



Appeal Decision

Site visit made on 13 June 2023

by Helen Hockenhull BA (Hons) B.PI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 July 2023

Appeal Ref: APP/E0915/W/23/3315937

Land South of Tantallon House, Gilsland, Brampton, Cumbria, CA8 7DA

- 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 Liam McNulty against the decision of Carlisle City Council.
 - The application Ref 22/0511, dated 27 June 2022, was refused by notice dated 3 October 2022.
 - The development proposed is outline application for detached two storey dwelling with all matters reserved for future determination except highway access.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Liam McNulty against Carlisle City Council. This application 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. The development plans for the merged local planning authorities will remain in place for the area within the new authority until such time as they are revoked or replaced. For the purposes of this appeal, the development plan comprises the Carlisle District Local Plan 2015-2030 (CDLP).
4. The application was submitted in outline form with the means of access only to be determined at this stage. The submitted Siting Plan is for indicative purposes only and I have considered the appeal on this basis.

Main Issues

5. The main issues raised in this case are:
 - whether the appeal site forms a suitable location for residential development having regard to national and local planning policies;
 - the effect of the development on the character and appearance of the area;
 - the effect of the proposal on the River Eden Special Area of Conservation, with particular regard to nutrient neutrality.

Reasons

Suitable location for residential development

6. The appeal site lies to the north of Gilsland, a small village located to the south of the River Irthing. It forms an area of grassland lying on the western edge of a cluster of 14 properties. An existing horticultural enterprise owned by the appellant is located to the west. Open countryside lies to the south and west with existing residential properties to the east and north.
7. The site is physically and visibly detached from the village of Gilsland. It is unclear whether the small cluster of properties next to which the site lies, is a separate settlement or part of Gilsland. I observed that the village boundary sign is in a position which would suggest that this cluster of dwellings is within the village. I note from Ordnance Survey maps that this group of dwellings appears to be referred to as Red Beck Bridge, in effect a small satellite settlement. Either way the appeal site can be viewed as being on the edge of an existing settlement. The site cannot be described as isolated as it is clearly not away from other places, buildings or people.
8. Paragraph 79 of the National Planning Policy Framework (the Framework) recognises that housing located where it will enhance or maintain the vitality of rural communities should be supported and that development in one settlement may support services in a village nearby.
9. Policy SP2 of the CDLP seeks to ensure that objectively assessed needs are met in the most sustainable manner. The policy makes provision for around 70% of housing growth to take place in Carlisle and the remainder in the rural area. Part 7 of the Policy considers housing development within rural settlements and states that development opportunities of an appropriate scale and nature, which are commensurate with their setting, will be harnessed to positively contribute to increasing prosperity of the rural economy and to enable rural communities to thrive. The supporting text to the policy suggests that proposals will be considered on a case-by-case basis ensuring that sustainable patterns of development prevail and that unnecessary and unjustified encroachment into and urbanisation of the District's countryside and fine landscapes is avoided.
10. Policy H02 considers windfall housing developments, recognising they can make a positive contribution to the supply of housing and help enhance or maintain the viability of rural communities. The policy states that new housing within or on the edge of villages will be acceptable subject to a range of criteria which I address below.
11. The appeal proposal is for a single dwelling which would be of an appropriate scale and nature in the context of the cluster of properties which it adjoins.
12. The occupants of the dwelling would contribute to the rural economy by making use of the services and businesses in Gilsland. The construction of the property would also support local jobs and generate a need for building supplies. However, as the appeal is for one dwelling, the contribution would be limited. I understand that the appellant has lived in Gilsland a long time, owns a local pub and has a child in the local primary school. I accept that the appellant and his family would also contribute to the enhancement and maintenance of the local community.

13. The site is immediately bounded by residential development to the east and further dwellings are located to the north. It is therefore physically connected to the settlement and integrates with it.
14. I observed on my site visit the polytunnel and small timber shed associated with the horticultural business located to the west of the appeal site. These structures are relatively small in scale. Their modest size means that they sit comfortably in their context and maintain the open character of the rural area. The horticultural enterprise as a whole does not spatially or visually define the appeal site such that it could be considered to form a corner element within the settlement, appropriate to be infilled. The established residential boundaries in this location are clearly defined and provide a clear distinction between the edge of the settlement and the adjoining rural area. The appeal proposal would extend beyond this boundary and result in an unacceptable intrusion into the open countryside.
15. Gilsland is a village with a range of services including public houses, post office, café, shop and school. Additionally, there is good access to Brampton and Carlisle, larger settlements which provide a further range of services and facilities. The appeal site can therefore be considered to be in an accessible location. It is also compatible with adjacent land uses.
16. In summary, I have found that the development is an appropriate scale in the context of the settlement, the site is on the edge of an accessible village and integrated with it, and the proposal would contribute to the viability of the rural community. However, I have also found that the proposal would unacceptably intrude into the countryside. Accordingly, the development would fail to comply with the objectives of the Framework and Policies SP2 and HO2 of the CDLP. The appeal site would therefore not form a suitable location for residential development having regard to national and local planning policies.

