



Appeal Decision

Site visit made on 31 January 2023

by Ann Veevers BA(Hons) DipBCon MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 May 2023

Appeal Ref: APP/E0915/W/22/3307760

Land north of Tarn Lodge Farm, Heads Nook, Brampton, Cumbria CA8 9BT

- 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 Ian Whittaker against the decision of Carlisle City Council.
 - The application Ref 21/0014, dated 11 January 2021, was refused by notice dated 8 April 2022.
 - The development proposed is siting of 2no. three bed and 2no. two bed lodges and 2no. pods together with landscaping, newt ponds, a sealed foul water drainage system, access track and parking.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Ian Whittaker against Carlisle City Council. This is the subject of a separate decision.

Preliminary Matters

3. On 1 April 2023 Carlisle City Council was dissolved and merged with other Councils to form one Unitary Authority known as Cumberland Council. However, until such time as it is replaced, the statutory provisions set out through Regulation 26 of the Local Government (Boundary Changes) Regulations 2018 allow for any extant development plans to have effect as if adopted by the new Unitary Authority until such time as the new Unitary Authority adopts a plan covering the whole of its area. For the purposes of this appeal, the development plan comprises the Carlisle District Local Plan 2015-2030 (CDLP).
4. I have taken the description of development from the application form. Although different to that on the decision notice, no confirmation that a change was agreed has been provided.
5. Additional information has been provided by the appellant at the appeal stage. The information includes an updated visibility splay statement and plan, clarification that an existing field gate would be removed, a copy of a land registry title document and an updated drainage strategy following advice referred to below regarding nutrient neutrality. The Council and third parties have had the opportunity to comment upon this information. As such, having regard to the Wheatcroft principles¹ I am satisfied that no prejudice would

¹ Wheatcroft (Bernard) Ltd v Secretary of State for the Environment [1982] JPL 37

occur to any party as a result of my consideration of their content and have determined the appeal on that basis.

6. Following the determination of the application, Natural England (NE) has issued advice in relation to nutrient level pollution². The appeal site lies within the river basin catchment of the River Eden Special Area of Conservation (SAC). In this instance the appeal proposal could increase phosphorus discharge into the internationally important European site³ which is already in unfavourable condition. Although not forming part of the Council's reasons for refusal, 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 ecological integrity of the SAC in relation to nutrients in accordance with the Habitats Directive⁴.
7. Both main parties commented upon this matter during the course of the appeal and NE have had the opportunity to make comments which I have taken into account in determining this appeal.

Main Issues

8. The main issues are:

- Whether the proposed site access is acceptable in highway safety terms, with particular regard to the adequacy of the proposed visibility splays; and
- The effect of the proposed development upon the integrity of the European protected site with particular regard to phosphorus nutrient level pollution.

Reasons

Site Access

9. The proposed access would utilise an existing gated field access at the junction of two rural roads which are subject to national speed limits (60mph), the C1024 and C1039. The access to the appeal site is separated from fields either side by a timber post and rail fence and slopes down towards the road junction. The field gate is set back into the verge in line with hedgerows either side. This existing field gate would be removed as part of the proposal.
10. There is broad agreement between the main parties that the proposed scheme would increase the use of the existing access but that there would be no significant impacts on the highway network in terms of capacity. The main issue is the adequacy of the visibility splays of the proposed access at the junction with the public highway.
11. The Cumbria Development Design Guide (CDG) sets out, amongst other things, recommended Stopping Sight Distances (SSDs) and visibility splays and is informed by the Manual for Streets (MfS) 2007, Manual for Streets 2 (MfS2) 2010 and, where appropriate, the Design Manual for Roads and Bridges (DMRB) 2019. The CDG sets out that the visibility requirements for roads subject to a 60mph speed limit should be set back 2.4m from the kerb (the x distance) with a 215m visibility in each direction (the y distance). It is accepted

² Natural England - Advice for development proposals with the potential to affect water quality resulting in adverse nutrient impacts on habitats sites – March 2022.

