



Appeal Decision

Site visit made on 3 August 2023

by S Brook BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th October 2023

Appeal Ref: APP/Z0923/W/22/3304774

Land to the north of Station Road, Drigg, Holmrook

Grid Ref Easting: 306507, Grid Ref Northing: 499123

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Sunshine Properties West Coast Ltd against Copeland Borough Council.
 - The application Ref 4/20/2070/001, is dated 21 January 2022.
 - The development proposed is described as 'Residential Development'.
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Decision

1. The appeal is allowed and planning permission is granted for Residential Development at Land to the north of Station Road, Drigg, Holmrook Grid Ref Easting: 306507, Grid Ref Northing: 499123, in accordance with the terms of the application, Ref 4/20/2070/001, dated 21 January 2022, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

2. The application form indicates that the proposal was made in outline with all matters reserved and I have considered the appeal on this basis. As such, I have taken the submitted access, layout and landscaping plans to be indicative only, albeit they are not labelled as such. Notwithstanding access is a reserved matter, it would be taken from the B5344 as the site location plan shows this to be the adjoining highway and this is the indicated location on the plans.
3. The Council has advised that the emerging Copeland Local Plan 2021-2038 Publication Draft January 2022 (ELP) has been subject to an independent examination by an Inspector. The next stage will be to undertake public consultation on proposed modifications. The ELP is therefore at an advanced stage and so some weight can be given to these policies.
4. I understand that Copeland Borough Council is now part of Cumberland Council. This has no effect, however, on the determination of this appeal.

Main Issues

5. The Council failed to determine the application within the prescribed period. The Council's appeal statement does not advise how the application would have been determined, had the opportunity arisen. Instead, it identifies the relevant policies of the Copeland Local Plan 2013-2028, Core Strategy and Development Management Policies, Adopted December 2013 (LP) and the ELP, other material considerations, and identifies key issues.

6. Additionally, I have been provided with responses to the consultation process. Taking all of these factors into account and my own observations on site, the main issues are considered to be:
- whether this is a suitable location for new housing given policies relating to open countryside, the settlement hierarchy and settlement boundary;
 - the effect of the proposed development upon the character and appearance of the area;
 - the effect of the proposed development upon highway safety; and
 - whether the proposal provides suitable drainage arrangements to minimise flood risk

Reasons

Whether this is a suitable location for new housing

7. LP Policy ST2 establishes the spatial development strategy for the Borough and states that new development will be located within defined settlement boundaries at an appropriate scale, in accordance with the Borough's settlement hierarchy. The village of Drigg is not identified as a Principal, Key Service or Local Centre and is not defined by a settlement boundary within the LP. As such, housing at this location requires a specific locational need to be demonstrated. However, there is no dispute between the main parties that the present housing requirement cannot be accommodated within the settlement boundaries which are defined by the LP and the housing land supply relies on sites outside of these settlements. Therefore, LP Policy ST2 is deemed to be out-of-date.
8. ELP Policies DS3PU and DS4PU provide the updated approach to development within the settlement hierarchy, along with revised settlement boundaries. Modifications have been suggested in relation to both policies. The proposed changes do not affect the identification of Drigg as a Sustainable Rural Village in the revised settlement hierarchy, within which, a limited amount of growth to maintain communities, will be supported. Nor do the modifications suggest that the proposed Drigg settlement boundary is likely to change. It is reasonable to conclude therefore that these aspects of ELP Policies DS3PU and DS4PU are likely to be found sound.
9. ELP Policy DS4PU considers sites outside the settlement boundaries. It states that in order to ensure that allocated sites are not prejudiced, housing development outside settlement boundaries will only be accepted where; a) the site is well related and directly adjoins the settlement boundary of a town or local service centre; b) the site is or can be physically connected to the settlement it adjoins by safe pedestrian routes; and c) the Council is unable to demonstrate a 5-year supply of deliverable housing sites or there has been previous under-delivery of housing against the requirement for 3 years. The modifications proposed, would amend the text of this policy to allow consideration to be given to a site which adjoins any identified settlement.
10. The appeal scheme lies adjacent to the proposed settlement boundary for Drigg. Pedestrian facilities exist to the opposite side of the road, to which the proposal could connect. The village of Drigg has a number of facilities, including a village hall and church, shop, and hotel/public house. The site is centrally

located and these facilities and services would be accessible by foot or cycle. A national cycle route passes the site and a bus stop is located to the site frontage. Whilst I have no information on the frequency of the bus service, a station on the west coast train line is also within a convenient walking distance. Whilst reference is made to an oversubscription of GP surgeries within the area, I have little substantive evidence to support this and so I cannot afford it any significant weight in my decision making.

