

Appeal Decision

Hearing Held on 12 January 2021

Site visit made on 13 January 2021

by Mr Andrew McGlone BSc(Hons), MCD, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 January 2021

Appeal Ref: APP/Q9495/W/20/3254342

Land at Meadowcroft, Storrs Park, Windermere LA23 3JG

- 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 E Clark of Hillcrest Developments North West Ltd against the decision of Lake District National Park Authority.
 - The application Ref 7/2017/5793, dated 19 November 2017, was refused by notice dated 17 December 2019.
 - The development proposed is an outline application for 4no detached 2 storey dwellings with vehicle access from Meadowcroft.
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Decision

1. The appeal is allowed and outline planning permission is granted for 4no detached 2 storey dwellings with vehicle access from Meadowcroft at Land at Meadowcroft, Storrs Park, Windermere LA23 3JG in accordance with the terms of the application, Ref 7/2017/5793, dated 19 November 2017, subject to the following conditions in the attached schedule.

Applications for costs

2. An application for costs was made by Mr E Clark of Hillcrest Developments North West Ltd against the Lake District National Park Authority. This application is the subject of a separate Decision.

Procedural Matter

3. The application was submitted in outline with all matters reserved for future consideration, save for access which is to be determined at this stage. I have dealt with the appeal on this basis and I have taken the indicative plan into account only insofar as it is relevant to my consideration of the principle of the proposed development on the site.
4. The main modifications to the Lake District Local Plan (Emerging Plan) have recently been consulted upon and the Authority anticipates receiving the Inspectors Report shortly, with the view to adopting the Emerging Plan in the Spring of this year. The main parties have set out the relevant policies to this case and agree that they do not amount to a material change compared to the policies found in the current development plan. I concur, but the policies in the Emerging Plan at this current stage only carry limited weight.

Main Issues

5. The Authority and the Highway Authority do not, subject to planning conditions, raise concern with the proposed access details. Despite residents' concerns, I agree. Thus, the main issues are: a) whether the development

would accord with development plan policies relating to the location of development in the Lake District National Park (LDNP); b) the effect of the proposal on the character and appearance of the appeal site and the English Lake District World Heritage Site (WHS); and c) whether the proposal would be safe from flooding, and not increase the risk of flooding elsewhere.

Reasons

Location of development

6. Policy CS02 of the Core Strategy including Proposals Map (Core Strategy) aims to enable development to support and maintain the vibrancy and sustainability of settlements, regenerate areas of need and reinforce the distinctiveness of place. The policy goes on to say that the distribution of development will reflect the different roles of settlements and conserve the integrity of the traditional settlement pattern. These settlements are rural service centres, villages and cluster communities. Areas outside these settlements as open countryside.
7. Interested parties do not agree with the main parties position that the appeal site lies within a Cluster Community as defined by Policy CS02. Storrs is to the south of the rural service centre of Bowness and Windermere, the centre of which is roughly just over a mile away. When moving between the two areas, there is a change in the character, form and layout of development, but Storrs is adjacent to Bowness and Windermere as there is pattern of development either side of the A592 linking the two. There are some undeveloped gaps nearer to the site, but they do not change my opinion.
8. There is no pedestrian footway along the A592 between the site and its junction with Meadowcroft Lane to the north. That said, I heard that pedestrians and cyclists use the more attractive route of Meadowcroft Lane despite it being within private ownership. This allows users to link up with the footway and paths which extend to and from Bowness and Windermere found on the A592 by its junction with Meadowcroft Lane. There may be a limited bus service available on the A592, but there would be a range of transport options available to occupiers of the proposed dwellings to use. Thus, the rural service centre is easily accessible.
9. Storrs extends across a reasonable area and includes a number of properties. It is not a hamlet applying the Oxford Dictionary definition. The lack of a focal point, signposts and facilities and services do not change my judgement that the appeal site is part of a Cluster Community by applying Policy CS02 as it requires such communities to be adjacent to and easily accessible to the services provided by a Rural Service Centre. Emerging Plan Policy 02 would not result in a different outcome despite the changes proposed to this policy.
10. No concerns have been raised about the proposal breaching the 30% threshold for development in such settlements. The number of dwellings proposed would be of a small-scale, proportionate to the size and population of Storrs and would not compromise the capacity of the settlement to accommodate further development. A planning condition could ensure that the scheme responds to local needs. Future occupiers of the proposal would help sustain local businesses through their day to day spending.
11. I will consider the proposal's effect on the settlement pattern of the area and function of the location as part of my assessment of the second main issue. Insofar as the remaining criterion, the land is not previously developed land

