Report No: PP31/20

Eden District Council

Planning Committee
13 August 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
20/0108	Mr P Hussey Land North of Cornerstone Cottage, Great Strickland, CA10 3DG The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission. The development proposed is the erection of two self-build/custom dwellings.	The appeal is dismissed.
19/0719	Mr P Hussey Land North of Cornerstone Cottage, Great Strickland, CA10 3DG The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission. The development proposed is the erection of one local occupancy dwelling.	The appeal is dismissed.
19/0807	Mr Frederick Markham Williams Wood, Morland, Penrith, CA10 3BJ The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission. The development proposed is creation of 'glamping' cabin.	The appeal is dismissed.

Application Number(s)	Applicant	Appeal Decision
19/0821	Mr and Mrs A Bircher Garden ground east of Littlethwaite, Catterlen, Penrith, CA11 0BQ The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission. The development proposed is erection of a self-build/custom-build dwelling with all matters reserved.	The appeal is dismissed.
	Mr and Mrs A Bircher Garden ground east of Littlethwaite, Catterlen, Penrith, CA11 0BQ The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5). The appeal was against the refusal of planning permissions for erection of a self-build/custom-build dwelling with all matters reserved.	The application for a full award of costs is refused.
19/0500	Mr John Davidson Rynrew Barn, Newton Reigny, Penrith, CA11 0AY The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission. The development proposed was originally described as a one and a half storey three bedroom detached residential dwelling.	The appeal is dismissed.

Application Number(s)	Applicant	Appeal Decision
	Mr John Davidson Rynrew Barn, Newton Reigny, Penrith, CA11 0AY The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5). The appeal was against the refusal of planning permission for development originally described as a one and half storey three bedroom detached residential dwelling.	The application for an award of costs is refused.

Oliver Shimell
Assistant Director Planning and Economic Development

The Planning Inspectorate

Appeal Decisions

Site visit made on 19 June 2020

by T J Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th July 2020

Appeal A - Ref: APP/H0928/W/20/3251997
Land North of Cornerstone Cottage, Great Strickland CA10 3DG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr P Hussey against the decision of Eden District Council.
- The application Ref 20/0108, dated 13 February 2020, was refused by notice dated 15 April 2020.
- The development proposed is the erection of two self-build/custom dwellings.

Appeal B - Ref: APP/H0928/W/20/3251998
Land North of Cornerstone Cottage, Great Strickland CA10 3DG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr P Hussey against the decision of Eden District Council.
- The application Ref 19/0719, dated 1 October 2019, was refused by notice dated 13 February 2020.
- The development proposed is the erection of one local occupancy dwelling.

Decision – Appeal A

1. The appeal is dismissed.

Decision – Appeal B

2. The appeal is dismissed.

Procedural Matter

3. The description of appeal B varies between the application form and the decision notice. The evidence indicates that while this proposal originally related to two dwellings, the scheme was reduced to one. I have determined the appeal on that basis.

Main Issue

4. The main issue in both appeals is whether the sites are suitable locations for residential development, having regard to the local development strategy for the area.

Reasons

5. Although Great Strickland generally has a linear settlement pattern, there are examples of backland development to the north and south of its main street. The appeal sites form part of an irregularly shaped parcel of land of pastoral character used for grazing. The field is wider at its southern end closest to the

main body of the village and tapers as it extends north-westward. Airygill Lane runs to the west of the northern section of the site at a lower level, separated by a hedgerow. Appeal B only relates to the southern section of the land and proposes one detached dwelling and garage, while appeal A includes an additional section of land to the north and relates to two detached dwellings and garages.

6. Policy LS1 of the Eden Local Plan 2014-2032 (ELP) sets out the Council's locational strategy for the distribution of development across the district. It sets out a hierarchical approach to development and advises that within smaller villages and hamlets, such as Great Strickland, development will be restricted to: infill sites, which fill a modest gap between existing buildings within the settlement; rounding off, which provides a modest extension beyond the limit of the settlement to a logical, defensible boundary, and; the reuse of traditional rural buildings and structures. This approach is also set out by ELP Policy HS2 which in addition seeks to restrict the size of dwellings at these locations and, in the case of greenfield sites, requires a local occupancy restriction.