11. As such, the appeal site is not isolated, it adjoins and is well related to the village, and it could be physically connected by safe pedestrian routes, delivering a limited amount of growth to maintain the vitality of this rural community. However, the Council presently has a 5-year housing land supply. Therefore, whilst the proposed development would not be contrary to ELP Policy DS3PU which sets out where new development will be directed, there would be conflict with ELP Policy DS4PU, as the proposal lies beyond the settlement limit for Drigg and not all of the criteria of ELP Policy DS4PU have been met. I afford this conflict with the ELP Policy DS4PU limited weight, given that the policy is subject to modifications that require further consultation.
12. To conclude on this first main issue, the proposed development would be a suitable location for new housing. Whilst there would be conflict with LP policy ST2, I attribute limited weight to the conflict with this policy given that it is deemed to be out-of-date. The proposal would comply with LP Policies ST1 and DM22, which collectively, and amongst other matters, seek to ensure that new development is accessible, minimises the need to travel, and provides sustainable transport infrastructure. Whilst there would be conflict with ELP Policy DS4PU, I attribute limited weight to that conflict, for the reason noted above. The proposal would meet the requirements of the National Planning Policy Framework (NPPF) in terms of providing housing where it will enhance or maintain the vitality of local communities, and actively managing patterns of growth to promote walking, cycling and the use of public transport, as an alternative to the private car.

Character and appearance

13. The appeal site comprises of a gently sloping field bound by hedgerow and fencing, fronting onto the B5344, a main road through the village. A further field lies opposite the site to the south, which is proposed as a housing allocation in the ELP, with open undulating farmland to the north and west. The main built form of the village is linear, extending south along Station Road and east along the B5344. However, as noted within the Copeland Landscape Settlement Study, July 2020, (LSS), Drigg is a dispersed settlement, with further development to the east off Old Shore Road, for example.
14. The proposed development would urbanise the site and represent a loss of open countryside and a visual change. However, noting the location of the appeal site adjacent to the village and the proximity of other built development along Station Road, Old Shore Road and along the B5433, the appeal scheme would not be out of character with the village or erode its dispersed form. It would not appear as an obvious intrusion into the open countryside, nor would it undermine the distinction between Drigg and Holmrook. The appeal scheme could provide an opportunity in its detailed design and landscaping to define the village edge and contribute to a sense of place.

15. As such, the proposal would not harm the character and appearance of the area. The proposal would comply with LP Policies ST1, DM10, DM26 and ENV5, which collectively, and amongst other matters, seek to protect and enhance the landscape by ensuring development does not detract from the distinctiveness of a particular area. In this respect, the proposal would also comply with the NPPF, which requires new development to add to the overall quality of the area, and be sympathetic to local character, including the surrounding built environment and landscape setting.
16. Whilst not yet afforded full weight, the proposal would not raise any conflict with ELP Policies H6PU, DS6PU and N6PU, insofar as they require that development is appropriate to the locality and considers natural, cultural and historical assets and local landscape character.

Highway Safety

17. Whilst the full details of access are reserved for future approval, it is necessary to be satisfied that a suitable access to the site is at least achievable. Drawing 001 Rev A provides indicative arrangements for access and layout, along with a dashed line demarcating sightlines. No dimensions for these splays are stated.
18. The response from the Highways Authority indicates a required visibility splay in both directions of 60m. However, the scaled drawings indicate a shortfall in this requirement. It has not been demonstrated therefore that the required visibility is achievable without extending beyond the site frontage, where I note mature vegetation has the potential to impede visibility. However, a negatively worded Grampian condition could be imposed to secure the required visibility as suggested by the Highways Authority. Whilst there is some uncertainty to delivery, the Planning Practice Guidance (PPG) recommends against the use of such conditions only where there is no prospect at all of the requirement being achieved, which does not appear to be the circumstances in this case. Whilst I acknowledge that access is a reserved matter, it would be appropriate to impose such a condition at this stage, so it is clear what is required at reserved matters stage.
19. I note that public representations highlight the busy nature of the B5433 and the proximity of the proposal to a number of existing junctions. However, there is no detailed evidence before me to suggest either matter would give rise to an unacceptable impact on highway safety and the Highways Authority has raised no such concerns.
20. To conclude on this main issue, the proposal would not result in harm to highway safety. The appeal scheme would therefore be acceptable in relation to LP Policy DM22 which amongst other matters, requires development to be accessible to all users and in this respect, is consistent with the NPPF. It would also meet the requirements of NPPF Paragraph 111, which states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. Nor does the proposal raise any conflict with ELP Policy CO4PU which requires that proposals have safe and direct connections to routes that promote active travel.