³ European sites include a Special Area of Conservation, Special Protection Area and Ramsar Site. The River Eden is also a Site of Special Scientific Interest.

⁴ Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

- by both main parties that such a requirement could not be met in the case of the appeal before me.
12. The appellant suggests that, on the basis of local traffic speeds and permitted relaxations to DMRB and MfS standards, a reduced visibility splay of 2.4m x 86.5m northbound and 2.4m x 74.9m southbound to the centre line of the carriageway would follow nationally recognised guidance and be achievable without the need to cross into third party land.
 13. The CDG, reflecting advice within MfS, states that it is preferable to use actual recorded 85th percentile figures of traffic speeds on existing roads when generating an accurate design of visibility splay. MfS provides guidance on visibility requirements and SSDs for streets where 85th percentile speeds are up to 37mph. At speeds above this, the recommended SSDs in the DMRB are more appropriate. Furthermore, visibility is measured horizontally and vertically, an important factor in the appeal case since the surrounding roads incorporate undulations and a significant proportion of traffic is Light Goods Vehicles (LGVs) with a higher driver eye height.
 14. In order to justify a reduction in the 60mph visibility splay requirement, a number of speed surveys were carried out on behalf of the appellant. These included two Automatic Traffic Count surveys (ATC) and a radar speed survey. I have been provided with some of the results. From the information before me, the surveys generally indicate that traffic levels in the area are relatively low, cars mostly travel slower than Light Goods Vehicles (LGVs) and there are a significant proportion of LGVs along the road network in this location. This observation has also been made by the main parties.
 15. There are several conflicting views between the appellant's highway consultants, Cumbria Highway Authority (HA) and a third party highway consultant instructed on behalf of local residents regarding the adequacy and interpretation of the data derived from the speed surveys.
 16. Notwithstanding any potential shortcomings in the way the surveys were undertaken, it is clear to me from my observations on site, albeit a snapshot in time, that even if I were to take the 85th percentile speed for LGVs throughout the day of 49.4mph northbound and 45mph southbound, a range of between 45mph and 52mph would be a reasonable assessment of likely LGV speeds in the location of the appeal site.
 17. The HA state the abnormal impact the LGVs has on the road network in this location should have a real impact on the road design criteria, including visibility splay, and advocate that the higher 85th percentile speed is used to include LGVs. However, the Council's reason for refusal refers to the full visibility splay requirement of 2.4m x 215m based upon the posted 60mph speed limit. I consider that, in accordance with CDG referred to above, results of the up to date speed surveys should be taken into consideration.
 18. The DMRB is used to assess the basis of the design of visibility splays where the 85th percentile speed is over 37mph, as is the case presented to me. However, DMRB refers to trunk roads and only the recorded speeds of cars outside of peaks hours. When only cars are taken into account, the 85th percentile figure reduces considerably to 35.4mph northbound and 31.7mph southbound. This is less than 37mph and therefore using MfS guidance, the visibility splay requirement would be achievable at the site. However, I cannot

ignore the local context of the site and the evidence that LGVs contribute to a large proportion of vehicles using the road throughout the day and LGV speeds are much greater than cars in this location.

