



Appeal Decision

Site visit made on 23 April 2025

by **C McDonagh BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 2nd June 2025

Appeal Ref: APP/K0940/W/24/3351932

Land to North of Underbarrow Road, Kendal LA9 5RS

- 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 F and M Pennington against the decision of Westmorland and Furness Council.
- The application Ref is SL/2023/0781.
- The development proposed is 'Outline application for the erection of 8 self-build dwellings.'

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Westmorland and Furness Council against Mr F and M Pennington. This application is the subject of a separate decision.

Preliminary Matters

3. The application was made in outline form with appearance and landscaping reserved for future consideration. As such I have considered the submitted site plan¹ as including the definitive site layout, access and scale, other plans are understood to be indicative and illustrative.
4. On 12 December 2024, the Government released an updated version of the National Planning Policy Framework (the Framework). The main parties were invited to make additional comments on the changes, and these have been considered in the determination of the appeals where relevant.
5. Submitted with the appeal is an extract of an example of an agreement pursuant to Section 106 of the Town and Country Planning Act 1990 to secure the proposed dwellings as self-build. However, I do not have an executed agreement before me to this effect and this matter is therefore not worthy of any weight.

Main Issues

6. The main issues in this appeal are as follows:
 - The effects of the proposal on the character and appearance of the area;
 - Whether the proposal includes a suitable mix and density of housing;
 - The effects of the proposal on the setting of the Lake District World Heritage Site (WHS);

¹ Drawing Number: 9975/I Revision H

- Whether a suitable foul drainage strategy can be achieved;
- Whether suitable living conditions for future occupiers of the dwellings can be ensured with regard to noise and dust;
- Whether suitable measures to control and mitigate against contamination have been adequately assessed;
- The effects of the proposal on ecology and biodiversity; and
- Whether adequate provision for broadband connection can be secured.

Reasons

Character and Appearance

7. The appeal site comprises a roughly rectangular parcel of grassland located to the north of Underbarrow Road on the edge of Kendal. The field undulates and slopes down towards the road. The boundary of the Lake District National Park (LDNP) abuts the site to the west, while to the northwest is Kendal Fell Quarry. There is an earth bund to the north and to the east lies a residential property, while there is a large housing scheme on the south side of Underbarrow Road.
8. The appeal is supported by numerous documents assessing the landscape and visual impacts of the proposal. The earliest of these, the Appraisal of Landscape and Visual Effects² (the appraisal), was originally drafted in 2017 in support of an earlier iteration of the site design which included 10 dwellings. Although this appraisal assessed a different scheme and the initial landscape and visual assessment work has been updated several times throughout the evolution of the project, the appraisal establishes the baseline landscape character type at that time. I have taken this on board in my assessment, although this has changed somewhat in the intervening years with the construction of the aforementioned housing estate to the south.
9. The site evidently lies within the Morecambe Bay Limestones National Character Area (NCA 20), and on a more local scale within the Open Farmland and Pavements landscape character area (3a) as identified within the Cumbria Landscape Character Guidance and Toolkit. Key features of this character area include grazed land with stone wall boundaries and open and uninterrupted views to the south.
10. The appraisal also establishes a visual baseline for the assessment of the proposal at that time. This includes a zone of theoretical visibility (ZTV) covering an area of 3km based on a bare earth scenario. This identifies receptors likely to include occupiers of nearby dwellings, users of local footpath and bridleways and motorists travelling on the adjacent road and the A591 further afield. Although photomontages were produced to illustrate the likely visual effects of the proposal, given the change in design of the proposal I have given this limited weight.
11. The LVIA Review³ advises that the baseline landscape and visual conditions of the appraisal are robust, although it points out that the review is not a full LVIA as would be expected to be provided by an applicant; rather, it is a review of the

² Westwood Landscape – April 2017

³ Stephenson Halliday – May 2019

methodology and approach to the assessment taken in the appraisal. Given the assessment was for 10 dwellings, as before I give the conclusions of effects limited weight.

