

Appeal Decision

Inquiry held on 15 May 2018

Site visit made on 15 May 2018

by Jameson Bridgwater PGDipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 June 2018

Appeal Ref: APP/M0933/W/17/3187120

Sir John Barrow Way, Ulverston LA12 9SZ

- 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 Oakmere Homes Limited against the decision of South Lakeland District Council.
 - The application Ref SL/2016/1109, dated 5 December 2016, was refused by notice dated 3 July 2017.
 - The development proposed is described as 'Residential Development'.
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Decision

1. The appeal is allowed and planning permission is granted for Residential Development at Sir John Barrow Way, Ulverston LA12 9SZ in accordance with the terms of the application, Ref SL/2016/1109, dated 5 December 2016, subject to the conditions set out in the attached schedule.

Preliminary matters

2. The Inquiry sat for 1 day. I held an accompanied site visit on 15 May 2018. I also conducted an unaccompanied visit on the 14 May 2018.
 3. A Statement of Common Ground was submitted which sets out the policy context along with matters of agreement and those in dispute.
 4. A planning obligation for the provision of affordable housing, on and off-site open space, and Sustainable Urban Drainage (SUDS), was submitted during the appeal under section 106 of the Town and Country Planning Act 1990. The affordable housing element of the obligation addresses part of the Council's second reason for refusal. I deal with the contents of this below.
 5. The appellant as part of their appeal submission have revised their proposal by reducing the overall number of dwellings from 107 to 101. The amendment removes 6 dwellings from the scheme and ensures that the built form of the proposal is wholly contained within the development plan allocation and retains the rocky outcrops (8, 9 and 10) identified by the Council as a key landscape feature. An amended plan was submitted to the Council detailing the change (Plan Ref. 033/01/Rev F). Responding to the revision, the Council at the Inquiry confirmed that, in light of changed circumstances relevant to the proposal they were no longer seeking to defend their reasons for refusal. The Council stated that the appellant's amended proposal addressed the harm
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identified in relation to landscape character and the integration of the on-site affordable housing provision. Further stating that the proposal as amended was now consistent with the policies of the development plan and should be approved without delay. Furthermore, no substantive or technical evidence that was contrary to the view of the Council was advanced by any other party in relation to these matters. Therefore based on all the evidence before me I see no reason to disagree with the conclusions of the Council.

6. I have therefore determined the appeal on the basis of this revision, mindful of the principles contained in the Wheatcroft decision. I consider that the amendments are not of a scale that the development is so changed that if I was minded to allow the appeal and grant planning permission it would deprive those who should have been consulted on the changed development of the opportunity of such consultation.
7. Nonetheless, whilst it has been confirmed that there is no longer any material difference in position between the main parties, it will be necessary for me to consider the issues involved, not least as a number of concerns have been raised by interested parties.

Main issue

8. The main issue in the appeal is:

- the effect of the proposal on the character and appearance of the area with particular regard to landscape features and the integration of affordable housing.

Reasons

9. The appeal site is located to the south east of Ulverston town centre adjacent to the Lund Farm residential estate. The site comprises a raised undulating area of pasture land containing a number of rocky outcrops and a lower lying area of land at the southern end, contained within a single field boundary. The proposal as amended relates to the erection of 101 dwellings and associated infrastructure, with access from Sir John Barrow Way and the establishment of a secondary emergency and temporary construction vehicular access onto Morecambe Road.

