



Appeal Decision

Site visit made on 19 June 2025

by **S Brook BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 21 August 2025

Appeal Ref: APP/K0940/W/25/3363196

Land on west side of 107 Beach Street, Askam-in-Furness

Grid Ref: Easting 321117, Northing: 477551

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mark and Jodie Tyson against the decision of Westmorland and Furness Council.
 - The application reference is 2023/0785.
 - The development proposed is described as 'Proposed dwelling on privately owned piece of land'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal site comprises a fenced plot of land lying to the west of 107 Beach Street, containing a number of small sheds, a mix of gravelled and grassed areas, with some children's play equipment, an animal hutch, and raised planting beds. Chickens are also kept on site. This fenced plot is one of many to the west of Beach Street. This area has the typical appearance of allotments, and I noted at my visit that many, albeit not all of these plots, are used for the growing of fruit and vegetables. The Council and a number of interested parties refer to the appeal site and these other plots as allotments.
3. The appellant has referred to the appeal site as a 'private garden', a 'leisure plot' and an 'allotment'. While some domestic paraphernalia was evident at the time of my visit, this represents only a snapshot in time. I am aware that the Council has refused an application for a Certificate of Lawfulness for an Existing Use or Development (CLEUD)¹, which sought to establish that this plot of land has historically been used as a private domestic garden. The Council concluded that insufficient evidence had been submitted to demonstrate that any non-agricultural use of the land in the form of a domestic garden was lawful.
4. This appeal does not relate to the determination of the CLEUD and it is not for me to determine the lawful use of the land as part of this section 78 appeal. For the purposes of determining this appeal only, the available evidence does not lead me to conclude that the appeal site has an established lawful use other than as an allotment, and so I have considered it as such, in reaching my decision.

¹ B26/2024/0186

Main Issues

5. The main issues are (a) the effect of the proposed development upon the character and appearance of the area, (b) whether or not the proposal would be suitably located having regard to development plan policies relating to community facilities, and (c) the effect of the proposed development upon ecological interests.

Reasons

Character and Appearance

6. Residential development fronts onto Beach Street for much of its length, comprising a mix of two storey terraced houses and detached bungalows. At its northwestern extent, the road curves northwards, becoming The Headland. At this point, albeit still within the development cordon of Askam in Furness, there is a distinct change in character to the west, as residential development gives way to allotments and then the sand dunes of the coast. The built form within these allotments is ad hoc and low level, providing a more open aspect towards the coastal area. Tracks leading through this area are informally made and arranged. While to the north and south, residential development can be seen to extend further west, this change in the type and scale of development beyond Beach Street provides a notable transition between the formally laid out residential street, and the more natural environment of the coast.
7. While the proposal would be located within the development cordon of the village, this is only one of a number of criteria contained within policy H7 of the Barrow Borough Local Plan 2016 – 2031 (LP), which specifically addresses housing development. This policy states that housing development will be permitted where it satisfies all of the criteria therein, including whether a proposal responds appropriately to the site and surrounding area.
8. The proposal would be seen in the physical and visual context of housing development along Beach Street, however, the introduction of the proposed dwelling at the appeal site would see the extension and encroachment of residential development into the transitional area discussed above. It would be positioned away from the formal highway, whereas most housing typically abuts the road. In this respect, it would not be consistent with the established pattern of development in the immediate area.
9. Materials are proposed to be in keeping with other properties, and the photomontages provided indicate that the proposed dwelling would be similar in height to 107 Beach Street. Nevertheless, it would have a notably larger footprint, and so it would introduce a bulkier scale of development into this transitional area, when the scale of built form is otherwise reducing. As such, when looking west from Beach Street, the appeal scheme would appear at odds with the prevailing form of development. The extension of residential development would detract from the open aspect afforded by the low scale of development within the allotments themselves, and it would detract from the informal arrangement of the area, both of which provide some relief to those passing through the area to the coast, as well as those utilising the allotments themselves.
10. For these reasons, the proposal would have a harmful effect on the character and appearance of the area. It would conflict with LP policies H7 and DS5, which collectively, and amongst other matters, require that new development integrates

with the natural environment, respects the distinctive character of the local landscape, and responds to the character and appearance of a site and its surrounding area, by ensuring that buildings are well designed in terms of their siting and scale.