12. The Landscape and Visual Impact Assessment/Review⁴ was submitted with the planning application subject to this appeal and reviews the previous two documents. It also concludes on the likely landscape and visual impacts of the scheme before me. The landscape assessment includes the Ghyll Manor housing development to the south which has changed the immediate character of the area along the road.
13. A further document, the Landscape and Visual Assessment - Rebuttal⁵ (the rebuttal), was submitted with this appeal. This includes updated baseline photography, with 4 photos taken from inside the LDNP to aid in the assessment of the visual impacts upon the National Park.
14. The appeal site displays some of the key characteristics identified in the toolkit, such as grazed land with stone wall boundaries, although the uninterrupted views to the south have been eroded by the housing development in that location. It is otherwise generally rural in character, with its location on the edge of Kendal contributing to a transitional quality as the built form of the town ceases and open countryside beyond opens up.
15. As such, I consider that the appeal site makes a minor yet positive contribution to the landscape character of the area. However, it has little amenity value, does not appear to be publicly accessible and given its size and location within the built form of the town, the appeal site is otherwise unremarkable. Moreover, it is located between landscape features such as the quarry, a small industrial estate and the housing to the south, all of which erode the rural character of the local area and contribute to a more residential and industrial quality alongside the rural characteristics of the appeal site and the LDNP to the west.
16. The number of proposed units in combination with the size of the site and the proposed layout would create a low-density development of large dwellings which would sit in large plots. In this transitional location, this would not be harmful to the landscape character of the site, particularly in light of the detached dwellings to the east and general lack of distinct patterns of development to the north of Underbarrow Road. While the site itself would incur a change in landscape character from rural to residential, it would be contained within the confines of the site itself which is clearly defined, within the built form of the town and retain some of the stone walls to the boundaries which would reinforce some of its key landscape characteristics. The site is a very small section in the wider landscape and set against a medium-low sensitivity, the effects of the proposal on the landscape character of the site would be negligible. While the LDNP abuts the site to the west, there would be no change to the landscape character of the National Park. As such, the effects of the outline proposal on the landscape character of the site and local area would not be harmful.
17. With regards to visual impacts, I have also had regard to the submitted baseline photographs appended to the rebuttal alongside my own observations on the site visit. The photographs are taken from 10 viewpoints, although the dwellings are

⁴ Galpin Landscape Architecture – October 2023

⁵ Galpin Landscape Architecture – August 2024

not rendered onto the imagery as with the appraisal. However, they do show that the appeal site is not readily visible from many local viewpoints. The tree belt to the west, albeit fully in leaf in the photographs, screens most views from the west from within the LDNP, while there are limited opportunities for direct views from receptors to the north given screening from trees and topography. This aligned with my observations on the site visit, and while some views of the proposal would be available to receptors from within the LDNP to the southwest, the proposed development would be viewed against the existing built form of the housing site to the south and built form to the east within the built-up area of Kendal.

18. There would also be some views from other vantage points, including from the road and the housing scheme to the south. However, shorter range views are to be expected and the majority of these would be experienced by motorists alongside some pedestrians. These would be transitional in nature and would not be in the viewpoint of the receptor for long given the size of the site. Moreover, housing in this location would not be unusual given the site is within the development limits of Kendal and the context of the prominent development to the south.
19. While I disagree that the visual effects of some views would be beneficial, I do find that much of the visual impact would be slight. This would be alleviated by the lower density of housing allowing more green spaces to remain within the development site and the spaces between dwellings and the boundaries of the appeal site to offset some of the built form. Moreover, I note that with landscaping a reserved matter, there would be an element of control for the Council to exercise and in working with the developer could devise a scheme to minimise the visual impact of the development on a local and wider scale.
20. Although I take on board the Council's concerns that a higher density of development would be a more efficient use of land, this is not the scheme before me, and I must assess the proposal as it is presented to me. I note that the Council's concern generally relates to the approach that the assessments have taken in their truncated form. While I agree that having 4 separate assessments and/or reviews is not ideal, the baseline landscape character and visual situation is articulated within the documents while effects are limited to the information before me at this time, which is unsurprisingly lacking given the outline status of the application.
21. To conclude on this main issue, the proposal would be in accordance with policies CS1.1, CS2, CS8.1 and CS8.10 of the CS⁶ and DM1 and DM2 of the DMP⁷. These seek to ensure that greenfield development is sympathetic to the landscape character of Kendal and to protect the countryside for its intrinsic beauty, diversity and natural resources, among other things.

