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## Appeal Decision

Site visit made on 4 August 2020

**by M Seaton DipTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 27 January 2021**

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**Appeal Ref: APP/Z0923/W/20/3252344**

**Tow Low, Low Moresby, Whitehaven, Cumbria, CA28 6RU**

- 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 Mrs Beverly Roberts against the decision of Copeland Borough Council.
  - The application Ref 4/19/2318/001, dated 14 August 2019, was refused by notice dated 19 November 2019.
  - The development proposed is described as an outline planning application for a single residential dwelling, with all matters reserved. Renewal of previously granted consent.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The application has been submitted in outline with all matters related to access, appearance, layout, scale and landscaping reserved for later consideration. I have noted the appellant's Block Plan showing the proposed point of access to the appeal site as being shared with that of the existing dwelling, however I have dealt with this plan as indicative only of how the appeal site might be accessed.
3. I note that the appellant has described the development as entailing a renewal of a previously granted consent for the site, which from the evidence before me appears to relate to an outline planning permission for the erection of a dwelling approved in 1982 (*LPA Ref: 82/992*). There is no evidence before me to suggest that the planning permission granted in that instance remains extant and therefore capable procedurally of a renewal of planning permission. However, I acknowledge the appellant's reference to this as a previous approval of permission for a single dwelling on the appeal site, and I will return to this reference within my assessment of the current appeal proposal.

### Main Issues

4. The main issues are;
  - whether the proposed development would be in an appropriate location for new housing; and,
  - the effect of the proposed development on highway safety, having regard to the impact on pedestrians and other road users.

## Reasons

5. The appeal site occupies a parcel of land set adjacent and to the south of the existing dwelling known as Tow Low and is indicated by the appellant as forming an overgrown part of the residential curtilage of this dwelling. At the time of my visit, the boundary to the adjacent private lane and Public Right of Way (PROW) was significantly overgrown with trees and planting. Whilst there are residential properties located further to the south (Stonewold) and on the opposite side of the PROW to the east (Tabor's Sound), the appeal site is bound immediately to the south and west by existing open land which appeared to be in use as paddock for the grazing of horses.

### *Spatial policy considerations*

6. There is no dispute between the parties that Low Moresby does not possess a defined settlement boundary in the Copeland Local Plan 2013-2028: Core Strategy and Development Management Policies DPD (the Local Plan). The appeal site therefore occupies a location beyond the development limits as set in the Local Plan and despite Low Moresby being a clearly established settlement.
7. In accordance with Policy ST2(C) vi), development outside of defined settlement boundaries must be restricted to that which has a proven specific requirement for such a location, which in reference to housing is that which meets *local needs including provision for agricultural workers, replacement dwellings, replacement of residential caravans, affordable housing and the conversion of rural buildings to residential use*. This approach is also broadly reflected by paragraph 77 of the National Planning Policy Framework (the Framework), which sets out that in rural areas, planning policies and decisions should be responsive to local circumstances and support housing developments that reflect local needs.
8. In referring to the locational requirement of Policy ST2, the appellant has indicated that the proposed dwelling would be provided as affordable housing to meet demand. However, no further expansion or evidence has been offered as to specifically what demand it is intended that the proposed dwelling would seek to address. Additionally, no mechanism has been suggested as to how such a provision would be secured, with the effect of the absence of a legal agreement accompanying the application or appeal being that any permission for a proposed dwelling would result in an unrestricted open market dwelling.
9. In the absence of there being evidence that any of the other criteria set out within Policy ST2 are of relevance, I have not attached any significant weight to the appellant's contention regarding affordable housing provision for the above reasons, and therefore find there to be clear conflict with Policy ST2 in this regard, as well as with paragraph 77 of the Framework.
10. In the submitted evidence, both parties have referred me to an Interim Housing Policy (IHP) dated 9 May 2017. The Council has utilised the IHP as a material consideration in determining planning applications during the period when it was unable to demonstrate a 5-year supply of deliverable housing land, thus rendering the policies of the Local Plan concerned with the supply of housing as being out-of-date. As a consequence, the presumption in favour of sustainable development and the 'tilted balance' addressed by paragraph 11(d) of the Framework, was engaged in the Council's assessment in this instance.