Community Facilities

11. LP policy I2 states that community facilities that serve the requirements of local people and which are accessible by walking, cycling and public transport will be protected, particularly those which promote health and wellbeing. The loss of such facilities will only be permitted where certain criteria are met, including if there will continue to be satisfactory provision of that type of facility elsewhere in the local area, or if it has been demonstrated that there is no longer a need or demand.
12. The supporting text to LP policy I2 states that community facilities provide for the health and wellbeing, social, educational, spiritual, recreational, leisure and cultural needs of the community, and that community facilities are defined as those used by local communities for leisure and social purposes. Allotments are not specified in the list of community facilities included in the supporting text to policy I2. However, I do not agree with the appellant that this reads as a closed list. The National Planning Policy Framework (the Framework) recognises that the provision of allotments can enable and support healthy lives by promoting good health. As such, it is not unreasonable to consider that allotments, by providing for the health and wellbeing of the community, can be regarded as a community facility, even if they do not comprise of bricks and mortar.
13. While I am advised that these allotment plots are privately owned, private ownership does not preclude their use as allotments, either by the present owner, or by renting the allotment to others in the local community, or by selling on the land for allotment use. Any of these options could comprise use by someone within the local community. I am not provided with any compelling reasons to differentiate between the function of private and public allotments. As such, I do not consider that private ownership of the appeal site prevents its consideration as an allotment, or consequently as a community facility.
14. Both the Council and the Parish Council consider that these allotments provide a valuable resource to the area, and the appellant accepts that allotments generally are a valued asset by those that use them. The Parish Council indicates that there is a long waiting list for allotments in Askam and Ireleth. While I have not been provided with evidence of this, or any detailed quantitative data or study by the Council itself, I have not been provided with any contradictory evidence either. As such, the available information suggests that there is not a satisfactory provision of this type of community facility elsewhere in the area, as required by criterion a) of LP policy I2, and it has not been demonstrated that there is no longer a need or demand for allotments in the local area, as required by criterion c). As the proposal would result in the loss of allotment land, it would exacerbate a shortfall and so it has not been shown that use of the appeal site for allotment purposes is surplus to requirements.
15. There is no suggestion that it is necessary to re-locate these allotments, or that they are not viable. No alternative provision is proposed. The only other circumstances where the loss of a community facility would be acceptable under LP policy I2 would be where the facility will be replaced with a use where the

benefits clearly outweigh the loss, which is criterion e). I will return to this matter below in the planning balance.

16. My attention has been drawn to the development of other such plots in Askam in Furness, both large and small scale, described as similar to the appeal scheme in terms of their former use. However, from the level of information provided, I cannot be certain that these other sites shared similar physical characteristics to the appeal scheme, or that any related proposals for housing were considered under the same policy regime or comparable circumstances. As such, this matter does not justify the appeal scheme.
17. There is dispute between the main parties as to the relevance of LP policies HC13 and GI1 to the determination of this main issue. The supporting text to LP policy HC13 states that developments affecting existing allotments should endeavour to provide alternative comparable provision elsewhere, albeit the policy itself is only concerned with the provision of new allotments. LP policy GI1 relates to green infrastructure, although the appeal site is not formally designated or identified as such. I have not found either policy to be determinative in my consideration of this matter.

Ecological Interests

18. The appeal site lies close to a number of internationally designated sites - Morecambe Bay and Duddon Estuary Special Protection Area (SPA), Morecambe Bay Special Area of Conservation (SAC), and Duddon Estuary Ramsar, subsequently referred to as European Sites, as well as the nationally designated Duddon Estuary Site of Special Scientific Interest (SSSI). These designations overlap and partially adjoin the southern boundary of the appeal site.
19. The Morecambe Bay and Duddon Estuary SPA is designated in particular for breeding and non-breeding birds, including migratory species, wintering birds and notable habitat. The Morecambe Bay SAC is designated for a number of habitats, including estuaries, mud flats and sandflats not covered by seawater at low tide, dunes, and Atlantic salt meadows, while the Great Crested Newt is a qualifying species. The Duddon Estuary Ramsar Site qualifies because it supports nationally important numbers of the Natterjack Toad, as well as wetland plants, waterfowl and waterbird assemblage. The Natterjack Toad is also a European Protected Species (EPS) under the Conservation of Habitats and Species Regulations 2017, and a species of principal importance under the Natural Environment and Rural Communities Act (NERC) 2006.
20. Conservation objectives of these European Sites can be summarised as maintaining or restoring the extent and distribution, and the structure and function of qualifying natural habitats and habitats of qualifying species/features; maintaining or restoring the supporting processes on which the qualifying natural habitats or habitats of the qualifying species/features rely, and maintaining or restoring the population and distribution of each of the qualifying species/features.
21. Natural England advised that given the close proximity of the proposal to the Ramsar site, the proposal should be subject to Habitats Regulations Assessment (HRA), specifically in relation to the potential impacts on Natterjack Toads. In further correspondence, Natural England advised that due to the expertise and site-specific knowledge of Amphibian and Reptile Conservation (ARC), their comments should be used to guide a Competent Authority in undertaking HRA.

