



Appeal Decision

Site visit made on 5 April 2022

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 May 2022

Appeal Ref: APP/M0933/W/21/3288884

Holme House Farm, Skelsmergh, Kendal LA8 9AQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Ms Moss of Holme House Farm Limited against the decision of South Lakeland District Council.
- The application Ref SL/2021/0552, dated 24 May 2021, was refused by notice dated 3 September 2021.
- The application sought outline planning permission for demolition of existing buildings and erection of five dwellings and shared use buildings without complying with a condition attached to planning permission Ref SL/2019/1032, dated 1 March 2021.
- The condition in dispute is No 5 which states that: The gross internal floorspace of each of the five dwellings hereby approved, together with the cumulative footprints of any other structures erected as permitted development within the curtilage of each dwelling for purposes incidental to the enjoyment of the dwellinghouse pursuant to The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), or any Order revoking or re-enacting that Order, shall not exceed 140 sq. m. The curtilage of any of the five dwellings hereby approved must lie within the "Blue Zone" or "Red Zone" on drawing (PP) 03 Rev D.
- The reason given for the condition is: To ensure that the replacement dwellings do not exceed a size that would compromise the objectives of policy CS1.2 (The Development Strategy) of the South Lakeland Core Strategy.

Decision

1. The appeal is allowed and outline planning permission is granted for demolition of existing buildings and erection of five dwellings and shared use buildings at Holme House Farm, Skelsmergh, Kendal LA8 9AQ in accordance with the application Ref SL/2021/0552 made on the 24 May 2021 without complying with condition No 5 set out in planning permission Ref SL/2019/1032 granted on 1 March 2021 by South Lakeland District Council, but otherwise subject to the conditions in the attached schedule.

Background and Main Issue

2. Holme House Farm is located in the open countryside. It comprises a farmhouse together with a number of buildings that have previously been used for residential, agricultural and business purposes. Six residential units have been accepted as lawful: four caravans which were granted a Certificate of Lawful Use (CLU) in 1998, and two dwellings in the original farmhouse. Business/storage uses of at least some of the farm buildings appears to have

been accepted as being in the baseline of the site¹, although these uses do not benefit from a CLU.

3. In considering the development, the Council's view was that the site is in a location where new residential development is generally regarded as unsustainable, but the harmful impact, mainly relating to the number of motorised trips to access services, was restricted by the relatively small size of the six lawful residential units. Consequently, condition 5 was imposed on the permission which limits the gross internal area of each of the five dwellings, including any incidental structures within their curtilages, to 140 square metres (sq.m).
4. The appeal proposal seeks permission to carry out the development without complying with condition 5 as the appellant does not consider that it meets the tests for conditions in paragraph 56 of the National Planning Policy Framework (the Framework). Alternatively, the appellant has requested a variation to its requirements to enable a larger gross internal floorspace for plots A and B and/or that additional floorspace is allowed for other structures to be erected as permitted development within the curtilage of each of the dwellings.
5. Taking the above background into account, the main issue is whether the condition is necessary and reasonable having regard to the development strategy for the area.

Reasons

6. Policy CS1.2 of the South Lakeland Local Development Framework Core Strategy adopted 2010 (the Core Strategy) sets out a development strategy based on a settlement hierarchy of principal, key and local service centres, and smaller villages, hamlets and open countryside. It seeks to focus new development in accessible locations with good access to services, facilities and public transport in accordance with the hierarchy of settlements. In the countryside, exceptionally, the policy allows for new development only where certain criteria are met.
7. The development does not meet any of these criteria. The Council's position is therefore that the development is not in accordance with the development plan, but the established residential use at the site is of sufficient weight to justify the grant of permission, with the caveat that the new dwellings must be of a scale that makes them no more unsustainable than the buildings they replace, in order to meet the overall sustainability objectives of its development strategy and the definition of sustainable development and associated guidance in the Framework.
8. The site lies approximately 2km to the east of Burneside, which is defined as a local service centre in Policy CS1.2 and as such has a limited range of services and facilities. It would be theoretically possible for future occupiers to walk or cycle to Burneside, which is relatively close in distance terms. However, the narrow and unlit nature of the road from the site to Burneside together with the lack of pavement would be disincentives to travelling on foot or by bicycle, especially during darker winter months or in inclement weather. Similar considerations would apply to the Public Rights of Way in the area.