Housing Mix and Density

22. The proposal includes 8 plots on a total site area of 1.3 hectares. Although details relating to appearance and landscaping would be confirmed at the reserved matters stage if outline permission was granted, I note the main parties do not dispute that the dwellings would ultimately include 4 or more bedrooms. Given

⁶ South Lakeland Local Development Framework Core Strategy (adopted October 2010)

⁷ Local Plan Development Management Policies (For South Lakeland District outside the Lake District and Yorkshire Dales National Parks) (adopted March 2019)

their size on the site plan, I see no reason to disagree. Policy CS6.2 of the CS⁸ seeks to ensure that new developments offer a range of housing sizes and types relating to the requirements of different groups of society.

23. My attention is drawn to the SHENA⁹ by both main parties. The Council advises that of existing house size needs, only 1% should be 4 or more bedrooms while the highest demand in the area is for 2 and 3 bed properties (53% and 31% respectively). I am also referred to a Rightmove search which evidently shows over 100 4+ bedroom properties available, although I do not have evidence of the latter before me.
24. However, the extract from the SHENA provided by the appellant concludes that market dwellings with 4 or more bedrooms should comprise 5-10% of the total housing makeup for new developments, with 2- and 3-bedroom units comprising 45-50% and 35-40% respectively. This is based on factors including an increased demand, potentially from increased home working and the need for office space.
25. There is nothing before me to show whether this proportion has or has not been met in recent planning approvals or updated projections of housing land supply. However, given the size of the dwellings and the layout shown on the site plan, a development of 100% (4+ bed) properties would not reflect the aim of policy CS6.2 to provide a range of housing sizes and types, particularly in light of the higher need for 2 and 3 bed units.
26. Moving on to density, policy CS6.6 seeks to make effective and efficient use of land and buildings through various requirements and actions. This includes meeting the target of an average density of at least 30 dwellings per hectare for all housing developments. CS6.6(4) goes on to state that lower density can be supported in some circumstances if there is proven need, and environmental constraints mean that it is not suitable for high-density development. The Council advises that the proposed density on the appeal site would be 6 dwellings per hectare.
27. To demonstrate need, the appellant has provided letters from local estate agents which advise that there is a high demand for larger properties at present. In spite of the properties referenced by the Council available on online search websites, the letter dated 5 December 2024¹⁰ advises some of these are not suitable and/or require significant renovations. The evidence from both parties on this matter is scant. While I have taken the opinions of the estate agents who supported the application into account, there is little substantive information in their comments and these offer limited weight in favour of demonstrating a proven need for lower density developments. The onus is on the developer to show this proven need for a lower density development, and I do not consider this part of the exception has been met.
28. The second exception relates to environmental constraints which make higher density development unsuitable. I am directed to conversations which took place some 10 years ago between the developer and the Council, and these demonstrate that the Council originally sought a lower density before this changed to a higher density proposal to make the most efficient use of land. While this gives

⁸ South Lakeland Local Development Framework Core Strategy (adopted 20 October 2010)

⁹ Westmorland and Furness Strategic Housing and Economic Needs Assessment (April 2023)

¹⁰ H&H Land and Estates – Ref: CIPT/GC

clarity in the understanding of the approach taken, these conversations are of little relevance to the proposal before me today, particularly given the changes made to the Framework since.

