



Appeal Decision

Site visit made on 10 January 2022

by J M Tweddle BSc(Hons) MSc(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 March 2022

Appeal Ref: APP/Q9495/W/21/3279281

**Land to the rear of Fairfield, Randlehowe, Eskdale Green, Cumbria
CA19 1UA**

- 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 Bill Taylor against the decision of the Lake District National Park Authority.
- The application Ref 7/2020/4077, dated 21 September 2020, was refused by notice dated 22 January 2021.
- The development proposed is described as 'outline planning application for 3No 1 bedroom dwellings or bungalows'.

Decision

1. The appeal is allowed and outline planning permission is granted for the erection of 3no. 1 bedroom dwellings on land to the rear of Fairfield, Randlehowe, Eskdale Green, Cumbria CA19 1UA in accordance with the terms of the application, Ref 7/2020/4077, dated 21 September 2020, and subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by Mr Taylor against the Lake District National Park Authority. This application is the subject of a separate decision.

Preliminary Matters

3. I have, in part, used the appeal site address as stated on the Appeal Form as this appears to be a more accurate reflection of the site's location. In my formal decision I have omitted the words 'outline planning application for' from the description of development and replaced them with 'erection of' because the former is not an act of development. I have also omitted the words 'or bungalows' because bungalows are also dwellings and therefore this wording is superfluous.
4. The planning application was submitted in outline with all matters reserved for future consideration. I have had regard to the proposed site plan and section drawing¹ which accompanies the proposal, but I have considered these details to be indicative only, and therefore these drawings provide only an illustration of how the site could be developed to accommodate the proposal.
5. The Lake District National Park Local Plan 2020-2035 (the LP) was adopted by the Local Planning Authority (LPA) on 19 May 2021. This now constitutes the development plan for the LPA's administrative area and its policies supersede those listed on the LPA's original decision notice. Furthermore, the Government

¹ Proposed Site Plan & Section Drawing No. ADAL134/F/10-01 Revision A

published a revised version of the National Planning Policy Framework (the Framework) on 20 July 2021. Both parties have had an opportunity to comment on these policy changes during the course of the appeal and I have considered their responses accordingly.

Main Issue

6. The main issue is whether the proposed development would provide a suitable location for housing, with particular regard to its effect on the character and appearance of the area.

Reasons

7. It is common ground between the main parties that the site would broadly satisfy the LPA's spatial strategy in relation to the location of new housing and that there is an evidenced need for housing in the locality. Therefore, the LPA's concerns are generally based on the visual effects of the proposal on the character and appearance of the surrounding area owing to the proposed positioning of residential development to the rear of existing properties and at the edge of the settlement.
8. The appeal site is a broadly rectangular piece of undeveloped land as part of a larger irregular shaped area of land to the rear of dwellings along Randlehow and Smithy Brow Lane, and on the eastern fringe of the village of Eskdale Green. A gravel track runs through the site and provides access to the village's wastewater treatment facility. While semi-rural in character, the site's appearance can be described as a rugged area of scrubland that is unkempt and does not appear to be farmed in any obvious way. The site is visible from a small car park on Smithy Brown Lane and in some private views from adjacent houses. The development would be visible from these viewpoints and from public views experienced by users of the public right of way which crosses the site.
9. However, the appeal site is not widely visible when traveling along surrounding roads in the locality and a band of mature trees to the west and south limit its visibility from the wider surrounding landscape. As such, the site makes a very limited contribution to the rural setting of the village and does not form part of strong landscape feature.
10. As proposed, the residential development would not directly address a street frontage, with the exception of the access taken from Randlehowe, and therefore it would represent a backland form of development. I do not disagree with the LPA's general view that the predominant form of development in Eskdale Green is that of frontage dwellings and buildings with direct access to the street. However, as I observed on my site visit, there are other limited examples of backland-style developments in the vicinity, and therefore such development cannot be discounted as entirely uncharacteristic of the area. Furthermore, it is not accurate to describe the settlement as completely linear in form, as the built form radiates out from the valley road (Smithy Brow Lane) along a small network of local lanes. Despite the lack of any central focal point, this is more akin to a cluster formation.
11. The LPA's Landscape Character Supplementary Planning Document (SPD) identifies the area in which the appeal site is located as the Bleng & Irt Area of Distinctive Character. Here the landscape is gently undulating and dominated

by pastoral farmland. The SPD identifies the small-scale settlement pattern of Eskdale Green as a sensitivity within this landscape, which is vulnerable to the introduction of buildings within, or at the edge of, the settlement that are out of scale or do not respect existing character.