Planning policy

10. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires decisions to be made in accordance with the development plan unless material considerations indicate otherwise. The Development Plan comprises the South Lakeland Core Strategy (CS), Saved Policies of the South Lakeland Local Plan (SLLP) and the South Lakeland Land Allocations Development Plan Document (LADPD).
11. Policy CS1.1 of the CS seeks to ensure development provides for all three elements of sustainable development by balancing and integrating the social, economic and environmental components. Policy CS3.1 of the CS seeks to balance the delivery of housing and economic growth with the protection of the environment within the Ulverston and Furness area. Policy CS6.3 of the CS relates to the provision of affordable housing. The policy requires that all

housing schemes of nine or more dwellings in the Principal Service Centres should include at least 35% affordable housing. Policy CS8.2 of the CS seeks amongst other things to ensure that development proposals should demonstrate that their location, scale, design and materials will protect, conserve and, where possible, enhance the special qualities and local distinctiveness of the area. Policy CS8.8 of the CS seeks to ensure that most new development should be located in flood risk zone 1. Policy CS8.10 of the CS seeks to ensure that proposed development is designed to reflect and enhance an area's local distinctiveness.

12. Policy LA1.3 of the LADPD allocates deliverable and sustainable sites for a range of types and sizes of new housing to meet the needs of all sectors of the community, including 4 hectares of land to the South of Lund Farm (the appeal site).

Character and appearance

13. As set out in the preliminary matters the built form of the appellant's proposal originally extended beyond the extent of the LADPD site allocation. The scheme as originally submitted would have required the removal of rocky outcrops (8, 9 and 10); an important landscape feature that contributes significantly to the character and appearance of the area. However, the amended proposal, which removes 6 residential units from the southern end of the site, would ensure that the built form of the proposal would be wholly contained within the LADPD site allocation. Moreover, this would ensure that the area to the southern end of the site including the rocky outcrops would be retained as a landscaped area. To avoid any unintentional damage to the rock outcrops I have imposed a condition requiring the area to be marked out on site by way of pegs whilst construction in the area is complete. Furthermore, the landscape features and the southern area of the site will be secured by the submitted planning obligation, with the area identified on a hatched plan within the agreement.
14. With regard to the proposed layout of the development, the removal of the 6 units would ensure that the Council's original concerns in relation to the clustering of affordable housing within the proposal would be addressed. Consequently, the revised scheme would adequately integrate the proposed on-site affordable housing within the development. Furthermore, the layout and scale of the proposal is broadly consistent with the existing residential development on Sir John Barrow Way and ensures adequate separation and privacy and as such would not appear incongruous in its landscape setting.
15. Therefore, having reached the above conclusions the proposed development as amended would not result in material harm to the character and appearance of the area and would ensure that the on-site affordable housing provision would be integrated within the overall scheme. Therefore, the proposal would be consistent with Policies CS1.1, CS 8.2 and CS8.10 of the CS and Policy LA1.3 of the LADPD.

Planning obligation

16. At the time the Council made their decision the appellant had not provided planning obligations in relation to affordable housing, on and off-site open

space, and a mechanism to deliver a SUDS Scheme. However, the appellant has as part of their appeal submitted a planning obligation pursuant to Section 106 of the Act, which addressed the issues outlined above.

17. None of the planning obligations contained within the agreement appear to be in dispute and the Council have provided a statement of CIL regulation compliance. However, I have considered the obligations against the tests in Regulation 122 of the CIL Regulations 2010 and the Framework nonetheless.
18. The obligation deals with affordable housing provision. The Council has identified a need for affordable homes in the District. The 35% affordable housing sought in the appeal scheme amounts to 31 dwellings (19 shared ownership units and 12 affordable rent units) of the 101 dwellings proposed on the site. The remaining balance of affordable housing is provided through a commuted sum of £291494 to contribute towards its delivery off-site, which was confirmed at the Inquiry as consistent with the requirements of Policy CS6.3 of the CS.
19. The Council has identified a need for open space within residential development sites in the District. The obligation deals with both on and off site open space provision and sets out the management arrangements for the on-site provision and ensures that the land at the south of the appeal site (hatched area) shall only be used for landscaping and drainage/flood attenuation. The obligation also provides a commuted sum of £31000 to contribute towards off-site play space. The provision within the obligation of both on and off site open space is consistent with the requirements of Policy CS8.3 of the CS and Policy S3 of the SLLP. The obligation also makes provision for the submission of a SUDS scheme for approval to the Local Planning Authority, and thereafter its implementation and subsequent maintenance. This is consistent with the requirements of Policies CS8.8 and CS9.2 of the CS.
20. I therefore consider that the planning obligations set out above meet the necessary tests in law and I have taken account of them in reaching my decision.