¹ Appeal reference APP/M0933/C/09/2108315, paragraph 52

9. I note that a number of the first future residents intend to work from home. The appellant has also highlighted that a number are keen cyclists and so would be making as many journeys as possible by bicycle, as well as the potential for use of electric vehicles. However, whilst this may be the case now, other residents in the longer term may not be in the same position.
10. Paragraph 105 of the Framework recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. While taking this into account, I nonetheless find that the majority of journeys to shops, schools and employment or to satisfy other daily needs would take place using the private motor vehicle. The location of the site would therefore not offer opportunities to access services and facilities by sustainable transport modes.
11. Whilst there may be extremes at both ends of a dwelling size, larger dwellings generally accommodate more people, with a commensurate level of vehicle movements. I appreciate that it is particularly the personal circumstances of two of the future households that is the main driver for this appeal scheme and that their desire for a larger dwelling may not necessarily result in additional occupiers. However, while this may be the case now, it may not be for other future residents in the longer term.
12. The Council has focussed on transport in terms of its assessment of sustainability. This is indeed an important environmental consideration given the aims of the Framework in relation to minimising the need to travel and maximising opportunities to promote sustainable transport. Furthermore, the development strategy for the area is based on the principle of concentrating new development in the defined settlements that offer the greatest concentration of existing services and facilities, so that more people will have the potential to live closer to their place of work, shops and services and reduce the need to travel.
13. Policy CS1.2 does not contain a cap on the size of development that may be acceptable. However, development plans cannot realistically address every development scenario that may arise. The policy contains a clear development strategy which limits development in the open countryside for the reasons summarised above, and an inappropriate scale of development would have the potential to undermine this.
14. The appellant highlights that the proposal would involve the cessation of the former business uses and that there would only be five dwellings compared to the six lawful residential units and bearing in mind that previously there were around 30 households. However, this would exaggerate the impacts associated with motor vehicle trips of the previous use given that the evidence before me illustrates that most of these residential units were unlawful.
15. My attention has been drawn to the fact that a members agreement would be put in place to limit the number of cars per household to two and that a similar condition could be imposed. Conditions cannot be used to control the actions of individual occupiers and so such a condition would not meet the Framework tests.
16. The appellant's examples of developments where similar conditions have been imposed do not seem to restrict the number of vehicles per household. Based on the submitted information, the scheme in Colchester has a different

locational context, being sited within a reasonable walking distance of a range of services and facilities, very close to a relatively frequent bus service and with a flat, traffic-free cycle path, with street lighting, connecting directly to the railway station and city centre. Whilst the Lancaster development has provision for 43 parking spaces for a 40 unit housing scheme, no details are before me as to the context for this. In any event, in regard to the appeal proposal, it is not so much about the number of vehicles that a household has but more about how frequently residents would have to travel by private motor vehicle to access services and facilities.

17. Although described as caravans, the four residential units benefitting from the CLU have had alterations and extensions. Nevertheless, they are still of a small size, as are the two residential units in the farmhouse. The maximum floorspace specified within condition 5, which took account of the floor space of all six existing units together with a number of outbuildings, is already larger than that of the residential units that would be replaced. To increase the size further would result in dwellings that would not be comparable. Based on the evidence that is before me, I therefore find that there is a likelihood of more vehicular movements to and from the site when compared to the residential units to be replaced. This would go against the main principle against which the development was considered acceptable.
18. Accordingly, a condition restricting the size of the dwellings is reasonable and necessary, having regard to the Council's development strategy as set out in Policy CS1.2 of the Core Strategy and the Framework's aims for sustainable development. Removing condition 5 would not therefore be acceptable.
19. The appellant has suggested a number of alternatives to condition 5². Options 2 and 3 would enable an increase in the floorspace of the dwellings on plots A and B. As set out above, this would not be acceptable as it would undermine the main principle against which the development was considered acceptable.
20. Option 4 would limit the number of bedrooms for the dwellings on plots A and B rather than floorspace. A larger kitchen or office space may not increase the number of residents. However, I am not persuaded that a condition limiting the number of bedrooms would be enforceable.
21. Option 5 would retain the floorspace cap but would remove the reference to permitted development (PD) rights within that cap.
22. The floorspace calculation used in condition 5 included the footprint of a range of outbuildings associated with the existing residential units, despite some uncertainties about their lawfulness. It includes an overall size allocation, with flexibility in how this is used, which could include the construction of buildings or structures incidental to the enjoyment of the dwellinghouse. In addition, the approved development includes provision for shared-use buildings with a maximum floor area of 480 sq. m, thus providing the opportunity for some incidental space for each household.
23. However, buildings or structures incidental to the enjoyment of a dwellinghouse would be unlikely to directly result in a material increase in the number of private motor vehicle journeys to access services and facilities, which is the main concern in terms of potential to compromise the objectives of the

² Appellant's statement of case, appendix 4

development strategy. I am also mindful that the six existing residential units would benefit from PD rights under this class of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).

