



Appeal Decision

Site visit made on 14 August 2023

by L Wilson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 September 2023

Appeal Ref: APP/A2335/W/22/3311057

Land North of Bailrigg Lane, Lancaster

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant permission in principle.
 - The appeal is made by Aldcliffe Hall Estates against the decision of Lancaster City Council.
 - The application Ref 22/00697/PIP, dated 26 May 2022, was refused by notice dated 10 October 2022.
 - The development proposed is permission in principle application for the erection of up to 5 dwellings.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the description of development in the heading above from the Council's decision notice and the appeal form rather than the application form, as the description was revised during the planning application process.
3. The application is for permission in principle for the erection of up to five dwellings. Planning Practice Guidance (PPG) advises that this is an alternative way of obtaining planning permission for housing-led development. The permission in principle consent route has two stages: the first stage (or permission in principle stage) establishes whether a site is suitable in-principle, and the second stage (technical details consent) is when the detailed development proposals are assessed. This appeal relates to the first of these two stages.
4. The scope of the considerations for permission in principle is limited to location, land use and the amount of development permitted¹. All other matters are considered as part of a subsequent technical details consent application if permission in principle is granted. I have determined the appeal accordingly.

Main Issues

5. The main issues are:
 - Whether the development constitutes habitats development under Article 5B of the Town and Country Planning (Permission in Principle) Order 2017 (as amended) (the Order); and

¹ PPG Paragraph: 012 Reference ID: 58-012-20180615

- Whether the site is suitable for residential development, having regard to its location, the proposed land use and the amount of development, particularly in respect of drainage and flood risk.

Reasons

Habitats development

6. The site is located approximately 2.5km from the Morecambe Bay and Duddon Estuary Special Protection Area (SPA), the Morecambe Bay Special Area of Conservation (SAC) and Morecambe Bay Ramsar Site. Article 5B(1) of the Order states that permission in principle cannot be given for habitats development.
7. The PPG sets out that habitats development means development which is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects) and is not directly connected with or necessary to the management of the site; and for which the competent authority has not given consent, permission, or other authorisation in accordance with Regulation 63 of the Conservation of Habitats and Species Regulations 2017². I am the competent authority for the purposes of this appeal.
8. Morecambe Bay is a large, very shallow, predominantly sandy bay at the confluence of four principle estuaries, the Leven, Kent, Lune and Wye. Morecambe Bay is very important for many species of birds (including foraging and roosting birds, as well as waterbirds) and they are qualifying features of the SAC, SPA and RAMSAR sites. The conservation objectives for the Morecambe Bay SAC are to ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features. Similarly, the conservation objectives for the Morecambe Bay and Duddon Estuary SPA are to ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive.
9. The birds may rely on areas outside of the designated sites boundaries. Due to the intervening roads, proximity to residential properties and associated activity, combined with the tree cover to the site and proximity of overhead electricity infrastructure, I agree with the Council that, it is unlikely that the site is functionally linked to the designated areas. Having said that, given that the proposal is for housing, and its proximity to the designated sites, there is a reasonable likelihood that the sites would be accessed for recreational purposes by future occupants of the development. Any additional recreational pressure, such as dog walking, has the potential to impact upon foraging and roosting birds (which are designation features of the sites).
10. Due to recreational disturbance post construction which would have the potential to have a likely significant effect on the designated sites, it is necessary to undertake an Appropriate Assessment to consider whether the proposal alone or in-combination with other plans or projects would have an adverse effect the integrity of the habitat sites.

