



Appeal Decision

Site visit made on 23 May 2017

by Graeme Robbie BA(Hons) BPI MRTPI

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

Decision date: 18 July 2017

Appeal Ref: APP/E0915/W/17/3168682

vacant land at Boustead Hill, Burgh-by-Sands, Carlisle, Cumbria CA5 6AB

- 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 Jonathan Brown against the decision of Carlisle City Council.
 - The application Ref 16/0049, dated 19 January 2016, was refused by notice dated 15 August 2016.
 - The development proposed is the erection of 2no. holiday units together with single storey store, associated landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 2no. holiday units together with single storey store, associated landscaping at vacant land at Boustead Hill, Burgh-by-Sands, Carlisle, Cumbria CA5 6AB in accordance with the terms of the application, Ref 16/0049, dated 19 January 2016, subject to the conditions set out in the attached schedule.

Procedural Matters

2. The planning application originally featured a lengthy description of the proposal. However, I have adopted a revised description of development as set out in the Council's decision notice, and subsequently in the submissions of both main parties. I note that the two camping pitches that were also initially included within the proposal were removed from the application prior to its determination but that this revision was not reflected in the formal decision notice. I am however satisfied that the Council determined the application on the basis that the camping pitches no longer formed part of the application, and I have therefore determined the appeal on the same basis, with the appropriate alteration to the description.
3. At the time that the application from which this appeal originates was determined by the Council, policies from the Carlisle District Local Plan 2001 – 2016 (CDLP) were referred to in the Council's reasons for refusal, alongside the emerging policies set out in the Carlisle District Local Plan 2015 – 2030 (LP). I am advised that the emerging LP was formally adopted by the Council on 8 November 2016 replacing, in its entirety, the CDLP. Both parties agree that the CDLP policies are no longer relevant and that the proposal should be considered against the provisions of the LP. I see no reason to reach a different conclusion and I have considered this appeal accordingly.

Application for costs

4. An application for costs was made by Mr Jonathan Brown against Carlisle City Council. This application is the subject of a separate Decision.

Main Issues

5. The main issues are the effect of the proposed development upon:

- The character and appearance of the surrounding area, including the setting of listed buildings; and
- Trees within the appeal site

Reasons

Character and Appearance

6. Boustead Hill is a small, largely linear settlement, lying on elevated land above the low lying tidal marshes of the Solway estuary. Viewed from the north, the predominantly east-west axis of the village is clearly evident on the skyline of the elevated land, small groups of trees providing some visual screening in the foreground.
7. Although Boustead Hill is largely linear in its built form with buildings predominantly fronting onto the narrow lane that runs through it, the range of farm buildings at the eastern end of the settlement provide depth to its built form beyond that which is largely confined between the lane and the gravel track on the southern side of the row of houses. It would be this track from which the appeal site would be accessed, on the southern side of which the appeal site lies. I saw that there are other buildings and dwellings on the southern side of this gravel track and so built development here is not without precedent. However, where the appeal site differs is that it also adjoins the lane that runs through the settlement. The site is, therefore, more clearly visible than those within which other buildings are located along this gravel track.
8. Being visible would not, however, equate to harm nor would it equate to being prominent. The dense, verdant roadside hedge provides the site with a not insignificant visual screen when viewed from the roadside. I acknowledge that the two main buildings and, to a lesser extent, the store building, would be visible above the hedge. However, the larger of the two residential units would be located towards the eastern side of the site and would not have a particularly significant presence in views from the roadside which would, in any event, be largely through the roadside hedge.
9. From the north and the rears of the existing properties, the gable elevation of unit 1 would be directly visible, albeit at some distance across the rear gardens and intervening track. The smaller of the two residential units, although closer to the western side of the site, would be positioned with its gable elevation end-on to the western boundary. Again, the visual presence of the gable elevation of unit 2 would be mitigated to an extent by the roadside hedge, whilst in longer views from the south, it would be intercepted by the existing apple trees within the southern portion of the site.
10. Most significantly however, it seems to me that the defining characteristic of Boustead Hill is its setting and relationship to the Solway Estuary, to the north. Its elevated position above the lower lying estuary and marshes gives it a prominent setting within the landscape when viewed from the north. However, from the south that prominence is not repeated. Here, the field pattern with its

hedgerows and trees limits the wider visibility of Boustead Hill, and its relationship with the Solway is not fully appreciated or recognisable.

