

## Eden District Council

## Planning Committee

13 February 2020

## Appeal Decision Letters

Report of the Assistant Director Planning  
and Economic Development

Attached for Members' information is a list of Decision Letters received since the last meeting:

Application Number(s)	Applicant	Appeal Decision
18/0985	<p>Dr Anderson and Dr Parratt Land North East of East Lodge, Edenhall, Penrith CA11 8SX</p> <p>The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.</p> <p>The development proposed is described as 'erection of a dwelling with all matters reserved.'</p>	The appeal is dismissed.
19/0378	<p>Addis Town Planning Ltd Barn South of Maiden Way, Kirkby Thore, Penrith CA10 1XS</p> <p>The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).</p> <p>The development proposed is described as 'conversion of an agricultural barn to the south of Maiden Way, Kirkby Thore, to a dwellinghouse (use class C3) including the retention of the walls, the steel frame, the concrete plinth, and external cladding with new materials to match as existing in design and appearance.'</p>	The appeal is dismissed.

Oliver Shimell

Assistant Director Planning and Economic Development



## Appeal Decision

Site visit made on 7 October 2019

by J M Tweddle BSc(Hons) MSc(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 January 2020

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Appeal Ref: APP/H0928/W/19/3234058

Land North East of East Lodge, Edenhall, Penrith CA11 8SX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Dr Anderson & Dr Parratt against the decision of Eden District Council.
  - The application Ref 18/0985, dated 10 December 2018, was refused by notice dated 31 January 2019.
  - **The development proposed is described as 'erection of a dwelling with all matters reserved'.**
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The application was made in outline with all matters reserved for future consideration. I have therefore taken any indication of reserved matters shown on the submitted drawings to be illustrative only.
3. For clarity, I have taken the site address from the **Council's decision notice** which includes the postal town of Penrith and is, therefore, a more accurate **reflection of the site's location**.
4. A revised version of the National Planning Policy Framework (the Framework) was published on 19 February 2019 and this post-**dates the Council's refusal** notice. I have had regard to the revised Framework in my decision and I am satisfied that this has not prejudiced any party as they have had the opportunity to comment during the appeal proceedings.

### Main Issues

5. The main issues are:
  - i) Whether the site is a suitable location for residential development, having regard to the local development strategy for the area, and;
  - ii) The effect of the proposal on the character and appearance of the surrounding area.

### Reasons

#### *Suitability of the location*

6. The suitability of the location for residential development, in this case, turns on whether the site can reasonably be considered to form part of the settlement of

Edenhall and, if so, whether it would amount to limited infill or rounding off as permitted by Policy LS1 of the Eden Local Plan 2014-2032 (the ELP).

7. The appeal site is an area of land located to the northeast of East Lodge, a detached residential property. The site is separated from East Lodge by a narrow lane known locally as Church Lane which provides access from the **village of Edenhall to St Cuthbert's Church to the southeast. The site is** understood to be a residential garden associated with East Lodge and comprises an orchard with well-kempt lawns and hedging. Beyond the gardens, the site is surrounded by agricultural pasture land to the north, east and south, with a stone barn located in the field to the northeast.
8. The appellants are of the view that the appeal site forms an integral part of the garden of East Lodge, which, in turn, they consider to form part of the settlement of Edenhall. To support their assertion, they have drawn my attention to a recent planning approval<sup>1</sup> for the erection of a dwelling within the southwest garden of East Lodge where they suggest the Council acknowledged that East Lodge could be construed as being within the settlement of Edenhall. I have been provided with a copy of **the Council's Delegated Report** pertaining to this previous approval and note that the Officer describes East Lodge and the site as being '*separated from the village of Edenhall by an agricultural field*'. The report goes on to state that:

*'The applicant's property [East Lodge] does lie 70m distant of the nearest dwelling in the village of Edenhall and is separated from it by a field grazed by sheep. Notionally therefore it could be considered as being outside of the urban area and within open countryside. The experience of being on the ground at the site itself however gives one the impression of being part of the village, albeit separated by the narrow field... Whether or not the site is open countryside or part of the village is inconclusive, since persuasive arguments can be made either way'* (my emphasis).