29. There is little information on what environmental constraints would entail in the application of this section of policy CS6.6. However, the supporting text advises that in assessing what density is appropriate priority will be given to ensuring that making efficient use of land does not result in development that detracts from the character of the area. I do not have a proposal before me for the 30+ dwellings which the Council seeks, and it is unclear as to whether a higher density scheme would be harmful.
30. However, the lower density of development proposed herein would be reflective of the adjacent detached dwellings and the transitional character of the appeal site in its location. Moreover, I have concluded that there would be no harm to the character and appearance of the area in my assessment of that main issue.
31. Notwithstanding the above, and to conclude on this main issue, I find that the proposed density and mix of housing proposed would conflict with policies CS6.2 and CS6.6 of the CS which seek to ensure a suitable mix and type of housing and make effective and efficient use of land and buildings.

Setting of the WHS

32. As established, the appeal site abuts the eastern boundary of the LDNP which is also a WHS. Given its location, there is no dispute between the main parties that the site lies within the setting of the designated heritage asset. As per paragraph 202 of the Framework, heritage assets range from sites and buildings of local historic value to those of the highest significance, such as World Heritage Sites which are internationally recognised to be of Outstanding Universal Value.
33. The Framework goes on to advise through paragraph 207 that in determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting.
34. I have had regard to the section of the Planning Statement submitted with the planning application which references the WHS. While I have bullet points of themes and attributes relating to the WHS, there is nothing before me to indicate what contribution is made by its setting. I therefore disagree that the level of information is proportionate to the asset's importance given the global value of a WHS.
35. Although I note the conclusion of the statement that there would be no harm, without establishing the contribution that the setting of the WHS makes to its significance, it is unclear as to how this conclusion has been reached, particularly in light of the cultural value attributed to the LDNP alongside its scenic beauty. A finding of no harm to the WHS due to the presence of the housing site adjacent and detracting features such as the quarry are not suitable assessments of the impacts of the proposal before me. Similarly, a lack of objection from the Lake District National Park Authority or Lake District National Park Partnership are not sufficient to establish a lack of harm.

36. While some elements of the proposal are reserved for future consideration, I cannot be certain that the proposal in its current form would conserve the WHS, including its setting. This would be contrary to policies CS8.6 of the CS and DM1 and DM3 of the DMP. These state, among other things, that development proposals must be supported by a Statement of Significance and Impact which should demonstrate a clear understanding of the asset's significance, including all those parts that would be affected by the proposal, as well as the contribution made by its setting. The proposal would also be contrary to paragraph 207 of the Framework as explained in the preceding paragraphs.

Foul Drainage

37. I am informed that the proposed dwellings would be connected to an existing sewer facility located at the site entrance of Ghyll Manor. Evidently, this was in private ownership at the time the planning application was being assessed and refused. I have been provided with a copy of a consultation response from United Utilities (UU) which confirms their objection to the proposal due to the proposed connection not being to a public utility. The appellant confirmed in their appeal statement that the connection had still not been adopted by UU at the time of the appeal.
38. I have been provided with a copy of a legal agreement from the owners of the sewer connection providing an option for connection for the proposal. I also have copies of correspondence between the appellant and UU within which the latter does not object in principle to the connection of the proposed scheme to the disposal point within the Ghyll Manor development. However, UU also state that there are outstanding remedial or legal requirements before the sewage connection point can be adopted. There is also no timescale for this to occur and at the time of writing this is still unconfirmed.
39. Moreover, while it is stated that UU will 'withdraw its comments' on this matter upon receipt of a legal agreement, it actually states that it would be able to discharge the condition which it recommended within its initial consultation response. Although the appellant advises this will be a case of when, not if, it is adopted, there is nothing before me at this time to confirm whether suitable arrangements can be agreed.
40. As such, there is nothing before me to indicate that a suitable foul drainage strategy could be agreed and as such, the proposal would be in conflict with policies CS1.1 of the CS and DM1 and DM6 of the DMP. These seek to ensure, among other things, that the first presumption will be for new development to drain to the public sewerage system. Non-mains drainage systems will not be acceptable in sewered areas.

