



Appeal Decision

Site visit made on 10 January 2024

by C Rafferty LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 12 February 2024

Appeal Ref: APP/M0933/W/23/3319805

Land at Daisy Hill, Church Road, Great Urswick, Ulverston LA12 0ST

- 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 and Mrs S Swarbrick against the decision of South Lakeland District Council.
 - The application Ref SL/2020/0604, dated 20 August 2020, was refused by notice dated 28 September 2022.
 - The development proposed is proposed 3no. bedroom detached dwelling and integral garage with associated access works including a partial change of use from agricultural to residential land.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I note references to the date on the decision notice being incorrect. Nevertheless, for the avoidance of confusion I have taken the date as shown on the notice. I further note that South Lakeland District Council is now part of Westmorland and Furness Council. This has no effect on the determination of this appeal.
3. Since the determination of this application, the Government published a revised National Planning Policy Framework (the Framework) on 19 December 2023. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I consider that there is no requirement for me to seek further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by my taking this approach. Where I reference the Framework, I do so using the revised paragraph numbers.

Main Issues

4. The main issues are: (i) whether the proposal would be in a suitable location; (ii) the effect of the proposal on the character and appearance of the area; (iii) the effect of the proposal on ecology and biodiversity; (iv) the effect of the proposal on highway safety; and (v) the effect of the proposal on the living conditions of neighbouring residents of Urswick Hall Cottage with regard to outlook and privacy.

Reasons

Suitable Location

5. The site comprises a sloping area of land located between detached two storey dwellings, currently in agricultural use. It sits across from open space between

properties that allows for views of the nearby Urswick Tarn. The proposal seeks to erect a detached dwelling at the site.

6. Policy LA1.1 of the South Lakeland Local Plan Land Allocations Development Plan Document 2013 (the ADPD) seeks to ensure that new homes and workplaces are delivered in sustainable locations and to protect the character of the surrounding landscape and defines development boundaries for numerous settlements, including Great/ Little Urswick. Policy CS1.2 of the Core Strategy sets out the settlement hierarchy. It states that development will be concentrated in identified Principle Service Centres, then Key Service Centres, followed by a number of Local Service Centres, to include Great/ Little Urswick. Based on the information before me, the appeal site falls just outside of the settlement boundary of Great Urswick such that, despite its proximity, it is located in the open countryside.
7. Policy CS1.2 states that, exceptionally, new development will be permitted in the open countryside where it has an essential requirement for a rural location, is needed to sustain existing businesses, provides for exceptional needs for affordable housing, is an appropriate extension of an existing building or involves the appropriate change of use of an existing building. There is nothing substantive before me to suggest that the proposal would meet any of these tests.
8. The appellant contends that Great/ Little Urswick does not qualify as a Local Service Centre. As such, it is argued that this area should be reclassified as a small village and assessed against Policy DM13 of the Local Plan Development Management Policies for South Lakeland District outside the Lake District and Yorkshire Dales National Parks (the DPD) which relates to small scale housing development within or on the edge of small villages and hamlets and with which the appellant argues the scheme complies.
9. Supporting text to Policy CS1.2 sets out the criteria for classification of a Local Service Centre. This includes, among other things, the presence of a local shop and good public transport links, with supporting text calling for a review of designated local centres every five years. The appellant suggests that as no local shop was present in Great/ Little Urswick at the time of the adoption of the Core Strategy, it was incorrectly allocated as a Local Service Centre, with poor and reduced transport services further compounding this stance. The appellant argues that this should have been identified as part of a five yearly review, or prior to the adoption of the DPD, to allow for a change in settlement boundaries, but this has not occurred. I acknowledge the arguments put forward by the appellant, and further note that in setting out percentages of housing and employment development to be delivered in accordance with the settlement hierarchy, Policy CS1.2 of the Core Strategy states that in order to adapt to changing circumstance the apportionment of development may need to be flexibly applied.
10. Nevertheless, I must make my decision in accordance with the current planning policies, which allocate Great/ Little Urswick as a Local Service Centre, within the settlement boundary for which the appeal site does not fall. This boundary is identified in Policy LA1.1 of the ADPD, adopted after the requisite consultation, review and public examination. There is therefore nothing substantive before me to suggest that the appeal site or Great/ Little Urswick is a small village under current policy, and despite the purported absence of a specific review in this regard, this does not alter the current policy position. The Council's submissions outline that the site was omitted from this settlement boundary due to its positive contribution to the streetscene and rural character of the village, allowing views to open

agricultural land. Based on my observations I have no reason to find that this is no longer the case.

11. Accordingly, the appeal site, falling outside of the settlement boundary of a Local Service Centre, is classified as open countryside and there is nothing to suggest that the proposal would meet any of the requirements of Policy CS1.2 of the Core Strategy to be permitted in the open countryside.
12. For the reasons given, the proposal would not be in a suitable location. As such, it would fail to comply with Policies CS1.1 and CS1.2 of the Core Strategy insofar as they seek to ensure sustainable development that accords with the settlement hierarchy. The Council has also made reference to Policy DM12 of the DPD, but I have addressed this later in the decision.

