

---

## Appeal Decision

Site visit made on 28 October 2019

**by C Coyne BA (Hons) DipTP MRTPI**

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

**Decision date: 11<sup>th</sup> December 2019**

---

**Appeal Ref: APP/A2335/W/19/3235804**

**Land to side of 5 Main Road, Nether Kellet LA6 1HG**

- 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 Lee Ogley (Fellside Land Developments Ltd) against the decision of Lancaster City Council.
  - The application Ref 19/00217/FUL, dated 18 February 2019, was refused by notice dated 13 May 2019.
  - The development proposed is construction of 4 new dwellings.
- 

### Decision

1. The appeal is allowed and planning permission is granted for the construction of 4 new dwellings at land to side of 5 Main Road, Nether Kellet LA6 1HG in accordance with the terms of the application Ref 19/00217/FUL, dated 18 February 2019, subject to the conditions set out in the Schedule to this decision.

### Application for costs

2. An application for costs was made by Mr Lee Ogley (Fellside Land Developments Ltd) against Lancaster City Council. This application is the subject of a separate Decision.

### Main Issue

3. The main issue in this case is the effect of the proposed development on the character and appearance of the area.

### Reasons

4. The appeal site comprises a portion of what appears to be agricultural land located at the western edge of the village of Nether Kellet. Several detached dwellings are directly adjacent to the eastern site boundary. There are also detached dwellings directly opposite the appeal site across Main Road to the south. The ground levels across the site vary with the gradient decreasing towards the north and northwest. The apparent agricultural land is directly adjacent to the site's western boundary beyond which the gradient decreases sharply towards an area of marshy ground bordered by mature trees to the west and south and a sewage treatment works to the north. The M6 motorway lies further to the west behind the row of mature trees.

5. The proposed dwellings would be of a design similar to those recently constructed at Briar Lea Road located close to the appeal site. The ground level for the proposed dwellings would be lower than the existing site level meaning that their height would be similar to that of the neighbouring dwellings to the east. Consequently, it is proposed to construct a retaining wall running along the southern and western site boundaries with landscaping comprising trees and shrubs behind it.
6. It is not disputed that the proposed development would be visible from Main Road particularly when travelling from the east. Indeed, given the appeal site's location in relation to Main Road it is reasonable to think that there would be an impact in relation to the character and appearance of the area. However, given the fact that there are existing dwellings to the south and east of the appeal site which are already clearly visible from Main Road, I consider that the proposed development would be in keeping with the established development pattern at this end of the village. I also consider that the design of the proposed dwellings would be in keeping with those in the surrounding area thereby positively contributing to the identity and character of the area.
7. The appeal site is not within a nationally designated landscape or a locally important key urban landscape. Additionally, given the ground levels of the proposed development and the extent of the proposed landscaping the proposed low-set dwellings would not be visible from the land further to the northwest or indeed from the public footpath located further to the west.
8. Consequently, the proposed development would be in scale and keeping with the existing landscape character and appropriate to its surroundings. As such, it would not result in harm to the character and appearance of the area.
9. I therefore conclude that the proposed development is in accordance with Policies DM28 and DM35 of the Lancaster Local Plan Development Management Document (adopted December 2014) which amongst other things seek to protect important landscapes and ensure that new development makes a positive contribution to the identity and character of an area through good design.

### **Other Matters**

10. I note the Council's reference to a previous appeal decision for a similar proposal which was dismissed. I do not have all the details of this case before me or the circumstances which led to that decision being taken. In addition, the circumstances applicable to the Lea Lane scheme<sup>1</sup> (effect of proposed development on living conditions as a main issue) are not exactly the same as those presented in this case, which I have determined on its own merits.
11. I note the point raised by the Council in relation to the density of the proposed development being considered too high. However, based on the evidence before me the proposed density would be approximately 20 dwellings per hectare. This would be appropriate for the appeal site and generally in-keeping with residential development within the surrounding area.

---

<sup>1</sup> Council Statement of Case.