7. Both cases turn, in the main on whether they can be considered as 'infill sites' or as 'rounding off'. Policy LS1 indicates that whether proposals accord with the definitions will be determined on a case by case basis. SPD[1] guidance offers some advice as to the interpretation of the terms.

Infill sites

8. The SPD advises that in most cases infill development would fill a 'modest gap'. In most cases this would be considered to be development that would fill a gap in an otherwise continuous built frontage. However, the SPD also advises that infill development could relate to backland development for up to two dwellings where this already exists in the settlement.

9. Appeal B relates to one dwelling, the proposal is therefore limited in scale in the context of the village. However, Policy LS1 is clear that infill sites should fill a modest gap between existing buildings within the settlement. While School Farm/School Farm Cottage are within the main body of the settlement, the stables to the north east are clearly detached from the main body of the village, sitting within the countryside which closely surrounds Great Strickland on its northern side. Even allowing for the appellants interpretation of the policy, I do not consider the sites to which both appeals relate to be within the village.

10. For these reasons, plot 1 which is included under both appeals A and B would not be situated on an 'infill site'. Plot 2, included under appeal A only would not be bound to the north east by any buildings and as a result, it could also not be considered an infill site. The dwellings associated with both schemes would make incursions into the countryside which would be detrimental to its character and that of the village.

11. To conclude on this matter, neither the proposals under appeal A or B would comprise infill development and they would therefore fail to accord with Policies LS1 and HS2 of the ELP, the provisions of which are set out above.

[1] Eden Local Plan 2014-2032 Supplementary Planning Document Housing

Rounding off

12. SPD guidance states that to be considered 'rounding off' a site must be enclosed by existing built development and a strong physical feature forming a defensible boundary.

13. A large area of garden land/paddock would remain to the north west of the sites associated with both appeals A and B. There is no defensible boundary that can be utilised on these parts of the development sites. To my mind the requirement for a defensible boundary is rooted in the desire that development on the edge of a village such as Great Strickland should be constrained by a definitive end point to protect its character and that of the surrounding countryside, which would be harmed as a result of the incursions of these proposals.

14. While the tapering of the paddock to the north west would make further development more complicated, and while any such application would be subject to consideration in its own right, it would not in itself form a feature that would prevent further development in its own right. While a new hedgerow is proposed to the northwest boundary of plot 1 under appeal B, SPD guidance is clear that it is not acceptable to propose the creation of new defensible boundaries as part of a development.

15. While my attention has been drawn to an appeal outcome elsewhere in the district (Ref: APP/H0928/W/19/3239768), based on the information available to me, that appeal site shared a different context and the inspector considered that a steep rise in land levels would hinder ability to develop beyond the application site. That situation is not reflective of the appeal site and therefore I have afforded this matter limited weight.

16. To conclude on this matter, for the reasons above, neither of the schemes associated with either appeal A or B could be considered to comprise of 'rounding off' and they would therefore fail to accord with Policies LS1 and HS2 of the ELP, the provisions of which are set out above.

Planning Balance

17. Applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise, in accordance with section 38(6) of the Planning and Compulsory Purchase Act (2004).

18. The appellant contends in relation to appeal A that the Council has been under delivering in relation to its obligations to provide self-build plots under the self-build act and that as a result, 'The presumption in favour of sustainable development' at paragraph 11 d) of The National Planning Policy Framework (the Framework) is relevant to the determination of this appeal. A unilateral undertaking has been submitted detailing that the dwellings under appeal A would be constructed as self-build/custom build dwellings.

19. However, even in the event that it were the case that the claimed lack of provision for self-build plots meant that the tilted balance was engaged, development plan Policies LS1 and HS2 have clear aims in protecting the character of the smaller villages and surrounding countryside within the district.

20. In relation to this appeal, these development plan policies have relevance and can be afforded significant weight as they have conformity with the National Planning Policy Framework. This is concerned with similar matters and advises at Paragraph 170 that planning decisions should contribute to and enhance the local environment by amongst other things, recognising the intrinsic character and beauty of the countryside, which would be harmed as a result of the proposals.

