



Appeal Decision

Site visit made on 13 August 2024

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd August 2024

Appeal Ref: APP/F0935/W/24/3344386

Field to South of Fell View, Moor Road, Broughton Moor

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr Wilson against the decision of Cumberland Council.
 - The application reference is OUT/2023/0012.
 - The development proposed is residential development on infill site between residential properties – self build/custom houses.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was submitted in outline with all matters reserved for future consideration. I have determined the appeal on this basis, treating supporting plans as illustrative.
3. The National Planning Policy Framework (the Framework) was amended in December 2023. I am satisfied that the amendments made have not had a material bearing on how the appeal proposal is considered. References in the decision are to the December 2023 Framework.

Main Issues

4. The main issues are:
 - whether the proposal would be in a suitable location for housing having regard to the development strategy for the area;
 - the effect of the proposal on highway safety;
 - whether it has been demonstrated that the site can be safely developed for housing with regard to coal mining risks; and
 - whether it has been demonstrated that the site can be developed for housing without unacceptable effects on biodiversity and the character and appearance of the area.

Reasons

Development Strategy

5. Policy S1 of the 2014 adopted Allerdale Local Plan (Part 1) Strategic and Development Management Policies (the SDMP) sets out a presumption in favour of sustainable development. Policy S2 establishes sustainable

development principles to assess proposals against. To support these policies, Policy S3 sets out the spatial strategy for the area. This establishes the level of development that is appropriate for different places based on a settlement hierarchy of Key Service Centres, Local Service Centres, Limited Growth Villages, and Infill/Rounding Off Villages.

6. The appeal site lies outside, but not far from, the settlement boundary of Broughton Moor. Policy S3 of the SDMP limits proposals outside the defined settlements to specific circumstances. Policy SA2 of the 2020 adopted Allerdale Local Plan (Part 2) Site Allocations (the SA LP) only supports proposals outside settlement boundaries where they comply with Policy S3 and other relevant policies. This caveat also applies to the support given to proposals for custom and self-build proposals in Policy SA4 of the SA LP.
7. There is no evidence to demonstrate that the proposal would satisfy any of the listed circumstances for development outside of defined settlements in Policy S3. To allow the appeal would undermine the planned approach to the distribution of development in the area.
8. The appellant has cited several cases which it is contended demonstrate that permissions have been granted outside of settlements. Only limited details of these cases are before me. The Council identifies that although two of the proposals¹ were outside of the settlement boundaries identified in the previous local plan adopted in 1999, both sites were directly adjacent to the built form of the village. Two examples² relate to a specific site covered by Policy S18 of the SDMP for the redevelopment of a former armaments depot. The other example³ does not appear to lie within the former Allerdale Borough Council area and so would have been considered under a different development plan. Based on the submitted evidence, these cases are not directly analogous to the appeal proposal, which I have in any case considered on its own planning merits in the context of the relevant development plan and evidence before me.
9. Broughton Moor is a Local Service Centre. The supporting text to Policy S3 explains that this tier consists of larger villages with a limited range of services and would accommodate a smaller scale of housing development that will help contribute towards maintaining the vitality of the settlement. There are some limited facilities in Broughton Moor which the site would be near to, and the site lies in between an existing house to the north and two houses to the south. Therefore, while the location of the site does not sit well with the settlement hierarchy, in terms of functional connectivity, the proposed dwellings would not be considered as isolated homes in the countryside in the context of paragraph 84 of the Framework.
10. Nevertheless, there would be conflict with Policy S3 of the SDMP, together with Policies S1 and S2 of the SDMP and Policies SA2 and SA4 of the SA LP, which seek to focus new development within the settlement boundaries. Due to this conflict, I conclude that the proposal would not be in a suitable location for housing having regard to the development strategy for the area.

¹ applications 2/2016/0469 and OUT/2019/0010

² applications FUL/2021/0070 and 2/2014/0858

³ application 4/20/2432/0F1

Highway Safety

11. Given the speed limit on the highway as it passes the site, the Highway Authority requires an access point to have a visibility splay of 120 metres in both directions from a point 2.4 metres (2 metres minimum) down the centre line of the access. No survey has been carried out to demonstrate that actual speeds of passing traffic at the site would allow a lesser visibility splay.
12. The appellant has submitted an illustrative plan showing how five houses could be accommodated on the site, with individual accesses onto the highway. The Highway Authority raised doubts as to whether compliant visibility splays can be provided for each of these accesses.
13. The appellant is not bound by this illustrative plan given that access, scale and layout are reserved for future consideration. Nonetheless, on my site visit I noted that there is a bend in the highway to the south of the site and that it slopes upwards to the north for much of the length of the site. From what I observed, the geometry of the highway in the vicinity of the site has the potential to limit the ability to achieve the required visibility splays, depending on the location of the access(es). Consequently, it is not clear from the evidence before me that the required visibility splays would be achievable.
14. The appellant states that there is no reported accident data for this stretch of highway. However, this does not provide a persuasive justification to increase the potential for an accident to occur in the future.
15. The Council informed the appellant that access should be considered as part of the outline application, as required by Part 3, paragraph 5(2) of the DMPO⁴ and an opportunity was given to provide additional information to address this matter. However, no additional information was submitted.
16. I acknowledge that there are nearby houses with drives onto a similar stretch of highway and with a comparable depth of plot to the appeal site. However, these are historic accesses, and it is necessary for me to determine the appeal against up-to-date planning policy including the Framework which states that proposals should not have an unacceptable impact on highway safety.
17. Taking the above factors into account, and notwithstanding that final access details are reserved for future consideration, I conclude that insufficient evidence has been provided to demonstrate that access arrangements could be put in place that would not have an unacceptable impact on highway safety. The proposal would therefore conflict with the access and highway safety requirements of Policies S4 and DM14 of the SDMP, Policy SA4 of the SA LP and paragraph 114 of the Framework.