12. From the strength of representations received in response to the proposed development I have no doubt that, largely owing to the existing access across the land via the public right of way, the site is considered to be of local amenity value. However, the site is not public open space and does not have any site-specific designation or protection afforded to it by the LP.
13. Given its positioning and close proximity to the existing built form of the village the development would be viewed as a modest extension to the settlement and would be experienced in the context of the existing adjacent houses. The siting of residential development at this location would not, therefore, appear as a discordant form of development, nor would it be harmful to its surroundings. For these reasons, I find that the development would relate well to the form of the existing settlement and therefore I am satisfied that it would not have an adverse effect on the local distinctiveness, character or landscape setting of the village.
14. I am conscious that the appeal site falls within both the Lake District National Park and the English Lake District World Heritage Site (WHS). In this regard, I acknowledge that the area is afforded the highest level of protection for its landscape and scenic beauty. However, given my findings above, there would be no conflict with the statutory purposes of the national park² nor would there be any harm to the Outstanding Universal Value of the WHS.
15. For all these reasons, I find that the proposed development would provide a suitable location for housing, with particular regard to its effect on the character and appearance of the area. Therefore, the proposal would not conflict with the relevant provisions of Policies 01, 02, 05 and 06 of the LP which together, amongst other things, seek to achieve the sustainable growth of settlements; that the extraordinary harmony and beauty of the landscape is conserved and enhanced; and seeks the sustainable growth of settlements with development that is inspired by and contributes to local character and distinctiveness. Accordingly, there would be no conflict with the associated provisions of the Framework.

Other Matters

16. Matters pertaining to appearance, layout, scale and landscaping are reserved for future consideration. While the indicative plan shows a rather regimented layout, this is only an illustration of how the site could be developed. I see no reason why a satisfactory scheme could not be brought forward at the reserved matters stage, and which would reflect the high standards of design that is required by both local and national planning policy. Furthermore, the appeal site's relationship with surrounding properties does not suggest that it would be impossible to design a scheme that would safeguard the living conditions of existing and future occupiers, with regard to privacy and outlook.
17. The local utilities company which operates the adjacent wastewater treatment facility has been consulted over the proposal and raise no concerns in relation

² Section 11 of the National Parks and Access to the Countryside Act 1949 (as amended)

to the capacity of these facilities. No concerns have been raised by Environmental Health Officers in relation to the proximity of the development to these facilities and there is no evidence to suggest that I ought to deviate from this. While access is also a reserved matter, I note that the local Highway Authority has not raised any fundamental concerns with the proposal and given the number of houses proposed, I do not expect a significant increase in vehicle movements. Furthermore, any adverse effects from the construction period would be short-term and could be mitigated by careful construction management.

18. There are some concerns raised in relation to the proximity of the development to adjacent trees and the drainage arrangements for the site. However, I am satisfied that these matters can be dealt with via the imposition of appropriate conditions that would secure the submission of further details for approval.
19. Interested parties have raised matters in relation to land ownership and property rights, including potential covenants and rights of access over the land. It is a well-founded principle that the planning system is not concerned with land ownership nor individual property rights. Nevertheless, a grant of planning permission would not negate or supersede any private legal rights relating to land ownership. Accordingly, issues relating to land ownership or property rights are a civil matter between the relevant parties and have not, therefore, had any material bearing on my assessment of the planning issues in this appeal.
20. Services and facilities in the village, including public transport, are limited, yet the settlement is identified within the LPA's spatial strategy as a location where development of an appropriate scale and nature would be supported. The Framework also advises that housing development in one village may support services in a village nearby.
21. The public right of way that crosses the site may need to be diverted to facilitate the proposal. Nevertheless, there is nothing before me to suggest that such a diversion would not be possible or unachievable. In any case, this matter relates to a separate regulatory regime beyond the planning system.
22. Interested parties are concerned with the existing use of the site and activities that have recently taken place, including the alleged felling of trees, burning of materials, storage of waste, etc. However, the current use of the site and the way in which it is managed is beyond the scope of this appeal, which is essentially concerned with the planning merits of the proposed development.
23. Despite alleged discrepancies with the details contained within the planning application form, the proposal has been assessed on the basis of providing three dwellings each with one bedroom, as indicated in the appellant's description of development. Therefore, any subsequent reserved matters application would need to reflect this.