Character and appearance

13. The predominant placement of development along this section of the road is defined by the positioning of properties in close proximity to the roadside, providing a notable linear pattern of development along both sides, within which the appeal site currently provides an element of openness and visual relief, contributing positively to the rural nature of the surrounds. While I observed some development set much further back from the highway, this was largely located behind roadside properties so as not to appear disruptive to the overall development pattern.
14. Conversely, the proposed development would be some 30m from the roadside, not behind any other development but in an elevated position and visible from the road. This has been done to retain a 'green gap' nature along the frontage of the site, albeit that the site is not formally designated as such, and to reflect the current openness, with additional landscaping and a 'cut and fill' approach proposed to provide an element of screening from the road and retain a countryside feel. It would also reintroduce an element of agricultural use. Nevertheless, the dwelling would appear out of step with the predominant pattern and placement of built form along the road, reading as an incongruous feature due to its placement. Even acknowledging the screening proposed, the higher position of the proposal would be notable from the roadside, even in passing views and glimpses, creating a visually jarring feature.
15. I have given much consideration to both the positioning and the precise external design of the proposal, in addition to the appellant's reference to other development including at the former Coot Public House, Carley Lane and White Gill Lane, the sites for which I observed on my visit. However, it remains that the immediate surrounds of the appeal site are defined largely by roadside dwellings with a notably more simple and modest external appearance. While the proposed external materials are reflective of the locality, the overall design of the proposal reads as overtly modern in the immediate context, primarily due to the expanse and placement of glazing on the front elevation and the flat roof dormer elements. These elements fail to reflect or respect the overarching character of the immediate setting that both, in their own right and when combined with the elevated position of the dwelling, would create an out of place addition to the streetscene.
16. I have had regard to the post development photomontage and Landscape Appraisal submitted by the appellant, and the Council's comments thereon. Nevertheless, even if I accepted the appellant's position regarding the location and amount of likely viewpoints of the proposal, it remains that for the reasons set out above I still find that it would result in visual harm.

17. For the reasons given, the proposal would result in significant adverse harm to the character and appearance of the area. As such, it would fail to comply with Policies CS8.2 and CS8.10 of the Core Strategy and Policies DM1 and DM2 of the DPD insofar as they seek to ensure high quality design and that the location, scale and design of development protects the pattern of distinctive features, maintains the quality of the landscape, responds to the context, and reflects the local vernacular.

Ecology and Biodiversity

18. Policy CS8.1 of the Core Strategy states that proposals should protect species and habitats. In this regard, the appellant has outlined various aspects of the appeal, to include maintaining the existing planted elements and retaining protected trees, opportunities for nesting in the projecting eaves and limestone facing of the dwelling, introduction of a swale, installation of bat boxes, additional planting, and the erection of the proposal on a currently managed, mown grass part of the site with purported limited ecological value. I further note the evidenced landscaping on the submitted plans.
19. I note the village setting and the appellant's personal knowledge of the site. However, even acknowledging the comments of Natural England it remains that no ecological assessments or appraisals relative to the proposal have been submitted. The site comprises grassland, trees and hedging, located in close proximity to the Urswick Tarn County Wildlife Site, such that survey information relevant to the scheme would be required to determine if this specific proposal would be acceptable with regard to potential impacts on ecology, or whether mitigation or compensation is required. In the absence of this information, it is not possible to determine with certainty whether the proposal can be carried out without harmful effects on protected species.
20. The presence of a protected species is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted. Consequently, the need to ensure ecological surveys are carried out should only be left to planning conditions in exceptional circumstances. It has not been demonstrated that exceptional circumstances exist in this case, and the fact that no such surveys or assessments were requested by the Council during the application process does not alter my view in this regard.
21. The Framework further states that decisions should contribute and enhance the natural and local environment by minimising impacts on, and providing net gains for, biodiversity. This is supported by Policy CS8.4 of the Core Strategy, which states that all development should protect, enhance and restore the biodiversity value of land. However, no substantive information on the biodiversity net gain of the proposal has been submitted.
22. For the reasons given, I have insufficient information to conclude that the proposal would not result in harm to ecology and biodiversity. As such, it would fail to comply with Policies CS8.1 and CS8.4 of the Core Strategy and Policies DM1 and DM4 of the DPD insofar as they seek to ensure development protects species and habitats, protects, enhances and restores biodiversity and results in environmental gains for biodiversity.