Other considerations

21. There was significant local concern raised in relation to the potential effect of the proposed development on the capacity of the local road network in particular Sir John Barrow Way. These included specific concerns in relation to safety in the evenings and weekends when on-street parking was at its peak and there was a greater likelihood of children playing on the estate. However, based on all of the evidence before me and the observations during my site visits, I am satisfied that any increase in traffic from the proposed development would not result in severe harm to highway safety. Moreover, this is consistent with the Highways Authority who raised no objection in relation to capacity or highway safety subject to the provision of site and locality specific highway improvement work. Moreover, I accept that residents have suggested that the proposed development could be accessed directly from Morecambe Road, however, that is not a matter before me and therefore in the absence of any substantive technical evidence contrary to the conclusions of the Highway Authority I cannot afford it any weight in my determination.

22. I have carefully considered the representations of local residents with regard to their concerns in relation to the effect of construction traffic and noise and disturbance. However, based on the evidence before me I consider that the effects of the proposal during the construction phase can be reasonably mitigated by way of planning conditions. I have therefore imposed a condition to secure a construction traffic route directly from Morecambe Road (Condition No 6) and conditions to minimise overall disruption during the construction phase and ensure the protection of living conditions of nearby residents (Conditions No 14, 15 and 16). In reaching my conclusion I have taken account of construction industry practice and I accept that a start time of 0730 Monday to Friday would not result in material harm to the living conditions of nearby residents. However, I have agreed with the Council that a 0800 start is more appropriate for Saturday working.
23. It was argued by local residents that the development is not needed as there are other residential schemes coming forward in the area. However, as set out above the site is allocated within the development plan for housing and therefore it forms a component part of the housing supply for South Lakeland. Therefore, it is necessary to develop the appeal site to ensure that the area's identified housing need is met.
24. It was also suggested by interested parties that the proposal could have ramifications in relation to the local and regional emergency plans of a nearby COMAH site. However, in the absence of objections from the operator of the site and the Health and Safety Executive, I consider that the proposal would not undermine local and regional emergency planning process or the ability to affect the plans in the event of an emergency.
25. Local residents also raised concerns in relation to flooding. Whilst no technical evidence was presented on these matters, I accept based on what I heard at the Inquiry that the wider area has been subject to a number of flood events which have resulted in disruption and hardship. However, the proposed development is located within Flood Zone 1 and this is confirmed by the Environment Agency who raised no objection to the proposal. Therefore, based on all of the evidence before me I conclude that subject to the imposition of planning conditions in relation to drainage, surface water and the provision of a SUDS scheme (Conditions No 4, 8 and 9) the proposal would be highly unlikely to materially increase the risk of flooding. In reaching this conclusion I have taken account of the appellants suggested alternative condition (No 8), however, given that some further albeit limited information is required I have applied the Council's version of the condition.

Conditions and Conclusion

26. The conditions suggested by the Council have been considered in light of the advice contained within the National Planning Practice Guidance and the National Planning Policy Framework. In addition to the standard implementation condition, it is necessary for the avoidance of doubt and in the interests of certainty to define the plans with which the scheme should accord, the number of dwellings, and extent of the retained landscape area (Conditions Nos 2, 3 and 17). To ensure the satisfactory appearance of the scheme and to protect the character and appearance of the area, it is necessary for the

materials and fenestration used to be submitted to the Council for approval (Condition No 10).

