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# Appeal Decision

Site visit made on 30 July 2019

**by Chris Baxter BA (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 17<sup>th</sup> September 2019**

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**Appeal Ref: APP/G0908/W/19/3228984**

**Land South of Abbey Court, High Harrington, Workington CA14 4PG**

- 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 Ken Wilson against the decision of Allerdale Borough Council.
  - The application Ref 2/2018/0495, dated 4 October 2018, was refused by notice dated 14 February 2019.
  - The development proposed is described as "Full planning permission for the erection of eleven dwellings, with details of access and associated works."
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## Decision

1. The appeal is allowed and planning permission is granted for the erection of eleven dwellings, with details of access and associated works at land south of Abbey Court, High Harrington, Workington CA14 4PG, in accordance with the terms of the application, Ref 2/2018/0495, dated 4 October 2018, subject to the conditions in the attached schedule.

## Application for costs

2. An application for costs was made by Mr Ken Wilson against Allerdale Borough Council. This application is the subject of a separate Decision.

## Main Issues

3. The main issues are the effect of the proposal on the character and appearance of the surrounding area; the effect of the proposal on living conditions of occupiers of neighbouring properties in respect of outlook, privacy, overshadowing, noise and disturbance; and the effect of the proposal on Public Right of Ways.

## Reasons

### *Character and appearance*

4. The appeal site is agricultural land described as being edge of settlement with residential properties to the north and west and a disused railway line to the east. The settlement has irregular patterns of development with a non-uniformed settlement boundary abutting rural countryside. The site is uneven with the north section being relatively flat and then drops to the south with a watercourse and Ancient Woodland located beyond the site boundary. It is the irregular pattern of development which positively contributes to the character of the area.

5. The proposal would introduce a linear form of back land development that would be parallel with properties on Little Croft, Abbey Court and Castle Close. Given the irregular pattern of built development in the area, which includes examples of linear development, the proposed layout would not be out of keeping and would not compromise the character and appearance of the settlement pattern.
6. The appeal site, located abruptly against the properties at Little Croft, Abbey Court and Castle Close, does not have any remarkable features and is not considered to be high quality landscape. The proposal would bring the built development closer to the woodland to the south however this would not be to the detriment of the overall appearance of the surrounding landscape. The Council describe the appeal site as a green corridor which forms a natural buffer between the urban area and undeveloped tranquil wooded valley. The proposed properties would not be located directly adjacent to the wooded valley. Whilst the proposed gardens would run up to the woodland area, these would be free of built development therefore retaining a buffer between the Ancient Woodland and the built development.
7. The Cumbria Landscape Classification identifies the appeal site as being in landscape character type 05d – Urban Fringe area. The proposal would be urban fringe development that would not encroach into the wider rural landscape and would not adversely affect the rural character beyond the built environment.
8. I have had regard to the Councils statement of case and committee report including reference to a refused scheme<sup>1</sup> which was dismissed at an appeal. However, I do not have the full details of this scheme and so cannot be sure that it represents a direct parallel to the appeal proposal, including in respect of scale and location. In any case, I have determined the appeal on its own merits.
9. The proposed development would not have a harmful effect on the character and appearance of the settlement pattern or surrounding landscape. The proposal would be in accordance with Policies S1, S2, S3, S4, S5, S24, S32, S33 and DM14 of the Allerdale Local Plan (Part 1) 2014 and the National Planning Policy Framework (the Framework) which seeks development to promote high standards of design that make a positive contribution to the local area, be of a scale commensurate to the size of the settlement, promote attractive places which allow direct contact with the natural environment, protect landscape character and ensure that new development integrates well with existing development.

#### *Living conditions*

10. The proposed properties would be located a significant distance from the existing properties. There are a number of properties which have windows which overlook the appeal site and rear garden areas directly adjacent to the site. However, given proposed size, position and location of the properties, the proposal would not adversely compromise the living conditions of the occupiers of neighbouring properties with regards to overshadowing, outlook and privacy.

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<sup>1</sup> Local Planning Authority Reference: 2/2017/0279

11. The level of activity associated with the proposed residential development, including vehicle movements from residents, visitors, deliveries and car headlights would differ from the current situation. I also note that the proposed estate road would run close to neighbouring properties. However, the level of activity associated with eleven properties would not be dissimilar to the existing activities experienced at Little Croft, Abbey Court and Castle Close. The amount of traffic and general activities associated with eleven properties would not unduly disturb the existing tranquil experience of the area nor would it lead to a level of noise and disturbance that would harmfully affect the living conditions of the occupiers of neighbouring properties.
12. The Council have referred to an Inspectors decision relating to a refused housing application 2/2012/0838 in Dean. I do not have the full details of this appeal decision or the housing scheme and therefore cannot be sure that it represents a direct parallel with the proposed scheme, particularly with regards to location and relationship with neighbouring properties. Nevertheless, this appeal has been determined on its own merits.
13. The proposal would not have a harmful effect on the living conditions of occupiers of neighbouring properties in respect of outlook, privacy, overshadowing, noise and disturbance. The proposal would accord with Policies S4 and S32 of the Allerdale Local Plan (Part 1) 2014 and the Framework which seeks proposals to safeguard the amenities of occupiers of both proposed and existing properties.