11. In this context, I conclude that the proposed development would not cause harm to the setting of Boustead Hill. Therefore, although when viewed from the south the proposed development would be a foreground feature to the row of buildings behind, any appreciation of Boustead Hill's setting in the wider context of the landscape to the north from this aspect would be limited. Moreover, notwithstanding the elevated levels of the site relative to the adjacent lane, those levels would not render the development prominent or harmful to the form or character of the settlement as a whole, for the reasons I have set out above.
12. The proposed external materials, or more particularly, the dark cement fibre panel cladding, would not follow the predominant vernacular materials found within Boustead Hill. The dark cladding would appear distinctly different to the brick, stone and render typical of the settlement. However, whilst that may be so, the choice of materials would imbue the buildings with something of an agricultural character which, the appellant suggests, reflects agricultural buildings in the surrounding area.
13. Although the choice of material would put the buildings somewhat at odds with the character and appearance of the buildings around them, I do not consider that that invalidates the approach adopted by the appellant in this instance. The stone detailing on the end elevations would provide a visual and contextual link to one of the predominant construction materials within Boustead Hill. It would do so in a respectful manner, but without seeking to challenge the pre-eminence or significance of those buildings by using matching materials and forms. Instead, the dark recessive colouring of the cladding panels would provide a low key response for the buildings that would give them an understated appearance and a sense of subservience to those located to the north.
14. Boustead Hill House, which lies a short distance to the north west of the appeal site on the opposite side of the lane that bounds the western side of the site, is a grade II listed building. Its principal elevation faces north, towards the Solway Estuary, whilst its rear elevation faces south, from where a garden and grounds extend some distance to the south. Croft House, which lies to the north of the site, is also a grade II listed building but was not specifically referred to in the second of the Council's refusal reasons.
15. It is not disputed that the appeal site lies within the setting of Boustead Hill House, and I see no reason to reach a different conclusion. As with the settlement as a whole, it seems to me that the significance of the setting of these buildings lies with their relationship to the Solway, to the north, and with the predominantly linear form of the Boustead Hill. Although there is a degree of inter-visibility between the appeal site and Boustead Hill House when viewed from the south, I agree that the strong masonry boundary wall and the roadside hedge, not to mention the lane itself, provide a clear demarcation between the two.
16. The layout, scale and form of the proposed development would see the buildings set away from the northwest corner of the site closest to Boustead Hill House. The proposed buildings would therefore lie behind and to the side of Boustead Hill House. From the north, looking back towards Boustead Hill

House, it seems doubtful to me that the proposed development would be seen. The formal entrance to Boustead Hill House, the masonry wall along its eastern boundary and the substantial physical presence of Croft Farm Cottage, not to mention the stand of trees in front of Boustead Hill House and Croft Farm Cottage, all combine to render the appeal site, and the proposed development, largely hidden from view. In this respect, the proposal would not harm the significance of the setting of the listed building.

17. From the south, the development lies in front, but to the side of, Boustead Hill House. Although seen together, views of both would be through the foliage of the roadside hedges and the trees, and above the substantial presence of the brick boundary wall. The setting of the listed building would be altered, but I am not persuaded that that impact would be anything more than slight. Nor has it been demonstrated that any harm would arise from that impact upon the significance of the setting of the listed building. In reaching this conclusion, I am mindful of the comments of the Council's Heritage Officer, as set out in the Committee report, and concur with the appellant's reading of these comments.
18. Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (s66(1)) sets out statutory duties in relation to designated heritage assets. It states that in considering whether the grant planning permission for development that affects a listed building or its setting, special regard shall be given to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. The National Planning Policy Framework (the Framework) states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Any harm should require clear and convincing justification, and consideration given to whether any harm is substantial or less than substantial.
19. I am satisfied, for the reasons set out above, that the proposal would not cause harm to the setting of the grade II listed Boustead House. As required by s66(1) I am required to have special regard to the desirability of preserving the setting of the listed building, whilst great weight should be given to the asset's conservation as set out in the Framework. I am satisfied that both these tests would be satisfied in this instance and is a matter to which I give great weight, and I am also satisfied that the proposal would accord with LP policy HE3 which seeks to preserve and enhance listed buildings and their settings.
20. For the reasons set out, I also conclude that the proposal would not be in conflict with LP policies GI1, GI2(1), SP6(1 – 3) or EC9(1). Together, these policies seek to ensure that all landscapes are valued for their intrinsic character and will be protected from, amongst other things, harmful or inappropriate development, that development is compatible with the character of the surrounding area and that it responds to the local context .