The IHP was designed to encourage sustainable development and boost housing delivery for planning applications that were not in full accordance with the development plan.

11. The Council has advised that as of 26 November 2020, the situation has altered and that in accordance with the published Five Year Housing Land Supply Statement 2020/21, the Council is now able to demonstrate a supply of deliverable housing sites of 6.35 years from a base date of 1 April 2020. It is therefore indicated that the IHP has been revoked. However, the Statement indicates that Policy ST2 as it relates to development boundaries remains out of date, as the Preferred Options Draft of the Local Plan indicates that in order to meet housing needs identified in the Strategic Housing Market Assessment (SHMA) over the period 2017-2035 (140 dwellings per year), development will be required outside the settlement boundaries in the Core Strategy. Given this situation, the policy does not accord with the Framework which requires local authorities to significantly boost housing delivery.
12. The presumption in favour of sustainable development and the 'tilted balance' encompassed by paragraph 11(d) of the Framework therefore remains applicable.
13. The Council referred within the reason for refusal to issues arising from the accessibility of services and facilities within reach of the appeal site. To this end, I have had careful regard to the detailed submissions by the appellant on the availability of services and facilities in both Low Moresby and the surrounding area, which have been premised on the format of the IHP as a material consideration. I consider that irrespective of the revocation of the IHP, these are issues which remain pertinent to the determination of the appeal as an expression and assessment of sustainable development, in accordance with the objectives of the Framework.
14. Whilst I acknowledge the absence of a development boundary for Low Moresby, the proposed development would be contiguous with the existing largely linear form of the settlement. The proposal for a single additional dwelling would not be uncharacteristic of the scale, character and role of the existing settlement. Furthermore, and with reference to paragraph 79 of the Framework, its location near to existing buildings and development would not be 'isolated' in accordance with the dictionary definition of the term.
15. Criterion B of the IHP sought to assess the level of services and facilities in a settlement, as defined in the Village Services Survey (VSS) dated 2017, with preference given to settlements containing the greatest concentration, albeit with weight as a material consideration given to updated information as provided by applicants.
16. Within the 2017 VSS, Low Moresby is indicated to have access to a Post Box and Nursery/Creche facilities alone, with no daily public transport. The appellant has disputed this and has submitted an update to the VSS to indicate that the settlement also benefits from access to a community facility, a restaurant, a bed and breakfast, employers, open space, daily public transport and a cycleway connection.
17. I have no reason to dispute the findings of the appellant as to the listed services and facilities and have had regard to the annotated map highlighting the locations of the various businesses, which includes Chestnuts Bed &

Breakfast (and Pet Boarding facilities) located within Low Moresby itself. I also note that of those services included within the VSS as being in the village, Busy Bees Nursery is in very close proximity to other businesses and facilities at Rosehill Theatre, and the Green Room Restaurant which have not been listed. Nevertheless, whilst I accept that there would appear to be a clear degree of inconsistency in locational classification of services and facilities within the VSS, there would be an undoubted continued reliance on the use of the private car to access the majority of day to day services and facilities, as whilst there are footpaths in evidence within and around the settlement, the majority of services and facilities would not be possible to easily walk to.

