



Appeal Decision

Site visit made on 23 January 2024

by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 January 2024

Appeal Ref: APP/H0928/W/23/3328057

Low Bradley, Ousby, Penrith, Cumbria CA10 1QA

- 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 Neary against the decision of Westmorland & Furness Council.
 - The application Ref 20/0143, dated 20 February 2020, was refused by notice dated 14 July 2023.
 - The development proposed is described as the 'change of use of agricultural land to a mixed use of camping and sui generis for growing veg, storing plant and machinery and car parking.'
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development in the banner heading above is taken from the Council's decision notice, as it more accurately describes the development proposed. The reference to part retrospective has been removed as it is not an act of development.
3. During my visit I observed a shepherd's hut in situ and the bases for 2 tents. The proposal therefore appears to be at least partially retrospective. However, the submitted site plan does not accurately reflect the number or positions of buildings and structures within the appeal site and the appellant's wider landownership. Nevertheless, having regard to the overall scale and location of the development proposed, I am satisfied that there is sufficient detail before me to properly assess the impact of the proposal in relation to the main issues. For clarity, I have assessed the development as shown on the plans and not as built on site.
4. In December 2023 the Government published a revised National Planning Policy Framework (the Framework). The parties' views on the changes were sought and have been taken into account in the determination of the appeal.

Main Issues

5. The main issues in relation to this appeal are the effect of the proposed development upon i) highway safety and ii) the River Eden Special Area of Conservation (SAC), with particular reference to nutrient neutrality.

Reasons

Highway Safety

6. The appeal site comprises a 2-storey dwelling with attached roadside barn and a tract of land that extends to the rear, accessed from the road via an existing

- track. This is where the proposed camping, machinery storage and vegetable growing would take place.
7. I observed that the existing access onto the road although longstanding, had poor visibility, due to the proximity of the barn to the road immediately to the north, and the gate post and boundary wall to Ivy House to the south. In exiting from the access, a driver would not have a full view of the road in either direction until the bonnet of the car is protruding well into the road. This presents a risk to vehicles leaving the site and those using the road, as well as pedestrians that may walk to the nearby pub or school bus¹, particularly from the housing opposite.
 8. The entrance to Ullesby Gardens virtually opposite the appeal site and the access to Ivy House behind a high fence and landscaping to the south, add a degree of complexity to the road conditions in this location. This exacerbates the risk of conflict between road users from an intensified use of the existing access.
 9. Modal Highway Consultants suggest that based on typical trips for camping, the appeal site is expected to generate 8 trips 2-way over a typical day. However, there is no information before me as to the capacity of each tent, the shepherd's hut or the camp site as a whole. An interested party suggests that the proposed tents could be occupied by up to 10 people each. This has not been disputed by the appellant. If that is the case, the proposed use would have capacity of at least 20 people which is likely to attract multiple cars. Whether this is the case or not, even 3 small additional units of accommodation would lead to an intensification in use of a substandard access over and above the existing situation.
 10. The Modal Consultants data indicates that traffic along the road is modest and generally travelling at less than the 30mph speed limit². This data is over 3 years old and was taken during the pandemic when the survey may not have represented usual circumstances. However, I have no reason to dispute these findings.
 11. The Crash Map data although indicating that there have been no accidents locally, does not include information related to damage-only accidents where there were no casualties or reports to the police. I also note an interested party refers to 'near misses' in the area due to farmers exiting accesses with no sight lines. This shows the importance of the need for visibility from accesses onto a main road. Even with low levels of traffic, conflict arising from vehicles egressing from the appeal site and those travelling along the road at between 25–27mph would be sufficient to cause considerable damage to vehicles and injuries to persons. The evidence with regard to a lack of accidents is not therefore conclusive, and does not convince me that the intensified use of a substandard access would be safe.
 12. Moreover, I am not persuaded that a visitor standing in the road to direct a driver when it is safe to leave the access is a reasonable and enforceable measure that would mitigate the significant and serious lack of visibility from the existing access, without also putting the pedestrian at risk. The proposal would therefore lead to an unacceptable impact on highway safety which paragraph 115 of the Framework indicates should be refused.

¹ As referenced by an interested party in an email dated 11 April 2020.

² As indicated in the Modal Consultants letter dated 15 June 2021.

13. During the application process a revised site plan was provided, denoting the use of a former access to the north of the host dwelling. The visibility splays shown fall short of the standards required by the Highway Authority. Be that as it may, I observed that there would be reasonably good visibility from this access in both directions sufficient to enable users to clearly see oncoming traffic and importantly vice versa, whilst waiting off the road.
14. However, the track leading from the access routes around the rear and side of the dwelling where it curves and becomes so narrow that it is not sufficiently wide enough to accommodate a standard sized car. Without alterations to the boundary wall affecting third party land or modification to the dwellings' conservatory, the alternative access could not be used for the proposed development. It would not therefore offer a safe and suitable access.
15. Reference is made to other developments being allowed nearby that have similar access issues. No specific evidence has been put to me such that I can be certain that the context, circumstances and scale of the developments are the same as that here. Regardless, the presence of existing substandard accesses does not justify permitting new development that would cause harm to highway safety.
16. Whilst the proposal for the storage of machinery and growing vegetables would be acceptable, the proposed camp site would intensify the use of a substandard access, leading to an unacceptable impact on highway safety. It would fail to comply with Policies EC4 and DEV3 of the Eden Local Plan 2018 (LP) which seek to ensure amongst other things, that development does not have a severe impact in terms of road safety, and that small scale tourism development provides suitable access that does not give rise to unacceptable impacts on the local road network.