21. The adverse impacts of granting permission for appeal A would therefore significantly and demonstrably outweigh the benefits. The proposal would not therefore in any event benefit from the presumption in favour of sustainable development and there would be no material considerations which would indicate that a decision should be taken otherwise than in accordance with the development plan.

Other matters

22. I acknowledge that the provision of new local occupancy housing would have associated economic and social benefits and that the provision of self-build plots is supported by government policy. However, the harm associated with the proposals would outweigh such benefits. I have considered other planning appeals put before me by the appellant, however there is nothing to indicate that the sites to which these relate share the same characteristics as that before me, and I therefore afford them limited weight. In any event, each appeal is determined on its own merits.

Conclusion

23. For the reasons set out above, I conclude that both appeal A and B should be dismissed.

T J Burnham

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 29 June 2020

by Sarah Manchester BSc MSc PhD MIEnvSc

an Inspector appointed by the Secretary of State

Decision date: 21st July 2020

Appeal Ref: APP/H0928/W/20/3246844
Williams Wood, Morland, Penrith CA10 3BJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Frederick Markham against the decision of Eden District Council.
- The application Ref 19/0807, dated 28 October 2019, was refused by notice dated 23 January 2020.
- The development proposed is creation of 'glamping' cabin.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposal on the rural character and appearance of the countryside.

Reasons

3. The appeal site is a small parcel of land planted with immature trees. It is in an elevated position in the countryside, a little less than 1km away from Morland. Access is from the C3056 Morland to Cliburn road, via an agricultural field gate and across the intervening field. The surrounding area is a sparsely and sporadically developed undulating rural landscape, with scattered traditional dwellings and farmsteads. There is a public right of way to the west of the site.

4. The proposed glamping cabin would be a relatively modest single storey building finished in oak cladding with a larch shingle roof and a long veranda. There would be a large car parking and manoeuvring area adjacent to the building. The long access track would be fenced out from the field and the vehicular access and parking areas would be surfaced with blue slate chippings. There would be alterations to the highway access to create visibility splays and a large surfaced entrance area, with new gateways set back from the road providing access to the cabin and the neighbouring field.

5. The Council's locational development strategy is based on the hierarchy of settlements within the district. Policy LS1 of the Eden Local Plan 2014-2032 Adopted October 2018 (the LP) sets out that in rural areas outside of the settlements, development will be restricted to specific circumstances including where proposals accord with other policies in the LP. This allows for development in the countryside where this would be an asset to the district.

6. Policy EC4 of the LP supports small-scale tourism development consisting of temporary accommodation such as caravan, camping and chalet sites provided they meet a number of criteria. These are that the site is adequately screened, that it avoids unacceptable adverse impacts on the local road network, and that the development is capable of being removed without damage or material change to the land on which it is sited.

7. The LP does not specifically mention glamping sites and there is no definition of glamping in the National Planning Policy Framework (the Framework). However, the concept of glamping is derived from 'glamorous' and 'camping' and it therefore relates to relatively luxurious and well-appointed camping accommodation. Consequently, policies in the Framework and the development plan that relate to tourism and camping are relevant to the proposal.

8. The cabin would be located where the long hill that rises from Morland gives way to a wide plateau. By virtue of its elevated location and the surrounding topography, there are views from the appeal site across the landscape, including towards the nearby Eddy House, Morland and further afield to the North Pennines. The cabin would be screened in part by trees. However, wide swathes through the site have not been planted with trees and they allow more direct views in and out of the site. By virtue of its relatively small scale, the cabin would not be particularly prominent in distant views across the landscape. Nevertheless, it would be visible from closer viewpoints.

9. The proposed access arrangements, including the track, enlarged road entrance and increased visibility splays, would cumulatively add to the visual impact in this location. Moreover, as a result of artificial illumination, including from the extensive glazing to the south facing elevation and car headlights, the proposal would be conspicuous during the hours of darkness and times of year when trees are not fully in leaf. Consequently, the proposal would be visually obtrusive when seen from locations in the surrounding area including the nearby footpath, road and scattered properties.

