



Appeal Decision

Site visit made on 31 August 2022

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

an Inspector appointed by the Secretary of State

Decision date: 18 October 2022

Appeal Ref: APP/H0928/W/22/3292512

Land to the rear of Elseghyll Cottage, Melmerby CA10 1HN

- 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 Richard Faith against the decision of Eden District Council.
- The application Ref 21/0595, dated 24 June 2021, was refused by notice dated 24 August 2021.
- The development proposed is described as a "change of use from hardstanding to construct a single 147m² 3-bed dwelling (C3) with upgraded vehicle access and utilities connections. The dwelling is designed to have a very low energy demand with the aim of gaining Passivhaus certification. The dwelling will be occupied by the applicant who grew up in the village in order to resettle in a neighbouring property to his family".

Decision

1. The appeal is dismissed.

Preliminary Matters

2. As part of the appeal submission, and in an attempt to address some of the Council's concerns, the appellant has put forward a revised drawing¹ with changes to the size and layout of windows on the southwest and southeast facing elevations of the proposed dwelling. I am mindful that the appeal process should not be used to evolve a scheme to overcome the Council's reasons for refusal. Therefore, I am normally required to deal with an appeal on the basis of the same plans and drawings that informed the Council's decision.
3. However, the appellant's proposed revisions are minor, and they do not substantially alter the proposed scheme. The Council and interested parties have had the opportunity to comment on the revised drawing as part of the appeal process. Accordingly, having regard to the Wheatcroft principles², accepting the revised drawing would not prejudice the interests of any party. Therefore, I have taken the revised drawing into account as part of my consideration of the appeal.
4. In its formal decision, the Council cites conflict with Policy DEV9 of the Eden Local Plan 2014-2032 (the ELP). The Council has since confirmed that this was an error and the correct policy reference should have been Policy ENV9 of the ELP. The full text of Policy ENV9 has been provided and the appellant has had the opportunity to address this as part of their submission.

Main Issues

5. The main issues in this appeal are:
 - The effect of the development on the character and appearance of the surrounding area, including any effect on trees;

¹ Proposed Elevations (Alternative Window Layout) Drawing No. 302, dated 31/01/2022

² Bernard Wheatcroft Ltd v Secretary of State for the Environment [JPL, 1982, P37]

- The effect of the development on protected species, with particular regard to bats; and,
- Whether the development would provide satisfactory living conditions for future occupants, with regard to noise, disturbance, odour, and other potential forms of agricultural pollution.

Reasons

Character and appearance

6. The appeal site is a rectangular parcel of land located on the eastern edge of the village of Melmerby, to the rear of Elseghyll Cottage and New House Farm. It falls within the North Pennines Area of Outstanding Natural Beauty (AONB) where the surrounding landscape is characterised by undulating countryside intersected by a patchwork of traditional drystone walls, hedgerows and groupings of mature trees.
7. Melmerby is characterised by a tight urban grain of traditional stone built buildings arranged around a large village green. Whilst there is some variety in building forms and style, the architectural vernacular is heavily influenced by the local farming industry, resulting in visually robust buildings of traditional form, predominantly constructed from local red sandstone with natural slate roof coverings. Windows are generally flanked with stone surrounds and have a strong vertical emphasis. These positive design elements combine to provide a strong sense of place.
8. The appeal site comprises a concrete surfaced yard, a timber clad yurt with a mature grass roof, and an area of land which, at the time of my visit, was being used for the cultivation of domestic plants as part of a horticultural enterprise. The site is enclosed by a mix of traditional drystone walls and post and rail fencing. It marks a point of transition between the built-up edge of the settlement and the rural landscape beyond. In this context, and given its existing discreet form and appearance, the site makes a modest contribution to the rural setting of the village.
9. The proposal amounts to a form of backland development that would introduce a two storey house with three bedrooms. The proposed dwelling has been designed to have very efficient thermal performance with the aim of achieving Passivhaus certification, resulting in an extremely low carbon footprint. The proposal also includes an external rainwater harvesting tank clad in red sandstone and an external staircase in stone with painted steel railings. The roof would be covered in Welsh slate with solar panels installed on its southwest facing pitch.
10. Despite the submission of a revised design, large areas of glazing to the southeast and southwest facing elevations would result in an uncomfortable solid-to-void ratio, whereas windows to the northwest facing elevation would vary in size, spacing and layout. This is in sharp contrast with the traditional style and orderly layout of windows that can be found on buildings in the surrounding area.
11. The extensive use of render and the overall lack of positive architectural features would add to the building's incongruous appearance, resulting in a bland illegible design that fails to show a clear understanding of the form and character of its surroundings. The stone clad rainwater harvesting tank is a particularly unusual structure that stands out as a prominent and discordant feature. It would not be similar to a dovecote, and there is no historic reference for such a structure at this location.

