



Appeal Decision

Site visit made on 7 January 2020

by Jillian Rann BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 February 2020

Appeal Ref: APP/Q9495/W/19/3230411

Oldfield House, Oldfield Road, Windermere LA23 2BY

- 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 Jonathan Blackburn against the decision of Lake District National Park Authority.
 - The application Ref 7/2018/5585, dated 19 September 2018, was refused by notice dated 7 December 2018.
 - The development proposed is described as: "1. Alterations & change of use from guest house (C1) to residential (C3) to facilitate the development of four apartments; 2. Retention of and alterations to cottage; 3. New dwellinghouse; 4. Transfer of unfettered planning unit from cottage to new dwellinghouse".
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The site is within the Lake District National Park and the Lake District World Heritage Site. An EIA Screening Opinion has been issued by the Authority, concluding that an Environmental Statement is not necessary in this case. On the basis of the proposal and details before me I agree.

Main Issues

3. The main issues are:
 - whether the proposed development would make appropriate provision for affordable housing, having regard to relevant development plan and national policies;
 - the effect of the proposed development on the character and appearance of the appeal site and its surroundings, including Windermere Conservation Area;
 - the effect of the proposed development on the living conditions of the occupants of Rose House with regard to light, outlook and privacy; and
 - the effect of the proposed development on the safety and convenience of highway users within the site and its vicinity, with particular regard to parking.

Reasons

Affordable housing

4. Policy CS18 of the Lake District National Park Core Strategy including Proposals Map (the Core Strategy), adopted October 2010, states that the Authority will permit new dwellings where they contribute towards meeting an identified local need or local affordable need. The policy's explanatory text clarifies that it will not permit any open market housing. Policy CS18 states that developments on windfall sites for four or more houses must reflect the local affordable need, and that in such cases a maximum of 3 houses for local need will be allowed. The explanatory text clarifies that any further units will be required to contribute to meeting local affordable need.
5. However, the National Planning Policy Framework (the Framework), as updated in February 2019, states that affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer). The 3 unit threshold in Policy CS18 is therefore inconsistent with the Framework.
6. The Authority has subsequently updated its Housing Provision Supplementary Planning Document: How we use Core Strategy Policy CS18 'Housing Provision' in planning decisions (the Housing SPD) to reflect the provisions of the Framework. The updated Housing SPD states that the Framework's 5 unit threshold has been adopted by the Authority as a material consideration, with the expectation that all units in excess of 5 on windfall sites will be local affordable needs units (with the first 5 being local needs units).
7. As the updated Housing SPD's provisions are thus consistent with the Framework, I afford it considerable weight as a material consideration which clarifies the interpretation of Policy CS18. Accordingly, I have applied Policy CS18 on the basis of the requirements and thresholds as set out in the Housing SPD with regard to local needs and local affordable needs provision.
8. The appeal relates to a guest house, the owners of which live in an attached building. The appeal proposal includes the conversion of the guest house into 4 apartments, with that attached owner's accommodation forming a fifth residential unit, and a new dwelling on the car park. The resultant 6 residential units would exceed the 5 dwelling threshold above which local affordable needs provision is required in accordance with the Housing SPD. However, whilst not disputing the interpretation of Policy CS18 as set out in the Housing SPD, the appellant contends that the owner's accommodation is a separate dwellinghouse at present, and that the development would therefore create only 5 *new* residential units. On that basis, the appellant considers that the development would be below the threshold for affordable local needs provision.
9. Planning permission was granted in 1992 for a development described as 'alteration to outbuilding to form living room and store below'¹. That permission related to the building which now forms the owners' accommodation, and was subject to a condition which states 'the accommodation hereby approved shall be and remain ancillary to the use of Oldfield House and form part of the curtilage of Oldfield House as a single planning unit'.