applying the definition found in the National Planning Policy Framework (the Framework). Nor would the proposal use a building.

12. In relation to whether the land is a domestic garden, the appeal site is not fenced off from the grounds of Meadowcroft which contains 14 apartments. However, it does not currently have the appearance of a manicured garden like the historic aerial photograph shows. I understand that some site clearance works have taken place and the site is managed twice annually. It also seems that the physical condition of the land has changed over time. A picture from 2010 supports this, but equally this only shows a small portion of the site at best and it does not automatically mean that the use has been abandoned. Despite the remarks made by the appellant's ecologist and drainage engineer, I agree with the Authority that gardens can take on many different forms of appearance, despite the Authority saying that the site did not have the appearance of a domestic garden in its Statement.
13. It is fair to surmise that the land's use has fluctuated over time, but residents of the apartments confirmed that they and their children have accessed the land and used it in a manner consistent with the function of a domestic garden. The appellant also maintains that they, along with the owner of unit 10 at Meadowcroft use the land as their garden. This postdates the 1991 statement which indicated that land was left without any reasonable use.
14. The lease and associated plan submitted during the Hearing relating to unit 1 at Meadowcroft confirms that the owners have a legal entitlement to use the communal areas identified in the plan. This plan excludes the appeal site. The appellant contends that despite the lease, the owners of the appeal site have informally allowed occupiers of the apartments to use the site. This reflects residents evidence provided at the Hearing about the owners' intentions.
15. The Authority did not explain why it considered the land not to function as a domestic garden. It points out that a Certificate of Lawful Use could be submitted by the appellant to establish the lawful use, but the evidence before me leads me to consider that the use of the land as a domestic garden has not been abandoned.
16. I conclude, subject to the assessment of the settlement pattern of the area that the development would accord with Core Strategy Policy CS02 relating to the location of development in the LDNP. This policy seeks to distribute development to reflect the different roles of settlements and to conserve the integrity of the traditional settlement pattern in the LDNP, having regard to the level of development; capacity of the settlement; meeting local needs; the efficient use of previously developed land, buildings and domestic gardens; and helping to sustain existing business. The proposal would also accord with Emerging Plan Policy 02 in respect of this issue.

Character and appearance and the WHS

17. The site lies within the Windermere Valley and the Lower Windermere Area of Distinctive Character. Each valley within the WHS makes its own particular contribution to the three intertwining themes of the Outstanding Universal Value (OUL) of the WHS. The WHS is an irreplaceable resource and should be conserved in a manner appropriate to its significance, so that it can be enjoyed for its contribution to the quality of life of existing and future generations.
18. The eastern shore to Lake Windermere is populated by numerous private

houses, villas and hotels that have evolved during the 19th and 20th centuries. A significant number of these are in the Arts and Crafts style. Properties are set within open space, woodlands and historic parkland generally facing the lake. The character of the site and its vicinity differs from Bowness, but the site is bound by residential development on four sides with narrow private lanes to the southern and eastern boundaries. This character is evident near to the site from public and private road's, but also to an extent from vantage points on the western shore of Lake Windermere and the lake itself. The villas and landscape set within a picturesque and harmonious romantic landscape are strong components of the OUL's attributes for the Windermere Valley.