12. In reaching these views, I acknowledge that render is used on both old and newer forms of development in the village. Nevertheless, its excessive use has harmfully eroded the character and appearance of the surrounding area, and therefore these other examples serve only to illustrate why such excessive use would be harmful. There are some more modern forms of development in the surrounding area which do not reflect the traditional form and character of development within the village. However, this does not justify the poor quality design elements that I have identified as part of the appeal scheme. Moreover, because of its location on the fringe of the settlement, the proposed dwelling would harmfully erode the rural landscape setting of the village and detract from the qualities of the surrounding area.
13. The development would not be visible from the main road that runs through the village. Nonetheless, it would be visible to a number of neighbouring residents in views from the rear of their properties, particularly in views from properties to the west, northwest and southeast. It would also be perceptible in longer-range views on the approach into the village along the unclassified highway to the southeast. In such views, the development would appear as an incongruous form of development.
14. With regard to trees, there are two mature sycamore trees (T17 and T18) along the northern boundary of the site and a single mature sycamore (T16) along the southern boundary. Together these trees form prominent landscape features which are visible in the wider landscape in views from the east and southeast, and from the rear of nearby properties. They are also visible from public vantage points along the main road that runs past the entrance to the site. As a result of their substantial height, canopy spread, and level of maturity, the trees make a positive contribution to the landscape setting of the village, and therefore they are of high amenity value to the surrounding area.
15. The appellant's tree survey³ categorises these sycamores as B1 trees, being of moderate quality with estimated remaining life expectancies of 20 to 40 years. Therefore, the trees are in such a condition as to make a significant contribution for a minimum of 20 years. The tree survey confirms that the excavations required for the proposed development would encroach into 6.7% of the Root Protection Area (RPA) of tree T16, and to a depth of 500-600mm.
16. BS 5837:2012⁴ confirms that the RPA is the minimum area around a tree deemed to contain sufficient roots and rooting volume to maintain the tree's viability, and where the protection of roots and soil structure is treated as a priority. All parts of the root system, but especially the fine roots, are vulnerable to damage. Therefore, intrusion into the RPA (other than for piling) will usually result in a degree of harm to the health of the tree and so is usually unacceptable.
17. The tree survey concludes that it is not anticipated that the proposed development will have any impact on the long-term health of tree T16. However, to determine the extent of root severance and damage that may be caused by the excavation for the insulated slab foundation, it is recommended that trial holes are excavated to establish the presence of any roots.
18. Trial pits were excavated by the appellant in June 2021 to investigate the presence, or otherwise, of roots within the RPA of tree T16 where the insulated slab

³ Tree Survey, Arboricultural Report and Arboricultural Impact Assessment, by Rowan Tree Surveys, dated 18 May 2021

⁴ British Standard 5837:2012 Trees in relation to design, demolition and construction – Recommendations, published by the British Standards Institution, April 2012

foundation is proposed, and within the RPA of tree T16. The appellant reports the findings within their Design and Access Statement⁵. It is stated that virtually no significant root presence was found in the pits, with roots between 3-5mm being found in one location; well below the 25mm threshold for pruning in BS 5837:2012. However, this suggests that some significant roots were found.

19. Nevertheless, these findings have not been verified by a suitably qualified Arboriculturalist via a supplementary arboricultural statement or impact assessment. The appellant's observations do not amount to a professional assessment. Furthermore, I have been provided with limited information regarding the specification of the trial pits or how they were excavated. From the photos provided, they appear to be of shallow depth and therefore may be insufficient in assessing the presence or otherwise of root growth in these areas, as I note the majority of roots are within the top 600mm of soil.
20. Mature trees recover slowly, if at all, from damage to their roots, and are less likely to withstand root-loss than young trees. Indeed, fully mature trees may die, or their life expectancy significantly curtailed, if 5 to 10% of their roots are damaged. Therefore, the reported findings of the trial pits are not sufficient to confirm the presence or otherwise of roots within the area where foundations are proposed, or the subsequent implications for the long-term health of tree T16.
21. In addition, the canopy of tree T16 will overhang the elevations of the proposed dwelling, and therefore some pruning and cutting back of branches will be required. Moreover, its position, to the immediate southeast of the proposed dwelling, is likely to result in significant shading of the dwelling and its surrounding garden area. This will restrict the outlook from, and direct sunlight to, habitable room windows on the southwest and southeast facing elevations, creating dark and gloomy conditions in the dwelling. This shading is also likely to adversely impact the efficient operation of the roof-mounted solar panels. The appellant's evidence does not change my view in this regard because, during my visit, which took place mid-morning on a sunny day at the end of August, I observed that tree T16 casts a significant shadow over the area where the dwelling is proposed. The close proximity of tree T16 and its canopy to the elevations of the proposed dwelling is also likely to generate safety concerns from future occupants of the dwelling.
22. Consequently, whilst the appellant may have no intentions of doing so, I consider it highly likely that future occupiers of the dwelling will seek to undertake significant pruning or fell the tree in order to improve their living conditions, to maintain safety, and avoid damage to the property from falling branches. This would further endanger the long-term health and amenity value of the tree. Pressures that arise as a direct consequence of the appeal proposal.
23. The appellant advises that none of the trees are subject to Tree Preservation Orders or fall within a conservation area, and therefore tree T16 may be felled before the end of its life expectancy due to its positioning in relation to a nearby culvert or to provide firewood. Be that as it may, tree T16 is currently present, and therefore I must consider the effect that the proposal would have on the health of this tree and in the context of its amenity value to the surrounding area.
24. The removal of the existing hardstanding from the site and replacement with a domestic garden would have some positive effects on the health of tree T16, reducing the load within its RPA. However, this does not overcome the potentially irreversible harm that would occur due to root loss within the tree's RPA or the