SAC and Nutrient Neutrality

17. The River Eden Special Area of Conservation is protected as a European Site of Nature Conservation Importance. It is therefore subject to statutory protection under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations), which outline a duty to consider whether a proposed development may have a significant effect on the conservation objectives of such protected sites.
18. The River Eden SAC has been determined to be in an unfavourable condition due to elevated nutrient levels, specifically phosphorus. The proposal would result in a net increase in overnight accommodation which could generate additional nutrient loads, such as nitrates and phosphates from wastewater.
19. In such circumstances Natural England considers that Competent Authorities (CA's) will need to carefully justify how further inputs from new proposals either alone or in combination, will not adversely affect the integrity of the site in view of the conservation objectives. This should be assessed on a case-by-case basis through appropriate assessment of the effects of the proposal³.
20. Nutrient neutrality is an approach which enables decision makers to assess and quantify mitigation requirements of new developments. It allows new developments to be approved with no net increase in nutrient loading within the catchments of the affected habitats site.

³ Natural England letter of 16 March 2022, 'Advice for development proposals with the potential to affect water quality resulting in adverse nutrient impacts on habitats sites.'

21. There is no evidence from either party as to whether the appeal site has a hydrological connectivity to the SAC or whether the designated sites' qualifying features are sensitive to any impact from this proposal. It is not clear whether the Council considers if the proposal would have a likely significant effect on the SAC and therefore whether an appropriate assessment (AA) is required.
22. The camp site toilets would be compostable with the wastewater from the showers and sinks directed to the roots of adjacent trees. Discharging wastewater straight to the ground without filtration could create a source of water pollution leaching into groundwater, whether or not biodegradable washing products are to be used. Without details of the proposed location and method of composting human waste, it is not known whether it would be effective at preventing nutrients from being leached into the soil. Moreover, there is no information regarding the soil type, percolation rates or the location of any nearby watercourses.
23. The planting of 600 trees is suggested as potentially offering nutrient neutrality for the scheme. However, the appellant has not provided any information regarding the specific nutrient impact of the proposed development through for example, a Nutrient Neutrality Assessment or Methodology. It is unknown whether the tree planting would offer sufficient mitigation.
24. The Habitat Regulations indicate that permission may be granted only where the CA is convinced the proposed development will not adversely affect the integrity of the European site concerned. There is not enough information before me as the CA to understand if the proposal would have a likely significant effect on the SAC, or enable me to carry out an AA, were one to be required. Given the potential harm identified and taking a precautionary approach, I cannot rule out the possibility that the proposal would have an adverse effect on the SAC.
25. The proposal therefore fails to comply with Policy ENV1 of the LP which seeks amongst other things, to give SAC's the highest level of protection and only permit development where no significant harm is caused including through appropriate mitigation. It would also fail to comply with paragraph 186 of the Framework, which advises that permission should be refused if significant harm to biodiversity cannot be avoided, adequately mitigated or as a last resort compensated for.

Other Matters

26. Planning law dictates that proposals must be determined in accordance with the development plan, unless material considerations indicate otherwise⁴. The Framework is a material consideration, in which the appellant points to support for a prosperous rural economy. The proposal would support jobs and local businesses including the nearby pub and shop. Nevertheless, consisting of 3 camping units the proposed development is of a limited scale. Other than mains water it would also be off-grid. However, the environmental benefits overall would be limited given the adverse effect identified above in respect of the SAC. These matters therefore attract limited weight.
27. The Council did not refuse the application on the grounds that the proposed camping site would be harmful to the character and appearance of the area due to its transient nature and lack of public visibility. This is neutral in the planning balance weighing neither for, nor against the proposal.

⁴ Section 70(2)(a) and (c) of the Town and Country Planning Act 1990.

28. Support from the Parish Council and an interested party does not equate to a lack of harm, and I have come to a different view regarding the impact of the development on highway safety and nutrient neutrality.
29. Whilst noting the evident frustrations of the appellant and the perceived conflict with the Framework with regard to the handling of the planning application by the Council, this is nonetheless a matter for the parties.

Planning Balance and Conclusion

30. The proposed storage of machinery and growing vegetables would be acceptable. However, the proposed camp site would result in an intensification of use of a substandard access that would have an adverse and unacceptable impact on highway safety.
31. Paragraph 188 of the Framework is clear that the presumption in favour of sustainable development does not apply where a proposal is likely to have a significant effect on a habitats site, unless an AA concluded that the proposal will not adversely affect the integrity of the habitats site. Given the lack of information before me, I have been unable to conclude that the proposal would not have an adverse effect on the SAC. The proposal therefore conflicts with the development plan.
32. The limited benefits to the environment and economy as discussed above would not therefore outweigh such conflict. Consequently, there are no considerations in this instance that lead me to find otherwise than in accordance with the development plan. For the reasons set out above, the appeal is dismissed.

M Clowes

INSPECTOR