19. The appeal site is not accessible to the public and it cannot be used for sport and recreation. These are matters of fact that the Authority accepted to be true during the Hearing. The Authority also conceded that use of the term 'open space' was not an accurate one in the context of the definitions of this term found in Section 336 of the Town and Country Planning Act 1990 (as amended) or the National Planning Policy Framework (the Framework). Nevertheless, I agree with the main parties that the appeal site does not meet either definition.
20. However, everyone has a right to appreciate and enjoy this landscape. Although the proposal would introduce development into a parkland setting that accompanies Meadowcroft, the houses could be designed and laid out to respond to the varied form, type and grain found around the site whilst including existing trees and forming landscaped plots. While developing the site would inevitably reduce the openness of the land, the proposal could be brought forward whilst responding to the settlement pattern of the area and its characteristics that are a component of the OUL.
21. Both Meadowcroft Lane and Christmas Lane are within private ownership. Most users of these roads will be people accessing property, but the routes are also used informally by walkers and cyclists among others. Although there was considerable debate about public and private receptors both in the written evidence and at the Hearing, the appeal scheme would not result in harm for the reasons set out. Though the proposal's effect would largely be localised, any development on the site would be likely to be, when viewed from either the lake or the western bank of the lake, nestled within a mature woodland landscape on the slopes leading down to the lake shore with private houses, villas and boat houses scattered amongst it.
22. I give great weight to the conservation of the WHS, but the proposal would conserve its significance. I therefore conclude, on this issue, that the proposal would not harm the character and appearance of the appeal site and WHS. As such, no conflict would arise with Core Strategy Policies CS01, CS02, CS03, CS11, CS25 and CS27; which jointly seek high quality development of a type, design and scale that reinforces the distinctive settlement pattern of the area and its character and integrity so as to conserve and enhance the special qualities of the spectacular and inspirational LDNP landscape. There would also be no conflict with the provisions of the Framework relating to heritage assets or with Emerging Plan Policies 01, 02, 05, 06 and 07.

Flooding

23. The appeal site lies within Flood Zone 1. Meadowcroft Lane and Christmas Lane are not adopted and have no formal drainage. The site sits below Meadowcroft Lane and the houses that lie to the east of it. Land within the site gently slopes to the west and is covered in vegetation. Based on maps, there are no clearly

- defined surface water bodies or dry water channels on or near to the site. Nor is the site near to any permanent rivers or streams. However, during extreme rainfall waters collect in a portion of the appeal site to form an ephemeral pond. This is reflected in the map produced by the Environment Agency showing areas which are prone to surface water flooding based on historic flooding information from the lead local flood authority. This draws on several information sources, so if there is a stream, as residents anecdotally suggest, its effect would likely be picked up and shown as the current predicted flood risk. Irrespective, there is also no physical evidence of the stream on site.
24. The water flow pathways onto the site detailed in the Flood Risk Assessment and Drainage Strategy ('the Strategy') are generally agreed. During or following periods of heavy rainfall, residents assert that surplus water from the underground stream is ejected from the base of a wall onto Meadowcroft Lane at its junction with Christmas Lane beyond the site's south-eastern corner. The Strategy also recognises that during extreme rainfall events, the combined sewer close to the eastern side of the site can be overloaded. This is an existing issue which the development cannot be held responsible for addressing, but if foul water is directed to the combined sewer then the proposed dwellings would only add to this situation.
25. Meadowcroft Lane has been re-surfaced in recent times to facilitate its use by refuse and recycling vehicles as the previous surface had become eroded. The merits of whether there was or wasn't a channel or ditch was discussed, but residents' first-hand experience suggests that most of the waters on the lane don't end up on the appeal site. However, those that do are also likely to include foul water in extreme rainfall events.
26. The Strategy says that further drainage investigations are required to assess the connection to the combined sewer and does broadly discuss an alternative using a pumping station in the south-west corner of the site. A planning condition along the lines suggested by the Highway Authority would ensure that precise details of how foul drainage from the site would be addressed.
27. The eastern boundary of the site is vegetated with some areas of exposed soil. Cuts created in this boundary have by all accounts aided the flow of water onto the site from Meadowcroft Lane. These cuts are subject to an ongoing civil action as the appellant says that they have been created without his consent and knowledge. Be as that may, the Strategy proposes to fill these in. Hence, it is reasonable to consider the effect of these works, in the context of Core Strategy Policy CS17, as the effect of flooding is a legitimate public interest for the purposes of planning, even if residents are correct in saying that most of the water on Meadowcroft Lane does not go onto the site.
28. The appellant recognised at the Hearing that the Strategy does not assess the effect of infilling the cuts and how this may or may not affect the risk of flooding elsewhere. They confirmed that the cuts had now been filled in, but there are no details of the works undertaken available. I am unclear whether they have based on my observations on site and the submitted photographs. If the appellant is correct, then surface waters continue to percolate into the site in any event. However, if they haven't been completed to achieve the prevention of runoff from entering the site, then this does not change the uncertainty about the effect of the Strategy proposed.
29. To remedy the matter, a pre-commencement condition is suggested. The main

