determined the planning application on the basis of the proposed change of use, and ultimately in such a circumstance, I find that the establishment of the existing lawful use would be a separate matter for the parties, and one which has not had any bearing on my decision.

Planning Balance and Conclusion

25. I agree that the employment of approximately 28 people would be supported as both an economic and social benefit of the development, once fully occupied. However, many of the other social benefits cited within the appellant's submissions including improved quality of life and readily accessible repairs and maintenance would not seem to be particularly dependent on the change of use. I accept that it would be beneficial for the building to be fully occupied rather than partially vacant, and that this would have the potential to relieve some pressure to build further dwellings within the locality outside of the urban area. However, this would though be dependent on the facility meeting a relatively local demand in terms of occupancy, which for the reasons set out above, the proposed development would not.

26. Therefore, and having regard to all other matters raised and the economic, social and environmental dimensions of sustainable development set out in paragraph 7 of the Framework, I conclude that the scheme would not accord with the Development Plan or the Framework, and would not represent sustainable development.

27. Consequently, the appeal should be dismissed.

M Seaton

INSPECTOR

APPEARANCES*

FOR THE APPELLANT:

Daniel Whitney	Senior Planner, Mosaic Town Planning
Lorraine Donnelly	Development Director, Your Housing Group

FOR THE LOCAL PLANNING AUTHORITY:

Kevin Richards	Area Planner, Lake District National Park Authority
Andrea Smith	Housing Development Manager, Allerdale Borough Council
Vivien Steadman	Housing Officer, Allerdale Borough Council

INTERESTED PARTIES

Martin Pugmire	Keswick Town Councillor
Tony Lywood	Borough & Keswick Town Councillor
Denstone Kemp	Keswick Town Councillor
David Burn	Mayor & Chair of Keswick Town Council
Hilary Baslington	Local Resident
Tom Rennie	Local Resident
Hilary Jacob	Lakehead Court Retirement Housing
Joan Weightman	Local Resident
Mike Hirst	Local Resident
Allan Daniels	Keswick Community Housing Trust

**This is not a comprehensive list of people who spoke - other people who were present also made brief comments at points during the Hearing and Site Visit.*

DOCUMENTS SUBMITTED AT AND FOLLOWING THE HEARING

Agreed Statement of Common Ground (submitted at the Hearing)

Draft condition submitted 30 August 2016, specifying Use Class and occupancy linked to age.

Comments on Updated Housing Strategy received 28 March 2017.