9. The assessment was not definitive in this regard and so it does not provide a firm conclusion as to whether that site or East Lodge can reasonably be considered to form part of the settlement of Edenhall. I also note that, at the time of this previous approval the Council was unable to demonstrate a five year housing land supply and therefore the presumption in favour of sustainable development applied. The assessment was, therefore, '**on balance**' in favour of granting permission and in recognition of the **Government's** positive growth agenda. The decision was also prior to the adoption of the ELP in October 2018 and so the policy context was different. Consequently, I give little weight to this previous grant of planning permission and have determined the appeal on the basis of the evidence before me, in light of the current policy context and based on my own assessment of the site, its surrounding context and its relationship with the built up area of the village.
10. It is a matter of fact that East Lodge and its gardens, including the appeal site, are surrounded by undeveloped countryside, which physically separate it from the built up area of Edenhall. Indeed, East Lodge and the appeal site are situated some distance from Tea Rose Cottage and Lilac Cottage which form the last properties within the village on either side of Church Lane. Beyond this, two paddocks flank each side of the lane, providing a physical break in built development and thereby separate East Lodge and the appeal site from the

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<sup>1</sup> Local Planning Authority Ref. 17/0486

settlement. Furthermore, the undeveloped and verdant character of the site is more closely related to the surrounding countryside than that of the settlement. Thus, notwithstanding the Councils previous decision in relation to the southwest garden of East Lodge, I find that both East Lodge and the appeal site cannot reasonably be considered to form part of the settlement. They are located within open countryside outside of the settlement of Edenhall. As such, there can be no question as to whether the development would be limited infill or rounding off development.

11. I acknowledge that the site, along with East Lodge, falls within the boundary of the Edenhall Conservation Area, is within approximately 200 metres of the core of the village and that it is closer to the settlement than both Edenhall Cross and **St Cuthbert's Church**. However, these factors do not define the extent of the settlement and do not, therefore, alter my findings on this main issue.
12. The location of the Old School House and the fact that Edenhall includes areas of unbuilt frontage does not change the fact that the appeal site is physically detached from the settlement. **Nor does the site's historical association with the Edenhall Estate, the former line of 'Ladies Walk'** or the historical maps of the area lead me to a different conclusion. In fact, the historical maps support my findings, in this regard, demonstrating that East Lodge and the appeal site have always been separated from the settlement by undeveloped land.
13. For all these reasons, I find that the appeal site is not a suitable location for residential development, having regard to the local development strategy for the area. It is contrary to Policy LS1 of the ELP which restricts development in other rural areas outside of key hubs and smaller villages and hamlets to the re-use of traditional buildings, the provision of affordable housing or where proposals would meet an exception set out elsewhere in the Local Plan.
14. Given that I have found the site to be located within the open countryside, Policy HS2 of the ELP is of no relevance to the proposal.

#### *Character and appearance*

15. Edenhall is largely a nucleated settlement with its historic core centred around a paddock which has the initial appearance of a village green but is enclosed by stone walls and grazed by sheep, a reflection of **the village's historical association with the farming community**. While this area is the focus of the **village's historic centre**, a further cluster of development exists to the **southwest at St Cuthbert's Place**. The open and spacious aspects of the fields and undeveloped countryside which surround the settlement, coupled with large areas of unbuilt frontage within the village, provide a positive contribution to the overall character of the area and form an important rural setting that frames the village.
16. The appeal site, while exhibiting some characteristics of a residential garden, is much less domesticated than the rest of the grounds associated with East Lodge. Its verdant undeveloped character is more closely related to the surrounding countryside and, therefore, makes a positive contribution to the intrinsic rural setting of the village and the surrounding landscape. Even though all matters are reserved for subsequent approval, a residential development at the site would stand out as being a discordant feature, particularly given its open countryside location and the lack of any built form to the east of the lane other than a simple agricultural barn in the neighbouring field.

17. The introduction of a dwelling into this rural landscape setting would erode its rural character and, in turn, would have a negative impact on the rural character and setting of the village. The development would be noticeably and visibly detached from East Lodge and set apart from the nearby settlement. It would, therefore, be an obvious and significant spatial encroachment towards the open countryside. As a result, the proposal does not demonstrate a clear understanding of the form and character of the surrounding built and natural environment and would disrupt the prevailing undeveloped rural character of its immediate surroundings.
18. I accept that the development is likely to be imperceptible in long distance views, yet this does not outweigh the harm I have found to the character and appearance of its immediate surroundings. While a degree of landscaping could reduce these harmful effects, the dwelling would still be visible from nearby views along Church Lane and the Public Right of Way to the southeast, appearing as a discordant form of development encroaching into the countryside. Furthermore, landscaping ought to be used to soften, enhance or complement the appearance of new development not to conceal inappropriate development that fails to contribute to, or is at odds with, its surroundings. The opportunity to enhance existing native hedgerows is of limited weight.
19. Consequently, the proposal would have a significant harmful effect on the character and appearance of the surrounding area. It follows, therefore, that the proposal would fail to comply with Policies DEV5 and ENV2 of the ELP which together require new development to show a clear understanding of the form **and character of the district's built and natural environment and to conserve** and enhance distinctive elements of landscape character. In this regard, it would also conflict with the aims of Sections 12 and 15 of the Framework which require development to be sympathetic to local character and recognise the intrinsic character and beauty of the countryside.

