

Appeal Decision

Site visit made on 16 July 2018

by Graeme Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 November 2018

Appeal Ref: APP/H0928/W/18/3201314

**the site is the first open and undeveloped field on the East side of the Melmerby to Gamblesby road. it spans in an Easterly direction to the A686
Grid Ref (Easting): 361555 (Northing) 537616**

- 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 Mr Lewis Faith against the decision of Eden District Council.
 - The application Ref 17/0534, dated 23 June 2017, was refused by notice dated 12 April 2018.
 - The development proposed is outline application for the development of 8 market lead homes based on traditional courtyard design.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was submitted in outline form with access, layout and scale to be considered, and appearance and landscaping reserved for subsequent consideration. Drawings have been submitted with the application, comprising a site location plan, a proposed site layout showing the arrangement and positions of houses and flats within the site, access to the site and the roadway into, and within, the development and a site drainage layout. Any indication on those plans to appearance and landscaping I have treated as being indicative.

Background and Main Issue

3. The Council resolved to grant outline planning permission for the application the subject of the current appeal at its meeting on 16 November 2017. This was subject to an agreement under section 106 of the Town and Country Planning Act 1990 (as amended) to secure a commuted sum for the provision of affordable housing. Agreement could not subsequently be reached regarding the level of commuted sum to be paid and the effect of this on the viability of the proposal.
4. Thus, the main issue in this appeal is whether the proposed development is required to make a contribution towards the provision of affordable housing.

Reasons

Policy Context

5. The Eden Local Plan (ELP) is at an advanced stage of preparation. Although the Council have not advised that it has yet been formally adopted it is clear that they afforded it considerable weight in reaching their decision on the

proposal. This is evidenced by the Council's reliance on ELP draft policy HS1 in its refusal reason, and an absence of reference to policies from the Eden District Council Core Strategy Development Plan Document (CS). As such, and in the absence of reference to any of the CS policies, so shall I.

6. Whilst not cited within the refusal reason, the provisions of ELP policy LS1 are also considered in some depth by the Council. ELP policy LS1 identifies Melmerby as a '*Smaller village and Hamlet*' where development of an appropriate scale and form will be supported. It goes on to state that where development delivers new housing on greenfield sites, proposals will be permitted where they accord with local connection criteria, the details of which are set out in ELP policy HS1.
7. Whilst the Council acknowledge that the proposal would not satisfy the local connection criteria set out in draft policy HS1, the Council's formally adopted policy on affordable housing contributions sets out its approach to securing financial contributions towards affordable housing provision elsewhere within the District. Although the approach sets out a commuted sum equivalent to 12% of the scheme's Gross Development Value (GDV), where a reduced level of contribution is sought by the development the level of sum is ultimately subject to a viability assessment. Although the scheme's viability remains a point of dispute in the current instance, the general approach set out by the affordable housing contribution policy is not directly challenged by the appellant.
8. I saw that the appeal site would round-off the settlement of Melmerby, adjoining existing dwellings to the south of the site, and located between the defensible boundaries of the roads to the east and west of the site. I am also advised that planning permission exists for development to the north of the appeal site. Whilst there has been a suggestion that the site may also constitute a form of infill development, being located between existing development to the south and consented development to the north, I have no details of that scheme and I give that matter limited weight. Nonetheless, I am satisfied that the site is well related to the existing settlement and it is common ground between the parties that the proposal would be acceptable in all other respects, subject to resolution of the matter of provision of affordable housing and the viability of the scheme.

Viability of the scheme

9. The application the subject of the current appeal has been described in submissions by both main parties as a resubmission of a previous application¹, which was subsequently considered at appeal². Extensive reference is made throughout both parties' submissions to evidence submitted in respect of the previous appeal. In particular, the appellant refers to an updated financial viability assessment³ carried out on behalf of Eden District Council that was submitted during the course of the previous appeal, shortly before the matter was heard before an Inspector. The appellant's further assessment of that updated document, and the Inspector's subsequent decision, forms the basis of the appellant's case in the current instance.

