



Appeal Decision

Site visit made on 11 January 2022

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 February 2022

Appeal Ref: APP/H0928/W/21/3283769

Land adjacent to Brackenridge, High Hesket CA4 0HU

- 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 Ms J Nelson against the decision of Eden District Council.
 - The application Ref 21/0189, dated 26 February 2021, was refused by notice dated 4 August 2021.
 - The development proposed is described on the application form as outline planning permission for the erection of up to five dwellings with all matters reserved.
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Decision

1. The appeal is allowed and outline planning permission is granted for the erection of up to five dwellings with all matters reserved at land adjacent to Brackenridge, High Hesket CA4 0HU in accordance with the terms of the application, Ref 21/0189, dated 26 February 2021, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by Ms J Nelson against the Council. This application is the subject of a separate decision.

Preliminary Matters

3. The application was submitted in outline with all matters reserved for future consideration (including access). I have determined the appeal on this basis, treating supporting plans as illustrative.
4. Reason for refusal three on the Council's decision notice refers to a conflict with Policy ENV4 of the Eden Local Plan 2014-2032 (the Local Plan) and reason for refusal four refers to a conflict with Policies DEV5 and DEV9. The Council has confirmed that the relevant policies are Policy DEV4 rather than ENV4 and Policy ENV9 rather than DEV9. I have determined the appeal on this basis.

Main Issues

5. The main issues are:
 - the effect of the proposed development on the character and appearance of the area;
 - the effect of the proposed development on highway safety with regard to access;

- the effect of the proposed development on the health and living conditions of neighbouring residents and whether acceptable living conditions for future occupiers would be provided, with particular regard to pollution; and
- whether there is appropriate infrastructure capacity for the proposed development.

Reasons

Character and Appearance

6. The appeal site is an open parcel of land laid to grass lying between the A6 and the western edge of the village of High Hesket. The land slopes gently upwards from the A6 to the houses in the east which front onto the road through the village. The proposed development would be for up to five dwellings. Although access is a reserved matter, indicative plans show an access point on the U3454 road, known as Doctors' Lane, to the north of the site.
7. Policy LS1 of the Local Plan identifies High Hesket along with Low Hesket to the north as a Key Hub, where proposals will be acceptable where they respect the historic character and form of the village. Policy DEV5 of the Local Plan is supportive of high quality design that reflects local distinctiveness and requires new development to show a clear understanding of the form and character of the district's built environment amongst other matters.
8. High Hesket has developed as a broadly linear settlement along the line of the Roman Road, High Hesket road. Whilst this linear form is still prevalent, the village has been extended outwards. This is particularly so on its eastern edge such as at Elm Close and Coopers Close where properties have been constructed in a linear form parallel to those fronting on to High Hesket road. There are also examples along the western boundary of the village including the two properties at its northern extent fronting onto the A6, Windy Heights, Tauranga, Ardvule and Brackenridge (the latter two being just to the north and east of the site with access from Doctors' Lane) and the primary school buildings to the south.
9. The indicative plan shows that a linear form of layout for the proposed dwellings could be achieved at the site, which would have a similar relationship to the properties fronting on to High Hesket road as those on Elm Close and Coopers Close.
10. Based on the indicative plan, the linearity of the settlement form would still be discernible when travelling along High Hesket road through the village, including at its historic core, from which the site would only be visible in glimpsed views. The proposed dwellings would be visible in views from the west including from the A6 and in longer distance views but would be seen against the backdrop of the existing dwellings and so would not disrupt the form and character of the village. This would also be the case when viewing the site from the north and south, given the building lines of other properties behind the frontage of High Hesket road.
11. The site access to the north of the site including associated visibility splays, would likely require some hedgerow and highway verge removal. There are already a number of access points serving properties on the lane. These are located between the village centre and nearby listed buildings and the appeal site, and have a domestic appearance. Consequently, whilst there would be

some change to the appearance of the lane, this would not be significantly harmful to its character or the historic nature of the village centre.

12. Notwithstanding that matters of appearance, landscaping, layout and scale are reserved, the proposal would inevitably result in the introduction of built development in what is an open parcel of land and so its character would change. However, the indicative plan illustrates that a development could be accommodated within the site that would respect the historic character and form of the village and the form and character of the area's built environment. As such the proposed development would not have an unacceptable effect on the character and appearance of the area and would accord with the requirements of Policies LS1 and DEV5 of the Local Plan, as summarised above. It would also accord with the design objectives of paragraph 130 and would not be contrary to paragraph 134 of the National Planning Policy Framework (the Framework).

