



Appeal Decision

Site visit made on 29 June 2020

by Sarah Manchester BSc MSc PhD MEnvSc

an Inspector appointed by the Secretary of State

Decision date: 21st July 2020

Appeal Ref: APP/H0928/W/20/3246821

Garden ground east of Littlethwaite, Catterlen, Penrith CA11 0BQ

- 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 and Mrs A Bircher against the decision of Eden District Council.
 - The application Ref 19/0821, dated 13 November 2019, was refused by notice dated 10 February 2020.
 - The development proposed is erection of a self-build/ custom-build dwelling with all matters reserved.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr and Mrs A Bircher against Eden District Council. This application is the subject of a separate Decision.

Procedural Matters

3. The application was made in outline with all matters reserved for future consideration.
4. A signed and dated Unilateral Undertaking (UU) pursuant to section 106 of the Town and Country Planning Act 1990 (as amended) has been submitted with the appeal. The UU contains obligations relating to the provision of self-build/ custom-build dwellings and I have therefore had regard to it in reaching my decision.

Main Issue

5. The main issue is whether the appeal site is a suitable location for new residential development, having regard to local and national policy for the provision of new housing.

Reasons

6. The appeal site is undeveloped land adjacent to Littlethwaite, which is a substantial detached property set in generous open grounds with agricultural fields to either side. The road frontage of the appeal site is formed by a continuous stone wall with the remaining boundaries formed by post and rail fences. The appeal site is in Catterlen, which is a small linear settlement with individual dwellings and groups of buildings separated by green space including agricultural fields. It is surrounded by undulating open countryside with fields, hedgerows, scattered trees and areas of woodland.

7. Policy LS1 of the Eden Local Plan 2014-2032 Adopted October 2018 (the LP) sets out the Council's locational development strategy based on the hierarchy of settlements. Catterlen is listed as one of the smaller villages and hamlets, where development of an appropriate scale will be permitted subject to meeting certain listed criteria including where it is restricted to infill sites or rounding off of settlements. Policy HS2 of the LP supports limited infill and rounding off development in the smaller villages, subject to restrictions on floorspace and local occupancy. These are broadly consistent with the policies in the National Planning Policy Framework (the Framework) that require rural housing to be located where it will enhance or maintain the vitality of rural communities, reflecting the different character and roles of different areas.
8. Littlethwaite is widely separated from neighbouring properties and the appeal site forms part of a substantially wide green gap in the settlement. It is not a modest gap between existing buildings and it is not in a built up frontage. The boundaries of the site do not appear to correspond to landscape features such as field boundaries. With the exception of the road frontage, the fenced boundaries appear arbitrary and they are not strong and defensible. Consequently, the site does not have the characteristics of an infill site and the appeal site does not round off the settlement.
9. The submitted plans and photographs appear to show that the appeal site was formerly agricultural land. Although it is differentiated from the adjacent land by fences, the appeal site does not have the appearance of a domestic garden. Nevertheless, it forms part of the grounds of Littlethwaite. Therefore, irrespective of its visual similarity to surrounding greenfield sites, the appeal site is PDL for the purposes of planning policy.
10. As such, there is no requirement for a local occupancy restriction, such as would be required by Policy HS2 for a greenfield site. However, and although all matters are reserved, there is nothing to indicate that the dwelling would be limited to 150m² of internal floorspace. Therefore, the proposal would not accord with the requirements of Policy HS2.
11. Policy HS2 aims to encourage the provision of housing that is affordable for local people. In this respect, proposals for PDL are not subject to local occupancy restrictions in recognition of the increased cost and the visual benefits of developing such sites. However, by restricting the size of the dwelling, the policy nevertheless aims to ensure that it remains reasonably affordable. In this case, there is nothing before me to suggest that the costs of developing it would be significantly greater than on a greenfield site. Furthermore, by virtue of forming part of a characteristic green gap, it already makes a positive visual contribution to the settlement.
12. My attention has been drawn to an appeal decision in Clifton where the Inspector apparently considered that a size restriction on brownfield development was not justified. However, neither the appeal decision nor the details of that case have been provided. I cannot therefore be certain that it is directly comparable to the appeal scheme before me or that it would provide a justification for a proposal that would fail to contribute to the Council's housing aims in this location.
13. There are no services or facilities in proximity to the appeal site. The main town of Penrith is over 5km from Catterlen, which is not well served by public transport. The intervening roads and the distances involved are not conducive

to walking or cycling to access services and facilities in Penrith. Therefore, future occupiers would not meet their reasonable daily needs by sustainable forms of transport. There would be a reliance on private car journeys from this location, including by future occupiers and their private and commercial visitors. There is little before me to demonstrate that the proposal would contribute to supporting services in villages nearby or that it would make any significant contribution to the local community.

14. Therefore, the appeal site is not in a suitable location for new residential development. It would conflict with Policies LS1 and HS2 of the LP which require, among other things, that development is located in accordance with the settlement hierarchy, reflecting the built form and service function of nearby development, and restricted to infill and rounding off development. It would also conflict with policies in the Framework that require housing to be located in areas with accessible services and where it will contribute to the vitality of rural communities.