27. In the interests of highway and pedestrian safety it is necessary for a scheme for the design, construction (including longitudinal and cross sections), drainage, illumination, signage and implementation phasing of the carriageways, footways, footpaths and all off site highway works, including the works to the entrances to the site to be submitted to the Local Planning Authority for approval (Condition No 4). Moreover, it is necessary in the interests of highway safety to ensure that no dwelling is occupied until its vehicular access has been constructed to base course level (Condition No 5).
28. It is necessary in the interests of amenity to ensure that there is adequate protection for the trees on and adjacent to the site during construction and to ensure that the landscaping of the scheme is carried out in accordance with the approved plans (Conditions Nos 11 and 12). Furthermore, it is necessary in the interests of heritage to impose a condition that ensures that the scheme is carried out in accordance with the submitted archaeological survey (Condition No 13). It is necessary in the interests of sustainability to ensure that the development accords with the submitted Travel Plan (DTPC) (Condition No 7).
29. For the above reasons and having regard to all other matters, I conclude that the appeal should be allowed.

Jameson Bridgwater

INSPECTOR

Schedule – Conditions

- 1) The development hereby permitted shall be commenced before the expiration of THREE YEARS from the date hereof.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Location Plan. Rev.A
 - Site Layout 033/APPEAL LAYOUT/01 Rev F
 - Landscaping Proposals,c-1336-03 rev F,c-1336-04 rev f,c-1336-05
 - Landscaping Proposal c-1336-02 rev f, (notwithstanding that the layout of housing on this plan is incorrect and is not approved by this plan).
 - Tree Survey c-1336-01 Revision A
 - External Works Layout 15169-C-SK02 Rev. E
 - Detention Basin Sections 15169-C-SK09
 - Short Sections 2 033/S/02A
 - Street Scenes 033/P/SS
 - Cycle track layout 15169-C-SK08
 - Walk/Cycle connections J613 Fig 1 rev A
 - House types plans & elevations 1050 PO1 & 2, 1205 PO1&2,

- BOR PO1&2, BOR-AG PO1&2, BOW PO1&2, BOW SPL PO1&2
 - BRA PO1&2, CAL PO1&2, GRA PO1&2, HON PO1&2,
 - KIRK PO1&2, LOW PO1 & 2, ROTH PO1&2, THIRL PO1&2,
 - WAS SPL PO3 &4, WIN PO 1&2, GRIZ PO 1 & 2,
 - LOUGH-RYD PO1 & 2
 - Apartment building plans and elevations 033/APP/P06 &
 - 033/APP/P07
- 3) The permission hereby granted relates to the construction of a total of 101 dwelling units comprising a total of 31 on site affordable dwelling units.
- 4) a) No occupation of dwellings hereby consented shall begin, until a scheme for the design, construction (including longitudinal and cross sections), drainage, illumination, signage and implementation phasing of the carriageways, footways, footpaths and all off site highway works, including the works to the entrances to the site shall be submitted to and approved in writing by the Local Planning Authority.
- b) The scheme shall be designed to a standard suitable for adoption and shall be implemented and completed in accordance with the approved scheme and agreed phasing timetable.
- 5) No dwelling hereby permitted shall be occupied until a means of vehicular access to serve that particular dwelling, has been constructed in all respects to the base course level in accordance with the approved plans.
- 6) a) Prior to the commencement of any development on the site, details of the temporary construction vehicle access from Morecambe Road shall be submitted to and approved in writing by the Local Planning Authority.
- b) The approved details shall be fully implemented before the temporary access is brought into use.
- c) There shall be no vehicular access to the site for construction traffic other than via the approved construction vehicle access.
- 7) The development shall not proceed except in accordance with the measures set out in the submitted Travel Plan prepared by DTPC deposited with the Local Planning Authority on 5 December 2016.
- 8) a) Prior to the commencement of development, a surface water drainage scheme, based on the hierarchy of drainage options in the National Planning Practice Guidance with evidence of an assessment of the site conditions (inclusive of how the scheme shall be managed after completion) shall be submitted to and approved in writing by the Local Planning Authority.
- b) The surface water drainage scheme must be in accordance with the Non-Statutory Technical Standards for Sustainable Drainage Systems (March 2015) or any subsequent replacement national standards and unless otherwise agreed in writing by the Local Planning Authority, no surface water shall discharge to the public sewerage system either directly or indirectly. The drainage scheme submitted for approval shall also be in accordance with the principles set out in the Flood Risk Assessment & Drainage Statement dated March 2017 proposing surface water discharging to Dragley Beck.

