
Appeal Decision

Site visit made on 15 March 2022

by Alison Partington BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 March 2022

Appeal Ref: APP/H0928/W/21/3287566

Fallowfield, Cliburn, Penrith, CA10 3AL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Graham Lund against the decision of Eden District Council.
 - The application Ref 21/0330, dated 31 March 2021, was refused by notice dated 1 November 2021.
 - The development proposed is the construction of 4 dwellings.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in the appeal are:
 - Whether or not the proposed development represents piecemeal development of the wider site and whether or not it makes adequate provision for affordable housing;
 - Whether or not the proposed development provides an adequate mix of housing;
 - The effect of the proposed development on biodiversity;
 - Whether or not the proposed development makes adequate provision of amenity space;
 - Whether or not the proposed development adequately incorporates sustainable design features; and
 - Whether or not the proposed development would be provided with adequate drainage.

Reasons

Whether piecemeal development

3. The appeal site consists of vacant land either side of Fallowfield, a cul-de-sac serving a number of houses. The settlement hierarchy in Policy LS1 of the *Eden Local Plan 2014 – 2032 (adopted October 2018)* (ELP) designates Cliburn as one of the 'Smaller Villages and Hamlets'. In such locations development is restricted to: infill sites, which fill a modest gap between existing buildings; 'rounding off'; and the reuse of traditional buildings. It is not disputed by the parties that the site is an infill site and I agree with this conclusion.

4. In addition, Policy HS2 of the ELP indicates that in such locations new dwellings should not have a gross internal floorspace of more than 150 sqm and that on greenfield sites a condition or legal agreement will be applied to restrict occupancy to those meeting a local connection.
5. On sites with 11 or more houses, ELP Policy HS1 seeks to ensure that 30% of new houses are provided as affordable housing. More detailed guidance on the application of this policy is provided in the *Housing Supplementary Planning Document (adopted April 2020)* (SPD). This indicates that it is not acceptable to sub-divide sites and submit applications in a piecemeal fashion to avoid making affordable housing contributions. In considering whether this is the case, it states that matters such as landownership, connectivity between the sites (including services and access), the fragmentation of units and land and the age of previous permissions will be taken into account.
6. The Council have suggested that the entire site, which with the proposed development would provide a total of 13 houses has been developed in a piecemeal way to circumnavigate the need to provide affordable housing.
7. The appeal site together with the adjacent land on which the other houses on Fallowfield have been built has a planning history dating back to 1989 which is set out fully in the appellant's appeal statement. This shows that the entire site first gained outline planning permission in 1990¹. Attached to this permission was a condition requiring no more than 4 houses to be completed / offered for sale in any one year.
8. The appellant has stated that due to the practice of the local authority at the time, rather than reserved matters applications being made for the entire site a series of full applications were made for various plots between 1998 and 2000, which led to the construction of the 9 properties on the wider site. These comprise a terrace of 3 dwellings, a pair of semi-detached houses, 2 detached houses and 2 detached bungalows.
9. On the appeal site itself outline permission for 4 houses, two of which were to be affordable housing, was granted in 2008. The appellant has stated that the provision of affordable housing was in accordance with both the *Joint Structure Plan for Cumbria and the Lake District (adopted April 2006)* which allowed a negotiated affordable housing split on suitable sites and the emerging Eden Core Strategy policy that required 50% affordable housing. An extension of time for this permission was granted in 2012, and reserved matters were approved in 2017. The appellant started the construction in 2021 but stopped when it was discovered that the planning permission had expired.
10. The application which is the subject of this appeal was submitted in response to this. In accordance with Policy HS2 of the ELP the gross internal floor areas of the proposed houses have been limited to 150 sqm and the appellant accepts a local occupancy condition would be applied.
11. It is not disputed that the appeal site is in the same ownership as the wider site and that the proposed development would utilise the same access road and other services. However, I have not been provided with any evidence to indicate that prior to 2006 there was any policy that required the provision of affordable housing. On this basis, the other 9 houses on the wider site were

¹ Application reference 89/1151

developed before there was any policy requirement to provide affordable housing. As such, the site cannot have been sub-divided in an attempt to avoid making provision for affordable housing because those requirements were not there when the rest of the site was developed.

12. Furthermore, this conclusion is supported by the fact that the appellant sought to start the construction of the previously approved scheme which included the provision of affordable housing in 2021, before it was realised that the permission had in fact expired. Whilst the current scheme no longer proposes any affordable housing this reflects the fact that, notwithstanding the need for affordable housing in the area, it is not a policy requirement for schemes of only 4 houses. However, the scheme would comply with the appropriate requirements set out above in Policy HS2 for residential development in 'Smaller Villages and Hamlets'.
13. All in all, I am satisfied that the proposal does not represent piecemeal development and therefore as a development of 4 houses does not need to make provision of affordable housing. As a result, there is no conflict with Policy HS1 of the ELP outlined above.