Highway Safety

23. The proposal would utilise the existing access to the site, taken from an adjacent narrow road, moderately parked at the time of my visit. The site entrance is close to other minor junctions on this road, serving off-street parking and residential properties, with a slight curve in the road to the east limiting the visibility of vehicles coming from this direction. As such, great driver care would be required when using this vehicle entrance to the site. Parking for two vehicles would be provided at the site, one of which would be located in the garage. While the Council has stated the second space would be directly in front, I accept the appellant's position that this could be provided in front of the pedestrian utility entrance to avoid a tandem arrangement.
24. I note that the Highways Authority has raised no objection to the proposal, subject to a condition for the provision of visibility splays, the dimensions for which have been provided in the suggested condition. Based on my observations, I have no reason to disagree that such visibility splays would be acceptable for a vehicle entering and exiting the site in forward gear.
25. However, even without a tandem parking arrangement and acknowledging the given dimensions of the space in front of the proposed dwelling, this space remains confined by the built form of the proposal and the steep, rising gardens. Accordingly, in the absence of a swept path analysis I cannot be certain that sufficient turning/ manoeuvring room would be provided to enable vehicles to enter and exit the site in forward gear and the lack of request for such an analysis from the Council does not alter my findings.
26. Given my observations on the nature of the immediate section of the road, I find that entering or exiting the site by reversing a vehicle would likely cause an increase in collision risk at this part of the highway, due to likely reduced driver visibility even with the cited splays in place.
27. For the reasons given, I have insufficient information to conclude that the proposal would not result in harm to highway safety. As such, it would fail to comply with Policy CS10.2 of the Core Strategy and Policy DM1 of the DPD insofar as they seek to ensure development is served by safe access to the highway and that there is safe movement of vehicles. While Policy DM9 has also been cited, this relates to parking provision which on the information before me is acceptable.

Living Conditions

28. The proposal would be located in close proximity to the boundary with the residential Urswick Hall Cottage and its associated gardens, with windows on the facing elevation and ample glazing and front balconies at first floor level on the principal elevation. As outlined above, the dwelling would also be situated in an elevated position in the site.
29. However, due to the presence of planting along the shared boundary with Urswick Hall Cottage, the proposal would not result in undue impacts on the living conditions of neighbouring residents of this property due to privacy and outlook. The main parties agree that an element of screening would be provided during the summer months and I observed on my visit that this would also exist during winter. While the proposal would rise above the

topmost part of this boundary planting it remains that a significant element of screening would result to much of the proposed dwelling.

30. Accordingly, despite its bulk and positioning, the proposal would not appear overbearing when viewed from the rear habitable rooms or gardens of Urswick Hall Cottage. The screening along the boundary would also ensure that clear and direct views of these spaces would not be possible from the proposal such that no undue actual or perceived overlooking would occur. As a result, the proposal would not negatively impact the neighbouring residents' enjoyment of their rear habitable rooms or garden.
31. For the reasons given, the proposal would not result in significant adverse effects on the living conditions of neighbouring occupiers of Urswick Hall Cottage with regard to privacy and outlook. As such, it would comply with Policy DM1 of the DPD insofar as it seeks to ensure delivery of acceptable levels of amenity.

Other Matters

32. The application is for self-build housing. However, the relevant Policy DM12 of the DPD sets out appropriate locations for self-build housing which, on the evidence before me, does not include the appeal site. Furthermore, the information before me suggests that the Council is currently meeting the requirements for self-build housing. This benefit therefore attracts little weight in favour of the scheme. As the appellant would relocate to the proposal, this would free up a family dwelling and therefore contribute to the housing mix and choice in the area. However, given that this would relate to a single dwelling only, this benefit is also limited.
33. The appellant has raised various grievances with the conduct of the Council throughout the application and appeal process. However, this has no bearing on my assessment of the planning merits of the appeal. Reference has also been made to numerous other examples of development. However, each application is decided on its own site-specific merits, and reference to development elsewhere carries little weight.
34. The Council raised concerns with the provision of one dwelling at the site not being an appropriate density, and with the amenity space provided not being suitable for the likely occupation of the dwelling. However, neither of these issues were considered to be reasons for the refusal of the proposal. As I am dismissing for other reasons, I do not need to review these matters. However, even if I were to find that no harm arose in these regards, it remains that this would not outweigh the harm that I did identify above.
35. I have had regard to the letters from interested parties supporting the proposal, citing that this is a suitable location for a permanent family dwelling on currently unused land that would help to sustain the village and provide local jobs during construction. Nevertheless, it remains that for the reasons above I have found that the proposal would result in harm and policy conflict.
36. The proposal would be occupied by a disabled family member of the appellant. In considering this appeal I have had due regard to the Public Sector Equality Duty contained in the Equality Act 2010, in particular the need to eliminate discrimination, advance equality of opportunity and foster good relations between those with protected characteristics and others. Following careful

consideration of these particular matters I am satisfied that the impact of dismissing this appeal is proportionate and justified.

Planning Balance and Conclusion

37. I have found that the proposal would not result in harm to the living conditions of neighbouring occupiers. This is an example of a lack of harm, which is neutral in the planning balance. Even when taken together with the other matters outlined above this would not outweigh the harm and policy conflict that I have identified with regard to the other main issues.
38. The proposal would not accord with the development plan when taken as a whole. There are no material considerations that indicate the appeal should be determined other than in accordance with the development plan. I therefore conclude that the appeal should be dismissed.

C Rafferty

INSPECTOR