



Appeal Decision

Site visit made on 22 January 2019

by **Sarah Manchester BSc (Hons) MSc PhD MEnvSc**

an Inspector appointed by the Secretary of State

Decision date: 18th April 2019

Appeal Ref: APP/H0928/W/18/3214337

Old Pond Cottage, Little Musgrave, Kirkby Stephen CA17 4PQ

- 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 N & Mrs L Emson against the decision of Eden District Council.
 - The application Ref 18/0399, dated 25 April 2018, was refused by notice dated 3 October 2018.
 - The development proposed is described as residential use for two local occupancy dwellings each no more than 150m² gross internal floorspace.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr & Mrs N & L Emson against Eden District Council. This application is the subject of a separate Decision.

Procedural matters

3. The application form gave the address as Old Pond House, Little Musgrave on the C3078 Musgrave Road to Low Hall, Little Musgrave CA17 4PQ. However, the Council's decision notice and appeal form amended that to Old Pond Cottage, Little Musgrave, Kirkby Stephen CA17 4PQ. I have used this latter description of the site address in this decision.
4. The appeal scheme is an outline proposal for the erection of 2 self-build local occupancy dwellings, with access and layout to be determined at this stage. Although a drawing has been submitted with details of design and appearance, I have treated this as indicative only.
5. At the time of determination, the emerging Eden Local Plan (2014-2032) (ELP) was at any advanced stage. This was formally adopted on 11 October 2018 and is thus the development plan for the purposes of the appeal. Policies CS9, CS16 and CS18 of the Council's Core Strategy Development Plan Document listed within the Council's reasons for refusal have been superseded. I have therefore made my assessment against Policies LS1, DEV5 and ENV2 of the ELP. Both parties have had an opportunity to comment on the relevant policies as part of the appeal process.

Main issues

6. The main issues are:

- i) Whether or not the appeal site is a suitable location for residential development, having regard to local and national planning policy for the delivery of housing; and
- ii) the effect of the proposed development on the character and appearance of the area.

Reasons

The suitability of the location for residential development

7. Little Musgrave is a small settlement made up of farmsteads and largely traditional rural dwellings. Built development is at intermittent and irregular intervals on either side of the road, with clusters of buildings separated by undeveloped green space including domestic gardens and agricultural land. Little Musgrave is surrounded by open countryside, with fields of grassland, mature hedgerows and scattered trees. The river Eden runs to the north of the settlement, and there are distant views of the North Pennines.
8. The appeal site is a triangular parcel of land of approximately 0.14 hectares, on the southern side of Swilling Lane, created from part of the garden of Old Pond House. The boundary to the road is an established outgrown hedgerow with scattered semi-mature trees. On the western side, the site is separated from the unmade track beyond by an established hedgerow with a post and wire fence. The remaining boundary, which separates it from the garden of Old Pond House, is formed by a line of recently planted shrubs in tree guards. The closest property to the site is Little Musgrave Farm, immediately to the north of Swilling Lane.
9. Policy LS1 of the Eden Local Plan 2014 - 2032 (ELP) is the Council's locational strategy. It sets out a hierarchical approach to development within the district, identifying the larger settlements as the main focus for new housing development and the smaller settlements as locations where development will be resisted, with certain exceptions. Little Musgrave is listed as one of the smaller villages and hamlets, a category towards the lower end of the settlement hierarchy. In these locations, development of an appropriate scale and which reflects the existing built form of the settlement, adjoining and neighbouring development, will be permitted provided it meets certain criteria. These include that development is restricted to infill sites and, where development is proposed on green field sites, that local connection restrictions will apply. In this case it is agreed that a local occupancy restriction could be secured by an appropriate legal agreement.
10. The ELP does not include a precise definition of infill sites, except that they are modest gaps between existing buildings within the settlement. In this case, the appeal site is somewhat isolated from the nearest development, and is not therefore a modest infill site between existing buildings. Notwithstanding the absence of immediately adjacent buildings, the appellant considers that the road, hedgerows and trees around the appeal site are strong and defensible boundaries to the proposed development. However, the appeal site is acknowledged by both parties to be part of the garden of Old Pond House. The location of the recently planted hedgerow that separates it from this property

does not obviously correspond to any former landscape feature such as an historic field or garden boundary. My impression is that this new hedgerow has resulted in an arbitrarily created plot and is not a strong boundary. The appeal site is not an infill site, and is a modest gap only in so far as it has been created from part of a garden and not as a result of the proximity of buildings to either side.