24. The variation of condition 5 as set out in option 5 would enable residents to exercise their PD rights under Schedule 2 Part 1 Class E of the GPDO whilst still retaining the cap on the size of the dwellings and therefore limiting the number of residents and unsustainable trip generation. Such a variation would not therefore undermine the development strategy as set out in Policy CS1.2 or the sustainable development objectives of the Framework.

Other Matters

25. The River Sprint to the west of the site is designated as part of the River Kent and Tributaries Site of Special Scientific Interest and River Kent Special Area of Conservation (SAC). The SAC is protected under the Conservation of Habitats and Species Regulations 2017.
26. A primary reason for the designation is the presence of white clawed crayfish, densities of which are extremely high throughout much of the Kent system. Other qualifying features are freshwater mussel, bullhead and water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitricho-Batrachion* vegetation.
27. A Shadow Habitat Regulations Assessment³ (Shadow HRA) was prepared for the appellant to accompany a discharge of conditions application⁴ related to the original permission. It updates a previous iteration submitted with the original planning application and considered as part of that scheme.
28. The Shadow HRA identifies that the proposal would include the removal of a small number of boulders which have been washed from the existing failed rock armour and lie in the river channel and their subsequent reuse to protect a discharge outfall within the River Sprint, the creation of a Sustainable Urban Drainage (SUDS) pond to deal with surface water drainage, and a package treatment plant to treat foul water. The works associated with the construction of the dwellings and the SUDS attenuation basin would be some distance from the River Sprint. However, the creation of a new outfall and the repositioning of a small number of in-situ boulders would take place within the watercourse.
29. Taking into account the information in the Shadow HRA, I am satisfied that these works have the potential to cause disturbance to the qualifying features of the SAC. The effect of the proposal is such that it is likely to have significant effects on the protected area.
30. In terms of the qualifying habitat - water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitricho-Batrachion* vegetation – the likely significant effects would be from: direct physical impacts from installing the pipe for the discharge of the SUDS scheme and package treatment plant; water pollution, increased turbidity and the introduction of invasive species from the construction of the dwellings and the SUDS and package treatment plant, and the installation of the pipe for the discharge of the SUDS scheme

³ Shadow Habitat Regulations Assessment, November 2021, reference JN00473/D01v3, prepared by SK Environmental Solutions Ltd

⁴ Application reference SL/2021/0572

and package treatment plant; and air pollution from the construction of the dwellings.

31. Likely significant effects on white clawed crayfish and bullhead would be from: direct physical impacts and disturbance from installing the pipe for the discharge of the SUDS scheme and package treatment plant; water pollution and increased turbidity from the construction of the dwellings and the SUDS scheme and package treatment plant and the installation of the pipe for the discharge of the SUDS scheme and package treatment plant.
32. I must therefore consider whether measures could be put in place to avoid or mitigate these impacts arising from the proposal. The Shadow HRA includes mitigation for the site-specific effects of the proposal on the SAC. This would be in the form of a Construction Environmental Management Plan (CEMP) to mitigate the risk of water and air pollution; a CEMP for SUDS features to ensure silt prevention measures are in place; an ecological clerk of works to undertake checks for invasive species; and a watching brief for the positioning of the pipe and the moving of the boulders.
33. Natural England has been consulted on the Shadow HRA and has confirmed that providing all mitigation measures identified are secured in any permission given, then the proposal would not result in adverse effects on the integrity of the SAC.
34. For the avoidance of doubt, clarification was sought from Natural England in respect of the recently updated conservation status of the SAC. Natural England confirmed that the site falls outside of the Nutrient Neutrality catchment for the SAC, and that its updated advice regarding Nutrient Neutrality does not alter its conclusion on the Shadow HRA. I have no reason to disagree with the comments made by Natural England.
35. I am satisfied that the Shadow HRA includes appropriate mitigation for the site-specific effects of the proposal on the SAC and that these could be secured by conditions. I therefore find that, subject to the proposed mitigation, the proposal would not result in an adverse effect on the integrity of the SAC.