- c) The development shall be completed, maintained and managed in accordance with the approved details. Any approved works shall be implemented prior to any dwelling hereby permitted being occupied.
- d) The sustainable drainage system shall be managed and maintained thereafter in accordance with a Management Plan which shall first be submitted to and approved in writing by the Local Planning Authority.
- 9) Prior to the commencement of development, a construction surface water management plan shall be submitted to and agreed in writing with the Local Planning Authority.
- 10) a) No superstructure shall be erected until samples and details of the materials to be used in the construction of the external surfaces of the development hereby approved have been submitted to and approved in writing by the Local Planning Authority.
b) The scheme shall be constructed in accordance with the approved materials before the dwellings are occupied.
- 11) a) Notwithstanding the submitted landscaping plans, updated landscaping details in relation to the southern part of the site, as indicated on plan reference c-1336-02 rev f., including boundary treatments, shall be submitted to and approved in writing by the Local Planning Authority prior to the construction of plots 89 and 90.
b) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out before any part of the development is occupied or in accordance with a programme to be agreed in writing with the Local Planning Authority prior to any development commencing. Any trees / shrubs which are removed, die, become severely damaged or diseased within five years of their planting shall be replaced in the next planting season with trees / shrubs of similar size and species to those originally required to be planted unless the Local Planning Authority gives written consent to any variation.
- 12) a) No site clearance, preparatory work or development shall take place until an updated arboricultural impact assessment, a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with Clause 7 of British Standard BS5837 - Trees in Relation to Construction - Recommendations has been submitted to and approved in writing by the Local Planning Authority. These details shall include a schedule of replacement trees to be planted.
b) The tree protection measures shall be carried out as described and approved, and shall be maintained until the development is completed.
- 13) The development shall not proceed except in accordance with the recommendations and mitigation strategy described in the Archaeological geophysical survey prepared by Phase site investigations and dated March 2017.
- 14) The development shall not proceed except in accordance with the submitted Construction Method Statement deposited with the Local Planning Authority on 21 June 2017, unless otherwise agreed in writing by the Local Planning

Authority. For the avoidance of doubt no construction vehicles shall access the site through Sir John Barrow Way at any time.

- 15) Notwithstanding the above details of and measures to control noise and vibration particularly in relation to any pecking operations shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of any development on site.
- 16) Notwithstanding the information contained within the submitted Construction Method Statement no construction works, including site preparation, earthworks, start-up of machinery, deliveries and unloading of equipment and materials shall not take place outside the hours of 0730 to 1800 Mondays to Fridays and 0800 to 1300 on Saturdays and at no time on Sundays or Bank, or Public Holidays.
- 17) Prior to the commencement of development on site, the area shown hatched on drawing reference 033/APPEAL LAYOUT/02, shall be pegged out on site and agreed in writing with the Local Planning Authority. No works except landscaping and drainage as approved in writing by the Local Planning Authority, or by other condition or approved plan, shall occur in this area. This area shall remain pegged out until the construction which immediately adjoins the area is complete.

DOCUMENTS SUBMITTED AT THE INQUIRY

1. Amended Layout Plan 101 Dwellings
2. Letter of objection – Mrs Andrea Cottis
3. Transcript of Alan Brenton’s representation (local resident)

APPEARANCES

FOR THE APPELLANT:

Mr Paul Tucker QC

Instructed by Kate Bellwood Associates

FOR THE LOCAL PLANNING AUTHORITY:

Mr Timothy Leader of Counsel Instructed by South Lakeland District Council

INTERESTED PERSONS:

Alan Brenton	Local resident
Geoffrey Keech	Local resident
Cllr Mark Wilson	Local Ward Councillor
Julie Swinburn	Local resident