⁵ Design & Access Statement DAS-01/A, by Richard Faith Architecture Bureau

pressure to substantially prune or fell the tree to maintain suitable living conditions for future occupiers of the dwelling.

25. In this case, there is insufficient information before me to demonstrate that tree T16 would not be harmed by the proposed development. Therefore, it has not been demonstrated that the proposal would adequately safeguard the tree in the interest of the amenity of the surrounding area.
26. Overall on this issue, the development would be wholly unrelated to the traditional character of other residential buildings in the village. It would not be sympathetic to local character or reflect the local distinctiveness of the surrounding built environment. Furthermore, in the absence of substantive evidence to the contrary, the proposal is likely to result in harm to an adjacent tree that possesses a high level of amenity value. This would have a detrimental effect on the landscape setting of the village and would therefore result in localised harm to the landscape quality of the AONB.
27. Bringing all these points together, I find that the proposed development would have a significant harmful effect on the character and appearance of the surrounding area, including a harmful effect on an adjacent tree. This would conflict with Policies LS1, DEV5, HS2, ENV3 and ENV2 of the ELP and the associated provisions of the Framework which together, among other things, seek to achieve development that is of a high quality design, which reflects the existing built form of the settlement, shows a clear understanding of the form and character of the District's built and natural environment, avoids adverse impacts on the special qualities of the AONB, and which protects landscape character and trees.
28. Policy ENV10 of the ELP seeks to conserve and enhance the historic environment including designated and non-designated heritage assets and their settings. The historic former barns to the west of the appeal site may well possess a degree of local heritage value to qualify as non-designated heritage assets. However, given the degree of separation between these buildings and the appeal site, I consider that the proposal would not impinge upon the setting of these non-designated heritage assets. Therefore, I find no conflict with ELP Policy ENV10.

Protected species

29. The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) imposes a duty to consider whether there is a reasonable likelihood of European Protected Species (EPS) being present and affected by the proposal. Furthermore, Policy ENV1 of the ELP requires new development to avoid any net loss of biodiversity and geodiversity, and where possible enhance existing assets.
30. The appellant's Preliminary Ecological Appraisal⁶ (the PEA) has identified two maternity roosts within 100 metres of the appeal site, one comprising 150 individual bats of an unidentified species and the other comprising 24 common pipistrelle bats. These roosts were found within buildings to the southeast of the site boundary. In addition, there are individual records of bat species including common pipistrelle, unidentified myotis, and brown long-ear within 100 metres of the site boundary.
31. The PEA identifies the mature sycamore trees along the site boundaries as possessing several features which may provide suitable habitat for crevice dwelling bats, these include vertical cracks, broken branches and cavities. The PEA report

⁶ Preliminary Ecological Appraisal Land at Melmerby, Penrith, by S.A.P Ecology and Environmental Ltd, dated 23 June 2021

advises that should there be a requirement for works within the RPA of these trees, or any pruning of branches, this would constitute a potential negative impact and additional assessments including ground level tree assessments, aerial assessments, and activity surveys may be required. I have found that the development is likely to have an adverse effect on the long-term health of tree T16 (identified as TN 3 in the PEA), potentially resulting in its premature loss.