Highway Safety

13. Doctors' Lane is a narrow two-way road that provides a short link between High Heskett road and the A6. It is subject to a 30mph speed limit. A number of properties have access directly on to the lane.
14. The appellant's traffic speed survey on Doctors' Lane recorded the 85th percentile speed of vehicles, which the Manual for Streets (MfS) identifies as the criterion for calculating stopping sight distances for a road of this nature, as 20.9 mph south west bound towards the A6 and 18.7 mph north east bound towards the village. A prevalence of car use between 08:00 to 09:00 and 15:00 to 16:00 weekdays was identified.
15. The appellant used the stopping sight distances in MfS to calculate appropriate visibility splays based on the recorded speeds. The resulting visibility splay requirements, including a 2.4m "bonnet length" correction, would be 23m to the south west (towards the A6) and 25m to the north east (towards the village). The indicative plan illustrates that these distances can be achieved, and the Highway Authority considers the details to be satisfactory. The appellant has confirmed that the visibility splays are in either her ownership or Cumbria County Council as Highway Authority. Based on the information submitted and my own observations, I am satisfied that an acceptable access to the site could be achieved.
16. The distance between the site and High Heskett road is very short, however there is no footpath or street lighting. A path is proposed along the eastern boundary of the site, linking to the existing access point beside High Heskett Primary School. This would link the site to the village without the need to walk on a road, thus providing a choice of routes for future residents. Whilst the path would provide a somewhat circuitous route to the middle of the village, it would nevertheless provide good access to the primary school.
17. There would be a modest increase in vehicles using the lane. However, based on the evidence submitted and my own observations, I am satisfied that this could be satisfactorily accommodated without an unacceptable impact on highway safety, even taking account of the pinch point to the east. The construction phase could be managed through a construction method statement, secured through a condition, to ensure that there would be no undue harm to highway safety from construction traffic. The detailed

submission for the proposed development would need to address the requirements for refuse collection. The situation with regard to emergency vehicles would not be substantially different to that for the existing properties on the lane. There is no evidence to suggest that the junction of Doctors' Lane with the A6 is unsafe, and I note that the Highway Authority raised no concerns in this regard.

18. It has been demonstrated that a safe and suitable access point to the site can be achieved and that the proposed development would not result in an unacceptable impact on highway safety. The proposed development would therefore accord with Policy DEV3 of the Local Plan, which states that development will be refused if it will result in a severe impact in terms of road safety and increased traffic congestion and requires development to provide safe and convenient access for pedestrians, cyclists and disabled people. It would also accord with paragraph 110 of the Framework which requires development to provide safe and suitable access for all users, and paragraph 111 which states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Living Conditions

19. Policy DEV5 of the Local Plan requires new development to meet a number of criteria including providing an acceptable amenity for future occupiers and protecting the amenity of existing residents. Policy ENV9 states that proposals for development likely to experience noise, light, dust, odour or vibration from a number of sources including roads must be supported by an adequate assessment to assess risks and their acceptability, and to ensure that appropriate mitigation is put in place to ensure occupiers are not adversely affected.
20. There may be some pollution generated during the construction phase that could affect neighbouring residents. However, this would be temporary and could be adequately mitigated through conditions to manage the construction phase.
21. The submitted plans are only indicative. However, they illustrate that sufficient separation distances could be provided between the proposed development and neighbouring properties to ensure that any pollution from the use of the site for residential purposes would not have an unacceptable effect on the health or living conditions of neighbouring residents. For the same reason, there would not be an unacceptable degree of overshadowing or loss of privacy for those residents or an unacceptable effect on their outlook. Loss of views is also raised as a concern. As planning is concerned with land use in the public interest, the protection of private views is not generally a determining factor.
22. Interested parties have raised concerns about the proposed path. There is no evidence to suggest that it would be a security risk to residents or to the primary school or give rise to anti-social behaviour. The path would be located at some distance from the nearest properties, even taking account of those with rear extensions, although it would run adjacent to the bottom of the rear gardens at a slightly lower level. Views of these properties by users of the path would be transient. Any impacts on privacy would therefore be limited and not materially different from the current situation in terms of potential for overlooking between gardens. From the evidence submitted and what I

observed, there would appear to be no requirement to move the electricity transformer to accommodate the path.