Coal Mining Risks

18. The site lies within a Coal Development High Risk Area. In such areas, new development proposals should be supported by a Coal Mining Risk Assessment to demonstrate that the development would be safe and stable, taking account of former coal mining activities.
19. The appellant submitted a 'CON29M Coal Mining Report'. As identified in the consultation response of the Coal Authority, this document does not constitute

⁴ The Town and Country Planning (Development Management Procedure) (England) Order 2015

a Coal Mining Risk Assessment. It only provides baseline information on coal mining features. A Risk Assessment need not require the completion of intrusive investigations, but information is required to assess if the site can be made suitable for its proposed use. This includes how any coal mining legacy will be dealt with to ensure the safety and stability of the proposed development. Paragraph 190 of the Framework makes it clear that where a site is affected by land stability issues, responsibility for securing a safe development rests with the developer and/or landowner.

20. In the absence of a Coal Mining Risk Assessment, it is not clear what the potential risks would be for the proposed development or whether mitigation measures could ensure its safety and stability. Given this uncertainty, it would not be appropriate to defer consideration of this matter to a planning condition. I appreciate that the Council's environmental health team has recommended several conditions. However, these relate to land contamination, not coal mining legacy matters.
21. I therefore conclude that it has not been sufficiently demonstrated that the site can be safely developed for housing with regard to coal mining risks. Accordingly, the proposal would conflict with Policy S30 of the SDMP which requires an investigation into the quality of the land for proposals where there is a risk of ground instability, and the requirements of paragraphs 189 and 190 of the Framework regarding land stability.

Biodiversity and Character and Appearance

22. The appellant contends that a hedgerow assessment was not required for validation of an outline application. Validation prerequisites are typically minimum requirements that do not negate the need for further explanatory information to be provided to clearly explain, justify, or mitigate the impacts of a proposal during the planning application process. Policy DM17 of the SDMP is clear that a tree or hedgerow survey will be required to accompany a planning application when trees or hedgerows are either present on the proposal site or are adjacent to it and are likely to influence or be affected by the development. The Council's validation checklist⁵ makes a similar statement. Neither differentiate between full and outline applications.
23. The Council identifies that the hedgerow along the site frontage extends to around 72 metres. This significantly exceeds the distance of 20 metres stated in the validation checklist.
24. Fields enclosed by hedges is a key characteristic of the landscape in the area. Roadside hedgerows are a notable feature on leaving the southern edge of Broughton Moor and mark a change from the village to the countryside. This includes the length of hedgerow along the site frontage, which also stands out as a feature from the Public Right of Way to the north east.
25. I appreciate that it would not be possible to establish the full details of the length of hedgerow that would need to be removed given that access is a reserved matter. While the appellant contends that it can reasonably be assumed that only short section(s) would need to be removed to facilitate a driveway(s), this does not consider the need for visibility splays to be created.

⁵ Appendix 5 of the Council's Statement of Case

It would be reasonable to conclude that this would likely require the removal of additional sections of hedgerow or a reduction in its height.

26. With no clear evidence to the contrary, in my judgement, the alterations that would be required to the hedgerow to establish the access(es) would have something of an encroaching, urbanising effect. This would create a more domestic appearance to this part of the roadside which would erode the area's rural characteristics. Given the uncertainty about the extent of removal and the absence of a survey to identify the biodiversity value of the hedgerow, consideration of the effects of the proposal on biodiversity should not be deferred to a planning condition.
27. Based on the evidence before me, I conclude that it has not been demonstrated that the site can be developed for housing without unacceptable effects on biodiversity and the character and appearance of the area. Accordingly, the proposal would conflict with Policies S4, S35, DM14 and DM17 of the SDMP. In summary, these policies expect developments to respond positively to character; protect and enhance key ecological habitats; and protect hedgerows that contribute to the character of the area.

Other Considerations

28. Although no specific details on the number of houses was identified on the application form, the indicative plan and appellant's planning statement indicate up to five dwellings. The proposal would contribute to the supply of housing in the area which would accord with the objective of the Framework regarding significantly boosting the supply of homes. There would also be construction employment and additional residents supporting local services and facilities. However, I do not afford such benefits very significant weight in the context of the quantum of dwellings indicated.
29. The appellant states that the houses would be self-build. This would contribute to a mix of housing sites in the area. However, neither main party has provided any information on the demand for self-build and custom housing or the extent of suitable permissions that have been given to meet any demand. I therefore give this matter only limited weight.

Planning Balance and Conclusion

30. The proposal would not be in a suitable location for housing as it would undermine the planned approach to the distribution of development. The Framework states that the planning system should be genuinely plan-led. The conflict with the Council's development strategy is therefore a matter which I afford significant weight to. Additionally, I am unable to conclude that it would be possible to erect houses on the site without unacceptable harm being caused to highway safety, biodiversity or character and appearance, or that the site can be safely developed for housing with regard to coal mining risks.
31. The other considerations in this case are not sufficient to outweigh the conflict with the development plan taken as a whole. I therefore conclude that the appeal should be dismissed.

F Wilkinson

INSPECTOR