11. The appellant has drawn my attention to a recent permission (18/0238) for up to 4 local occupancy houses at Reagill where locational issues were also considered. However, that permission was granted prior to the formal adoption of the ELP and at a time when the Council was not able to demonstrate a 5 year housing land supply (5YHLS). It is therefore not directly comparable with the appeal proposal which I have assessed in the light of current planning policy.
12. My attention has also been drawn to a recent appeal decision (APP/H0928/W/10/3194233) that was similarly concerned with residential development in one of the smaller villages and hamlets. That appeal considered whether or not the proposed scheme could be considered as rounding off the settlement. The Inspector found that a defensible settlement boundary for the purposes of rounding off would be a landscape feature sufficient to prevent further extension of development. In this case, the appeal site does not benefit from any such landscape features and could not be considered to round off the settlement.
13. I therefore conclude that the proposed development is neither an infill site nor would it round off the settlement. Notwithstanding that a local occupancy condition could be attached, for the reasons set out above it is not a suitable location for new residential development. It would be in conflict with Policy LS1 of the ELP, which seeks to ensure that new development is appropriate in its local context. It would also conflict with policies in the National Planning Policy Framework, including paragraphs 8 and 78 requiring, amongst other matters, that housing should be located in areas with accessible services and where it will enhance or maintain the vitality of rural communities.
14. Although not included in the reasons for refusal, the provisions of Policy HS2 of the ELP are relevant to the appeal scheme. The proposed development would comply in part with the requirements of this policy, including in terms of floorspace and local occupancy restrictions. However, it would fail to meet all requirements as it is neither infilling nor rounding off development. The policy does not therefore support the proposed development and is not a justification for allowing the appeal scheme.

Character and appearance

15. Part of the character of Little Musgrave is the juxtaposition of irregularly spaced building complexes with areas of undeveloped green space. The generous garden associated with Old Pond House is within the settlement and contributes to the distinctive character and appearance of Little Musgrave and the area. The proposed development of the appeal site would erode this character and would be contrary to the existing pattern of development in the settlement.
16. The appeal site is located on that part of the garden that is furthest from Old Pond House. The proposed development would not be seen as part of an existing building complex. Based on the proposed layout, and irrespective of

any detailed design, it would have the appearance of a pair of dwellings that are not obviously associated with, and are unrelated to, nearby dwellings and farmsteads. In this respect it would not relate well to its surroundings. The proposed location and siting of the dwellings would also result in a more evenly distributed and continuously built environment to the south of Swilling Lane. The proposed location and siting would not respect the distinctive form and rhythm of the street scene or the rural character of the area.

17. I therefore conclude that the proposed development would harm the character and appearance of the area. It would be in conflict with Policies DEV5 and ENV2 of the ELP. These policies require that new development demonstrates an understanding of the form and character of the built and natural environment, and protects and enhances the distinctive rural landscape; reflects local distinctiveness and the existing street scene; and complements the distribution and form of both settlements and buildings within their landscape setting.

Planning Balance

18. At the time of determination, the Council was unable to demonstrate a 5YHLS and the provisions of paragraph 11 of the National Planning Policy Framework therefore applied. With the adoption of the Eden Local Plan 2014–2032, this is no longer the case.
19. The appeal scheme would in any case make a minimal contribution to housing supply. It would provide only limited economic benefits, most of which would arise in the short term during the construction phase. While the scheme would provide a site for up to 2 local occupancy dwellings, based on the 2009 Musgrave Parish Housing Needs Survey there was insufficient evidence to persuade me that it would meet a specific local need.
20. On the other hand, I have identified significant harm arising from the effect of the proposal on the character and appearance of the area. Even if the Council was unable to demonstrate a 5YHLS, the adverse impacts of the proposal would significantly and demonstrably outweigh the very limited social and economic benefits, when assessed against the policies of the Framework as a whole. The presumption in favour of sustainable development therefore does not apply in this case.

Conclusion

21. For the reasons set out above, I conclude that the proposal would conflict with the development plan and there are no material considerations that outweigh that conflict. Therefore, the appeal should be dismissed.

Sarah Manchester

INSPECTOR