#### *Public Rights of Way*

14. Public Bridleway 262006 and Public Footpath 262005 both cross the appeal site and are proposed to be realigned to accommodate the proposed development. The Council's Countryside and Access Officer has indicated that the ability to travel along the Bridleway and Footpath would be unaffected by the proposed development.
15. There are concerns that the development would adversely affect the experience and enjoyment of the Bridleway and Footpath and their recreational value. I do not consider the recreational value of the appeal site to be particularly high. Given the sites topography, the main use of the appeal site would likely be walking and exercising of dogs. There are other fields in the area which offer similar recreational experiences to which the appeal site offers.
16. The proposal would alter the experience of the Bridleway and Footpath within the site from a rural to a built environment. However, this would only be for a short distance and the rural environment and experience would be apparent once a pedestrian left the south boundary of the site. Given the rural landscape environment which bounds the appeal site to the south and east, the proposal would not have an adverse effect on the experience and enjoyment of the Bridleway and Footpath.
17. The proposed development would not have a harmful effect on the experience, enjoyment and recreational value of the Bridleway and Footpath. The proposal would not be contrary to Policies S2, S24 and S33 of the Allerdale Local Plan (Part 1) 2014 and the Framework which seeks development to increase the opportunities to make journeys by foot or cycle, promote high quality, attractive places allowing everyone to enjoy direct and regular contact with the natural environment.

### *Section 106 Agreement*

18. A signed and sealed section 106 legal agreement has been submitted which secures the provision of affordable housing on the site. The appellant and Council are agreeable to this obligation.
19. It is necessary that I consider this obligation against the three tests set out in the Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010. All new housing development brings about demand for affordable housing and this is supported by Policy S8 of the Allerdale Local Plan (Part 1) 2014 which seeks housing development of 10 dwellings or more to require to make provision for 20% affordable housing. I am therefore satisfied that the proposed obligation would be necessary to make the development acceptable in planning terms. Furthermore, on the evidence before me, it would be directly related, and fairly and reasonably related in scale and kind, to the development proposed. The obligations meet the relevant tests. I have therefore attached weight to this contribution in reaching my decision.

### *Other matters*

20. Other concerns have been raised, including the effect of the proposal on vehicle traffic, highway junctions, parking, wildlife and habitat, housing demand, schools, surface water and drainage. I have given careful consideration to these matters and also note that Council Officers have not raised any substantial objections. These matters do not lead me to a different overall conclusion on the main issues or give me cause to withhold planning permission.
21. I have had regard to the previous planning applications that have been refused. However, I do not have full details of these development schemes or the circumstances that led to them being refused and so cannot be sure that they represent a direct parallel to the appeal proposal, including in respect of relationship with the built and natural environment and development plan policy. In any case, I have determined this appeal on its own merits.

### **Conditions**

22. The conditions imposed are those which have been suggested by the Council with the appellant in agreement. In the interests of precision and clarity I have undertaken some minor editing and rationalisation.
23. In addition to the standard timescale condition, I have imposed a condition specifying the relevant drawings as this provides certainty. To prevent undue risk to the local environment it is necessary to attach conditions relating to surface water run-off, flooding and contamination. In the interests of highway safety I have attached conditions relating to the construction of the roads, footpaths and turning areas, as well as access gates.
24. To protect the living conditions of occupiers of neighbouring properties it is necessary to include conditions in respect of a construction management plan. In order to ensure a satisfactory appearance, I have included conditions relating to materials and means of enclosures. Finally, in the interests of safeguarding ecological interest and biodiversity a condition is included to ensure the recommended arboricultural and ecological mitigation is adhered to.

## **Conclusion**

25. For the reasons set out above, the proposed development would accord with the development plan and therefore having had regard to all other matters raised the appeal should be allowed.