10. By virtue of its high quality design, the cabin would be in keeping with the character and appearance of tourism development elsewhere. However, the cabin would be an isolated feature in an elevated and prominent position in the rural landscape. It would not be seen in the context of similar development elsewhere. It would be an incongruous feature that would not relate well to traditional rural development in the area. Consequently, it would be a discordant feature that would not make a positive contribution to its rural surroundings.

11. The woodland might provide a greater degree of screening as the trees mature, particularly during the summer when the trees are in leaf. However, there is no information in the form of a landscape management plan or similar to demonstrate that the trees would be maintained and managed over the lifetime of the proposal. Vegetation is not guaranteed to be permanent in any case. Therefore, while it can help assimilate development into its surroundings, it should not be relied upon to screen inappropriate development from view.

12. Therefore, the proposal would result in significant harm to the rural character and appearance of the countryside. It would conflict with Policies EC4, DEV5 and ENV2 of the LP. These require, among other things, that new camping sites are adequately screened, that development reflects local distinctiveness and protects and enhances the distinctive rural landscape.

Other Considerations

13. The proposal would be a diversification and a benefit for the appellant's business. Nevertheless, by virtue of its small size, it would make a minimal contribution to the Cumbrian tourist economy. While future users would be likely to use local shops, cafes and public houses, there would be limited economic benefits in terms of support for local services and facilities. The proposal would create part-time employment opportunities. These are matters that carry limited weight and they would not outweigh the harm that I have found.

14. Camping, and hence glamping, is an activity generally associated with the countryside. However, there is no substantive evidence that glamping requires a greater degree of isolation or privacy than any other type of camping accommodation. The type of tourist accommodation proposed does not justify the isolated countryside location.

15. The proposal would be supplied with water and electricity and it would be connected to a cesspit. Although relatively small, the building would have living and sleeping accommodation and a kitchen and bathroom. The proposal would therefore provide for the main activities of daily domestic existence. On this basis, the absence of an electrical grid connection would not appear to preclude year-round occupation and it does not weigh in favour of the scheme.

16. The maturing woodland could contribute in the future towards reducing carbon emissions and it would provide wildlife habitats and benefits for biodiversity. However, the woodland already exists and it is not proposed as part of the scheme. Therefore, it does not weigh in favour of the proposal.

17. There is no highway reason for refusal. However, concerns have been raised in relation to highway safety and specifically whether the visibility splays illustrated on the plans would be adequate. No speed survey was submitted to demonstrate the adequacy of the access arrangements and the Council did not request one, on the basis that it was minded to refuse the application on grounds relating to its landscape impact. As I am also dismissing the appeal for other reasons, this is not an issue that I need to consider further.

Conclusion

18. For the reasons set out above, the proposal would conflict with the development plan and there are no material considerations that would outweigh that conflict. For this reason, the appeal should therefore be dismissed.

Sarah Manchester

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 29 June 2020

by Sarah Manchester BSc MSc PhD MIEnvSc

an Inspector appointed by the Secretary of State

Decision date: 21st July 2020

Appeal Ref: APP/H0928/W/20/3246821
Garden ground east of Littlethwaite, Catterlen, Penrith CA11 0BQ

- 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 Mr and Mrs A Bircher against the decision of Eden District Council.
- The application Ref 19/0821, dated 13 November 2019, was refused by notice dated 10 February 2020.
- The development proposed is erection of a self-build/ custom-build dwelling with all matters reserved.

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr and Mrs A Bircher against Eden District Council. This application is the subject of a separate Decision.

Procedural Matters

3. The application was made in outline with all matters reserved for future consideration.

4. A signed and dated Unilateral Undertaking (UU) pursuant to section 106 of the Town and Country Planning Act 1990 (as amended) has been submitted with the appeal. The UU contains obligations relating to the provision of self-build/ custom-build dwellings and I have therefore had regard to it in reaching my decision.