Trees

21. The appeal site is bounded to the east and west by dense and relatively tall hedges. Within the southern portion of the site there are a number of trees, of which, the proposal seeks the removal of two. Of these, one (an apple tree) would be removed to facilitate the development. The other, an ash tree, lies on the southern boundary and would not be directly affected by the proposed development.

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22. I saw that the ash tree is the largest of the trees within and immediately around the appeal site. However, its presence in the landscape and the immediate setting of Boustead Hill is limited. The dense, verdant roadside hedge provides a significantly leafy screen when looking towards the site from the adjacent lane, whilst the apple trees within the site add to the sylvan setting of the southern portion of the site. Longer views towards the site from the south are glimpsed, set in the context of the surrounding field and hedgerow patterns, particularly the dense roadside hedge along the eastern side of the lane adjacent to the site.
23. The contribution that the ash tree makes to the character of the area is, in my judgement, less individual and more collectively as part of the group of trees within the appeal site. However, I note the advice, provided verbally at the Committee meeting, of the Council's Landscape Architect / Tree Officer that the ash tree is of poor quality, thereby endorsing the conclusions of the appellant's tree survey, an extract of which is quoted in the Design and Access statement. I accept that landscaping conditions could ensure the retention of this tree but, on the basis of the evidence before me, it seems to me that it does not warrant that level of protection.
24. I am however satisfied that with appropriate conditions to retain and protect the remaining apple trees together with a robust landscaping scheme to secure, amongst other things, the replacement of the removed trees with two trees of the same species, the proposal would satisfactorily retain in the short term, and enhance in the longer term, the tree cover within and around the site. This would be to the longer term benefit of the character and appearance of the site and its surroundings. For these reasons, there would be no conflict with the aims of LP policy GI6 which seeks to protect and integrate existing trees and hedgerows within developments and to seek the replanting of trees of an appropriate species where they are lost to new development.

Other Matters

25. With regard to comments and objections from local residents, the Council were satisfied that, subject to the completion of an Assessment of Likely Significant Effects (ALSE) with regard to the nearby nature conservation sites (Solway First Special Area of Conservation, Upper Solway Flats and Marshes Special Protection Area Ramsar Site and Site of Special Scientific Interest), it was unlikely that the proposal would have a significant effect on those designations and this did not form a reason for refusal. The ALSE has since been completed which confirms the Council's early conclusions and the Council have not sought to challenge its conclusions. I have not been presented with any reason to reach an alternative conclusion and thus see no reason to disagree.
26. Similarly, the archaeological impact of the proposal, having regard to the site's relationship with the potential alignment of Hadrian's Wall, was fully considered by the County Archaeologist. The County Archaeologist did not object to the proposal or recommend any further archaeological works and there is no evidence before me which would lead me to reach an alternative conclusion.
27. Local residents object to the proposal on a wider basis, including in respect of the nature of the proposed holiday accommodation and noise, loss of privacy, the management and servicing of the property, drainage and access, traffic generation and highway safety. However, I have no compelling evidence before me that would lead me to conclude that the proposal would generate

levels of noise that would be harmful to the living conditions of nearby residents, whilst the distances and relationships between the proposed units and nearby properties would be such that I am not persuaded harm to living conditions would arise. With regard to the other matters, I note that these did not form part of the Council's refusal reasons and I am satisfied that these matters would not result in a level of harm which would justify dismissal of the appeal.

Conditions

28. I have considered the list of conditions suggested by the Council in light of the Framework and Planning Practice Guidance. Where reasonable and necessary I have made amendments and alterations to the suggested conditions.
29. In addition to the time limit condition, I agree that a condition specifying the approved plans is necessary in order to provide certainty. Although the drawings describe the facing materials that it is proposed to use in the construction of the approved buildings, a condition requiring the submission of full details and samples of the materials is nonetheless necessary in the interests of character and appearance. So too, conditions relating to existing and proposed ground levels, hard and soft landscaping details, external lighting and tree and hedge protection. I have however altered the hard and soft landscaping condition to make reference to boundary enclosure details and surfacing details for the access and car parking areas.
30. Conditions relating to foul and surface water drainage are appropriate and necessary in the interests of proper site drainage, limits on the hours of construction in the interests of the living conditions of occupants of nearby properties and details of wildlife enhancement measures and an environmental construction management plan (CEMP) in the interests of biodiversity and nature conservation. I have replaced suggested conditions 12 and 13 with a single condition regarding the use of the buildings to provide holiday accommodation, which I consider to be more usefully concise. To do so would not disadvantage either party.
31. Although not specified in the Council's list of suggested conditions, it is noted from the minutes of the Committee meeting that revised highways conditions were proposed at the Committee meeting. I am satisfied however that, other than a condition to ensure that gates open in an inward direction, the provisions of those conditions can be adequately resolved with the conditions that I have set out above. With regard to the removal by condition of permitted development rights for the extension of the buildings, I have not been provided with justification, or details of any other special circumstances, that would support such an approach, and have therefore not imposed a condition to this effect.