#### Other matters

20. The site is located within the Edenhall Conservation Area (CA) and while the effect of the proposed development on the character and appearance of the CA is not in dispute, I am mindful of my statutory duty in this regard. The **Council's Conservation Officer raised no objection to the proposal and, given** that the site is located some distance from the historic core of the village, I see no reason to disagree with this assessment. As such, the proposal is likely to have a negligible effect on the CA and would, therefore, preserve its overall character and appearance.
21. I recognise that the Framework promotes the effective use of land including previously developed or brownfield land. However, even if I were to accept the **appellant's claim that the site constitutes previously** developed land, this does not amount to a presumption in favour of developing the appeal site and, as such, it would not outweigh the principle conflict I have found with the **Council's locational strategy**.
22. Despite assurances that the dwelling would be limited in scale to a single storey building and would utilise local materials, I am conscious that these are reserved matters. In any case, such assurances would not overcome my **concerns in respect of the site's suitability for residential development nor the** harm I have found to the character and appearance of the surrounding area.

23. In support of their case, the appellants have drawn my attention to an appeal decision for residential development at South Dykes<sup>2</sup>. In that case the decision turned on whether the proposal would amount to a 'rounding off' of the settlement. However, in this case the appeal site lies within the open countryside, detached from any settlement. Therefore, this previous appeal decision is not comparable to the current appeal proposal and is of little weight.
24. **I appreciate the appellants' longstanding connection** with the area, their desire to build a property that would allow them to downsize and I recognise that they are very active in the local community, enabling access to **St Cuthbert's Church** and maintaining its security. The proposal would contribute an additional dwelling to the local housing stock and potentially free up a family home. I also acknowledge the letters of support from interested third parties and the lack of objection from the local Parish Council and other consultees. However, these considerations do not outweigh the harm I have found in this case and the resulting conflict with the development plan.

#### Conclusion

25. For the reasons I have set out, the appeal is dismissed.

*J M Tweddle*

INSPECTOR

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<sup>2</sup> APP/H0928/W/18/3194233



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## Appeal Decision

Site visit made on 7 January 2020

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 28 January 2020

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Appeal Ref: APP/H0928/W/19/3235718

Barn South of Maiden Way, Kirkby Thore, Penrith CA10 1XS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
  - The appeal is made by Addis Town Planning Ltd against the decision of Eden District Council.
  - The application Ref 19/0378, dated 30 May 2019, was refused by notice dated 26 July 2019.
  - The development proposed is **described as 'conversion of an agricultural barn to the south of Maiden Way, Kirkby Thore, to a dwellinghouse (use class C3) including the retention of the walls, the steel frame, the concrete plinth, and external cladding with new materials to match as existing in design and appearance.'**
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The Council amended the description of the proposal to 'Change of use of agricultural building to dwellinghouse.' **This was agreed by the appellant and** used in the planning appeal form. I have therefore determined the appeal on this basis.
3. I note that on the plans showing the Elevations and Sections as existing<sup>1</sup> and as proposed<sup>2</sup> the south west elevation is incorrectly labelled as the north west elevation. For the avoidance of doubt, I have taken this to be an error and determined the appeal on the basis of the correct label as the south west elevation.

### Main Issue

4. The main issues are:
  - Whether the proposal would be permitted development under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO), having regard to the requirements of Paragraphs Q(b) and Q.1.(i) in relation to works reasonably necessary for the building to function as a dwellinghouse; and

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<sup>1</sup> Ref: HGKT/PBC/P/03 Rev A.

<sup>2</sup> Ref: HGKT/PBC/P/06 Rev A.

- If so, whether or not prior approval would be required in accordance with the conditions set out in paragraph Q.2(1) of the GPDO.