22. The proposal has been accompanied by an Ecological Appraisal, by Envirotech dated March 2024, and a Natterjack Toad Assessment, by Ash Bennett Consultant Ecologist dated June 2024. Having reviewed these documents, ARC maintained concerns with the proposal. I am also provided with a Screening and Appropriate Assessment undertaken by the Council.
23. Having considered all of the information before me, I have no reason to disagree with the Council's screening assessment, which concludes that the proposal has the potential for likely significant effects (LSE) to all of these European Sites during the construction and/or operational phases by means such as, air and water pollution, spread of invasive species, killing or injury of qualifying features, fragmentation of supporting habitats or loss of functionally linked land, and light pollution. Before giving consent to any development where there is credible LSE, the decision maker as the competent authority must conduct an Appropriate Assessment in relation to the LSE of the proposal on the integrity of the European Sites.
24. I am advised that Natterjack Toads presently use the site as they migrate to the ponds to breed or disperse from the ponds towards optimal foraging habitat. There is the potential for this species to take refuge under some of the site's features. Supporting information relating to the SSSI suggests that the condition of Natterjack Toads in this location is "Unfavourable – declining".
25. While there is some disagreement as to the extent of mitigation measures required for the construction stage, the information before me suggests that with the provision of a site specific Construction Environment Management Plan (CEMP), an Invasive Species Management Plan (ISMP), and a sufficiently detailed Natterjack Toad Mitigation Plan (NTMP), all of which could be secured through the imposition of appropriate conditions, LSE's would be suitably mitigated during the construction phase, so as to not undermine the conservation objectives of these European Sites, or the interlinked SSSI.
26. However, dispute remains as to whether LSE's could be adequately mitigated during the operational phase, once the dwelling is occupied. The Council considers that LSE's could result from a number of sources, including, the re-occurrence or planting of invasive species which could spread to the designated sites; the introduction of domestic pets, which could directly kill or injure Natterjack Toads, or result in a greater level of disturbance pressure; an increased level of vehicular movements which could kill, injure or disturb Natterjack Toads; internal and external lighting and general noise associated with residential use which could disturb breeding patterns for Natterjack Toads, or inhibit use of the application site for foraging, commuting, dispersal, and refuge; as well as an increased risk of water pollution within the designated site resulting from the use of herbicides, pesticides, fungicides and fertilizers, or from animal waste, contaminating surface water at the appeal site. The Council considers that only some of these operational LSE's could be mitigated.
27. The proposal would not directly impact on the area of breeding ponds for the Natterjack Toads, or the most important foraging areas for this species, which I understand are the adjacent sand dunes and saltmarsh habitat to the west. The appeal site itself is not described as significant foraging habitat, and following development, it would remain accessible to Natterjack Toads in terms of foraging, commuting, dispersal, and refuge. The appeal site already has a use that is likely

to result in some direct risk or disturbance to this species, including from general comings and goings of people and vehicles, the keeping of chickens, use of gardening equipment or machinery, and risk of water pollution from the use of herbicides, pesticides, fungicides and fertilizers. The use could be intensified to an extent, albeit the likelihood of this is uncertain.

28. Nevertheless, the proposal would introduce residential development immediately adjacent to this important habitat. Permanent occupation of the site for residential purposes would bring with it a greater level of activity than at present, with a greater potential for noise and disturbance from both humans and pets utilising the garden, from the more frequent comings and goings of vehicles, from internal light spill which could not be controlled, even though the placement of windows and fencing has reduced this LSE to an extent, and from the potential for pollution of surface water. This more frequent and intense use of the site would exacerbate these risks over and above its allotment use, not least because there is a greater risk of these LSE's extending into the evening, which is significant given the nocturnal nature of this species. Having considered the evidence provided by experts in the field, both for and against the proposal, I am not convinced that all of the likely LSE's identified by the Council have been either robustly refuted by the appellant, or adequately mitigated or compensated for.
29. Consequently, I cannot conclude beyond all reasonable scientific doubt, that the proposal would not result in an adverse effect on the integrity and conservation status of these European Sites, particularly the Duddon Estuary Ramsar site. Nor am I able to conclude that the proposal would not have an adverse effect on the SSSI, within which the status of the Natterjack Toads is already unfavourable. Hence there would be conflict with LP policy N3, which states that there is a presumption in favour of the preservation and enhancement of sites of international and national importance, and that development proposals that would cause a direct or indirect adverse effect on any site of international or national importance, including its qualifying habitats and species will only be permitted where the adverse effect cannot be avoided and any adverse effects can be mitigated or compensated for.