Main Issue

5. The main issue is whether the appeal site is a suitable location for new residential development, having regard to local and national policy for the provision of new housing.

Reasons

6. The appeal site is undeveloped land adjacent to Littlethwaite, which is a substantial detached property set in generous open grounds with agricultural fields to either side. The road frontage of the appeal site is formed by a continuous stone wall with the remaining boundaries formed by post and rail fences. The appeal site is in Catterlen, which is a small linear settlement with individual dwellings and groups of buildings separated by green space including agricultural fields. It is surrounded by undulating open countryside with fields, hedgerows, scattered trees and areas of woodland.

7. Policy LS1 of the Eden Local Plan 2014-2032 Adopted October 2018 (the LP) sets out the Council's locational development strategy based on the hierarchy of settlements. Catterlen is listed as one of the smaller villages and hamlets, where development of an appropriate scale will be permitted subject to meeting certain listed criteria including where it is restricted to infill sites or rounding off of settlements. Policy HS2 of the LP supports limited infill and rounding off development in the smaller villages, subject to restrictions on floorspace and local occupancy. These are broadly consistent with the policies in the National Planning Policy Framework (the Framework) that require rural housing to be located where it will enhance or maintain the vitality of rural communities, reflecting the different character ad roles of different areas.

8. Littlethwaite is widely separated from neighbouring properties and the appeal site forms part of a substantially wide green gap in the settlement. It is not a modest gap between existing buildings and it is not in a built up frontage. The boundaries of the site do not appear to correspond to landscape features such as field boundaries. With the exception of the road frontage, the fenced boundaries appear arbitrary and they are not strong and defensible. Consequently, the site does not have the characteristics of an infill site and the appeal site does not round off the settlement.

9. The submitted plans and photographs appear to show that the appeal site was formerly agricultural land. Although it is differentiated from the adjacent land by fences, the appeal site does not have the appearance of a domestic garden. Nevertheless, it forms part of the grounds of Littlethwaite. Therefore, irrespective of its visual similarity to surrounding greenfield sites, the appeal site is PDL for the purposes of planning policy.

10. As such, there is no requirement for a local occupancy restriction, such as would be required by Policy HS2 for a greenfield site. However, and although all matters are reserved, there is nothing to indicate that the dwelling would be limited to 150m2 of internal floorspace. Therefore, the proposal would not accord with the requirements of Policy HS2.

11. Policy HS2 aims to encourage the provision of housing that is affordable for local people. In this respect, proposals for PDL are not subject to local occupancy restrictions in recognition of the increased cost and the visual benefits of developing such sites. However, by restricting the size of the dwelling, the policy nevertheless aims to ensure that it remains reasonably affordable. In this case, there is nothing before me to suggest that the costs of developing it would be significantly greater than on a greenfield site. Furthermore, by virtue of forming part of a characteristic green gap, it already makes a positive visual contribution to the settlement.

12. My attention has been drawn to an appeal decision in Clifton where the Inspector apparently considered that a size restriction on brownfield development was not justified. However, neither the appeal decision nor the details of that case have been provided. I cannot therefore be certain that it is directly comparable to the appeal scheme before me or that it would provide a justification for a proposal that would fail to contribute to the Council's housing aims in this location.

13. There are no services or facilities in proximity to the appeal site. The main town of Penrith is over 5km from Catterlen, which is not well served by public transport. The intervening roads and the distances involved are not conducive

to walking or cycling to access services and facilities in Penrith. Therefore, future occupiers would not meet their reasonable daily needs by sustainable forms of transport. There would be a reliance on private car journeys from this location, including by future occupiers and their private and commercial visitors. There is little before me to demonstrate that the proposal would contribute to supporting services in villages nearby or that it would make any significant contribution to the local community.

14. Therefore, the appeal site is not in a suitable location for new residential development. It would conflict with Policies LS1 and HS2 of the LP which require, among other things, that development is located in accordance with the settlement hierarchy, reflecting the built form and service function of nearby development, and restricted to infill and rounding off development. It would also conflict with policies in the Framework that require housing to be located in areas with accessible services and where it will contribute to the vitality of rural communities.