## Reasons

### *Whether the proposal would be permitted development*

5. Class Q of the GPDO concerns a change of use of a building and any land within its curtilage from a use as an agricultural building to a dwellinghouse. Paragraph Q(b) states that the building operations reasonably necessary to convert the building to a dwellinghouse use would be permitted development, whilst Paragraph Q.1 outlines the circumstances where development would not be permitted by Class Q. It is common ground between the parties that the proposal complies with the requirements of Paragraphs Q.1(a)-(h) and (j)-(m).
6. However, the parties disagree over whether the proposal complies with Paragraph Q.1.(i). Paragraph Q.1.(i) places restrictions on the building operations which can be undertaken. It states that development is not permitted if it would consist of building operations other than: (i) the installation or replacement of — (aa) windows, doors, roofs, or exterior walls, or (bb) water, drainage, electricity, gas or other services, to the extent reasonably necessary for the building to function as a dwellinghouse; and (ii) partial demolition to the extent reasonably necessary to carry out the building operations allowed.
7. The Planning Practice Guidance (PPG) provides further clarification in this regard<sup>3</sup>. It states that the right assumes that the agricultural building is capable of functioning as a dwelling. It goes on to confirm that the right permits building operations which are reasonably necessary to convert the building, which may include those which would affect the external appearance of the building and would otherwise require planning permission. It also explains that it is not the intention of the permitted development right to allow rebuilding work which would go beyond what is reasonably necessary for the conversion of the building to residential use. Therefore, it is only where the existing building is already suitable for conversion to residential use that the building would be considered to have the permitted development right.
8. The PPG also confirms that internal works are generally not development. For the building to function as a dwelling it may be appropriate to undertake internal structural works, including to allow for a floor, the insertion of a mezzanine or upper floors within the overall residential floorspace permitted, or internal walls, which are not prohibited by Class Q.
9. The Council does not dispute that the proposed building operations fall within the restricted building operations set out in Q.1 (i)(i) (aa) and (bb). However, it disagrees with the appellant that the extent of the building operations proposed are reasonably necessary for the building to function as a dwellinghouse. The appellant asserts that the works would not amount to a 'rebuild' or a 'fresh build' as too much of the original structure would be incorporated for this to be the case.

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<sup>3</sup> Paragraph: 105 Reference ID: 13-105-20180615 Revision date: 15 06 2018.

10. In my determination of the appeal I have had regard to the Hibbitt High Court Judgement<sup>4</sup>. This concerns a Class Q proposal and, amongst other things, considers the distinction between works required for the conversion of an existing agricultural structure or building to a dwellinghouse, and works amounting to its rebuilding or, in effect, the creation of a new building.
11. I appreciate that the Hibbitt Judgement predates the most recent advice within the PPG and that, as highlighted by the appellant, the details of the case differ in some ways to the appeal before me. However, it is still relevant in that it concluded that 'the concept of conversion has inherent limits which delineate it from a rebuild' and that 'it is a matter of legitimate planning judgment as to where the line is drawn.'
12. The appeal building is a large, partly enclosed, agricultural barn. As described in **the appellant's statement of case**, it consists of three distinct sections, the original being a traditional steel framed Dutch barn with a curved roof, a concrete posted barn adjacent with a pitched roof, and a lean-to structure. At the time of my site visit, part of it was being used to house cattle.
13. The Dutch barn and lean-to have roofs of corrugated metal sheeting and the adjacent concrete posted barn has a roof of asbestos cement corrugated sheeting. The Dutch barn and adjacent concrete posted barn are enclosed on the lower part on the south west, north west and part of the north east elevations by upright concrete railway sleepers which are approximately 2m in height, set into the concrete floor and rendered internally. They are enclosed on the upper part on the north west and the majority of the south west elevations by single width corrugated metal sheeting.
14. The south east elevation and the majority of the north east elevation are open to full height and small sections of the south west elevation and the north east elevation are open on the upper part. The lean-to is open on all sides. There is a concrete floor slab within the Dutch barn and adjacent concrete posted barn and a compacted hardcore floor within the timber posted lean-to. There are no subdividing elements within the barn apart from metal railings and a gate which forms an enclosure for cattle.
15. The proposal would create a two storey, three bedroomed, detached dwelling. The appeal statement declares that the works include the reuse of the concrete plinth, the existing walls and the steel framed structure, the concrete uprights and the steel frame. It is stated that it will be necessary to replace the corrugated sheeting above the plinth and on the roof as well as inserting timber infill panels between the frame along part of the north east elevation. The south east elevation will be made up of windows with some limited cladding above. New openings for windows will be inserted into the existing structure and new materials on the south west and north east elevations. A new floor will be inserted above the existing concrete floor slab and a new first floor constructed internally. It will also include modern finishing techniques to resist moisture and increase insulation. No demolition is proposed.
16. A Structural Survey accompanied the application<sup>5</sup>. It concludes that **'the barn is suitable to facilitate the conversion to a dwelling**. Little modification may be

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<sup>4</sup> Hibbitt and Another v Secretary of State for Communities and Local Government and Rushcliffe Borough Council [2016] EWHC 2853 (Admin).