Conclusion

32. For the reasons set out, and having considered all other matters raised, I conclude that the appeal should be allowed.

Graeme Robbie

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: (drawing nos.) 01.02.01; 04.02.07; 04.02.01 Rev A; 04.02.04; 04.02.02 Rev D; 04.03.01 Rev B; 04.05.01 Rev C; 04.05.02 Rev B; 04.03.02 Rev B; 04.02.05; 04.02.03 Rev A; 1603.02A and 1603-01, except in respect of the two camping pitches and the vehicle and pedestrian gates shown on drawing 04.02.02 Rev D.
- 3) Full details and samples of all materials to be used on the exterior of the hereby approved buildings shall be submitted to, and approved in writing by, the local planning authority. The development shall thereafter be carried out in completed accordance with the approved details and samples.
- 4) No development shall take place until full details of hard and soft landscape works, including a phased programme of works have been submitted to and approved in writing by the Local Planning Authority. The hard landscaping works shall include, but not be limited to, details of all boundary enclosures, and surfacing details of the access, parking and manoeuvring spaces within the site. All works shall be carried out as approved prior to the occupation of any part of the development. Any trees or other plants which die or are removed within the first five years following the implementation of the landscaping scheme shall be replaced during the next planting season.
- 5) Prior to the commencement of development, a scheme of tree and hedge protection shall be submitted to, and agreed in writing, by the local planning authority. The tree and hedge protection shall be implemented in accordance with the agreed scheme, prior to commencement of any works or development on site, and maintained to the satisfaction of the Local Planning Authority for the duration of the development.

Within the fenced off area;

- 1) No equipment, machinery or structure shall be attached to or supported by a retained tree or by the tree protection barrier.
- 2) No mixing of cement or use of other contaminating materials or substances shall take place within, or close enough to, a root protection area that seepage or displacement could cause them to enter a root protection area.
- 3) No alterations or variations to the approved tree and hedge protection schemes shall be made without prior written consent of the local planning authority.
- 4) No materials or vehicles shall be stored or parked within the fenced off area.
- 5) No alterations to the natural/existing ground level shall occur.
- 6) No excavations will be carried out within the fenced off area.

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- 7) The tree and hedge protection fencing must be maintained to the satisfaction of the local planning authority at all times until completion of the development.
 - 6) No development approved by this permission shall be commenced until a scheme for the provision of surface water drainage works has been approved in writing by the local planning authority. Such a scheme shall be constructed and completed in accordance with the approved plans.
 - 7) The proposed foul water drainage shall be in strict accordance with the details contained within the application, unless otherwise agreed in writing by the local planning authority.
 - 8) Prior to installation, details of any proposed means of external lighting shall be submitted to and approved in writing beforehand by the Local Planning Authority.
 - 9) Details of the relative heights of the existing and proposed ground levels and the height of the proposed finished floor levels of the buildings shall be submitted to and approved in writing by the local planning authority before any site works commence.
 - 10) No development shall take place until the applicant has submitted, for approval in writing by the local planning authority, details of any proposed wildlife enhancement measures that are to be incorporated into the development. The development shall be implemented in accordance with these approved details.
 - 11) The development hereby approved shall be used solely for holiday use only and shall not be occupied as a person's sole, principal or permanent place of residence. The owner shall keep a register to monitor the occupation of the holiday accommodation hereby approved and that register shall be available for inspection by the local planning authority at all reasonable times and shall contain details of those persons occupying the holiday accommodation, their name, normal permanent address and the period of occupation.
 - 12) No construction work associated with the development hereby approved shall be carried out before 07.30 hours or after 18.00 hours Monday to Friday, before 07.30 hours or after 13.00 hours on Saturdays, nor at any times on Sundays or Bank Holidays.
 - 13) Prior to the commencement of development, the applicant shall submit a Construction Environmental Management Plan (CEMP) for approval in writing by the local planning authority. The development shall then be undertaken in accordance with the details contained within the Construction Environmental Management Plan.
 - 14) Notwithstanding the details shown on drawing no. 04.02.02 Rev D the vehicle and pedestrian gate shown on that drawing shall be mounted so as to open inwards into the site.