Planning Balance

15. The Self-Build and Custom Housebuilding Act 2015 (the Act) places duties on local authorities. These include maintaining a register of persons seeking to acquire self-build or custom-build (hereafter referred to as self-build) plots, giving suitable development permission in respect of enough serviced plots of land to meet the demand on the register in each base period, and having regard to the demand when exercising its planning function.

16. For the purposes of the Act, the first base period was 1 April 2016 to 30 October 2016, with each subsequent base period running from 31 October to 30 October the following year. The Council has 3 years from the end of each base period to grant an equivalent number of suitable permissions as there are entries on the register for that period. Therefore, by October 2019, the Council was required to demonstrate that it had met the demand from the first base period, during which time there were 5 entries on the register.

17. In terms of suitable development permissions, the Council considers that it granted planning permission for 21 confirmed self-build dwellings in the period 1 April 2016 to 31 October 2018. However, it appears that these permissions are primarily single dwelling permissions which could be considered as self-build serviced plots. There is no evidence that they are restricted to self-build by legal agreement, as would be secured in this case through the UU. The appellant considers that market-led planning permissions should not count towards meeting the demand on the self-build register, since there is no obligation for such permissions to be developed for self-build housing.

18. The Planning Practice Guidance (the PPG) states that development permission will be suitable if it is permission in respect of development that could include self-build and custom housebuilding. Self-build properties can provide market or affordable housing. I accept that some single dwelling permissions are unlikely to be suitable to meet demand for more affordable or local occupancy self-build housing. However, I am not persuaded that single dwelling permissions are inherently unsuitable for open market self-build housing.

19. Therefore, taking into account the low level of demand in base period 1 and in the absence of evidence to the contrary, it seems reasonably likely that the Council will have granted enough suitable permissions, at least for open market

self-build housing, irrespective of the absence of restrictive legal agreement. I note there has been a sharp rise in the number of register entries during base period 4, from October 2018 to October 2019. However, the Council has until October 2022 to permission the equivalent number of plots and it would therefore be unreasonable at this stage to reach any conclusion as to whether or not the Council will meet the demand corresponding to base period 4.

20. My attention has been drawn to an appeal decision in Woodville[1], where the Inspector found that in the absence of evidence of restrictive legal agreements there was considerable doubt as to whether any single dwelling permissions should count as self-build serviced plots. Although I have not seen the detailed evidence in that case, there are differences between the schemes including in terms of the number of entries on the register in each base period, the numbers of permissions granted and progress towards meeting the demand. That schemes also differs by virtue of its significant economic, social and environmental benefits, including that the proposed 30 self-build plots would meet the majority of the demand on the self-build register for that area. I cannot therefore be certain that it is directly comparable to the appeal scheme or that it undermines the Council's evidence in this case.

21. Paragraph 11d) ii. of the Framework states that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

22. The Council's housing policies are not out-of-date. The LP, and particularly Policy HS2, supports self-build housing to meet local needs, aiming to restrict housing in the smaller villages to the types of size and tenure that would be likely to come forward as self-build housing. However, the Council has no specific self-build housing policy which, although not a statutory requirement, is one way in which the PPG suggests authorities can support such housebuilding. The parties therefore agree that the development plan is silent in this regard. On this basis, paragraph 11d) of the Framework is engaged.

23. The Council can demonstrate a 5 year housing supply and 1 dwelling would in any case make a minimal contribution to the supply of housing. The proposal would make a small contribution towards meeting the demand for self-build plots. There would be minimal economic benefits in the short-term during the construction phase. There is no guarantee that Littlethwaite would be sold upon completion of the scheme, or that it would be occupied by a family or on a permanent basis. In any case, there would be limited longer-term social and economic benefits, which carry limited weight in favour of the scheme.

24. The evidence indicates that the proposal would not result in detrimental effects on highway safety, biodiversity, flood risk, residential amenity or the historic environment. Appearance and layout are reserved matters that could be satisfactorily addressed at a later stage. However, these are requirements of the development plan and they are neutral factors in my assessment.