19. While the appellant has assessed the visibility splay requirement using the 85th percentile speeds for LGV's using a HA spreadsheet calculator and adding a gradient percentage, I have not been provided with full details of the basis for using such a tool. Indeed, the Council's submission clarifies that the splay calculator is an internally used spreadsheet for MfS2 calculations and does not generally relate to DMRB standards.
20. On the basis of the information before me and given my finding that a range of LGV speed between 45mph and 52mph would be a reasonable assessment upon which to base an acceptable visibility splay, this would suggest a splay of around 2.4m x 160m. Even if I were to take the lower 45mph speed, the visibility splay would be 2.4m x 140m on DMRB derived data. Several visibility splays have been specified by various highway representatives of the appellant, but no detailed plans have been provided to clearly demonstrate a visibility splay is achievable taking into account undulations in the road within the splay and without crossing third party land aside from drawing ref: 20-C-15788-04. This plan indicates a significantly reduced visibility splay of 2.4m x 86.5m northbound and 2.4m x 74.9m southbound.
21. Even if I were to agree that such a reduction was acceptable, it seems to me that this splay is also incumbent upon a visibility extent to the centre of the road rather than the generally accepted nearside carriageway edge.
22. It has been put to me that this approach would be acceptable given the rural nature of the two 'C' roads and the likelihood of vehicles crossing the centre line due to the bend at the junction. My attention has been drawn to two recent appeal decisions⁵ for a nearby site where an Inspector noted that a visibility splay could be extended to the centre line. Reference is made by the Council in this regard to an off-set from the inside kerb around a bend in the road. On the face of it I consider this appears dissimilar to the current appeal where the access is positioned on the outside of a bend and at a road junction. However, I have not been provided with the full details or the background of this example, including speed of vehicles, prevailing topography, width or nature of the road. In any event, I am required to reach conclusions based on the individual circumstances of this appeal.
23. While MfS1 references scope for flexibility in design such that the splay does not need to strictly adhere to the nearside carriageway edge in order to accommodate the required distances, this is only acceptable where vehicles approaching from the left on the main arm are unlikely to cross the centre line of the road. Even if this was the case for vehicles approaching from the left (southbound), there is no similar relaxation at Paragraph 7.7.5 of MfS1, nor anywhere else, for vehicles approaching from the right (northbound). Moreover, MfS refer to visibility requirements relating to traffic where 85th percentile speeds are lower than 37mph, which is not the situation before me when LGVs are taken into account. Given the circumstances, a measurement to the centreline to the right (northbound) would be inappropriate in this case.

⁵ APP/E01915/W/20/3248748 and APP/E0915/C/20/3248752

24. Consequently, when taken to the nearside edge of the carriageway, even if the appellants reduced northbound splay of 2.4m x 86.5m was appropriate, it would encroach over a hedge on third party land and in this respect, there is no guarantee that a wider visibility could be maintained in perpetuity.
25. Furthermore, the crest in the road to the south of the proposed access would mean that vehicles exiting the access would only be likely to be seen by drivers travelling northbound in cars once over the crest. The distance from the proposed access to the crest is considerably short of the 140m SSD requirement of DMRB and significantly short of the 50mph national speed banding of 160m. No compelling evidence has been submitted to indicate the effect of visibility in the horizontal plane to ensure views are not obstructed by the undulations in the roads, particularly the crest on the northbound approach.
26. Paragraph 10.5.9 of MfS2 states that unless there is local evidence to the contrary, a reduction in visibility below recommended levels will not necessarily lead to a significant problem. Nevertheless, in the absence of convincing evidence I cannot be certain the achievable visibility splay would provide a safe and suitable access for the proposed development.
27. I recognise that the access is already in use by agricultural vehicles although no information has been provided to demonstrate the frequency of its use. However, having regard to the small scale of the proposal, the number of proposed vehicle trips is likely to be limited when spread throughout the day. The lack of recorded road traffic accidents in the vicinity of the proposed access is no guarantee of none occurring.
28. I acknowledge that planning permission was granted for the erection of self-catering lodges at the appeal site in 1994⁶. This permission was not implemented and pre-dates the CDLP and the Framework. As such, it is of limited relevance.
29. For the above reasons, I conclude that the proposed site access would be unacceptable in highway safety terms, with particular regard to the adequacy of the proposed visibility splays. The proposal would therefore conflict with Policies IP2, EC9, EC10 and EC11 of the CDLP which together, amongst other things, require safe and achievable access and seek to ensure developments do not harm highway safety. Furthermore, the proposal would be contrary to the guidance contained in Paragraphs 110 and 111 of the Framework, which amongst other things, seeks to ensure that developments are not permitted if there would be an unacceptable impact on highway safety.

