



Appeal Decision

Site visit made on 31 January 2023

by Ann Veevers BA(Hons) PGDip (BCon) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 March 2023

Appeal Ref: APP/E0915/W/22/3307908

12 The Whins, Heads Nook, Brampton, Cumbria CA8 9AL

- 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 D Williamson against the decision of Carlisle City Council.
 - The application Ref 22/0089, dated 1 February 2022, was refused by notice dated 12 April 2022.
 - The development proposed is erection of 1 no. detached dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The address in the banner heading above is taken from the application form. The Council's decision notice used the address 'Land to the rear of 12 & 14 The Whins, Heads Nook, Brampton, Cumbria CA8 9AL' which more accurately reflects the location of the appeal site and was used to notify neighbours of the appeal and used by the appellant in the appeal form. I have therefore assessed the appeal on this basis.
3. The description of development in the banner heading above omits some of the text from the description provided on the planning application form. The omitted text simply states that the proposal is a resubmission of a previous scheme, and as such it does not describe acts of development.
4. The application was made in outline, with all matters of detail reserved for future consideration, save for the access. The appellant submitted an amended block plan during the course of the planning application, indicating the width of the access road, denoting a visibility splay and showing the location of parking spaces (Drawing No.3172/2C). As the Council and third parties have had the opportunity to comment upon the plan, I consider no injustice would be caused to interested parties by my consideration of it. I have therefore had regard to it but have regarded all elements of the plan, except access, as illustrative. I have determined the appeal on this basis.

Main Issues

5. The main issues are:
 - The effect of the vehicle access on the character and appearance of the Public Right of Way (PROW) and surrounding area;
 - Whether pedestrian safety would be retained with particular regard to users of the Public Right of Way (PROW); and,

- The living conditions of occupiers of 14 The Whins, with particular regard to noise and disturbance.

Reasons

Character and Appearance

6. The appeal site is located at the rear of two detached properties, numbers 12 and 14 The Whins (No.12 and No.14), on part of the rear garden belonging to No.12. Both No.12 and No.14 sit at the end of a cul-de-sac close to a railway line and a steep wooded valley on the edge of the village. The surrounding area is characterised by undulating open countryside and the gently sloping land and trees located on the site complement the adjacent woodland and provide a positive rural feel to its wooded location.
7. I saw at my site visit that PROW 138024 runs along the timber fence forming the side boundary of No.14 and continues along the southern boundary of the garden to No.12 before passing through woodland and the river valley to the neighbouring village of Broadwath. The path is narrow where it meets the two storey rear corner of No.14. Even though the PROW is close to existing dwellings and crosses a railway line, it retains a pleasant rural character, particularly due to the wooded nature of the area and at the time of my site visit, which I appreciate is a snapshot in time, the path appeared to be well used.
8. Access to the proposed dwelling would be taken from the cul-de-sac. Although no information has been submitted to enable me to determine the exact route of the access driveway, it would have a minimum width of 3.2m and it is clear from my observations and the topography of the site that it would run along an existing strip of grassed area adjacent to the gable of No.14 and continue across the PROW to enter the site at the rear of No.14. This would result in significant encroachment onto the PROW and into an area of woodland visually separate from the adjacent housing.
9. Although glimpses of houses along The Whins are evident from the PROW and the removal of three Leylandii to form part of the access would not impinge on the overall appearance of the surrounding woodland, the PROW is seen as visually separate from the nearby housing and discernibly part of the woodland, even though it is close to the boundary with No.14 and crosses the railway line. Whilst the PROW would not deviate from its existing route, and even if sensitive materials were used in the surfacing of the proposed access drive, the impact on the appearance of the area would be exacerbated by the widening and earthworks required to the PROW to form the driveway, as well as the inevitable removal of vegetation.
10. Consequently, the changes required to gain vehicular access to the proposed dwelling would urbanise this part of the PROW. Rather than enhance the experience of the user, the widening of this, albeit relatively short, section of PROW would detract from its narrow, winding, rural character. Furthermore, there is no substantive evidence to indicate that the use of the proposed access would significantly improve natural surveillance of the footpath due to the likely minimal vehicle and pedestrian activity associated with only a single dwelling and as it only relates to a very small section of the footpath concerned.

11. For reasons given above, the proposed vehicular access would represent an unacceptable intrusion into the wooded landscape and harm the character and appearance of the PROW and surrounding area. As such, in respect of this issue, it would fail to comply with Policy SP6 and Policy GI5 of the Carlisle District Local Plan 2015-2030 (CDLP) which together, amongst other things, seek to ensure development responds to local context, respects landscape character, is well integrated with its surroundings and ensures that all public footpaths, bridleways, cycleways and other rights of way are retained.