parties agree that this condition would be relevant to planning, relevant to the development permitted, enforceable and precise. Differing views are, however, expressed about the other tests.

30. The suggested condition would have a clear policy and site-specific justification. It is therefore a necessary condition, and the planning permission could not be implemented until the matter is satisfactorily resolved and the condition discharged either by the Authority or on appeal should the Authority refuse permission. In theory, repeated discharge submissions could be made, but this would not change the rigour and transparency that the consideration of any assessment ought to bring. There is no reason why residents should not have confidence in this process or be kept abreast of matters. It would also be in the appellant's interest to resolve the matter so that the scheme can proceed.
31. The Authority say that it is not possible to reach a reasonable conclusion on flood risk at this time, but the Strategy is based around the site's current predicted flood risk to attenuate a 100-year storm with a 30% uplift to account for climate change. The Strategy would also provide capacity for lower probability storm events not of a critical duration. A French drain would collect any waters that enter the site from Meadowcroft Lane, including any wastewater which the site currently takes on during extreme rainfall events. If the assessment demonstrates that there is no wider impact, then the Strategy is simply proven to be robust and appropriate.
32. If not, then the development could not take place, and thus no harm would occur in this instance. This is the underlying point of such a condition. It would also be within the appellant's gift to not fill the cuts, setting aside the merits of the civil case as this would maintain the current situation. In this event, the Strategy would address any waters that go onto the site from the lane. As such, there is a reasonable prospect that those concerns could be addressed within the permission period based on the Strategy.
33. The remainder of the Strategy outlines how surface waters would be dealt with. Notably, surface waters would be directed away from the access and Meadowcroft. There are no technical concerns with this, but the proposed connection to discharge runoff into Lake Windermere would rely on land within the grounds of Meadowcroft. Of the 14 units within Meadowcroft, the appellant owns No 11, while his business partner Mr Johnson owns No 10. They jointly own the freehold to Meadowcroft. As such, the pre-commencement condition would not be unduly restrictive.
34. Consequently, I conclude on this issue that, subject to the imposition of the suggested planning conditions, the proposal would be safe from flooding, and not increase the risk of flooding elsewhere. The appeal scheme would accord with Core Strategy Policy CS17 and Framework paragraph 155; which jointly, among other things, seek to avoid inappropriate development in areas at risk of flooding, and where necessary development should be made safe for its lifetime, taking into account the impacts of climate change, without causing or increasing the risk of flooding elsewhere. The proposal would also accord with Emerging Plan Policy 03.