18. Although there cannot reasonably be an expectation of a similar level of public transport access in rural areas to that available in urban areas, the closest bus stops are located at Howgate which are indicated as being 1200 metres or 1 mile distant on B5306, dependent on whether walking via the road from the village or via 'Commongate' public footpath. I note the appellant's contention that access to these bus stops has been gained on a daily basis over the years by dozens of school children. However, I find that a combination of the distance, contours of the land and route gradient, and the characteristics of the alternative routes with the road narrow and unlit without a pedestrian environment, and the footpath being unmade, unlit and across fields, would neither encourage nor present attractive options for walking or cycling for all and therefore result in a modal shift away from use of the private car.
19. I accept that a bus service may have run through the village in the past and that the infrastructure associated with the service remains in situ close to the site. However, the assessment must be based on the services and facilities available currently rather than the potential for reinstatement or re-provision, for which there is no indication of there being any likelihood.
20. Turning to the other criteria within the IHP, I have already addressed matters related to affordable housing provision and issues related to highway safety are covered further on in this decision. I have also not been presented with any evidence of adverse individual or cumulative impacts of the development on infrastructure capacity. Other matters related to flood risk, impact on the Lake District National Park, the provision of Executive Housing, design and rural character, intrusion into the open countryside or the merging of settlements, landscape harm, and master-planning related to major development, have not been highlighted as being of any particular relevance in the decision-making for the proposal.
21. The appellant has expressed clear frustration that Low Moresby previously possessed a clearly defined settlement boundary in earlier iterations of the Local Plan prior to 2006, with the deletion of the settlement boundary contended to have been based on an inaccurate assessment of services and facilities within the village. In this regard, I note that the appellant has sought to draw a comparison between the services and facilities available within Low Moresby and other settlements, as well as the size of the settlement which is contended as being Copeland's 16<sup>th</sup> largest village by population, with smaller settlements highlighted as possessing defined settlement boundaries.
22. However, the VSS is clear as to its function as a means of informing the evidence base for the settlement hierarchy and development strategy, rather than drawing conclusions in itself as to which villages should be designated as

local centres. Furthermore, the submitted evidence highlights that the Council is progressing with the emerging Local Plan through the recently published *Copeland Local Plan 2017-2035: The Preferred Options Draft*, which sets out alternative options for addressing key issues facing the Borough, rather than at this stage identifying sites for development or specific policies. With the emerging Local Plan progressing at an early stage, it is not appropriate or within the remit of this appeal to comment on the merits of the approach to defining settlements outside the local plan process.

23. I have carefully considered the proposed development in the context of the development plan and other material considerations and setting aside the revocation of the IHP, I have found the proposed development would not have accorded with Criteria B & E of the interim policy.
24. However, in my assessment against the development plan, I am satisfied that the proposal would not be in an appropriate location for new housing. The proposed development would conflict with Policies ST1, ST2 and DM22 of the Local Plan, to which I attach moderate weight, as well as with paragraph 77 and part 9 of the Framework. These policies set out the strategic development principles that inform and underpin the Borough's planning policies in respect of economic, social and environmental sustainability *inter alia*, the spatial development strategy for the Borough, the requirement for development proposals to be accessible and reflect local needs, and the promotion of sustainable transport.

#### *Highway safety*

25. Whilst I am mindful that the means of access is a reserved matter at this stage, the disposition of the appeal site is such that access would need to be taken from the adjacent lane and PROW to Constitutional Hill and Croft Lane, with I note the indication by the appellant of a proposed arrangement to share the existing access of Tow Low.
26. The Council has expressed concern that the use of the PROW as an access for the proposed development would be likely to result in safety and amenity issues for users. However, it is evident that the access is currently used for this purpose not just to serve Tow Low, but also other properties including the dwelling marked as Stonewold on the submitted Locality Plan, further to the south of the appeal property.
27. I accept that the proposed development would result in an intensification of the use of the lane, and that the narrowness of the carriageway and its shared use by vehicles and pedestrians inevitably would lead to some conflict between users, as it no doubt already does. However, I am not persuaded that any likely increase in traffic generation from the proposed development would be of a quantum sufficient to materially or unacceptably worsen the existing situation, with I note no evidence adduced to support the contention of the existing situation as proving to be dangerous.
28. With regards the PROW itself, I am satisfied that the length and condition of the carriageway between the appeal site and the junction with Constitutional Hill and Croft Lane would not act as a deterrent to pedestrians. Whilst the junction between the PROW and Constitutional Hill and Croft Lane may not in all probability meet current highway standards given its geometry and visibility, the junction is existing and used on a daily basis by residents without any

evidence provided of accidents resulting in personal injury. I observed traffic through Low Moresby to be very limited in terms of quantum, with comparatively low speeds observed given the existing road layout and character. On this basis, and as I have found with the use of the PROW itself, I do not consider the likely increase in traffic generation associated with the use of the junction would result in a worsening of highway conditions or an unacceptable impact on highway safety.