23. The proposed development would be sited relatively near to the A6 road. A Road Traffic Noise Assessment (the Noise Assessment) has been prepared by the appellant to support the proposal. This is supplemented by a memorandum responding to questions raised by the Council's environmental health officer.
24. In order to provide adequate living conditions, the Noise Assessment recommends that the facades of the proposed dwellings should be set back from the A6 by at least 12m; the dwellings should face towards the A6 and have gardens to the rear (east); there should be a 2m high acoustic fence for any end rear gardens with a line of sight towards the A6; and specific requirements for windows and alternative ventilation systems in the dwellings.
25. The Noise Assessment acknowledges that the measurements were taken during the COVID-19 pandemic with national travel restrictions in place. It identifies that, whilst domestic vehicle flows were around 60% less than a more typical situation, commercial traffic flows, including HGVs, were similar to pre pandemic levels. Interested parties have identified the potential for a future increase in traffic on the A6 due to new development in the area.
26. For there to be a perceptible change in noise levels, there must be an increase of at least 3dBA. The Noise Assessment advises that the amount of traffic would have to double for the measured level to increase by 3dBA. This has not been disputed by the Council. Traffic generated by the new developments identified together with an increase arising from what might be considered as more normal traffic flows passing the site would likely be less than that. I am therefore satisfied that, if the recommendations in the Noise Assessment are followed, providing adequate living conditions for future residents in terms of noise would be possible.
27. Vehicles on the A6 would pass the site at an oblique angle and at a lower level and the dwellings would be set back from the road and so light pollution would not cause unacceptable harm for future occupiers. There may be some odours from vehicles on the A6 including those in the nearby lay-bys, but this is unlikely to give rise to unacceptable living conditions for future occupiers due to the separation distances. Given the separation distances and the identified noise mitigation measures which would also help mitigate effects from vibration of the type most likely to cause annoyance, I am satisfied that adequate living conditions for future residents could be achieved in this regard. No substantive evidence has been submitted to demonstrate that dust and particulates would result in unacceptable living conditions or health impacts for future occupiers.
28. The proposed development would not have an unacceptable effect on the health or living conditions of neighbouring residents and would provide acceptable living conditions for future occupiers, with particular regard to pollution. Consequently, it would accord with Policies DEV5 and ENV9 of the Local Plan which have been summarised above. It would also accord with paragraph 185 of the Framework which seeks to ensure that new development is appropriate for its location taking into account the likely effects of pollution on health and living conditions, and the agent of change principles in paragraph 187.

Infrastructure Capacity

29. Reason for refusal three on the Council's decision notice does not specify a particular type or types of infrastructure that is lacking. However, I note the concerns that have been raised about infrastructure capacity in the area.
30. No substantive evidence has been presented to demonstrate that the primary school or doctors' surgery has insufficient capacity. The company responsible for the water and sewerage network in the area has not objected to the proposed development subject to conditions covering surface and foul water to secure proper drainage and to manage the risk of flooding and pollution. Its consultation response refers to water supply but does not identify this as a factor that would prevent the proposed development from proceeding. There is no evidence to demonstrate that there is an issue with the electricity supply in the area.
31. Policy LS1 of the Local Plan sets out that the 13 Key Hubs will be the focus for development to sustain local services appropriate to the scale of the village and its hinterland. The supporting text for the policy explains that the Council expects modest amounts of market led development to occur in such locations, to help meet local need and enable services to be protected and enhanced. Although noting the closure of the pub, there are a number of services and facilities within a reasonable walking or cycling distance of the site, or that are accessible by a relatively frequent bus service that operates throughout the day and into the evening.
32. There is no evidence to demonstrate that there is insufficient capacity within the existing infrastructure networks to meet the demand that would be generated by the proposed development. Consequently, the proposal would accord with Policy DEV4 of the Local Plan, which supports new development where there is sufficient capacity in the existing infrastructure networks to meet the demands of the new development, or where this cannot be demonstrated, where additional capacity can be released. It would also accord with paragraph 124 of the Framework, which states that decisions should support development that makes efficient use of land, taking into account the availability and capacity of infrastructure and services amongst other matters.