Character and appearance

17. I have established that the appeal site is located on the edge of a small satellite settlement of Gilsland. The area to the south and west of the site have a rural character with mature vegetation bounding the public highway. Whilst there are residential dwellings to the north of the appeal site, Westwood and Tantallon House, they are set back in their plots with extensive planting on the highway frontage. This contributes to the rural character. The distinct established settlement edge to the west of Willowbank gives the feeling that on reaching the appeal site, one is leaving the settlement and entering into the countryside.
18. The Council describe the appeal site as being part of a larger agricultural field. This is challenged by the appellant as being inaccurate. I observed on my site visit that the horticultural enterprise, the associated access and the appeal site are individually fenced off from the wider field to the west and south. It appeared to me that the appeal site and horticulture business had been part of a wider field and therefore this description is in my view not unreasonable.
19. Policy GI1 of the CDLP outlines that all landscapes are valued for their intrinsic character and will be protected from excessive harm or inappropriate development. It goes on to say that proposals will be assessed against the criteria presented within the Cumbria Landscape Character Guidance and

Toolkit with regard to a particular Landscape Character areas, key characteristics, local distinctiveness and capacity for change.

20. The appeal site is located within the 'Broad Valleys' Landscape Character type. This is characterised by wide and open deep valleys, with open floodplains, rural farmland comprising areas of improved pasture, pockets of scrub, woodland and coniferous plantations, hedges and stone walls forming a matrix of field boundaries.
21. This landscape character type covers a wide area of Cumbria including parts of the Rivers Liddel, Irthing, Derwent, Lune, Lyth, Kent and Winster. It is inevitable that not all of the stated characteristics apply to the appeal site and the surrounding area. For example, it refers to small villages of a vernacular character in common, buildings built of sandstone and limestone, villages being linear close to the river or more nucleated close to the valley top. These characteristics are not wholly applicable to the appeal site and its locality.
22. The sensitive characteristics of the landscape type are identified as woodlands, orchards, hedgerows and open meandering undeveloped river plains. Estate parkland and deer parkland are identified as sensitive as is the limestone and sandstone vernacular of traditional villages and their siting following the grain of the valleys.
23. The appeal scheme would not involve the removal of any trees or hedges and it is not located in the visual context of a historic village with a sensitive vernacular. Furthermore, the proposed dwelling, though in outline, is not indicated to be sited where it would impact negatively on the undeveloped valley sides.
24. In the reason for refusal the Council describe the characteristics of the area as being predominantly open and rural in character with sporadic built form and pockets of mature woodland. The appellant interprets this as suggesting that the built development in the settlement is sporadic and that the settlement contains pockets of mature woodland. My reading of the Council's statement is that it describes the wider area. The settlement contains 14 dwellings and forms a very small cluster of built development. In the context of the village of Gilsland, it is not unreasonable to describe this very small settlement together with other isolated dwellings in the locality, as sporadic development within the countryside. Therefore, in my view it provides a fair description of the character of the area.
25. Looking at the appeal site from the immediate locality, the site is screened by mature hedgerows along the road frontage. Approaching from the east, very limited views of the site can be obtained due to existing roadside vegetation, though it is likely that the roof of a dwelling would be visible. From the west, heading towards the village, views of the proposal would be achievable at certain points above the hedgerow and at the access to the site. Whilst the proposed dwelling would be seen beyond the horticultural polytunnel and timber building, in the backdrop of the dwellings to the east, its forward projection beyond the established settlement edge would have a negative impact on the character of the area.
26. It is possible for the site to be partially viewed from the Hadrian's Wall path to the south of the river, However, it would be seen with extensive tree cover in the foreground and in the backdrop of existing development. The proposal

would be seen as part of the settlement and would not be seen as intruding into the countryside from this viewpoint.