¹ Application reference: 7/1992/5342

10. I have had regard to the *Gravesham* judgment cited by the appellant², which refers to a distinctive characteristic of a dwelling house as being its ability to afford to those who use it the facilities required for day-to-day private domestic existence. However, whilst the owners' accommodation may contain such facilities, in this case the accommodation in that building was permitted only as an ancillary component of the guest house use, and its occupation is explicitly restricted by condition to being part of that guest house as a single planning unit.
11. There has been no subsequent application to remove that restrictive condition, and a recent application for a Certificate of Lawful Use, seeking to establish the owners' accommodation as an independent dwelling, was refused by the Council. Therefore, notwithstanding the facilities therein, it has not been demonstrated to me that the occupation of the owners' accommodation as a self-contained dwelling or separate planning unit from the guest house would be consistent with the terms of the 1992 permission, or that its use as such has otherwise been established.
12. The owners' accommodation is connected to the guest house via an internal door and, whilst the appellant may work elsewhere, a statutory declaration submitted by his partner states that she is responsible for the guest house's operation. Consequently, from the evidence before me, I consider that the owners' accommodation maintains physical and operational links with the guest house at present. I understand that the guest house is not occupied or used for several months of the year. However, a period of non-occupancy does not alter or extinguish its guest house use, and the ongoing occupancy of the owners' accommodation during those periods is not sufficient to establish it as a separate, independent dwelling.
13. The owners' accommodation has a separate land registry title from the guest house. However, that appears to be because the building was purchased separately at some time in the past as an addition to the pre-existing guest house use. The existence of separate titles is not in itself sufficient to establish the owners' accommodation as a separate or independent planning unit, particularly having regard to the occupancy condition on the 1992 permission, which created a specific planning link between the two buildings in this case.
14. I have been advised that business rates are paid for the guest house, whilst Council tax is paid for the owners' accommodation. Be that as it may, I cannot be certain that the criteria used to define the owners' accommodation as residential for Council tax purposes are directly comparable to those required to establish it as an independent residential unit for planning purposes. As such, the matter does not alter my conclusions above, which are based on the planning merits of the case.
15. Drawing those threads together, on the basis of the evidence before me and my own observations, and having regard to the site's planning history, I conclude that the owners' accommodation is an ancillary component of the site's lawful use as a guest house, and does not comprise a separate, independent dwellinghouse in this case.
16. Accordingly, when taken together with the other 5 residential units proposed, the use of the owner's accommodation as a self-contained dwelling would

² *Gravesham Borough Council v SSE and Another* [1984] 47 P.&C.R. 142

result in a total of 6 new dwellings on the site. Consequently, there is a requirement for one of those units to be provided and secured as a local affordable needs dwelling in accordance with the terms of Policy CS18, as clarified in the Housing SPD, in addition to the dedication of the remaining 5 as local needs dwellings.

17. The Housing SPD states that a Section 106 Agreement will be required for local affordable need housing. I have no such agreement before me, nor any suggestion as to how the required local affordable needs dwelling might otherwise be secured, delivered and subsequently retained. Therefore, for the reasons given, I conclude that the proposed development would not make appropriate provision for affordable housing, having regard to Policy CS18 of the Core Strategy, and to the Framework and the Housing SPD as further material considerations.

Character and appearance

18. The guest house is a two storey stone building with gables to the front and side, a bay window facing Oldfield Road, and flat-roofed dormers to the front, side and rear. The owners' accommodation occupies a two storey stone outbuilding to the rear, set back from the surrounding road frontages and attached to the main guest house building by a single storey link corridor.
19. The site is in Windermere Conservation Area (the WCA), and is identified as a building contributing to the special character of the WCA. Surrounding buildings are predominantly Victorian and vary in size. However, there is some consistency in their detailing, including bay windows and front gables, and in the use of stone in their construction, with some also having elements of light coloured render. More recent infill development, such as Rose House adjacent to the site, is generally sympathetic to that established character in its materials and features. Those existing buildings, including the appeal building, therefore give this part of the WCA a strong, attractive character and consistency of appearance which contributes to its significance.

Extended dormer

20. The extended dormer would span more than half of the width of the appeal property's side roof slope, and would extend to some height, despite being set up from the eaves and down from the ridge. Therefore, and also as a result of its flat-roofed design, the dormer would have a significant bulk and massing, and would appear as a disproportionate feature which would unduly dominate the side elevation of the building's roof, and would be highly prominent in views of the building from Oldfield Road and Lake Road.
21. Its width would also give the extended dormer an unduly horizontal emphasis, which would not reflect the scale or vertical proportions of the windows on the lower floors of the appeal building. Nor would the wider dormer maintain a sense of proportion or alignment with the dormers on the side of the neighbouring building below it, as the existing side dormer does currently.
22. The appeal building has existing flat-roofed dormers to the front, side and rear. However, those existing dormers are relatively large and bulky in relation to the property's roof form and contribute little to its appearance at present, and their presence does not offset or justify the harm to the building and the WCA which would arise as a result of the larger, wider dormer now proposed.

23. The enlarged dormer would therefore appear discordant, even in the context of the somewhat varied surrounding roofscape and other existing dormers nearby, and would detract from the character and appearance of the appeal site and its surroundings, including the WCA.