Nutrients

30. The appeal site lies within the Zone of Influence of the SAC and is subject to the Conservation of Habitats and Species Regulations 2017 (as amended) (The Regulations).
31. The importance of the SAC is its aquatic habitat which supports the qualifying features of an invertebrate assemblage reliant upon exposed river sediment. Other qualifying features include rivers with floating vegetation, often dominated by water-crowfoot and other aquatic flora, alluvial forest, breeding birds, Atlantic salmon, crayfish and otter. The SAC also incorporates geological

⁶ LPA Ref: 94/0524

Sites of Special Scientific Interest. The conservation objectives of the SAC are to ensure that the site contributes to achieving the favourable conservation status of its qualifying features by maintaining or restoring the extent, distribution, structure, function and supporting processes of the habitats of the qualifying features and species, the population of the qualifying features and species and the distribution of the qualifying features and species within the sites.

32. Policy G13 of the CDLP relates to biodiversity assets, including European protected habitats. It sets out that internationally designated sites will be afforded the highest level of protection, as they are of exceptional importance in respect of rare, endangered or vulnerable natural habitats or species.
33. The Regulations require where a plan or project is likely to result in a significant effect on a European site, a competent authority is required to make an Appropriate Assessment (AA) of the implications of that plan or project on the integrity of the European site in view of its conservation objectives. Any likely significant effects (LSEs) arising from a development need to be considered alone and in combination with other development in the area, adopting the precautionary principle.
34. At the time the planning application was determined, the Council and NE concluded that, subject to conditions, the proposal would be unlikely to result in LSE on the integrity of European sites. However, having regard to the recent advice from NE regarding nutrient level pollution, the proposal would involve a form of development which would generate wastewater, along with potential for pollution due to surface water runoff. Consequently, there would be a potential pathway to the SAC which could increase its nutrient load, and LSE cannot be screened out. As a result of this, I am obliged under the Regulations as the competent authority to carry out an AA.
35. The concept of nutrient neutrality recognises that if there is no net increase in nutrient loading within the catchments of the affected habitats site as a result of proposals, then existing nutrient issues will not be exacerbated. I may give consideration to any conditions or other restrictions which could secure mitigation and so provide certainty that the proposal would not adversely affect the integrity of the site. I have undertaken this assessment on a proportionate basis and adopting a precautionary approach. The Council, appellant and NE have been consulted regarding this matter.
36. I have not been provided with a nutrient calculation methodology. However, the appellant proposes to dispose of wastewater via a sealed cess tank and, where a gravity fed system is not feasible due to the topography of the site, small pumping stations would be installed to move the foul water from the holiday accommodation up to the cess tank location. The sealed tank would then be taken by licenced waste carrier to treatment works located outside the SAC catchment. The appellant therefore contends that by disposing of effluent outside of areas subject to nutrient neutrality it will enable the proposal to be nutrient neutral and will therefore not alter the assessment of LSE already carried out on behalf of the City Council. In terms of surface water, rainwater downpipes on each holiday unit would discharge to infiltration trenches.
37. However, while NE is satisfied that tankering foul water out of the catchment is an acceptable means of mitigating the impacts associated with the discharge of foul water, the mitigation would rely on a strategy to remove wastewater off-

site to an appropriate WTW. Although I have been provided with letters from two drainage contractors willing to take wastewater from the proposed development, I have not been provided with any obligation on them to do so. In addition, once tankers carrying wastewater were to leave the site, control of the deposit and subsequent processing of wastewater would fall outside the appellant's control.