Housing Mix

14. The appeal scheme consists of 2 bungalows and 2 houses all of which would have 4 bedrooms. No evidence has been provided to explain why this mix of dwelling types has been provided, nor why they are all 4 bedroomed properties. This is contrary to the requirements of ELP Policy HS4 which requires residential developments to address local need through reference to various criteria. No substantive evidence has been provided to demonstrate that the housing mix requirement should not be met on the site.
15. The Council's evidence shows that demand on the Choice Based Letting System in the area is for 1, 2, and 3 bedroomed properties. Given that to comply with Policy HS2, the appeal scheme would be subject to a local occupancy condition, in the absence of evidence to the contrary, I am not satisfied that the proposal would provide the types and sizes of houses needed to meet local need.
16. The appellant has suggested that Policy HS4 only applies to major residential developments. However, unlike other policies such as HS1 and HS5, which clearly state that they only apply to developments of more than 10 dwellings, Policy HS4 has no such caveat and therefore applies to all residential development irrespective of size.
17. Therefore, in the absence of any evidence to show how the proposed development would meet local need, I consider that it would not provide an adequate mix of housing and would be contrary to Policy HS4 outlined above.

Biodiversity

18. The site is currently grassland. Whilst the appellant suggested that it is likely to have limited ecological value no formal assessment has been carried out to confirm this is the case. Nor to establish a baseline to ensure the development avoids any net loss of biodiversity and preferably provides a net gain in accordance with Policy ENV1 of the ELP.
19. Whilst a condition could be used to ensure the provision of some details, the provision of an ecological assessment to establish the baseline position is

necessary at this stage to ensure the design and layout of the development is appropriate and would avoid adverse effects on biodiversity.

20. Consequently, I am not satisfied that the proposed development would not have an unacceptable effect on biodiversity. Thus, it would conflict with ELP Policy ENV1 set out above.

Amenity Land

21. Policy COM3 of the ELP requires that residential schemes of more than 10 dwellings (major residential development) should make provision on site for open space. In addition, in areas where there is a demonstrable under provision of existing open space, contributions may be sought from smaller residential schemes towards the provision of additional and accessible open space or for the upgrading of existing facilities. Given my conclusion that the proposal is not piecemeal development, it is not major residential development. Moreover, the Council have not provided any evidence to show there is a demonstrable under provision of open space in the area.
22. In the light of this, I consider that it is not necessary for the proposal to either provide on site provision of open space or a contribution to off-site improvements. Therefore, there is no conflict with Policy COM3 outlined above.

Sustainable Design Features

23. Similarly, Policy ENV5 of the ELP requires major residential development to demonstrate how the proposed scheme has considered various environmentally sustainable design features. However, as the proposal is not major residential development, the appeal scheme does not need to comply with the requirements of this policy.

Drainage

24. It is proposed that surface water drainage would be discharged by soakaways and the appellant provided percolation test results to show these would perform adequately to the Council several months before the decision on the application was made. The Council has not disputed the findings of these tests or provided any evidence to the contrary. Moreover, I understand that the wider development also makes use of soakaways.
25. Given this, and the fact that further details could be provided by a condition, I consider that the proposed development would be provided with adequate drainage and would accord with the requirements for water management set out in Policy DEV2 of the ELP.

Other Matters

26. In coming to my decision, I have had regard to concerns raised by third parties, most of which are addressed in the main issues. Other matters included parking and the need for a ground condition assessment. Given my overall findings in respect of the main issues it has not been necessary for me to consider these matters in detail. However, the Council have not raised any objection with regard to the level of parking nor have they identified a need for a ground condition survey. None of the evidence before me leads me to a different conclusion, and if needed a ground condition survey could have been required by condition.

Planning Balance and Conclusion

27. I have found that the proposal would not be piecemeal development of the wider site and so the development does not need to provide the various policy requirements for major residential schemes set out in Policies HS1, COM3 and ENV5 of the ELP. I also consider that the proposal would be provided with adequate drainage. However, an absence of harm in all these matters is a neutral factor. Consequently, they would not outweigh the harm I consider the scheme would cause in respect of the housing mix and its impact on biodiversity.
28. Therefore, for the reasons set out above I conclude the appeal should be dismissed.

Alison Partington

INSPECTOR