New dwelling

24. With a stone frontage and rendered side walls, and a front gable and bay window, the detailing and materials of the proposed dwelling would be sympathetic to those of the neighbouring property at Rose House and other older properties within the WCA. Its front door would be set back within the site, but would nonetheless face towards, and be visible from, Lake Road, thus providing a clear entrance to, and sense of arrival at the property.
25. Whilst the dwelling would extend some distance back into the site, its depth would not be significantly greater than that of the properties on either side, and would be broken up to some degree by the rear parts of the building stepping out to either side. The front part of the building adjacent to Lake Road would be relatively narrow. However, its rear section, set further back into the site, would be wider, and overall the building would not appear incongruous in a street scene of properties which already have some variety in their width and layout, including forward-projecting gables of various depths.
26. The dwelling's side elevations would contain few openings. However, they would be largely screened from view by adjacent buildings on either side, and would not feature prominently in the wider street scene, or detract from its character or appearance. Whilst parts of the dwelling would be quite close to its side boundaries, sufficient space would nonetheless remain around the building to maintain a sense of separation between it and adjacent buildings, and it would not appear unduly cramped within its wider context, where other existing buildings are similarly located close to their side boundaries.
27. Therefore, the proposed new dwelling would not cause harm to the character or appearance of the appeal site or its surroundings, including the WCA.

Character and appearance – conclusion

28. I conclude that the new dwelling would preserve the character and appearance of the site and its surroundings, including the WCA. However, for the reasons given, I conclude that the extended dormer would cause harm to the character and appearance of the appeal building and its surroundings, including the WCA. Having regard to my duty under section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, I must give considerable weight to that harm, and to the presumption that preservation is desirable.
29. The effects would be relatively localised, and the harm to the WCA as a whole would be less than substantial. Nevertheless, I must have regard to the significance of the WCA, and the Framework requires any such harm to be weighed against the public benefits of the proposal.
30. The extended dormer would enlarge the usable area within one of the proposed flats which, together with the other units proposed, would contribute to local housing supply. However, the additional accommodation achieved would be very limited and, from the details before me, I am not convinced that it would be the only means of delivering an acceptable conversion scheme for the guest house. Therefore, the public benefits arising from the development would be

very limited, and would not outweigh the harm arising to the WCA in this instance. Nor would the removal of a timber shed from elsewhere in the site offset the harm that would arise from the large, highly prominent dormer.

31. The proposal would therefore conflict with Policy CS27 of the Core Strategy and saved Policy BE11 of the Lake District National Park Local Plan. Amongst other things, those policies require development proposals to conserve and enhance the character and integrity of the historic environment, and state that to avoid harm to conservation areas proposals need to respect the character or appearance of the locality by reason of their scale and proportion. The proposal would also conflict with the Framework, which requires that account should be taken of the desirability of sustaining and enhancing the significance of heritage assets in determining applications, and with the National Design Guide, which refers to well-designed new development responding positively to the features of the site and the surrounding context, including form and scale.

Living conditions

32. The proposed two storey dwelling would extend back into the site for some distance. However, the tallest, deepest part of the building, and thus the majority of its bulk and massing, would be located away from the site's boundary with Rose House. The part of the dwelling closest to Rose House would be much more limited in depth, with lower eaves and a pitched roof sloping away from that neighbouring property and its side windows which face the site.
33. Therefore, any reduction in the levels of daylight reaching the side windows of Rose House would be of limited extent and duration, and would not be sufficient to justify withholding permission on those grounds. Furthermore, as the dwelling would be located roughly to the north east of Rose House, it would not adversely affect the levels of sunlight reaching that neighbouring property.
34. The eaves of the part of the dwelling closest to Rose House would be roughly level with the sill of the neighbouring property's first floor windows, and its roof would slope away from them. It would therefore not appear oppressive or have an overbearing effect on those neighbouring first floor windows, which would maintain wider views over the dwelling's roof to either side. The limited depth of the part of the dwelling closest to Rose House means that the neighbouring ground floor windows would maintain some outlook across its front drive and rear garden, even were they not obscure-glazed as they are at present. Therefore, and as the taller, deeper part of the dwelling would be located further from those windows, it would not have an unduly dominant or overbearing effect on those windows or the rooms they serve.
35. The patio doors and balcony in the side elevation of the proposed dwelling would be set some distance away from the boundary with Rose House, and oriented roughly perpendicular to its rear elevation. They would therefore principally look out across the drive to the rear of Rose House, and would not allow direct views into its rear windows or over its private amenity area, which is at the front of that neighbouring property. The patio doors and balcony would also be offset from the side windows of Rose House which face the site. Any views from those areas towards the side-facing rooms of Rose House would thus be limited to oblique angles, and would likely be screened to some degree by the proposed dwelling's side projection, which would extend

alongside and beyond them towards Rose House. Overall therefore, those areas would not result in a harmful degree of overlooking of Rose House.