## **Conditions**

12. I have imposed conditions as set out in the attached schedule in light of the use of planning conditions set out in the National Planning Policy Framework and national Planning Practice Guidance. I have undertaken some minor editing and rationalisation of the conditions proposed by the Local Planning Authority in the interests of precision and clarity. Conditions relating to the commencement of the development and ensuring compliance with the approved plans are necessary in the interest of clarity. A condition relating to the submission of surface water drainage is reasonable and necessary in order to protect the living conditions of the future occupiers of the proposed dwellings.
13. Conditions requiring the submission of samples in relation to materials and details in relation to: floor levels; means of enclosure and retaining structures; lighting or floodlighting; boundary treatments; rainwater goods; ridge, verge and eaves; external windows and doors; vehicle parking layouts; areas to be hard surfaced and the proposed hard surfacing materials; an implementation programme, including phasing of work where relevant; and a management and maintenance scheme, are necessary in order to protect the character, appearance and amenity of the area.
14. Conditions relating to the proposed landscaping and planting of trees ensuring compliance with the approved Tree Protection Plan/Arboriculture Method Statement and Planting Plan are reasonable in the interests of protecting the amenity of the area. In addition to these, conditions in respect of the hours of construction and related deliveries are necessary and reasonable in order to protect the living conditions of neighbouring occupiers.
15. The Council have suggested a condition removing permitted development rights in relation to any extension or enlargement of the buildings permitted or the erection of any building, enclosure, wall, fence or gate or the laying of any hardstanding to the front of the permitted dwellings. However, such a condition is not necessary as the other conditions imposed would ensure that the proposed development would not adversely affect the character, appearance or amenity of the area.

## **Conclusion**

16. For the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be allowed.

*C Coyne*

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: Location Plan; Proposed Site Plan (5649-002G); Proposed Plans and Elevations (5649-003C); Proposed Section-A (5649-006B); Proposed Section-B (5649-008); Proposed Section-C (5649-009); Proposed Site Plan Visibility Splays (5649-007A); Tree Protection Plan/Arboriculture Method Statement Version 2; and Planting Plan Version 2.
- 3) No building hereby permitted shall be occupied until surface water drainage works have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
  - i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
  - ii) include a timetable for its implementation; and,
  - iii) provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 4) No development above foundation level shall take place until full details of the finished levels, above ordnance datum, of the ground floors of the proposed buildings, in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.
- 5) No development above foundation level shall take place until a sample panel of the materials to be used in the construction of the external surfaces shall have been prepared on site for inspection and approved in writing by the local planning authority. The sample panel shall be at least 1 metre x 1 metre and show the proposed material, bond, pointing technique and palette of materials (including stone, roofing, cladding and render) to be used in the development. The development shall be constructed in accordance with the approved sample, which shall not be removed from the site until completion of the development.
- 6) No development above foundation level shall take place until the following details have been submitted to and approved in writing by the local planning authority:
  - means of enclosure and retaining structures;

- lighting or floodlighting;
- boundary treatments;
- rainwater goods;
- ridge, verge and eaves;
- external windows and doors;
- vehicle parking layouts;
- areas to be hard surfaced and the proposed hard surfacing materials;
- an implementation programme, including phasing of work where relevant.

The development hereby permitted shall be carried out in accordance with the approved details before any part of the development is first occupied in accordance with the agreed implementation programme. The completed scheme shall be managed and maintained in accordance with an approved scheme of management and maintenance.

- 7) The development hereby permitted shall be carried out in accordance with the approved Tree Protection Plan/Arboriculture Method Statement, prepared by Yew Tree & Gardens, Version 2, dated 5 February 2019 and the protection measures within it. The protection measures shall be fully implemented prior to any equipment, machinery or materials being brought onto site, retained in situ for the duration of the works, and only removed once the development is complete and all machinery and works material removed from the site.
- 8) The development hereby permitted shall be carried out in accordance with the approved Planting Plan prepared by Yew Tree & Gardens, Version 2 dated 31 January 2019 (amended 5 February 2019). The Planting Plan shall be fully implemented in the first planting season following the completion of the development.
- 9) Demolition or construction works shall take place only between 0800 - 1800 Monday to Friday and between 0800 - 1400 on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 10) Deliveries shall be taken at or despatched from the site only between 0800 - 1800 Monday to Friday and between 0800 - 1400 on Saturdays, and not at any time on Sundays or on Bank or Public Holidays.