Other Matters

30. The proposal would provide for an additional family dwelling, which would make a positive contribution to the Government's objective of significantly boosting the supply of homes, as well as choice in the housing market. My attention has been drawn to the recognition given to the significant contribution of windfall sites to the delivery of housing in this area. The appeal site is within an accessible location, near to a range of local services and amenities. I am advised that the proposal would provide for a local family who both work and go to school in the area. Therefore, future occupiers would provide support for local services and contribute to the local economy, while other economic benefits would flow from the construction phase in the short term. I note the intention to utilise sustainable construction techniques, renewable energy, and to recycle waste where possible. The proposal would provide a net gain in biodiversity. Given the small scale of the development, the weight to be attached to these benefits is modest.
31. Reference is made to the proposal providing a self-build dwelling. As part of the Government's objective of significantly boosting the supply of homes, the Framework also sets out the importance of addressing the needs of groups with

specific housing requirements, which include those wishing to commission or build their own homes. However, there is no mechanism before me which secures the development as self-build. This limits the weight I can afford to this as a benefit of the proposal.

32. The appeal site is located on land with the lowest probability of flooding. The Council has not sustained any concerns in terms of the level of accommodation afforded by the proposal, the suitability of the access, or the impact on the living conditions of surrounding properties. Parking and service connections would be provided. These are neutral matters that do not carry any weight for or against the appeal scheme.
33. While I have been provided with commentary from both main parties on the potential for a larger and more comprehensive development of the appeal site and its surroundings, I have considered only the development before me.

Planning Balance

34. For the reasons outlined above, the proposal would result in harm to the character and appearance of the area, conflicting with LP policies H7 and DS5. As I have been unable to conclude that the proposal would not adversely impact upon identified sites of international and national importance ecologically, there is additional conflict with LP policy N3.
35. As noted above, criterion e) of Policy I2 states that the loss of community facilities will be permitted if the facility will be replaced with a use where the benefits clearly outweigh the loss. Given that the proposal relates to the provision of only one dwelling, the public benefits are modest, albeit this is in the context of the Council being unable to demonstrate a 5-year supply of deliverable housing land. The harm would relate to the loss of only one allotment plot, albeit the available evidence suggests that this is in the context of a lack of satisfactory provision. The Framework recognises the need to significantly boost the supply of housing, but also recognises, the role of allotments in enabling and supporting healthy lives. As such, I find this matter finely balanced, but the benefits of an additional dwelling do not clearly outweigh the loss of allotment provision. Consequently, the proposal would also conflict with LP policy I2.
36. These policies of the Local Plan, insofar as they apply to the appeal scheme, are generally consistent with the Framework. However, as the Council cannot demonstrate a 5-year supply of deliverable housing land, with the latest data indicating a supply of 3.10 years, I turn to paragraph 11d of the Framework.
37. The proposal would harm a number of assets of particular importance as identified in footnote 7 of the Framework. While Framework paragraph 193 b) states that exceptionally, adverse effects on a SSSI may be acceptable when the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest, this would not be the case for the appeal scheme, given the modest benefits proposed.
38. The harm to assets of particular importance provides a strong reason for refusing the development in the circumstances of this case, in accordance with Framework paragraph 11d) i.

39. Even if this had not been the case, and even if I had not identified conflict with LP policy I2 relating to community facilities, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, having particular regard to specified key policies, given the harm to the character and appearance of the site and surrounding area. Even though the proposal would be sustainably located, it would not add to the overall quality of the area, nor would it be sympathetic to local character, including the surrounding built environment and landscape setting.
40. Consequently, the proposal would conflict with the development plan when taken as a whole, and there are no other material considerations, including the Framework, which indicate that a decision should be made other than in accordance with it.

Conclusion

41. For the reasons given above the appeal should be dismissed.

S Brook

INSPECTOR