Other Matters

35. Concerns have been raised about the proposal's effect on nearby residents living conditions and visual amenity. As this is an outline scheme, precise details of any layout and therefore relationship are matters to be considered

- later. However, based on the location and size of the site in relation to nearby properties there is good reason to consider that no harm would arise.
36. Interested parties are concerned about a precedent being set which would progressively erode the WHS. No other sites have been drawn to my attention whereby the same situation could arise. However, proposals must overcome a high bar for development to be granted in the WHS and each case must be considered on its own merits.
37. I have no reason to disagree with the findings of the Ecological Appraisal. Japanese knotweed populates the site, but the appellant confirmed that they are in the process of treating this. There is separate legislation that ensures that this process continues.
38. Planning applications in 1990 and 1991 proposing housing were refused. I do not have details of these schemes before me, and given the passage of time, the circumstances relating to the site in terms of its characteristics and policy are highly unlikely to be the exactly same. Nevertheless, I have considered the appeal on its own planning merits.

Conditions

39. A condition in respect of the reserved matters and the timing of the development is necessary in the interests of certainty. For the same reason, I have imposed a condition concerning the approved plans and documents. I have imposed a condition so that the dwellings are occupied by persons with a defined local need as this is necessary to deliver the Authority's housing provision in line with Policy CS18. In the interests of increasing the amount of energy generated through renewable and low carbon sources by at least 10% I have imposed a condition to this effect.
40. A construction method statement is necessary in the interests of nearby residents living conditions. I have imposed an amended version based on discussions at the Hearing about the management of vehicle movements and details of delivery hours. The condition already requires details to be submitted of how plant and materials would be loaded and unloaded which has a knock-on consideration of how any vehicles would access the site or nearby road. To secure the sustainable management of surface water runoff I have imposed a condition so that the works in the Strategy are implemented and retained, but also so that an assessment is made of the effects of the Strategy so the development does not increase the risk of flooding elsewhere. A condition in respect of foul drainage is also necessary for the reasons set out earlier.

Conclusion

41. For the reasons given above I conclude that the appeal should be allowed.

Mr Andrew McGlone

INSPECTOR

SCHEDULE OF CONDITIONS

1. Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the National Park Authority before any development takes place and the development shall be carried out as approved.

Application for approval of the reserved matters shall be made to the National Park Authority not later than 3 years from the date of this permission.

The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.

2. The development hereby permitted shall be carried out in accordance with the following approved plans, details and mitigation measures and recommendations contained therein: site location plan; MC-WIP-01; Arboricultural Impact Assessment (dated 14.09.17); Ecological Appraisal (ref. 3940); and Flood Risk Assessment and Drainage Strategy (ref. K35626/01/FRA/EH, Issue 2, March 2019).
3. The dwellinghouses hereby permitted shall not be occupied otherwise than by a Person with a Local Connection as his or her Only or Principal Home, or the widow or widower of such a person, and any dependents of such a person living with him or her.

The Occupant will supply to the National Park Authority (within 14 days of the National Park Authority's written request so to do) such information as the Authority may reasonably require in order to determine whether this condition is being observed.

In this condition the following definitions apply:

'Person with a Local Connection' means an individual who before taking up occupation of the dwelling satisfies one of the following conditions:

- (1) The person has been in continuous employment in the Locality defined for at least the last 9 months and for a minimum of 16 hours per week immediately prior to occupation; or
- (2) The person needs to live in the Locality defined because they need substantial care from a relative who lives in the Locality defined, or because they need to provide substantial care to a relative who lives in the Locality defined. Substantial care means that identified as required by a medical doctor or relevant statutory support agency; or
- (3) The person has been continuously resident in the locality defined for three years immediately prior to:
 - a) Needing another dwelling resulting from changes to their household, including circumstances such as getting married, divorced, having children, or downsizing.
 - b) Undertaking full-time post-secondary education or skills training and is returning to the locality defined within 12 months of its completion, or
 - c) Being admitted to hospital, residential care or sentenced to prison, and are returning to the locality defined within 12 months of their discharge/release, or
- (4) The person is a person who –

- a) Is serving in the regular forces or who has served in the regular forces within five years prior to occupation;
- b) Has recently ceased, or will cease to be entitled, to reside in accommodation provided by the Ministry of Defence following the death of that person's spouse or civil partner where -
 - i. The spouse or civil partner has served in the regular forces; and
 - ii. Their death was attributable (wholly or partly) to that service; or
- c) Is serving or has served in the reserve forces and who is suffering from a serious injury, illness or disability which is attributable (wholly or partly) to that service.