Living Conditions

41. The appeal site lies adjacent to the Kendal Fell Quarry site, while the A591 bypass road is located to the southwest. I understand that the concerns of the Council relate to noise and vibration impacts from the road and quarry as well as dust from the quarry. Evidently, the quarry involves the extraction of limestone and has permission to do so until 2042. Although it is stated that the quarry is coming to the end of its use, there are no guarantees that its use will cease by 2032 as stated. Even if this was to occur on this timeline, there remains the potential for harm to the living conditions of occupiers of the proposed properties before the operations at the quarry ceases or a local plan allocation sees the site change use.

42. While noise impacts upon adjacent properties may have been agreed in 2016, there is nothing before me to assess the potential impacts of any of the matters listed above upon the prospective future occupiers of the proposal; nor does a lack of noise complaints from nearby residents of existing properties. I do not consider that addressing these issues at reserved matters stage is suitable, nor is there evidence before me that these are capable of being addressed at this stage. The onus is on the appellant to provide the necessary assessments to demonstrate that these matters can be addressed in any subsequent development of the site. The future occupation of two of the plots by the quarry owners is not sufficient to overcome this concern.
43. Based on the foregoing, the proposal has not demonstrated that it could provide prospective future occupiers of the scheme with suitable living conditions with regard to noise, dust and vibration from the quarry or A591 road. This would be contrary to policies DM1 and DM7 of the DMP, which state, among other things, that development will be permitted where the direct, indirect and cumulative effects of pollution (including, but not restricted to air, noise, dust, odour, smoke, fumes, gases, steam, smell, vibration and water) will not have a negative impact on health, the environment (including wildlife and tranquillity) and general amenity of existing or future occupiers and users or any sensitive receptor.
44. The proposal would also be contrary to paragraphs 187 and 198 of the Framework. These advise that planning decisions should contribute to and enhance the natural and local environment by preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability; and that decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on living conditions.

Contamination

45. I understand that the planning application was supplemented by a Phase 1 Desk Study¹¹, albeit this was from 2016 in support of an earlier proposal. I have had regard to the updated Phase 1 Desk Study¹², which advises that 1 potential source of contamination relating to landfill gas was identified, whilst also recommending that the risk is very low to low.
46. The Council's public protection team has reviewed the findings of the study and recommended that a number of conditions be attached to any grant of permission. Onerous or not, from the evidence before me it is clear that the proposal could successfully mitigate the potential risks of contamination subject to the agreement of details relating to these conditions.
47. As such, the proposal would accord with policies DM1 and DM7 of the DMP which state that, among other things, where contamination issues are identified, development proposals for the site should incorporate appropriate remediation and subsequent management measures to remove unacceptable risks to human health, groundwater and the wider environment identified in the assessment process, as appropriate for the uses proposed. The full implementation of approved remediation measures will normally be required prior to the occupation of the proposed

¹¹ Meridian Geoscience – Rev O, December 2016

¹² Tweddell & Slater Ltd – 12 June 2024

development. The proposal would also accord with paragraphs 187 and 198 of the Framework, which advise that planning decisions should contribute to and enhance the natural and local environment by preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability; and that decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on the natural environment.