² Paragraph: 005 Reference ID: 58-005-20190315

11. Additional recreational pressure could have adverse impacts upon foraging and roosting birds in numerous ways which would contravene the conservation objectives. For example, through a reduction in foraging success, physiological impact, physiological impact and through direct mortality from domestic dogs. Without mitigation the proposal would be likely to have an adverse effect on the integrity of the SAC, SPA and RAMSAR site.
12. The PPG sets out that if the local planning authority is satisfied, after taking account of mitigation measures in the appropriate assessment and concluding that the development will not adversely affect the integrity of the protected site, then, subject to compliance with other statutory requirements regarding the permission in principle process, it can grant permission in principle³. As I am the competent authority for this appeal, this falls to me.
13. Although the proposal is small scale, the scheme (taken both in isolation and cumulatively) would, through potential impacts from increased recreational pressure, have a likely significant effect on the European designated sites. To mitigate any potential increase in recreational pressures caused by the development, homeowner packs could be provided to occupants of the dwellinghouses, as identified within the Habitat Regulation Assessment for the Local Plan. I understand that this is the Council's approach to housing developments across the district. Therefore, subject to the proposed mitigation (homeowner packs), and taking into account the small scale of the proposal, the development would not result in an adverse effect on the integrity of the designated sites.
14. The PPG sets out that it is not possible for conditions to be attached to a grant of permission in principle⁴. The PPG also states that when granting permission in principle to a site, local planning authorities can provide information on the decision notice about what they expect the detailed proposals to include at the technical details stage. This information may include where further impact assessment is needed by the applicant or where a particular scheme of mitigation may be required⁵.
15. The appellant has suggested that a condition relating to the proposed mitigation (homeowner packs) could be attached at the second stage (as part of the technical details consent application). However, this would not provide the necessary certainty that an adverse effect on the integrity of the sites would be avoided as I cannot be sure that this would occur. The appellant has not provided adequate certainty, for example an obligation alongside the permission in principle application/ appeal that includes the relevant mitigation provisions with a 'trigger' for its delivery linked to the associated technical details consent. There is no mechanism before me to control the submission of the homeowner packs, and having regard to the precautionary principle, I do not have certainty that the mitigation would be secured if planning permission is forthcoming.
16. Consequently, in the absence of a mechanism to mitigate the development's impact, I am unable to conclude, beyond reasonable scientific doubt, that there would be no adverse effects on the integrity of the SPA, SAC and RAMSAR designations. As such, the proposed development would constitute habitats

³ Paragraph: 005 Reference ID: 58-005-20190315

⁴ Paragraph: 020 Reference ID: 58-020-20180615

⁵ Paragraph: 045 Reference ID: 58-045-20180615

development and permission in principle cannot be given for habitats development as it would not comply with Article 5B(1) of the Regulations.

17. Therefore, the proposal would conflict with Policies SP8 and EN7 of A Local Plan for Lancaster District 2011-2031, Part One: Strategic Policies and Land Allocations DPD (2020) and Policy DM44 of A Local Plan for Lancaster District 2011-2031, Part Two: Review of the Development Management DPD (2020) (DM DPD). These collectively seek, amongst other things, to ensure designated sites are protected from development proposals that have a detrimental impact on their designation, and seek mitigation or compensation measures. It would also conflict with Section 15 of the National Planning Policy Framework (the Framework) which seeks to conserve and enhance the natural environment.
18. My attention has been drawn to numerous appeals. In the Wormelow appeal case⁶ the required mitigation measure was not clear, and the other appeals required a financial contribution⁷. There are some similarities between these appeals and the scheme before me. Nonetheless, they cannot be directly compared to the proposal before me as the mitigation measure is known, and there is no requirement for a financial contribution. I have also considered the findings of the Inspector in the Weston Road appeal⁸, but I have found (taking into account the relevant parts of the PPG and Article 5B(1) of the Regulations and evidence presented) the scheme before me would meet the definition of habitats development. Consequently, the highlighted appeal decisions do not alter my findings above.

Drainage and flood risk

19. Whilst I have found procedurally that permission in principle cannot be granted as the proposal constitutes habitats development, I have considered the second reason for refusal. The appeal site comprises a field, enclosed by mature hedgerows and trees, with residential properties to either side. The site is within flood zone 1.
20. Bailrigg Lane, which is adjacent to the appeal site and would provide access to the development, is at high risk of surface water flooding, from 1 in 30 year events. This is the highest frequency and risk of surface water flooding.
21. Based on the information presented and the topography of the site (sloping down to Bailrigg Lane), it is highly likely that the site drains to Bailrigg Lane. This is particularly likely given the identified slowly permeable ground conditions of the area, combined with the lack of highway drains or mains wastewater drainage provision within the locality. There is no known acceptable discharge point from the site or potential outflow. The site is not located close to a known accessible public sewer or a watercourse, which only leaves soakaways as the potential viable option for surface water for the dwellings.
22. The proposed development would reduce the permeability of the site through introducing impermeable structures. Given the slowly permeable seasonally wet acid loamy and clayey soils, and no percolation tests have been undertaken (to accord with BRE 365 Digest Standards and to confirm whether or not ground conditions are suitable for infiltration), the proposal fails to detail