27. Given the above, I find that the appeal proposal would cause harm to the character and appearance of the area, albeit this would be localised. It would therefore fail to comply with Policy GI1 which seeks to protect landscapes from excessive harm and inappropriate development.

The River Eden SAC

28. The appeal site lies adjacent to the River Irthing which forms part of the River Eden SAC catchment. The Council were advised in March 2022 by Natural England (NE) that the catchment was in unfavourable conservation status for the purposes of the Conservation of Species and Habitats Regulations 2017 (as amended) ('the Habitat Regulations) due to nutrient levels.
29. The proposed development has the potential to cause nutrient pollution as a result of foul and surface water drainage. The increases in loading of nitrates as a result of the development, would be likely to adversely affect the designated species and habitats in the SAC without mitigation measures. As such, the proposal would (both alone, and in combination with other development) be likely to lead to significant effects on the River Eden SAC. It is therefore necessary that I undertake an appropriate assessment in accordance with the requirements of the Habitat Regulations.
30. The appellant has outlined in evidence the difficulties that have arisen in providing a nutrient budget calculation, as Natural England's budget calculator was flawed and required updating. Now that a new revised calculator has been produced, the agent has been able to provide a nutrient budget calculation for the development. This concluded that the development would lead to a small increase in nutrients entering the local watercourse following treatment at Gilsland Waste Water treatment works. The development therefore must include mitigation measures to achieve nutrient neutrality.
31. Whilst mains drainage is available and would be the preferred solution, it would not achieve nutrient neutrality at the current time. After exploring a range of options, the appellant has put forward a proposal to install a cesspool. This would ensure a closed foul drainage system with no foul drainage entering the mains system or the local watercourse.
32. A common approach to achieve nutrient neutrality is to purchase credits in a nutrient generation scheme. Natural England are currently setting up such a scheme in Cumbria but this is not yet available.
33. The appellant proposes that the cesspool solution is temporary until such time as the treatment works are upgraded or when discharge to the mains system can be offset by the purchase of credits under the Natural England provided scheme. This could be secured through an appropriately worded condition.
34. This is an unique approach to address this matter. The Council in their costs rebuttal has commented that this solution would not be acceptable because it is not considered to be suitable mitigation as required by Natural England. This is because the duration of the impact is taken as in perpetuity.
35. The cesspit proposal is a temporary solution and not something that should be in place longer term. The appellant is proposing this only until a mains

connection can be achieved and other mitigation is in place. A permanent solution to address the nutrient issue would therefore be achieved. Compliance with Building Regulations is a separate matter for the appellant. I also take account of the Environment Agency Advice to Local Authorities on non mains drainage for non-major development.

36. In the absence of substantive evidence to the contrary, I consider the proposal to be an acceptable solution to ensure the proposal achieves nutrient neutrality. As such the development, in combination with other plans and projects would not be likely to lead to significant effects on the River Eden SAC. It would comply with paragraphs 174 and 180 of the Framework and Policy GI3 of the CDLP which seek to protect international and national designated sites and enhance the natural environment having regard to water quality and pollution.

Other Matters

37. The appeal site lies in the Buffer Zone to the Hadrian's Wall World Heritage Site. This heritage asset is internationally recognised to be of Outstanding Universal Value. Its significance derives from its historical and archaeological interest. The Framework in paragraph 189 advises that an irreplaceable resource such as this should be conserved in a manner appropriate to its significance.
38. Policy HE1 of the CDLP seeks to ensure that development proposals enhance or preserve the character and setting of the Buffer Zone. In this case, due to the site's location close to a small settlement and with the presence of planting and tree cover, I consider that in visual terms, the proposal would preserve its setting. The development would therefore comply with the objectives of the Framework and CDLP Policy HE1.
39. A Grade II listed building, known as The Hill lies approximately 380 metres to the north west of the appeal site. As a result of this separation distance and the intervening landscaping, I am satisfied that the proposal would preserve its setting in compliance with Policy HE3 of the CDLP.

Conclusion

40. I have found that the appeal site would not form a suitable location for residential development having regard to national and local planning policies and that it would cause harm to the character and appearance of the area. I have also concluded that it would not be likely to lead to significant effects on the River Eden SAC. Whilst this weighs in favour of the scheme, it does not outweigh my overall findings.
41. For the reasons given and having had regard to all other matters raised, I dismiss this appeal.

Helen Hockenhull

INSPECTOR