Conditions

36. The Planning Practice Guidance makes it clear that decision notices for the grant of permission under Section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. Permission reference SL/2019/1032 was granted subject to a number of conditions which require the submission of further details for approval. The submitted information identifies that a number have been discharged. I shall amend those conditions accordingly and will impose all those conditions that remain relevant.

Conclusion

37. For the reasons given above, a cap on the size of the dwellings is necessary and reasonable, having regard to the legitimate purposes of supporting the Council's development strategy as set out in Policy CS1.2 of the Core Strategy and the Framework's aims for sustainable development. The inclusion of the PD rights within the cap can be removed without unacceptably undermining these.

38. The appeal succeeds in respect of the proposed variation to condition 5, which would retain the floorspace cap but would remove the reference to PD rights from within that cap.

F Wilkinson

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan, PP (11); New Build Zones, (PP) 03 Rev D. All other submitted plans have been treated as illustrative only.
- 2) Reserved matters" in the context of this application means: (1) access; (2) layout of the entire site (including an overall landscaping strategy); and details of the (3) appearance, (4) scale and (5) landscaping of each individual dwelling or shared-use building hereby approved. The landscaping associated with each individual dwelling or shared-use building means detailed proposals consistent with the overall landscaping strategy.
- 3) The development to which this permission relates must be begun not later than whichever is the later of the following dates:
 - a) five years from 1 March 2021; or
 - b) the expiration of two years from the final approval of: (1) the access to, and layout of, the entire site (including an overall landscaping strategy); and (2) the appearance, scale and landscaping of at least one of the five dwellings hereby approved.

Application for the approval of the reserved matters referred to in b must be made not later than three years from 1 March 2021.

- 4) No development of any individual dwelling or shared-use building shall commence until the reserved matters relating to that individual dwelling or shared-use building have been submitted to, and approved in writing by, the local planning authority.
- 5) The gross internal floorspace of each of the five dwellings hereby permitted shall not exceed 140 sq. m. The curtilage of any of the five dwellings hereby permitted must lie within the "Blue Zone" or "Red Zone" on drawing (PP) 03 Rev D.
- 6) The shared-use building(s) hereby approved must lie within the "White Zone", "Red Zone" or "Blue Zone" on drawing (PP) 03 Rev D and shall be limited to a cumulative footprint not exceeding 480 sq. m. Use of the shared-use buildings must be restricted to: (1) shared incidental residential uses reasonably necessary to support any co-housing objectives for all five dwellings hereby approved; and/or (2) shared space for agricultural storage, production and related activities associated with the farming and general management of the land contained within the red and blue lines on drawing (PP) 11.
- 7) The overall landscaping strategy required by condition 2 shall include: (1) provision for the retention and enhancement of the existing tree belt located between the eastern boundary of the application site (but still within the blue line on drawing PP (11)) and public footpath number 570030; and (2) a maintenance strategy for the landscaping of all the land within the red and blue lines on drawing (PP) 11 for the lifetime of the development. Any further details of landscaping submitted in compliance with condition 2 must accord with the overall landscaping strategy and, thereafter, must be maintained in accordance with the agreed maintenance strategy.