36. The dwelling's other side windows facing Rose House would serve a utility room, and as a secondary window to a lounge. The privacy of neighbouring occupants could thus be protected via the use of obscure glazing in those openings, which could be secured by condition.
37. Therefore, for the reasons given, I conclude that the proposed development would not have an adverse effect on the living conditions of the occupants of Rose House with regard to light, outlook or privacy. No specific conflict with development plan policies has been drawn to my attention. However, the proposal would not conflict with the Framework, which states that planning decisions should ensure that developments create places with a high standard of amenity for existing and future users.

Safety and convenience of highway users

38. The property's existing parking area is relatively small with only limited space for vehicles to turn within it. However, on the basis of the information before me and my own observations, I consider that the car park could accommodate at least 3 cars at present, as has been suggested by the Council.
39. The proposed development would have only one off-street parking space, a level of provision significantly below that recommended in the Cumbria Development Design Guide (CDDG), which the Council has calculated to be around 9 spaces based on the proposed development. Therefore, as 5 of the 6 properties would have no off-street parking, the development could lead to a significant amount of overspill parking taking place on surrounding streets.
40. I have been referred to photographs showing areas of nearby streets without any parked vehicles. However, those photographs represent only a single point in time and, although there are no parking restrictions on surrounding streets, I have not been presented with substantive survey evidence demonstrating that those streets would consistently have adequate capacity to accommodate the levels of on-street parking likely to arise from the proposed development.
41. Therefore, on the basis of the evidence before me, I consider that on-street parking associated with the development could lead to inconvenience to existing residents, some of whom have no off-street parking, as a result of their having to park further from their homes. Furthermore, having regard to the somewhat limited width of some nearby streets, additional on-street parking could also increase the likelihood of obstruction to the free and safe movement of vehicles in the vicinity of the site.
42. The appellant estimates that the guest house and owner's accommodation could generate up to 10 vehicles. However, as those figures appear to relate to 'peak' occupancy of the guest house, I cannot be certain that they indicate typical occupancy levels. Furthermore, that existing use benefits from more off-street spaces than the proposed development. Therefore, whilst the existing lawful use may generate some on-street parking, from the somewhat limited evidence before me I am not convinced that its effects would be directly comparable to the proposed development, including with regard to the amount of on-street parking and the times it was most likely to take place. The weight I afford to that existing use is therefore limited.

43. The site is within walking distance of Windermere town centre. However, I have no substantive evidence before me to indicate that car ownership in the area, or amongst occupants of dwellings of the types and sizes proposed, is such that a lower level of parking provision would be acceptable in this instance.
44. I have been referred to two recent permissions granted by the Council³. I have received very little information regarding those cases. However, one appears to have related to a change of use of a residential retreat to a hotel, and the other appears to have been determined before the adoption of the parking guidelines in the CDDG. Therefore, on the basis of the evidence before me, I cannot be certain that the circumstances in those cases were directly comparable to those in the case before me, including with regard to the nature of the proposals and the policy context in which they were considered. In any event, I have determined the current appeal on its own planning merits.
45. Therefore, for the reasons given, on the basis of the evidence before me and my own observations, I conclude that the proposed development would have an unacceptable impact on the safety and convenience of highway users within the site and its vicinity, with particular regard to parking. No specific conflict with development plan policies has been drawn to my attention. However, the proposal would conflict with the Framework, which states that development should minimise the scope for conflict between pedestrians, cyclists and vehicles, and create places that are safe, with a high standard of amenity for existing and future users.

Other Matters and Planning Balance

46. I have been advised that the guest house has been the subject of recent marketing which failed to generate prospective purchasers. However, those circumstances do not alter my conclusions regarding the harm that would arise from the particular redevelopment proposal before me.
47. For the reasons given, I conclude that the extended dormer would cause harm to the character and appearance of the appeal building and the WCA, which is not outweighed by public benefits. I have also found harm to highway safety, and conflict with development plan policy with regard to affordable housing.
48. The development would create 6 new dwellings, and contribute to the supply of local housing in an existing settlement close to local shops and facilities. However, the benefits arising from the relatively small-scale proposal would be modest, and would not outweigh the harm I have identified in this case.
49. I conclude that the proposed dwelling would not cause harm to character or appearance, or to the living conditions of neighbouring residents. However, the absence of harm in those respects is neutral, rather than a factor weighing in favour of the proposal.

Conclusion

50. For the reasons given, and having regard to all other matters raised, the appeal is dismissed.

Jillian Rann
INSPECTOR

³ Application references: 7/2018/5156 and 7/2017/5071