29. I have had regard to the issue raised by the Council in respect of the need to show in full the means of access between the appeal site and the public highway, in this instance Constitutional Hill and Croft Lane, and notify those with an interest in this land. However, whilst I acknowledge the need to resolve this issue and in particular the rights of access over land seemingly not within the appellant's control, I note the Council opted in any event to assess and determine the application on its planning merits, and I have undertaken my assessment of the appeal proposal on the same basis.
30. For these reasons, I am satisfied that the proposed development would not result in conditions which would be prejudicial to the highway safety of pedestrians or other road users. I do not therefore find conflict with Policies ST1 and DM22 of the Local Plan, which seek to ensure that development accords with the Strategic Development Principles of the Local Plan including the accommodation of traffic and access arrangements in ways that make it safe and convenient for pedestrians and cyclists to move around, and for development to be accessible to all users.

### **Planning Balance and Conclusion**

31. The appellant has referred me to the previous grant of planning permission in 1982 on the appeal site for a dwelling. However, whilst this decision is indicative of the planning history of the site, its significance to the current proposal is very limited due to the age and expiry of the consent and the significant evolution of planning policy both locally and nationally over the past 38 years, not least of all as illustrated by the publication of the various iterations of the Framework since 2012.
32. The Council has cited two appeal decisions within the Statement of Case, for an executive dwelling (*Ref: APP/Z0923/W/18/3194844*) in the hamlet of Grange, and for a single dwelling (*Ref: APP/Z0923/W/18/3218762*) outside of Low Moresby. I do not have the benefit of the detailed evidence and circumstances relating to the appeal decisions, but whilst I accept that both sites exhibit some differences in character to the appeal site, in both instances the approach to decision-making is of relevance where an assessment of access to services and facilities was undertaken. Nevertheless, these decisions have not been a critical influence on my decision-making on this appeal, which I have determined on its own planning merits.
33. The provision of an additional dwelling would make a limited positive contribution to the local housing market, which in light of the need to significantly boost housing delivery must weigh in support of the proposal. The development would also provide some very limited economic support for the services and facilities in nearby and neighbouring higher order settlements, albeit with a likely reliance on the use of the private car to access the majority of services and facilities. The payment of other charges such as Council Tax

- would also inject money into the local economy, which would have the potential to have some further limited benefit during the construction period.
34. The economies of scale for shared future maintenance of the PROW and provision of other services and amenities to existing properties would also improve with a greater number of dwellings sharing the financial burden. I note that the appellant has offered to upgrade the shared surface of the PROW at their own expense, including the provision of improved parking arrangements. However, whilst it is unclear as to whether this would be secured by a legal agreement, in light of my conclusions on highway matters I do not find this to be an action which would be necessary to make the development acceptable in planning terms, and therefore it would not accord with all of the tests set out at paragraph 56 of the Framework. I do not therefore attach any weight in support of the proposed development from this offer.
35. Turning to the environmental strand of sustainability, the proposal would result in the development of existing garden land rather than represent a *brownfield* development as contended, and this does not therefore weigh in support of the proposal. The appellant has also contended that the proposal would create a more contiguous village and a stronger edge to adjacent open countryside, and would improve the aesthetic of this part of the village through the removal of the existing dilapidated garage and smartening up of the site, although no justification is provided as to the need for an additional dwelling within the curtilage in order to facilitate these improvements. However, with all matters reserved related to the design and appearance of the proposed development, I have not drawn any conclusions on the impact of the development on character and appearance.
36. I acknowledge the above limited benefits and I have concluded that there would not be any harm to highway safety, although this would neither weigh against nor in support of the development. Whilst I have noted the appellant's contention that the Council has a clear prejudice against all sustainable development outside of settlement boundaries, I have found in this instance that the proposed development would not have accorded with the now revoked IHP, and whilst I have attached only moderate weight to the harm to the spatial policies of the development plan, there would be conflict with paragraph 77 and part 9 of the Framework, to which I attach substantial weight. I have therefore not found the proposal to be sustainable development.
37. I am therefore satisfied that in applying the presumption in favour of sustainable development as set out at paragraph 11(d) of the Framework, that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the limited benefits, when assessed against the policies in the Framework as a whole.
38. For the above reasons, the appeal should be dismissed.

*Martin Seaton*

INSPECTOR