- 8) The development of any individual dwelling or shared-use building shall proceed in accordance with an Arboricultural Impact Assessment and an Arboricultural Method Statement that shall first have been submitted to, and approved in writing by, the local planning authority as part of the reserved matters application for that individual dwelling or shared-use building. The Arboricultural Impact Assessment must assess the potential impact on any of the 47 individual trees and 8 groups of trees identified in the "Tree Locations & Constraints" information submitted with this application. Any trees identified for retention must be included in the details of landscaping for that individual dwelling or shared-use building required by condition 2 and must be protected during the course of development in accordance with the agreed Arboricultural Method Statement.
- 9) The dwellings hereby approved shall be constructed to meet the Building Regulations M4(2) standards for accessible and adaptable homes.
- 10) None of the dwellings hereby approved shall be first occupied until connected to the necessary infrastructure to enable access to high speed (superfast) broadband, unless this is unfeasible in the terms set out in policy DM8 (High Speed Broadband for New Developments) of the South Lakeland Development Management Policies Development Plan Document.
- 11) Each of the dwellings and shared-use buildings shall be constructed in accordance with a specification produced to accommodate as many of the provisions within the "List of Measures that support and enhance habitat creation, urban greening and respond to the effects of climate change" contained in Appendix 1 of the Development Management Policies Development Plan Document as is reasonably practicable in the circumstances. No development shall commence until the scheme has been submitted to, and approved in writing by, the local planning authority. The scheme can be submitted as part of a relevant reserved matters application as required by condition 2.
- 12) No individual dwelling or shared-use building shall be first occupied until: (1) gas protection measures for that dwelling/building together with a capping system for the garden and other soft landscaping areas within the curtilage of any dwelling, have been installed in accordance with a scheme that shall first have been submitted, and approved in writing by, the local planning authority; and (2) a validation report and statement/certificate from an appropriately qualified person detailing any contamination identified during the construction of that dwelling/building and any remediation undertaken (including material removed in the clearance of the site) has also been submitted, and approved in writing by, the local planning authority. The scheme for gas protection and, where relevant, the capping system can be submitted as part of a relevant reserved matters application as required by condition 2.
- 13) The finished ground floor levels of the dwellings and shared-use building(s) hereby approved shall be set no lower than 79.1m AOD.
- 14) The development hereby permitted shall be carried out in accordance with the following:
 - Section Through Proposed Detention Basin, K36703/A2/05/ B;
 - Proposed Foul and Surface Water Drainage Plan, K36703/A1/02 B;

- Construction Environmental Management Plan for SuDS Features, Holme House Farm Ltd., Report Reference K36703/01/CEMP/JJ, Rev B, produced by R G Parkins & Partners Ltd. and dated October 2021.

No individual dwelling or shared-use building hereby permitted shall be first occupied until it has been connected to the approved surface water drainage scheme. Thereafter, the surface water drainage scheme shall be maintained for the lifetime of the development.

15) The development hereby permitted shall be carried out in accordance with the following:

- Proposed Foul and Surface Water Drainage Plan, K36703/A1/02 B;
- Details of the Biorock sewage Treatment Plant.

No individual dwelling or shared-use building shall be first occupied until it has been connected to the system of foul drainage. Foul and surface water must drain to separate systems.

16) Any works of demolition must proceed in accordance with the conclusions and recommendations of the Bat Update Survey Letter Report, Holme House Farm, Skelsmergh, Kendal, produced by Lucy Gibson Consulting and dated 27 May 2020.

17) The development hereby permitted shall be carried out in accordance with the following:

- Holme House Farm, Skelsmergh –Biodiversity Net Gain - Summary Letter Report, Lucy Gibson, 26 May 2021;
- The Biodiversity Metric 2.0 -Calculation Tool, Holme House Farm.

The net gain shall be maintained for the lifetime of the development.

18) All construction work shall proceed in accordance with the Construction Environmental Management Plan for the redevelopment and enhancement of Holme House Farm Version 2. In addition:

- If it is essential for any excavations to be left open overnight then a means of escape should be provided with a plank situated at no more than forty five degrees within the excavation.
- All lighting associated with the construction phase of the project must be directed away from the River Sprint and the associated woodland.

19) No individual dwelling or shared-use building shall be first occupied until any external lighting required for that dwelling/building has been installed in accordance with a scheme that shall first have been submitted, and approved in writing by, the local planning authority. The scheme must include confirmation from a qualified ecologist that it has been designed to minimize harmful impacts on: (1) the River Kent and Tributaries Site of Special Scientific Interest (SSSI); (2) the River Kent Special Area of Conservation (SAC); and (3) protected species. The scheme can be submitted as part of a relevant reserved matters application as required by condition 2. Thereafter, any external lighting shall be maintained in accordance with the approved scheme.

- 20) Construction work shall be limited to daylight hours only and never on Bank Holidays nor otherwise outside the hours of 08:00 – 18:00 Monday to Friday or 09:00 – 13:00 on Saturdays.
- 21) None of the dwellings or shared-use buildings hereby approved shall be first occupied until the first 10 metres of the access drive measured from the carriageway edge of the adjacent highway has been surfaced in bituminous or cement-bound materials.
- 22) No structure, vehicle or object of any kind shall be erected, parked or placed and no trees, bushes or other plants shall be planted or be permitted to be grown within the visibility splay to the east of the site entrance with Garth Row Lane.