Other Matters

33. There are a number of listed buildings located around the junction of High Heskett road and Doctors' Lane. These include the Grade II* listed St Mary's Church, and the Grade II listed war memorial, the public house, The White House, Holly Cottage and Heskett House. Their significance lies in part from the evidence they provide of the architectural style of the time and the historical associations with the development of High Heskett. Although the appearance and scale of the proposed dwellings is not known, and the layout is only indicative, given the separation distance and intervening properties, the use of the site for up to five dwellings, including the creation of an access on to Doctors' Lane, would not harm the setting of the listed buildings or their significance as designated heritage assets. In reaching this conclusion, I have had special regard to the desirability of preserving their setting.
34. Appropriate measures can be put in place to manage surface water and drainage to ensure that there would be no unacceptable increase in flood risk.

35. I note the housing targets set out in the Local Plan, the permissions that have already been granted for other housing development in the village and that the site is not an allocated Local Plan site. However, significantly boosting the supply of housing is an objective of the government. Furthermore, the scale of development proposed would be within the terms of Policy LS1, which does not normally support new housing developments which would increase the size of a village by more than 10%, and the annual housing figure in the Local Plan is identified as a minimum figure rather than a maximum. Any application for further housing in the vicinity would be considered on its own merits.
36. My attention has been drawn to a number of policies in the Local Plan but none of these would preclude the development of greenfield land. There is sufficient separation distance from the site and the school's wildlife garden such that there would be no harm caused. There is no evidence to suggest that the site is of a high ecological value and whilst some vegetation may have to be removed to enable the site access, landscaping is a matter reserved for future consideration and a scheme could be required that would provide appropriate mitigation as well as biodiversity net gain. There is no evidence to suggest that the site constitutes best and most versatile agricultural land.

Conditions

37. I have considered the conditions suggested by the Council, having regard to the six tests set out in the Framework, and have amended the wording of certain conditions in that light (without altering their fundamental aims).
38. In the interests of certainty, the relevant conditions concerning the timescales for the commencement of development, the submission of the reserved matters and the approved plans are necessary.
39. A number of conditions are required prior to commencement of development to ensure that the relevant details are acceptable and compliance with their requirements at a later time could result in unacceptable harm. A condition requiring details of the construction phase is necessary to ensure that the impacts of construction on the living conditions of existing residents and highway safety are minimised. In the interests of the proper functioning of the proposed development conditions are necessary to require details of: vehicle parking and turning areas, construction details of the access and connection to the existing highway, maximum achievable visibility splays, access roads, walkway to High Heskett road and their surfacing; refuse storage and collection; the discharge of surface water and foul drainage; a landscaping scheme; and how all dwellings at the site would not exceed the required noise criteria.
40. To prevent the over development of the site, a condition is necessary to restrict the development to no more than five dwellings. In the interests of the living conditions of neighbouring occupiers a condition restricting hours of operation during the construction phase is necessary. In the interest of the character and appearance of the area and highway safety, it is necessary to removed rights for works permitted to take place without the need for express planning permission on a selective basis, referring to classes of the GPDO¹ concerned with boundary treatments and outbuildings.

¹ Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

Conclusion

41. For the reasons given above, having considered the development plan as a whole along with all other relevant material considerations, I conclude that the appeal should succeed.

F Wilkinson

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Details of the layout, scale and appearance of the building(s), extent of the domestic curtilage and proposed boundary treatments on a site plan, all access arrangements and the landscaping (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority prior to the development being commenced and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) 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.
- 4) Development shall be carried out in accordance with the following approved plans: Location Plan 121-110-01C.
- 5) The development shall comprise no more than 5 dwellinghouses or residential units.
- 6) A detailed Construction Method Statement shall be submitted to and approved in writing by the local planning authority prior to the development being commenced. The approved Statement shall be adhered to throughout the site clearance and construction period. The Statement shall provide for:
 - i. The parking of vehicles of site operatives and visitors;
 - ii. Access and turning space for vehicles, demonstrating all vehicles are able to enter and leave the highway in a forward gear, with details of proposed crossings of the highway verge;
 - iii. Loading and unloading of plant and materials;
 - iv. Storage of plant and materials used in constructing the development;
 - v. The erection and maintenance of security hoarding;
 - vi. Measures to control the emission of dust and dirt during construction;
 - vii. A scheme for recycling/disposing of waste resulting from demolition and construction works;
 - viii. Vehicle routing plan to and from the site, including hours of movement;
 - ix. Details of any proposed temporary closing of any roads or streets;
 - x. Location of site compound;
 - xi. Surface water management details during the construction phase.
- 7) Details to be submitted as part of the reserved matters submission shall include a plan to demonstrate areas for the turning and parking of vehicles, full detailed plans of the construction details of the access and connection to the existing highway, maximum achievable visibility splays, access roads, walkway to High Heskett road and their surfacing. The development shall then be implemented in accordance with the approved details prior to first occupation of any of the approved residential units and shall be retained as such thereafter. The turning area shall thereafter be kept clear so that vehicles can manoeuvre at all times.
- 8) Details to be submitted as part of the reserved matters submission shall include a detailed Landscaping Scheme and a Landscape Management Plan. The Landscaping Scheme shall include wherever possible the retention of existing trees and hedges. If trees/hedgerows are identified for removal, replacement