32. The PEA also identifies the yurt as having at least a low potential to accommodate roosting bats and recommends that activity surveys are undertaken within the bat active season to determine if bats are present. These further surveys would also inform any requirement for mitigation or compensation.
33. Bats are listed as a EPS under the Habitats Regulations. Therefore, the evidence indicates there is a reasonable likelihood of a protected species being affected by the proposed development. Circular 06/2005⁷ confirms that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted. In the absence of the additional surveys recommended by the PEA, I am unable to conclude that the proposed development would not result in harm to a protected species.
34. Circular 06/2005 goes on to advise that the need to ensure that ecological surveys are carried out should only be left to coverage under planning conditions in exceptional circumstances. I am not convinced that any such circumstances exist in this case. Moreover, it would not be possible to secure any necessary mitigation or compensatory measures in the absence of further surveys. The appellant has made their own observations of bat activity in and around the site, but this does not amount to a professional assessment or survey by a suitably qualified person.
35. The appellant suggests that the yurt could be removed without the need for planning permission. However, its removal is required to facilitate the proposed development, and therefore it is reasonable to consider the potential effect of its removal.
36. Therefore, I find that insufficient information has been provided to demonstrate that the proposed development would not have an unacceptable adverse effect on protected species, with particular regard to bats. Thus, I am unable to conclude that the proposal would accord with Policy ENV1 of the ELP or the policies set out in Section 15 of the Framework, which together require the conservation and enhancement of the natural environment.

Living conditions for future occupants

37. ELP Policy ENV9 requires proposals for development likely to experience noise, light, dust, odour or vibration from road, rail or air, or other sources 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. The policy goes on to state that such assessments should consider the likely level of exposure at the time of the application and any increase that might be reasonably expected in the foreseeable future.
38. A large agricultural shed exists to the immediate northeast of the appeal site, approximately 18.5 metres from the proposed dwelling. This building is currently in

⁷ Biodiversity and Geological Conservation – Statutory obligations and their impact within the planning system, Office of the Deputy Prime Minister, 16 August 2005

agricultural use for the storage of machinery in relation to the operations of an agricultural contracting business.

39. Given the close proximity of the proposed dwelling to the agricultural business, it is highly likely that the operations and movement of agricultural machinery to and from the adjacent site would result in a level of disruption to future occupiers of the dwelling. Furthermore, I have not been advised of any restrictions placed upon the agricultural use of the building. Therefore, it would be possible for the building to accommodate livestock, giving rise to potential issues with odour and effluent discharge. This could result in further adverse effects on the living conditions of future occupants of the dwelling, and I note the objection from the Council's Environmental Health Officer in this regard.
40. Mechanical ventilation is proposed and may mitigate some of these potential adverse effects. However, the appeal proposal is not supported by an assessment of the type required by Policy ENV9 and therefore insufficient information has been provided to demonstrate compliance with Policy ENV9. It has not therefore been demonstrated that the proposal would provide satisfactory living conditions for future occupants, with regard to noise, disturbance, odour, and other potential forms of agricultural pollution.
41. Therefore, the proposal would conflict with Policies ENV9 and DEV5 of the ELP and the associated provisions of the Framework which together seek to achieve acceptable amenity for future occupiers.
42. The appellant has drawn my attention to a number of examples of where agricultural operations take place in close proximity to existing dwellings. However, I do not know the circumstances of those other cases or the policies that applied at the time of their consideration. Furthermore, I have no evidence that a previous grant of planning permission for a dwelling on the site of the agricultural building has been lawfully commenced. In any case, my consideration of this matter is based on the existing unrestricted agricultural use of the adjoining building and the consequent effects this could have on the living conditions of the future occupiers of the proposal.

Other Matters

43. The appeal site is located within the Catchment of the River Eden Special Area of Conservation (SAC). During the course of the appeal, Natural England issued updated guidance in relation to nutrient pollution. In its updated guidance Natural England advises that the River Eden SAC is in an unfavourable conservation status due to high levels of phosphorous. Accordingly, both parties were invited to comment on the implications of this for the appeal.
44. The appellant submitted further evidence confirming that the proposal would result in additional nutrient loading in the form of phosphate contained in wastewater from the site. It is therefore likely that, in the absence of suitable mitigation, the proposal would have a significant adverse effect on the integrity of the SAC. However, as I am dismissing the appeal for other reasons, it is not necessary for me to consider this matter further.

Planning Balance and Conclusion

45. The proposal is for a self-build scheme that would allow the appellant, who has a longstanding connection with the village, to relocate back to the area to support the family farm estate and assist with the care of an elderly relative. The proposal would utilise an area of previously developed land and, owing to its environmental

credentials, it would contribute to the Council's low carbon agenda and would be energy efficient. There would be further environmental gains through enhanced landscaping and some economic benefits during the construction period and thereafter, with future occupants contributing to local services and facilities. I also note there is support from the Parish Council along with a small number of residents.

46. However, the proposal would result in harm to the character and appearance of the surrounding area, including the AONB, ecology, and to the living conditions of future occupants. These harms, and the associated conflict with the development plan, are matters which attract significant weight.
47. In conclusion, for the reasons set out above, I have found the proposal to be contrary to the policies of the development plan and no material considerations of sufficient weight have been advanced to justify a decision other than in accordance with the development plan. Therefore, the appeal is dismissed.

J M Tweddle

INSPECTOR