Conditions

24. The Framework sets out that conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. I have assessed the LPA's suggested conditions on this basis and made some minor revisions in the interests of precision and clarity.

25. I have attached conditions relating to the submission of reserved matters and the time limits associated with this. I have also included a condition specifying the approved plan as this provides certainty. To comply with Policy 15 of the LP and the requirements of the LPA's Housing SPD³, I have included a condition restricting the future occupancy of dwellings in line with the LPA's local occupancy criteria. However, I have amended the qualifying time periods under clauses iii and iv to be 'a period of at least three years' because I do not believe it is the LPA's intention to restrict future occupancy only to individuals who have previously been resident in the locality for a period of exactly 3 years. I have also found the LPA's suggested wording in relation to mortgagees and successors in title to be unnecessary as this relates to matters of ownership, whereas the condition is concerned with occupation of the dwellings.
26. In order to safeguard trees on and adjacent to the site, I have consolidated the LPA's suggested three conditions into a single concise condition that will secure a tree survey and a scheme for the protection of trees. A condition is also necessary to secure the submission and approval of a drainage scheme and to ensure that surface and foul water are drained on separate systems. I have reworded the LPA's suggested condition in the interests of precision and clarity.
27. Finally, in order to meet the LPA's objectives around carbon reduction and pursuant to Policy 20 of the LP, a condition is imposed to ensure that the development secures a proportion of its energy from decentralised and renewable or low carbon energy sources. I have also reworded this condition in order to ensure it is precise, enforceable and achieves the policy expectation.

Conclusion

28. I have found the proposal to be compliant with the above cited policies of the development plan and the associated provisions of the Framework.
29. There are no material considerations that would indicate that the appeal should be determined other than in accordance with the development plan. Accordingly, I conclude that, subject to the conditions set out in the attached schedule, the appeal should succeed.

J M Tweddle

INSPECTOR

³ Housing Supplementary Planning Document, How we use Policy 15: Housing in planning decisions, published May 2021

Schedule of Conditions

- 1) Details of the access, appearance, landscaping, layout and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.
- 2) Application for the approval of the reserved matters shall be made to the Local Planning Authority not later than 3 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 reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plan: Location Plan Drawing No. ADAL134/00-01.
- 5) The dwellings hereby permitted shall not be occupied otherwise than by a person with a local connection and as their only or principal home, or the widow or widower of such a person, and any dependants of such a person living with them.

The occupant will supply to the Local Planning Authority (within 14 days of the Local Planning Authority's written request to do so) 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:

'a person with a local connection' means an individual who immediately prior to occupation of the dwelling satisfies one of the following criteria:

- (i) 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; or,
- (ii) 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,
- (iii) The person has been continuously resident in the locality defined for a period of at least 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

- (iv) The person is a former resident who lived in the locality defined for a period of at least three years and then lived outside the locality defined for social and/or economic reasons and is returning to live in the locality defined within three years of the date of their departure; or
- (v) 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 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: Bootle; Ennerdale and Kinniside; Eskdale; Irton with Santon; Muncaster; Ulpha; Waberthwaite; Wasdale; and those parts of the parishes of: Drigg and Carleton; Gosforth; Lamplugh; Millom Without; Ponsonby; and Whicham; which are situated within the Lake District National Park.

- 6) No site clearance, preparatory work or development shall take place until a survey and scheme for the protection of trees on, and adjacent to, the site (a tree protection plan), and appropriate working methods (an arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) have been submitted to and approved in writing by the Local Planning Authority. The scheme for the protection of the trees shall be carried out as approved.
- 7) No building hereby permitted shall be occupied until a scheme for foul and surface water drainage has been implemented in accordance with details that shall first have been submitted to and approved in writing by the Local Planning Authority. Before any details are submitted to the Local Planning Authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent replacement standards), and the results of the assessment shall have been provided to the Local Planning Authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
 - Provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - Provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any

public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime;

- Include a timetable for implementation; and,
 - Confirm that no surface water shall discharge into the public sewerage system either directly or indirectly.
- 8) The dwellings hereby permitted shall not be occupied until a scheme demonstrating that at least 30% of the development's predicted operational energy requirements will be generated via decentralised and renewable or low carbon energy sources has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include a timetable for implementation and details of any physical works on site. The scheme shall be implemented in accordance with the approved details and retained as operational thereafter.