'Locality' shall mean the administrative areas of the Parishes of: Broughton East; Cartmel Fell; Crook; Crosthwaite and Lyth; Helsington; Kentmere; Lakes; Longsleddale; Skelwith; Staveley in Cartmel; Staveley with Ings; Underbarrow and Bradleyfield; Upper Allithwaite; Windermere; Witherslack; Meathop and Ulpha; and those parts of the Parishes of Fawcett Forest; Strickland Ketel; Strickland Roger; and Whitwell and Selside which lie within the administrative area of the Lake District National Park.

An 'Only or Principal Home' is a dwellinghouse which is occupied continuously for a minimum period of six months in every twelve month period. For the avoidance of doubt the dwelling shall not be occupied as a second home or for holiday letting accommodation.

The obligations contained in this condition shall not be binding or enforceable against any mortgagee or any receiver appointed by such a mortgagee, or any person deriving title through such a mortgagee or receiver provided always that a successor in title of such a person will be bound by the obligations contained in this condition.

4. Prior to the first use of the development hereby permitted, at least 10% of the energy supply of the development shall be secured from decentralised and renewable or low carbon energy sources. Details and a timetable of how this is to be achieved, including details of any physical works on site, shall be submitted to and approved in writing by the National Park Authority. The approved details shall be implemented in accordance with the approved timetable and retained as operational thereafter.
5. No development shall take place until a construction method statement has been submitted to, and approved in writing by, the National Park Authority. Thereafter works shall take place in accordance with the approved details. The Statement shall provide for:
 - the parking of vehicles of site operatives and visitors;
 - the management of vehicle movements, including delivery hours;
 - loading and unloading of plant and materials;
 - storage of plant and materials used in constructing the development;
 - wheel washing facilities; and
 - measures to control the emission of dust and dirt during construction.
6. Prior to development commencing an assessment shall be undertaken to assess any potential flood risk impacts that may arise from implementation of the Flood Risk Assessment and Drainage Strategy prepared by R.G. Parkins and Partners Ltd (ref. K35626/01/FRA/EH, Issue 2, March 2019). This flood risk assessment shall be submitted to and approved in writing by the National Park Authority prior to any development commencing. The works contained in the Flood Risk Assessment and

Drainage Strategy prepared by RG Parkins and Partners Ltd. shall be completed prior to the occupation of any of the dwellings hereby permitted and shall be retained thereafter.

7. None of the dwellings hereby permitted shall be occupied until works for the disposal of sewage shall have been provided on the site to serve the development hereby permitted, in accordance with details that have first been submitted to and approved in writing by the National Park Authority.

END OF SCHEDULE

APPEARANCES

FOR THE APPELLANT:

Killian Garvey	Planning Barrister, Kings Chambers
Eric Clark	Appellant
Robin Wood	R and K Wood Planning LLP
Mary Fisher	Associate Director, Stephenson Halliday
Dr Ed Henderson	R.G. Parkins and Partners Ltd

FOR THE NATIONAL PLANNING AUTHORITY:

David McGowan	Lake District National Park Authority
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INTERESTED PARTIES:

Chris Garner	
Keith Pullen	
Charles Adams	Director of Meadowcroft Cottages Management Ltd
Richard Grime	Director of Meadowcroft Cottages Management Ltd
Steve Dodwell	
Steve Rawlinson	Lowther Building Company
Carol Rawlinson	
Ken Halliday	
David Forsythe	

DOCUMENTS

- 1 Lease and plan for unit 1, Meadowcroft