Planning Balance

15. The Self-Build and Custom Housebuilding Act 2015 (the Act) places duties on local authorities. These include maintaining a register of persons seeking to acquire self-build or custom-build (hereafter referred to as self-build) plots, giving suitable development permission in respect of enough serviced plots of land to meet the demand on the register in each base period, and having regard to the demand when exercising its planning function.
16. For the purposes of the Act, the first base period was 1 April 2016 to 30 October 2016, with each subsequent base period running from 31 October to 30 October the following year. The Council has 3 years from the end of each base period to grant an equivalent number of suitable permissions as there are entries on the register for that period. Therefore, by October 2019, the Council was required to demonstrate that it had met the demand from the first base period, during which time there were 5 entries on the register.
17. In terms of suitable development permissions, the Council considers that it granted planning permission for 21 confirmed self-build dwellings in the period 1 April 2016 to 31 October 2018. However, it appears that these permissions are primarily single dwelling permissions which could be considered as self-build serviced plots. There is no evidence that they are restricted to self-build by legal agreement, as would be secured in this case through the UU. The appellant considers that market-led planning permissions should not count towards meeting the demand on the self-build register, since there is no obligation for such permissions to be developed for self-build housing.
18. The Planning Practice Guidance (the PPG) states that development permission will be suitable if it is permission in respect of development that could include self-build and custom housebuilding. Self-build properties can provide market or affordable housing. I accept that some single dwelling permissions are unlikely to be suitable to meet demand for more affordable or local occupancy self-build housing. However, I am not persuaded that single dwelling permissions are inherently unsuitable for open market self-build housing.
19. Therefore, taking into account the low level of demand in base period 1 and in the absence of evidence to the contrary, it seems reasonably likely that the Council will have granted enough suitable permissions, at least for open market

self-build housing, irrespective of the absence of restrictive legal agreement. I note there has been a sharp rise in the number of register entries during base period 4, from October 2018 to October 2019. However, the Council has until October 2022 to permission the equivalent number of plots and it would therefore be unreasonable at this stage to reach any conclusion as to whether or not the Council will meet the demand corresponding to base period 4.

20. My attention has been drawn to an appeal decision in Woodville¹, where the Inspector found that in the absence of evidence of restrictive legal agreements there was considerable doubt as to whether any single dwelling permissions should count as self-build serviced plots. Although I have not seen the detailed evidence in that case, there are differences between the schemes including in terms of the number of entries on the register in each base period, the numbers of permissions granted and progress towards meeting the demand. That schemes also differs by virtue of its significant economic, social and environmental benefits, including that the proposed 30 self-build plots would meet the majority of the demand on the self-build register for that area. I cannot therefore be certain that it is directly comparable to the appeal scheme or that it undermines the Council's evidence in this case.
21. Paragraph 11d) ii. of the Framework states that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
22. The Council's housing policies are not out-of-date. The LP, and particularly Policy HS2, supports self-build housing to meet local needs, aiming to restrict housing in the smaller villages to the types of size and tenure that would be likely to come forward as self-build housing. However, the Council has no specific self-build housing policy which, although not a statutory requirement, is one way in which the PPG suggests authorities can support such housebuilding. The parties therefore agree that the development plan is silent in this regard. On this basis, paragraph 11d) of the Framework is engaged.
23. The Council can demonstrate a 5 year housing supply and 1 dwelling would in any case make a minimal contribution to the supply of housing. The proposal would make a small contribution towards meeting the demand for self-build plots. There would be minimal economic benefits in the short-term during the construction phase. There is no guarantee that Littlethwaite would be sold upon completion of the scheme, or that it would be occupied by a family or on a permanent basis. In any case, there would be limited longer-term social and economic benefits, which carry limited weight in favour of the scheme.
24. The evidence indicates that the proposal would not result in detrimental effects on highway safety, biodiversity, flood risk, residential amenity or the historic environment. Appearance and layout are reserved matters that could be satisfactorily addressed at a later stage. However, these are requirements of the development plan and they are neutral factors in my assessment.
25. The Framework attaches substantial weight to using suitable brownfield land within settlements for homes. Although the appeal site is PDL, for the reasons

¹ Ref APP/G2435/W/18/3214451

set out above, it is not a suitable site for residential development. Therefore, this is a matter that carries limited weight in favour of the scheme.

26. Schemes relating to individual self-build dwellings have been allowed on appeal². In that case, there were benefits including the contribution to the housing supply, the location immediately adjacent to an area identified for additional housing, and visual and biodiversity enhancements. Therefore, it is not directly comparable to the appeal scheme and it does not provide a justification for it.
27. The appellants live next to the appeal site and they have family in the area. Their desire to continue to live in the village is therefore understandable. However, it has not been demonstrated that there are no existing properties that would meet their retirement needs nor suitable infilling or rounding off plots elsewhere. Moreover, the Council is not required to ensure that the specific requirements of every person on the register are met, only that an equivalent number of permissions are granted. The appellants personal circumstances therefore carry little weight in favour of the scheme.
28. The site is not located close to services and facilities. The need to travel would not be minimised. There would be no realistic opportunity for journeys by sustainable modes of transport, resulting in an increase in private car journeys. The proposal would not contribute to supporting the aims of the Framework in relation to healthy lifestyles and climate change adaptations. This is a matter that carries moderate negative weight.

Conclusion

29. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations, which include the Framework, indicate otherwise.
30. I have found that the conflict with the Council's locational development strategy and its housing aims for the smaller villages would result in significant and moderate harm. There would be moderate harm resulting from the reliance on private car journeys. The contribution to meeting the demand for self-build plots and to the supply of housing more generally, and the social and economic benefits of the scheme, are factors that carry limited weight.
31. The adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
32. Therefore, the appeal should be dismissed.

Sarah Manchester

INSPECTOR

² Ref APP/X2220/W/17/3176895