Ecology and Biodiversity

48. I note there was some dispute regarding the timing of the submission of the Extended Phase 1 Habitat Survey Report¹³ and a subsequent addendum¹⁴. Although the initial report is of some age, the addendum advises that little change has occurred since the initial survey took place. An updated survey detailed within the addendum concluded that there are no significant changes and that the initial conclusions of the first report remain.
49. However, the findings of the Council's ecologist contradict many of the conclusions, with concerns raised regarding the accuracy of the survey, a lack of a biodiversity baseline assessment and the timing of the walkover survey being early in the growing season. While the 2015 survey may have concluded that the site is of low ecological value, it is imperative that the proposal is supported by sufficient surveys to ensure no harm would be caused to on or off-site ecology or biodiversity.
50. Moreover, the circular¹⁵ states that 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 the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. Given the age of the report and the uncertainty of the updated addendum, I cannot be certain that the proposal would not harm protected species. The evidence is lacking in this regard.
51. I further note the concerns from the Council that without a baseline assessment of biodiversity on site, that it would not be possible to conclude that a net gain could be achieved. This is subject to policy DM4 of the DMP which states that a biodiversity net gain should be secured from development. However, I note that landscaping is a reserved matter, and the recommendations of the 2015 report advises on several matters to secure a net gain. Many of these could be achieved through appropriate landscaping of which the Council would be able to collaborate with the developer to achieve a net gain. I further note that due to the date the application was made, the proposal would not be required to demonstrate a 10% biodiversity net gain pursuant to Schedule 7A of the Town and Country Planning Act 1990.
52. To conclude on this main issue, it has not been demonstrated that the proposal would not harm ecology and biodiversity. This would be contrary to policies CS8.1 and CS8.4 of the CS and DM4 of the DMP. These seek to ensure that all development proposals should seek to protect, enhance and restore the biodiversity and geodiversity value of land and buildings.

¹³ SK Environmental Solutions Ltd – 18 June 2015

¹⁴ SK Environmental Solutions Ltd – 10/04/2024

¹⁵ Circular 06/2005: Biodiversity and Geological Conservation

Broadband

53. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that 'If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise'. Policy DM8 of the DMP states that development proposals must demonstrate early engagement with infrastructure providers and be accompanied by a 'Broadband Statement' that explains the current internet connectivity in the site's locality and the potential for the site to be provided with high-speed broadband.
54. I am informed that fibre broadband is available for connection nearby, although there is nothing to substantiate this. I agree that digital connectivity is a fundamental requirement of modern life, particularly with the prevalence of working from home. As such, it is unclear as to why this information was not provided with the planning application or appeal to ensure suitable connectivity is achievable for future occupiers of the dwellings.
55. As such, I must conclude that the proposal has not demonstrated that suitable future internet connections for residents could be provided, contrary to policy DM8 of the DMP as explained above.

Other Matters

56. I note the appellant is aggrieved at the handling of the planning application by the Council. The appeal site clearly has a long history of discussions and subsequent proposals, with correspondence before me going back over a decade in some cases. Be that as it may, it is not my role to mediate disputes of this type. I have had regard to the planning merits of the case and the Council will have its own complaints procedure for disputes relating to its customer service.

Planning Balance and Conclusion

57. I have found that the proposal conflicts with the development plan with regards to housing mix and density, its potential impacts upon the Lake District WHS, foul drainage, living conditions of future occupiers, ecology and biodiversity and broadband connection. These matters weigh against the proposal considerably. While I have found no harm with regards to character and appearance of the area and land contamination, these would be of neutral weight rather than weighing in favour of the scheme.
58. Due to the lack of a planning obligation to secure the self-build tenure of the dwellings, I cannot attribute more weight to this aspect of the scheme, although the addition of 8 dwellings to the Council's existing supply is worthy of positive weight. However, this would be limited as I have nothing before me to indicate that the Council is not meeting its housing supply targets over the current 5-year period. There would be further limited economic benefits from the construction of the dwellings and potentially increased numbers of residents using nearby services and facilities.
59. To conclude, the proposal would conflict with the development plan as a whole as well as the Framework. I have determined that the benefits are of limited weight and would not outweigh that conflict. As such, the appeal is dismissed.

C McDonagh

INSPECTOR