planting will be required at a minimum ratio of 3:1 (3 new trees for each tree removed or damaged). The Landscape Management Plan shall include long-term design objectives, management responsibilities and maintenance schedules for all landscape areas. The development shall be implemented in accordance with the approved details prior to first occupation of any of the approved residential units and shall be retained as such thereafter.

- 9) A detailed scheme for the storage facilities and collection facilities for domestic waste bin arrangements shall be submitted to and approved in writing by the local planning authority prior to the development being commenced. The approved scheme shall be fully implemented prior to first occupation of any of the approved residential units and shall be retained as such thereafter.
- 10) Full details of the surface water drainage system and a maintenance schedule (identifying the responsible parties) shall be submitted to and approved in writing by the local planning authority prior to the development being commenced. The drainage scheme must include:
- i. An investigation of the hierarchy of drainage options in the National Planning Practice Guidance (or any subsequent amendment thereof). This investigation shall include evidence of an assessment of ground conditions and the potential for infiltration of surface water;
 - ii. A restricted rate of discharge of surface water agreed with the local planning authority (if it is agreed that infiltration is discounted by the investigations); and
 - iii. A timetable for its implementation.

The approved scheme shall also be in accordance with the Non-Statutory Technical Standards for Sustainable Drainage Systems (March 2015) or any subsequent replacement national standards. The development hereby permitted shall not be occupied until surface water drainage has been provided in accordance with the approved scheme and shall be retained and managed as such thereafter.

- 11) A detailed foul drainage scheme and an investigation of the hierarchy of foul drainage options in the National Planning Practice Guidance (or any subsequent amendment thereof) shall be submitted to and approved in writing by the local planning authority prior to the development being commenced. The development hereby permitted shall not be occupied until foul drainage has been provided in accordance with the approved scheme and shall be maintained thereafter. The development shall be drained on separate foul and surface water systems, and no surface water shall discharge to the public sewerage system either directly or indirectly.
- 12) All residential units shall be designed so as not to exceed the noise criteria based on current figures by the World Health Authority Community Noise Guideline Values/BS8233 conditions given below:
- Dwellings indoors in day-time: 35dB Laeq, 16 hours.
 - Outdoor living area in day-time: 50dB Laeq, 16 hours, unless this can be fully evidenced as being unfeasible within the site, and not exceed 55dB Laeq, 16 hours in any case.
 - Inside bedrooms at night-time: 30dB Laeq, 8 hours (45dB Lmax).
 - Outside bedrooms at night-time: 45dB Laeq, 8 hours (45dB Lmax).

Details evidencing how all residential properties at the site shall not exceed the noise criteria shall be submitted to and approved in writing by the local planning authority prior to the development being commenced, with approved mitigation to achieve these criteria implemented prior to first occupation of the residential unit and retained as such thereafter.

- 13) No site preparation/clearance, demolition, construction, deliveries or fit-out associated with the development shall occur during the construction phase except between the hours of 08:00 to 18:00 Monday to Saturday. No such activities shall be undertaken on Sundays or on Public Holidays during the construction phase.
- 14) Notwithstanding the provisions of the Town and Country (General Permitted Development) Order 2015 (as amended) (or any Order revoking and re-enacting that Order with or without modification), no development under Part 1 Class E and Part 2 Class A of Schedule 2 to that Order shall be carried out.