Drainage and flood risk

21. The site itself is within Flood Zone 1, at the lowest risk of flooding. A Drainage Strategy Report (DSR) dated April 2022 is provided. For surface water disposal, this indicates that percolation tests have shown ground infiltration to be unsuitable. An existing culverted outfall to a watercourse to the southern site boundary is identified as draining the majority of the site surface water flows. It is proposed to use this outfall for surface water discharge, utilising a combination of permeable paving and an attenuation basin/structure, to restrict all flows to the greenfield run off rate of 4.7l/s for storm events up to 1 in 100 year + 40% allowance for climate change.
22. Concerns are raised as to the condition of this culverted watercourse and the potential for increased flood risk downstream. Photographs are provided of standing water on the nearby road and within private land, albeit I have no detailed information as to the severity of the rainfall event to which these photographs relate. Both the Flood and Coastal Defence Engineer and the Lead Local Flood Authority (LLFA) seek additional survey information of the culverted watercourse and repair of any damage or defects, with the LLFA indicating that this could be secured by the imposition of a condition.
23. However, should the need to repair any defects arise, it is unclear if these could be achieved without involving third party land. In any event, the DSR indicates that the discharge rate from the proposed scheme would be restricted to the existing greenfield run-off rate. This could be secured, along with the detailed design of the drainage scheme, through the imposition of a suitably worded condition. As such, the appeal scheme should not pose any increased risk of flooding downstream, over and above the existing situation. Therefore, the evidence before me does not suggest that an additional condition requiring survey/repair of the culvert would be necessary to make the development acceptable and so, it would not meet the tests set out at paragraph 56 of the NPPF.
24. As such, the proposed development would provide suitable drainage arrangements to minimise flood risk, in accordance with LP Policies ST1, ENV1, DM11 and DM24, which collectively and amongst other matters, require surface water to be managed appropriately so that new development does not contribute to increased surface water run-off through measures such as Sustainable Drainage Systems. The proposed development would meet the requirements of NPPF Paragraph 167, which requires that flood risk should not be increased elsewhere. Nor would the proposal raise conflict with emerging Policies DS8PU and DS9PU, which collectively and amongst other matters, require pre-development or better levels of surface water run-off, consideration of the drainage hierarchy, and avoidance of development in areas where existing drainage infrastructure is inadequate; unless appropriate mitigation is provided.

Other Matters

25. The submission includes a Preliminary Ecological Appraisal dated 1 April 2022 (PEA), which identifies that the site lies within proximity to the Drigg Coast Special Area for Conservation (SAC) and the Morecambe Bay and Duddon Estuary Special Protection Area (SPA). No likely significant effects are identified and no mitigation measures are considered necessary. Natural England has confirmed that the proposed development will not have significant adverse

impacts on statutorily protected nature conservation sites. Based on the information available, the proposal is not likely to have a significant effect on the internationally important interest features of these designated sites, alone or in combination and an Appropriate Assessment is not necessary in this case.