⁶ APP/W1850/W/21/3284012

⁷ APP/P1133/W/19/3220392, APP/K3605/W/19/3229624 and APP/B1550/W/20/3253876

⁸ APP/D0121/W/20/3253758

the way in which the development could be sustainably drained and discharged in accordance with the surface water drainage hierarchy.

23. The potential effects of flooding could be serious, particularly as Bailrigg Lane is the only vehicular access in and out of Bailrigg. Taking into account the slowly permeable ground conditions of the site, known high level of surface water flooding risk, lack of local public drainage infrastructure or watercourse in the immediate vicinity of the site, lack of information regarding proposed drainage arrangements, the proposal would be unacceptable with regards to drainage arrangements.
24. Whilst specific details of drainage could be provided as part of the technical details consent stage, given the absence of a feasible drainage solution at the site, in this case, I cannot be sure that the location in principle would be acceptable. The proposal could exacerbate existing known high risk and frequency of surface water flooding of the adjacent highway and neighbouring dwellinghouses and land. Accordingly, it is not possible to conclude that this is a suitable location for residential development without further information.
25. For these reasons and from the evidence before me, a satisfactory arrangement for disposing and discharging of surface water cannot be achieved, and a risk of flooding would remain and could be exacerbated by the proposal. Therefore, given the circumstances of the site, the proposal in principle would be unacceptable in terms of drainage and flood risk.
26. Consequently, the proposal conflicts with Policies DM33 and DM34 of the DM DPD. These seek, amongst other things, to ensure surface water is managed sustainably within new development, and the Council expects that proposals for all new development will use Sustainable Urban Drainage Systems in accordance with the Surface Water Drainage Hierarchy. It would also conflict with chapter 14 of the Framework which states that inappropriate development in areas at risk of flooding should be avoided and seeks to ensure that flood risk is not increased elsewhere.

Other Matters

27. Both main parties acknowledge that the Council cannot demonstrate a five year housing land supply, the site is in an accessible and sustainable location, and within a broad location for growth. The appellant suggests that the Council's housing land supply position is 2.1 years, and the Council has not disputed this.
28. The development is for up to 5 dwellinghouses which would contribute to housing supply. Nonetheless, the benefits associated with the appeal scheme (including housing supply, social and economic) would carry limited weight given the small scale of the development.

Planning Balance

29. I have found that in the absence of a mechanism to mitigate the development's impact, I am unable to conclude that the development would not have an adverse effect on the integrity of the SPA, SAC and RAMSAR designations. Consequently, the proposed development would constitute habitats development and procedurally permission in principle cannot be given for such development.

30. Even if I had concluded that the proposal would not be habitats development, and a condition could be attached as part of the technical details stage, I have found that the proposal would be unacceptable in terms of drainage and flood risk. As such I have considered this scenario and the implication of paragraph 11(d) of the Framework being engaged given that the Council are unable to demonstrate a five year supply of deliverable housing land.
31. Paragraph 11 of the Framework, in the context of the presumption in favour of sustainable development, indicates that planning permission should be granted unless (d)(i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Policies in the Framework relating to areas at risk of flooding are included in paragraph 11(d)(i)⁹. The proposed development would be contrary to the Framework, and the harm in relation to drainage and flood risk that I have identified above provides a clear reason for refusing the development proposed. Therefore, the presumption in favour of sustainable development does not apply in this instance. Thus, even if I had found that the development would not constitute habitats development, the lack of a five year housing land supply does not alter my overall findings.

Conclusion

32. I conclude that permission in principle cannot be granted for habitats development. Furthermore, the site is not suitable for residential development, having regard to its location, the proposed land use and the amount of development, particularly in respect of drainage and flood risk.
33. Consequently, for the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other material considerations, the appeal does not succeed.

L Wilson

INSPECTOR

⁹ See paragraph 11(d)(i) – footnote 7 of the Framework