38. In this regard and in light of the Written Ministerial Statement on 'Improving Water Quality' (20 July 2022) and the Chief Planner's Letter on the same subject (21 July 2022), I consider the suggested use of a condition to secure a mitigation package that ensures the avoidance of adverse effects on the integrity of European sites by achieving nutrient neutrality would fail the test of reasonableness and enforceability. There is no planning obligation before me to secure the management and removal of wastewater outside of the catchment in perpetuity. Therefore, I cannot be certain beyond reasonable scientific doubt that a nutrient neutral development would be secured.
39. Furthermore, I have not been provided with details of the treatment of contaminated surface water potentially arising from vehicles along the proposed access track and parking area.
40. My attention has been drawn to a recent appeal decision⁷ for holiday chalets at a nearby location, which was allowed, subject to conditions relating to the management of wastewater. I have been provided with a copy of the decision notice but do not have the full detail, evidence and circumstances before me that were before the Inspector in that appeal. Both main parties suggest that similar conditions could be imposed should I be minded to allow the appeal.
41. Whilst I note the approach taken by the Inspector in that case, I am not in full knowledge of the details of that case which, in any case, would not set a precedent as each proposal must be assessed on its own merits, having regard to the particular circumstances of the site and the proposals. Moreover, the existence of seemingly similar development elsewhere does not represent an appropriate reason to find in favour of a proposal that would cause harm in this case, a case I have considered on its own merits.
42. Therefore, for the reasons given above and in adopting the precautionary principle, I cannot be satisfied that the scheme could be delivered without increasing the nutrient load of phosphates in the catchment. As such, although the increase from 6 holiday units would be small, based upon the evidence before me, alone and in-combination, it has not been demonstrated that development would not result in LSEs that would be harmful to the integrity of the European protected site with particular regard to phosphorus nutrient level pollution.
43. Accordingly, the proposal would conflict with Policy G13 of the CDLP and paragraph 180 of the National Planning Policy Framework (the Framework) which requires that the natural environment and biodiversity is conserved, and that if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.

⁷ APP/E0915/W/21/3284915

Other Matters

44. A Grade II Listed Tarn Lodge and Tower Folly are located to the south of the appeal site and were once part of a single estate that included the appeal site. The significance of Tarn Lodge is derived from its historic Georgian country house form and association as the residence of noteworthy occupant George Bell Routledge as well as its estate setting including views towards Tower Folly to the north. The significance of Tower Folly is also derived from its Georgian origins and its setting as a focal point in the designed landscape. Tarn Lodge is not readily visible from the appeal site and separated from it by undulating landscape and woodland. Tower Folly is located on the top of a hill and filtered views of the appeal site are obtainable from it. The Georgian Group and the Gardens Trust raise concerns that the proposal would harm the setting of this designated asset.
45. From the evidence before me and my observations on site, due to the distance from the site to Tower Folly and the design, layout and limited scale of the proposal, when seen in the context of the undulating and wooded landscape, I am satisfied that the scheme would integrate acceptably within the setting of the aforementioned listed buildings and have no reason to disagree with the Council in this regard. Therefore, the proposal would not be harmful to the setting or significance of Tarn Lodge and Tower Folly, having regard to the desirability of preserving listed buildings and their setting as set out in section 66(1) of the Act.⁸
46. I note the appellant's comments about the Council's handling of the application, particularly with regards pre-application advice and interest from third parties. This has little to do with the planning merits of the case, which I have considered on the basis of the evidence before me.
47. The proposal would provide economic benefits through the contributions of the occupiers to the local economy. Occupants of the dwelling would likely use and provide some support to existing facilities in Castle Carrock and nearby settlements. I have noted the appellant's comments highlighting the accessible location of the appeal site and, subject to the imposition of appropriately worded conditions, the absence of identified harm to the principle of the proposed development, neighbours' living conditions, local landscape, trees and ecology. Even if I 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 and conflict with the development plan as a whole.

Conclusion

48. For the reasons given above, the proposal is contrary to the development plan taken as a whole, and the Habitats Regulations. There are no material considerations advanced including the policies of the Framework that indicate the decision should be made other than in accordance with the development plan. Therefore, the appeal is dismissed.

Ann Veevers

INSPECTOR

⁸ Planning (Listed Buildings and Conservation Areas) Act 1990.