¹ LPA reference: 14/0808

² APP/H0928/W/16/3158080

³ Lambert Smith Hampton: '*Financial Viability Assessment Review (Update) for Eden District Council in respect of Paddock to the north of Helm Bar, Melmerby CA10 1HF*', dated October 2016

10. Previously⁴, the two main disputed elements affecting the viability of the scheme were the site's value and the proposal's GDV. Through the myriad viability assessments submitted with the current appeal proposal, which include those previously considered and updates thereto, it appears to me that the Council's assessment of GDV (at £1,780,000) now appears to have been adopted by the appellant⁵. Whilst the 'Financial Viability Assessment – LSH Version'⁶ has upwardly revised the site's GDV to £1,886,365, it appears that on the balance of the evidence both parties views on this matter have converged more towards the GDV previously accepted by the Inspector as being most robust in relation to this site.
11. It is unclear as to the extent to which the Council have assessed the appellant's latest appeal submissions. The Council's Statement of Case (SofC) appears to contradict itself, stating in turn that the Council's external auditors have both considered the information, and not had sufficient time to do so. In turn, the appellant states that the evidence that underpins the appeal had been available to the Council for a significant period of time, which appears to me to have pre-dated the Council's formal decision on the application. Both parties, however, remain committed to their site value figures of £200,000 (Council) and £275,000 (appellant) that were assessed previously at the appeal hearing.
12. To support the latter figure, the basis for which was initially derived in a 2015 site evaluation⁷, the appellant submitted additional and updated information in the form of a 'Land Price Evidence' document to support the contention that the higher of the two figures represents a more robust assessment of site value. However, whilst it is argued that this provides a more detailed basis upon which to derive a site value, it seems to me to merely rehearse information previously submitted, and subsequently discounted by the previous Inspector. Thus, for those reasons I do not find comparisons with single plot sites in Winskill and a site on Icold Road, Greystoke to be particularly useful for the reasons set out in respect of the previous appeal proposal.
13. Moreover, the examples quoted still appear to result in plot values similar to those that led the Council, and the Inspector, to arrive at conclusions that a site value of £200,000 for the appeal site was the more robust of the two figures. It may be that the appellant's calculations of land value per m² of property support the theory that the site value might exceed the Council's figure, but the conclusions drawn in respect of these other proposals and their implications for the appeal site's site value seem to be based on assumptions and unsubstantiated statements rather than substantive evidence. I am not therefore persuaded that the evidence is sufficiently compelling to allow me to reach a conclusion that deviates from that reached by the previous Inspector in this respect and that there would be sufficient residue within the scheme to make a commuted payment of the level sought by the Council.
14. However, even if I were to conclude that the site value was in the region of £275,000, the submitted viability assessment concludes that there would remain a residue within the proposal that would support the payment of a commuted sum towards affordable housing provision. The appellant argues

⁴ APP/H0928/W/16/3158080

⁵ 'Viability – assessor accepted figures.pdf' and 'Viability – assessor accepted figures (275k site value).pdf' – Planning Appeal Full Statement, 6. Conclusion on site value

⁶ LPA Statement of Case Appendix D Part 1a

⁷ Penrith Farmers' & Kidds plc 'Valuation of Land at Melmerby (North of Helm Bar)' dated 4 June 2015

that this lower amount, in the region of £29,000, would be further eroded by the application of sensitivity testing and to cover the types of margins of error discussed at length in the transcripts of the previous appeal hearing.

15. The arguments for the margins of error and sensitivity testing advanced by the appellant again draw on extracts from the transcript of the previous appeal hearing. However, it seems to me from those transcripts that elements of both were implicit in the identification of values set out in the Council's previous assessments and to apply them again at this stage would amount to double-counting.
16. Thus, for the reasons I have set out above, and acknowledging that there are a differing approaches to the assessment of viability, I am not persuaded that the scheme is unable to make appropriate contribution, in the form of a commuted payment, towards the provision of affordable housing. There is no mechanism before me with which to secure such a commuted payment, and for that reason the appeal cannot succeed. In the absence of a mechanism to secure commuted payment, the benefits that would arise from the contribution towards affordable housing, noted as a corporate District-wide priority, would not occur and would not, as a consequence, amount to a material consideration sufficient to justify a proposal contrary to emerging policy HS1.
17. The proposed flatted units (ground and first floor) would be significantly smaller than the houses within the development. They might be comparable in size with residential units provided on sites elsewhere within the District that are affordable houses but that does not make them affordable dwellings in the terms set out in the National Planning Policy Framework (the Framework). Similarly, stating that they are 'likely to be very close to an affordable home in terms of value', refers to only one factor amongst many in what would be construed as being an affordable home and does not make them affordable, or lead me to conclude that anything other than limited weight should be given to this matter.

Other Matters

18. It is noted that the Council do not object to the proposal in terms of its scale, design and layout, its impact on the character and appearance of Melmerby or the living conditions of occupiers of existing neighbouring properties. Nor are there objections to the proposal, subject to the conditions, in terms of archaeology, ground conditions, flood risk, highways or drainage. These, however, are neutral factors and are not sufficient to outweigh the harm that I have identified above.

Conclusion

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

Graeme Robbie

INSPECTOR