<sup>5</sup> Structural Survey Kingmoor Consulting Ref 19-147c001, dated 24 May 2019.

- required to the existing frames and foundations and any works would allow the structure to provide additional moisture resistance and an increased level of insulation.’
17. However, in relation to the proposed scheme of works, it states that it can be assumed that there would be some minimal ‘replacement of any damaged roof members’ and ‘limited strengthening of roof components’ to ensure that the loadings from the new roof cladding can be accommodated by the existing structure. Furthermore, it proclaims that ‘where required additional walls and structural support would be created using timber infill panels highly insulated to ensure compliance with the building regulations and may also provide additional barriers to resist moisture penetration.’ It also declares that **the ‘new external infill panels would be fixed to the existing concrete and from inspection, it would appear this is suitable for fixings and to resist any additional loads from the infill panels.’** No additional information has been provided in relation to the detail of the proposed works.
18. I acknowledge that any strengthening works required to the roof structure would be internal and therefore, as stated within the PPG, ‘not generally development’. I also accept that Class Q, does potentially allow for substantial works. However, having regard to the evidence before me, it is not entirely clear what the full nature and extent of the proposed building operations would be. The phraseology used in the Structural Survey **such as ‘may’, ‘where required’ and ‘would appear’** in relation to the proposed works that would be necessary to convert the building to a dwellinghouse is very broad and not definitive. In addition, the annotated plans do not fully confirm in any great detail the form and extent of the proposed works.
19. Even if I were to accept that the works were limited to what is indicated on the plans and in the **appellant’s statement of case**, although the proposal would retain and reuse the existing 2m concrete plinth, structural frame and foundations, and retain the floor, it appears that all of the other elements of the existing barn would be new materials, albeit some to match the existing. This would include the roof; exterior walls of the south east elevation (albeit glazed) and the majority of the north east elevation; the upper part of the building of the north west and south west elevations; windows; and doors. This **area makes up a substantial surface area of the building’s external envelope** and would mean that only the basic concrete and steel wall, frame and floor of the agricultural building would remain unchanged.
20. Consequently, considering the building as a whole and the collective extensive nature of the proposed building operations, I am of the opinion that, on balance, they would be beyond what could be considered to be reasonably necessary for the building to function as a dwellinghouse. So much so that they would, to my mind, go beyond what could reasonably be described as a conversion scheme.
21. Taking the above into account, I conclude that it has not been demonstrated that the proposal would be permitted development under Schedule 2, Part 3, Class Q of the GPDO, having regard to the requirements of Paragraphs Q(b) and Q.1.(i) in relation to works reasonably necessary for the building to function as a dwellinghouse.

### *Prior approval*

22. I acknowledge that the Council has raised no concerns regarding the requirements of Paragraph Q.2 (1) (a) – (f) and that the appellant considers that there is no reason why these could not be met. However, given my conclusion that the evidence before me does not establish that the proposed change of use would be development permitted under Class Q of the GPDO, there is no need for me to consider whether or not prior approval would be required as it would not alter the outcome of the appeal.

### *Other Matters*

23. The appellant has drawn my attention to a recent appeal decision<sup>6</sup> which he considers is directly comparable to the appeal before me, where an Inspector concluded that the proposal **'would amount to conversion of the cart shed and not re-building of it. The cart shed is capable of functioning as a dwelling following building works reasonably necessary to convert it. Therefore, it meets the requirement of Paragraph Q.1 (i)(i).'** I accept that there appear to be some comparisons with this case and the appeal before me. However, I am not fully familiar with the full details of this case, and in any event, I have determined this appeal on its individual planning merits, on the basis of the submitted information and my observations on site, and with appropriate regard to legislation and Government guidance.
24. The appellant has confirmed that, should the appeal be allowed, it is highly likely that a subsequent application for planning permission for changes to the external appearance of the building would be made. This would include the cladding over of the railway sleepers with a continuation of the metal sheeting. The appellant states that the external cladding would not be necessary for the conversion though it would result in a more aesthetically pleasing and higher quality design. Be that as it may, as I have concluded that the proposal does not benefit from Class Q permitted development rights, this is not a determinative matter.

### *Conclusion*

25. For the reasons given above, having regard to the requirements of Paragraphs Q(b) and Q.1.(i), I conclude that it has not been demonstrated that the proposal would comply with the description of permitted development as it is set out by Class Q, of Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). The appeal is therefore dismissed.

*F Cullen*

INSPECTOR

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<sup>6</sup> Ref: APP/Z3825/W/18/3211612.