26. A number of mitigation measures are included within the PEA which address other ecological interests and could be secured through the imposition of a condition. On this basis, the proposal would comply with LP Policies ST1, ENV3 and DM25, which collectively and amongst other matters, seek to protect and enhance biodiversity interest. Nor would the proposal conflict with emerging Policy N1PU which has similar aims.
27. Grade II listed Drigg Hall lies to the east. Given that this building lies within the village, existing housing forms an established part of its setting. Noting that the layout and appearance of the appeal scheme would be subject to further approval, I am satisfied that residential development of the site could be achieved in a manner that would preserve the setting of this listed building and any significance derived from it. The proposal would comply with LP Policy ST1 insofar as it seeks to protect and enhance cultural and historic features and their settings.
28. The Historic Environment Officer has highlighted the potential for archaeological interest within this area and recommends a condition to secure a programme of archaeological investigation/recording. There is no information before me to suggest that this would not be a proportionate response to the likely significance of such heritage assets, having regard to paragraph 194 of the NPPF.
29. LP Policy ST1 seeks to manage development pressures to protect the Borough's agricultural assets. However, there is no further evidence before me to demonstrate that the site comprises high quality agricultural land or that the loss of this field would harm supply and so I give this matter only limited weight.
30. LP Policy SS5 seeks to ensure adequate provision and access to open space. However, the site comprises of private grazing land and whilst I have considered the loss of this field in terms of possible visual harm to the character and appearance of the area, there is no information before me to suggest that the site has any additional value as an accessible green space.
31. A Package Treatment Plant is proposed for foul water drainage. PPG advises that septic tanks or package sewage treatment plants may only be considered if it can be clearly demonstrated by the applicant that discharging into a public sewer is not feasible. This has not been demonstrated by the proposal, which includes contradictory information as to the separation distance to the public sewer. In the circumstances, a condition could be imposed to secure full details of a foul water drainage scheme. The capacity requirements and operation of any package treatment plant would be subject to the other regulatory regimes (General Binding Rules/Environmental Permitting).
32. My attention is drawn to the proximity of the proposal to a working farm. However, at my site visit, it appeared that the appeal site would be no closer to farm buildings than existing housing within the village and I have been provided with no evidence to suggest that there are any existing amenity issues arising from this situation.

33. Reference is made to a lack of need for the proposal and the availability of alternative sites, in some cases, comprising previously developed land. However, local and national policies do not place a cap on the number of homes to be delivered and the Council accepts the requirement to go beyond the existing settlement boundaries in order to meet future housing need. The provision of up to nine additional dwellings would make a positive contribution towards the Government's objective of significantly boosting the supply of homes, along with the associated economic benefits, and I note the level of representation supporting the delivery of additional housing in this village, including the Parish Council. I afford these benefits moderate weight.
34. Representations also raise the need for affordable housing. Paragraph 64 of the NPPF states that the provision of affordable housing should not be sought for residential developments that are not major developments. The appellant's submission indicates a proposal of nine dwellings, which would fall below the NPPF threshold. Whilst the application is made in outline only and the description of the development does not specify any unit numbers, this can be controlled through the imposition of a condition. Therefore, the proposal does not trigger a requirement for affordable housing provision.
35. Reference is made to the proposal potentially comprising self-build plots that could meet the needs of those on the Council's self-build register. However, there is no mechanism before me to secure this and so I can give this only limited weight as a potential benefit of the proposal.

Planning Balance

36. I have not identified any conflict with those LP Policies relevant to matters of character and appearance, highway safety, drainage and flood risk, or the other matters discussed above. However, I have identified conflict with LP Policy ST2 and so there is conflict with the Development Plan when taken as a whole.
37. I have also identified conflict with ELP Policy DS4PU, which is a material consideration. I afford this conflict with the ELP Policy DS4PU only a limited amount of weight, given that the policy is subject to modifications that require further public consultation.
38. As the proposal is for residential development and LP Policy ST2, which provides the spatial strategy for new development, is deemed to be out of date, NPPF paragraph 11d) is engaged. The proposal would not harm areas or assets of particular importance and provide a clear reason for refusing the development as set out in NPPF paragraph 11d) i. NPPF paragraph 11d) ii requires granting planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
39. I have found that the proposal would contribute toward the supply of housing in a suitable location. I have not identified any harm to the character and appearance of the area. I am satisfied that technical highway and drainage matters can be adequately resolved at the reserved matters stage or controlled through the imposition of conditions. I have considered all other matters raised.

40. Taking all of this into account, the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF, taken as a whole. Therefore, the proposal would represent sustainable development for which there is a presumption in favour. As such, the NPPF as a material consideration indicates determination other than in accordance with the development plan.