Pedestrian Safety

12. Policy GI5 of the CDLP seeks to protect public footpaths and the explanatory text to the policy states that they provide a valuable resource fulfilling essential leisure, wildlife and transport functions. Although the route of the PROW would not change and the proposal is only for one dwelling, given the proposed widening and use by vehicles along part of the PROW, there would be the potential for some conflict between pedestrians and vehicles. No evidence has been presented to demonstrate how users of the PROW would be protected from any vehicle movements. Even with the provision of a 2.4m visibility splay at the access from Whins Close, users of the PROW approaching the site in a westerly direction would not be in clear sight of vehicles travelling along the access drive where it meets the PROW due to the high hedge along the boundary of No.15 The Whins (No.15).
13. Nevertheless, the scale of the proposal would be modest and vehicular movements would be limited. The narrow nature of the proposed drive would ensure vehicular speeds would be slow and the position of the existing gate along the PROW would allow the presence of a vehicular access to be visible and for drivers to see pedestrians. I note that, subject to the imposition of conditions, the Highway Authority raise no objections to the proposal with regard highway safety.
14. Therefore, the proposed development would retain pedestrian safety, with particular regard to users of the PROW. Accordingly, in respect of this issue, I find the proposal would not conflict with Policy GI5 of the CDLP.

Living Conditions

15. The vehicular access to the proposed dwelling would be directly adjacent to the side elevation of No.14. I saw at my site visit that there are four windows on the side elevation that would face the proposed access. Two of these windows are positioned at a high level on the side elevation and serve a bathroom and utility room (which is obscurely glazed). The other two windows are at a lower level and are secondary windows serving a living room. The proposed vehicular access would also be sited close to the rear outdoor space to No.14.
16. My attention has been drawn by the appellant to the Carlisle to Newcastle railway line located close to the side elevation of No.14. Even if the frequency of trains along this line exceeded the number of vehicular movements that would be generated by the proposal, the sound of vehicles passing next to windows on the side elevation of No.14 and close to the rear outdoor space are likely to be more apparent to occupiers of No.14. Nonetheless, the windows serving the living room are secondary to the main outlook which faces the rear garden. Furthermore, the lower ground level of the access driveway and the likely minimal vehicle and pedestrian activity associated with only a single

dwelling would not be likely to result in the creation of significant noise and disturbance to occupiers of No.14 either when inside the dwelling or within the rear outdoor space.

17. Similarly, the position of the parking and manoeuvring arrangements for the proposed dwelling could be located away from the boundaries with No.12 and No.14 when considered at a reserved matters stage. No noise assessment was requested by the Council and no objection was received from the Environmental Health team.
18. The façade of No.14 faces a large turning head. Although the proposed access would pass close to the front windows of No.14, it would be separated by an existing low wall and fence. Moreover, occupants of these rooms would already experience some noise and disturbance from vehicle movements within the turning head. Consequently, any additional movements associated with one dwelling would be unlikely to be significant.
19. My attention has been drawn to a recent appeal decision¹, which was dismissed, for a similar development to that currently proposed. Whilst I have had regard to the previous Inspector's findings, it differs from the appeal before me because the location of the proposed access was located in a gap between two dwellings. It is therefore materially different, and I have reached my own decision based on the circumstances of the present case.
20. For the reasons given, I find that the proposed development would not harm the living conditions of occupiers of 14 The Whins, with particular regard to noise and disturbance. As such, in respect of this issue, the proposal would comply with Policy SP6 of the CDLP which, amongst other things, seeks to ensure that new development does not prejudice the living conditions of the occupiers of existing buildings.

Other Matters

21. Following determination of the application, Natural England updated its advice in relation to nutrient level pollution in a number of existing and new river basin catchments. The advice finds that an increasing number of waterbodies, in or linked with European Sites, are now deemed to be in 'unfavourable' conservation status for the purposes of the Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations). In this instance the appeal proposal could increase nitrogen discharge into the internationally important River Eden Special Area of Conservation (SAC). It is incumbent upon me as the competent authority to consider whether the proposed development would be likely to have a significant effect on the integrity of the SAC.
22. Although both main parties have provided information in this regard, regulation 63(1) of the Regulations indicates the requirement for an Appropriate Assessment is only necessary where the competent authority is minded to give consent for the proposal. Thus, as I have found that the development is unacceptable for other reasons, it is not necessary for me to further consider the implications on the SAC.
23. I have noted the appellant's comments highlighting the planning history of the site and the absence of identified harm to the principle of development, neighbouring occupiers' privacy, parking and visibility and drainage. Even if I

¹ Appeal Ref: APP/E0915/W/17/3192682

were to agree that there would be no unacceptable effects on these issues, this is a neutral factor which would not outweigh the harm identified.

24. Matters related to the ownership of the land would be separate to and would not ultimately influence the assessment of the planning merits of the proposal.

Conclusion

25. Whilst I find no harm to pedestrian safety, with particular regard to users of the PROW, or to the living conditions of the occupiers of No.14, I find unacceptable harm to the character and appearance of the PROW and surrounding area. The proposed development therefore conflicts with the development plan when considered as a whole and there are no other considerations, either individually or in combination, that outweigh the identified harm and associated development plan conflict.

26. For the reasons given above I conclude that the appeal should be dismissed.

Ann Veevers

INSPECTOR