*Chris Baxter*

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: 18.019-005 C - Proposed Site Plan (dated 08.11.18); 18.019-006 B - Proposed Site Plan 1 of 2 (dated 08.11.18); 18.019-007 B - Proposed Site Plan 2 of 2 (dated 08.11.18); 18.019-008 A - Proposed Site Sections (dated 30.10.18); 18.019-009 A - House Type A (dated 14.11.18); 18.019-010 A - House Type B (dated 14.11.18); 18.019-011 A - House Type C (dated 14.11.18); 18.019-012 - Boundary Details; 18.019-014 A - Site Location Plan (dated 30.10.18); 18.019-015 - House Type D (dated 14.11.18).
- 3) Before development commences, details of surface water drainage including ongoing maintenance, management and discharge rates (demonstrating no greater run-off than the greenfield rate) shall be provided to the Local Planning Authority and approved in writing. The drainage for the development hereby approved, shall be carried out in accordance with the principles set out in the submitted Flood Risk Assessment ref: SHF.1544.001.HY.R.002.A, dated September 2018 proposing surface water discharging into watercourse. No surface water will be permitted to drain directly or indirectly into the public sewer. Any variation to the discharge of foul shall be agreed in writing by the Local Planning Authority prior to the commencement of the development. The development shall be completed in accordance with the approved details.
- 4) Further to the Phase 1 Desk Top and Coal Mining Risk Assessment ref 18-185, all necessary site investigation works within the site boundary must be carried out to establish the degree and nature of the contamination and its potential to pollute the environment or cause harm to human health. The scope of works for the site investigations should be agreed with the Local Planning Authority prior to their commencement.
- 5) Any contamination found which poses unacceptable risks to human health, controlled waters or the wider environment, no development shall take place until a detailed remediation scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme must include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan.
- 6) Should a remediation scheme be required, the approved strategy shall be implemented, and a verification report submitted to and approved in writing by the Local Planning Authority, prior to the development (or relevant phase of development) being brought into use.
- 7) In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported immediately to the Local Planning Authority. Development on the part of the site affected must be halted and a risk assessment carried out and submitted to and approved in writing by the Local Planning Authority. Where unacceptable risks are found remediation and verification schemes

shall be submitted to and approved in writing by the Local Planning Authority. These shall be implemented prior to the development (or relevant phase of development) being brought into use. All work shall be undertaken in accordance with current UK guidance, particularly CLR11.

- 8) Notwithstanding the submitted Construction Method Statement, before development commences, further details shall be provided to the Local Planning Authority and approved in writing to confirm:

- a) No work being undertaken on Sundays or Bank Holiday.
- b) Compliance with BS 5228-1:2009+A1:2014 Code of Practice for noise and vibration control on construction sites.

The development shall be undertaken in full accordance with the approved construction management plan and its amendment subject of this condition.

- 9) The carriageway, footways, footpaths, bridleway etc. shall be designed, constructed, drained and lit to a standard suitable for adoption and in this respect further details, including longitudinal/cross sections, shall be submitted to the Local Planning Authority for approval before work commences on site. No work shall be commenced until a full specification has been approved. These details shall be in accordance with the standards laid down in the current Cumbria Design Guide. Any works so approved shall be completed before the development (or any phase of development) is complete. In that respect a phasing plan shall be provided to demonstrate the progression of development.
- 10) No dwellings or buildings or structures shall be commenced until the access roads, as approved, are defined by kerbs and sub base construction.
- 11) No dwellings shall be occupied until the estate road including clearance strips to serve such dwellings have been constructed in all respects to base course level and street lighting where it is to form part of the estate road has been provided and brought into full operational use.
- 12) The access drive shall be surfaced in bituminous or cement bound materials, or otherwise bound and shall be constructed and completed before the development is occupied/brought into use.
- 13) Access gates, if provided, shall be hung to open inwards only away from the highway.
- 14) Full details of the highway surface water drainage system shall be submitted to the Local Planning Authority for approval prior to development being commenced. Any approved works shall be implemented prior to the development being completed and shall be maintained operational thereafter.
- 15) No dwelling hereby approved shall be occupied until the vehicular access, parking and turning requirements for that dwelling has been constructed in accordance with the approved plan and have been brought into use. The vehicular access, parking and turning provisions shall be retained and capable of use at all times thereafter and shall not be removed or altered without the prior consent of the Local Planning Authority.

- 16) No part of the development hereby permitted shall be constructed above plinth level until details of all external and roofing materials have been submitted to and approved by the Local Planning Authority. Only the materials so approved shall be used in the development as approved.
- 17) Notwithstanding the submitted plans, details of the siting, height and type of all means of enclosure/screen walls/fences/other means of enclosure shall be submitted to and approved by the Local Planning Authority prior to the occupation of any dwelling(s). Any such walls/fences etc shall be constructed prior to the approved building being brought into use/occupied. All means of enclosure so constructed shall be retained and no part thereof shall be removed without the prior consent of the Local Planning Authority.
- 18) The development shall be undertaken only in full accordance with the mitigation and recommendations within the submitted arboricultural and ecology reports.