Conditions

41. I have considered the conditions put forward by the Council and interested parties with reference to the NPPF and PPG. The appellant has had the opportunity to comment.
42. I have imposed conditions which concern the statutory time limit and the reserved matters. In the interests of certainty, I have also imposed a condition concerning the approved plans.
43. I have included a condition limiting the development to nine dwellings as this has formed the basis of the submission and any increase would have differing implications, for affordable housing provision for example.
44. In addition to the conditions discussed above relating to visibility splays, drainage details, archaeological investigation and ecology, I have imposed conditions to secure a Construction Method Statement (CMS) in the interests of highway safety and details of a footpath link to the existing footpath into the village, in the interests of pedestrian safety. I have excluded a pre-construction road condition survey from the CMS as this seems onerous for a development of this scale and I have been given no justification for this.
45. I have considered those conditions suggested by the Council that originated from the response from United Utilities. I have amended this wording because the submitted DSR has already provided some of the information requested and condition 6 includes implementation, management and maintenance. It is unnecessary to specify foul and surface water should drain on separate systems as condition 6 requires drainage details for both to be submitted for approval in any event.
46. A condition to secure landscaping of the site is unnecessary as this is a reserved matter. The PPG clarifies that this reserved matter includes details such as screening by fences or walls and level changes/earthworks. A condition requiring landscape maintenance details could be imposed at the reserved matters stage if necessary.
47. I have been provided with no justification for removing permitted development rights for future householders provided by the Town and Country Planning (General Permitted Development) (England) Order 2015 and so a condition to this effect is not included. A number of additional conditions have been requested by consultees. However, these too relate to reserved matters and can be considered or conditioned at that stage.

Conclusion

48. For the reasons outlined above, I have found conflict with the development plan as a whole, however, other material considerations, including the NPPF, indicate I should determine the appeal other than in accordance with it. Consequently, I conclude that the appeal should be allowed.

S Brook

INSPECTOR

Schedule of Conditions

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing No 002, Revision A Site Location Plan.
- 5) The development hereby permitted shall not exceed nine dwellings.
- 6) No development shall commence until visibility splays providing clear visibility of 2.4m x 60m in both directions measured down the centre of the access road and the nearside channel line of the carriageway edge have been provided at the junction of the access road with the county highway. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order) relating to permitted development, at no time shall the approved visibility splay be obstructed by any building, wall, fence, structure or planting exceeding a height of 0.6m above the level of the adjacent carriageway.
- 7) No development shall commence until full details of a surface water drainage scheme and a foul water drainage scheme have been submitted to and approved in writing by the Local Planning Authority. Unless otherwise agreed in writing by the Local Planning Authority, these drainage schemes must demonstrate or include:
 - a. A restricted rate of discharge to the culverted watercourse of 4.7l/s where applicable;
 - b. Levels of the proposed drainage systems including proposed ground and finished floor levels in AOD;
 - c. Incorporation of mitigation measures to manage the risk of sewer surcharge where applicable;
 - d. measures to prevent surface water discharging onto or off the highway
 - e. a timetable for implementation; and,
 - f. a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

The submitted details shall have regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version). The approved schemes shall be implemented and thereafter managed and maintained in accordance with the approved details.

- 8) No development shall commence within the site until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority.

This written scheme will include the following components:

- a. An archaeological evaluation;

- b. An archaeological recording programme, the scope of which will be dependant upon the results of the evaluation;
 - c. Where significant archaeological remains are revealed by the programme of archaeological work, there shall be carried out within one year of the completion of that programme on site, or within such timescale as otherwise agreed in writing by the LPA: a post-excavation assessment and analysis, and submission of a completed archive report.
- 9) No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The Statement shall provide for:
- a. the parking of vehicles of site operatives and visitors;
 - b. the routing of construction vehicles to and from the site
 - c. loading and unloading of plant and materials;
 - d. storage of plant and materials used in constructing the development;
 - e. details of any temporary access points
 - f. wheel washing facilities;
- The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 10) No development shall take place until visibility splays providing clear visibility of 60 x 2.4 x 60 metres down the centre of the access road and the nearside channel line of the carriageway edge have been provided at the junction of the access road with the highway. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order) relating to permitted development, no structure of any kind shall be erected, and no trees or other plants shall be planted or be permitted to grow within the visibility splay, which would obstruct visibility.
- 11) Prior to the first occupation of the dwellings hereby approved, a footway must be provided that links continuously and conveniently to the nearest existing footway, the details of which shall have been first submitted to and approved in writing by the Local Planning Authority. The footway shall thereafter be retained.
- 12) The development shall be carried out in accordance with the mitigation measures and biodiversity enhancements set out within document 'Preliminary Ecological Appraisal, Report 0422/1, Prepared by South Lakes Ecology April 2022.