



Appeal Decision

Site visit made on 10 March 2020

by Patrick Hanna MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 March 2020

Appeal Ref: APP/W0910/W/19/3232017

Land to the south of Elkstone Avenue, Barrow-in-Furness LA14 5BX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Alistair Wilcock of Mullberry Homes Ltd against Barrow-In-Furness Borough Council.
 - The application Ref B13/2018/0803 is dated 26 November 2018.
 - The development proposed is erection of five dwellings, four of two-storey four-bed units, and one of single storey one-bed unit.
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Decision

1. The appeal is dismissed and planning permission is refused.

Procedural Matters

2. Barrow-in-Furness Borough Council (the Council) adopted the Barrow Borough Council Local Plan (LP) on 4 June 2019, prior to the current appeal. The saved policies of the Local Plan Review are therefore deleted.
3. Amended site layout Ref TR/800A was submitted with the appeal but did not form part of the original application. As this proposes development outside the site boundary as shown in red on the location plan, I am not satisfied that those who should have been consulted on the changed development have had the opportunity of such consultation. As such, I have assessed the appeal on the basis of the original drawings. Written submissions also indicate that the scheme is yet to be fully designed out, however, the application is for full planning permission and I have assessed the appeal on that basis.

Main Issues

4. From the evidence before me, I consider that the main issues are the effect of the proposal on (a) the character and appearance of the surrounding area, with regard to landscape features and floor levels; (b) drainage of surface water; (c) the safety of road users and connectivity; and (d) protection of biodiversity.

Reasons

Character and appearance

5. The appeal site comprises two elements, firstly, a grassed area sloping gently down to the south and, secondly, a strip of land currently occupied by fenced tennis courts to the west of the appeal site. To the north, a new residential

- development is under construction; to the south and east is a dense strip of trees, shrubs and hedgerow, with a public footpath and dwellings beyond. The effect of the proposal would be to extend the residential development into the grassed area and part of the tennis courts, with land levels raised to the south.
6. The significance of the existing landscaping features, which are largely self-seeded, and their contribution to the character and appearance of the surrounding area, is limited, with the exception of the mature trees. Whilst some trees would be lost within the southern part of the site, those along the western boundary are shown to be retained. Submissions indicate that new trees are also proposed, along with native hedgerow boundaries. Overall, I am satisfied that appropriate landscaping could be secured by condition.
 7. Road levels will be raised to the south, resulting in the road being up to some 1.67 metres higher than existing ground levels, with the floor level at plot 5 being some 2 metres higher, and a retaining wall of up to some 1.6 metres in height is proposed around much of the periphery of the site. This would result in the proposed road and dwellings being sited on a form of plateau above the surrounding area. As a consequence, the overall prominence of the proposal would increase such that it would be out of keeping with the character and appearance of the lower surrounding area.
 8. I conclude that the proposal would not have an adverse effect on the character and appearance of the surrounding area with regard to landscape features, however, there would be a significant adverse effect with regard to floor levels. As such, the proposal conflicts with policy H7(c) of the LP, which requires development to be well designed in response to the surrounding area.

Surface water

9. The submitted drawings show a drainage layout, and United Utilities are satisfied a detailed design can be agreed through planning conditions. On the other hand, the Lead Local Flood Authority object due to a lack of attenuation, and pollution prevention and treatment features, amongst other things, within what is a sensitive Groundwater Source Protection Zone 1. However, it is not clear from the evidence how these necessary features would be adequately provided within the confines of the appeal site or impact upon existing drainage infrastructure. Furthermore, the amended scheme described above suggests that the drainage strategy is not yet resolved. Consequently, I am not persuaded that the drainage proposal, as it stands, is adequate.
10. I conclude that the proposal would have a significant adverse effect on the drainage of surface water in the surrounding area. As such, the proposed development would fail to comply with policy C3a of the LP which requires new development to demonstrate how foul and surface water will be effectively managed so that the impact on the environment is minimised.

Connectivity and highway safety

11. The Council's highways officer is concerned about lack of allowance for any retaining wall or earthworks required adjacent to the road network. However, the drawings show a proposed solution; the new road level would be supported by a retaining wall some 1.6 metres away from the road edge, and the proposed dwelling at Plot 5 would be approximately 0.7 metres away from a retaining wall abutting the footpath. Whilst it is clear that such retaining walls

would need to be heavily engineered to facilitate the proposal, there is no evidence before me to suggest that it is technically unfeasible, notwithstanding the harm identified above in terms of character and appearance. The proposal would not impact unduly on the highway network and, as such, would not adversely affect the safety of road users.

12. The Council indicate that land south of the appeal site is allocated for housing, and the highways officer requires that a link should be provided between the two. No details of any specific policy requirement for such a vehicular link have been provided to me, however, the proposal does fail to promote accessibility by walking and cycling, as opposed to the private car, as no link has been made to the footpath network which runs immediately adjacent to the site.
13. I conclude that the use of the proposed access road would not have an adverse effect on the safety of road users, such that it complies with policy H7(e) of the LP, which requires development to not impact unduly on the highway network. However, the proposed development would have a significant adverse effect on connectivity with the surrounding area, such that the proposal would conflict with policies GI1 and H7(f) of the LP. Together, these require that development should integrate sustainable movement choices.

Biodiversity

14. No evidence has been submitted by the appellant or the Council in respect of existing habitats on the site, or the effect of the proposal on biodiversity. However, as I am dismissing the appeal on other grounds, it is not necessary for me to reach a conclusion on this matter in terms of policy N3 of the LP.

Other matters

15. Inclusion of the site within the Strategic Housing Land Availability Assessment is not determinative to this appeal. The design, density and deliverability of the dwellings, and compliance with privacy, amenity and roads standards are not matters of dispute. Notwithstanding reference made to former paragraph 14 of the National Planning Policy Framework, I have found that the proposal conflicts with an up-to-date development plan. No suggestion has been made that the provisions in paragraph 11(d) and footnote 7 apply, and therefore the proposal does not benefit from the presumption in favour of sustainable development. Representations have been made in respect of differing ownerships within the site, however this is a private matter between the relevant parties and not within my jurisdiction.

Conclusion

16. I have found that the proposal would not have an adverse impact on the character and appearance of the area in terms of landscape features, and would not adversely affect the safety of road users. However, this is outweighed by the harm to the character and appearance of the area caused by raised levels; the adverse effect of the proposal on surface water drainage, and lack of connectivity to the adjacent footpath network. For the reasons given above, I conclude that the appeal should be dismissed.

Patrick Hanna

INSPECTOR