25. The Framework attaches substantial weight to using suitable brownfield land within settlements for homes. Although the appeal site is PDL, for the reasons

[1] Ref APP/G2435/W/18/3214451

set out above, it is not a suitable site for residential development. Therefore, this is a matter that carries limited weight in favour of the scheme.

26. Schemes relating to individual self-build dwellings have been allowed on appeal[2]. In that case, there were benefits including the contribution to the housing supply, the location immediately adjacent to an area identified for additional housing, and visual and biodiversity enhancements. Therefore, it is not directly comparable to the appeal scheme and it does not provide a justification for it.

27. The appellants live next to the appeal site and they have family in the area. Their desire to continue to live in the village is therefore understandable. However, it has not been demonstrated that there are no existing properties that would meet their retirement needs nor suitable infilling or rounding off plots elsewhere. Moreover, the Council is not required to ensure that the specific requirements of every person on the register are met, only that an equivalent number of permissions are granted. The appellants personal circumstances therefore carry little weight in favour of the scheme.

28. The site is not located close to services and facilities. The need to travel would not be minimised. There would be no realistic opportunity for journeys by sustainable modes of transport, resulting in an increase in private car journeys. The proposal would not contribute to supporting the aims of the Framework in relation to healthy lifestyles and climate change adaptations. This is a matter that carries moderate negative weight.

Conclusion

29. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations, which include the Framework, indicate otherwise.

30. I have found that the conflict with the Council's locational development strategy and its housing aims for the smaller villages would result in significant and moderate harm. There would be moderate harm resulting from the reliance on private car journeys. The contribution to meeting the demand for self-build plots and to the supply of housing more generally, and the social and economic benefits of the scheme, are factors that carry limited weight.

31. The adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

32. Therefore, the appeal should be dismissed.

Sarah Manchester

INSPECTOR

[2] Ref APP/X2220/W/17/3176895

The Planning Inspectorate

Costs Decision

Site visit made on 29 June 2020

by Sarah Manchester BSc MSc PhD MIEnvSc

an Inspector appointed by the Secretary of State

Decision date: 21st July 2020

Costs application in relation to Appeal Ref: APP/H0928/W/20/3246821
Garden ground east of Littlethwaite, Catterlen, Penrith CA11 0BQ

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr and Mrs A Bircher for a full award of costs against Eden District Council.
- The appeal was against the refusal of planning permission for erection of a self-build/ custom-build dwelling with all matters reserved.

Decision

1. The application for a full award of costs is refused.

Reasons

2. The Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The application for costs should clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.

3. The applicants consider that the Council behaved unreasonably by introducing a new reason for refusal and thereby prolonging proceedings, by relying on information that is manifestly inaccurate and untrue, and by not engaging adequately with the National Planning Policy Framework (the Framework) contrary to established case law.

4. The reasons for refusal relate to conflict with the Council's housing policies. In its evidence to the appeal, the Council has discussed the impact of the proposal on the character and appearance of the area. However, it has not introduced any additional reasons for refusal or concluded against any additional policies. As can be seen from my appeal decision, the character and appearance of the appeal site and the settlement is relevant to the consideration of whether or not the proposal would meet the criteria relating to infill sites and rounding off settlements. In any case, it has not been demonstrated how the Council's evidence to the appeal prolonged the appeal process.

5. Concerns have been raised in respect of the data the Council relied upon as evidence that it is meeting its legal duty in relation to permissions for self-build and custom-built dwellings. While appeal decisions relating to different schemes may reach different conclusions in respect of the adequacy of evidence, I am not aware that there is any agreed standard methodology. Each case must be considered on its own individual merits. As can be seen from my

appeal decision, taking account of the particular merits of the case, and in the absence of evidence to the contrary, I did not find that the Council was failing to discharge the relevant duty.

6. In determining the application, the Council did not specifically refer to Paragraph 11d) of the Framework. However, it did assess the scheme against relevant development plan policies and it did consider whether there were any material considerations that would outweigh the conflict with the development plan. While the applicants disagree in relation to the weight to be afforded to the benefits of the scheme, and therefore with the Council's conclusion, the Council exercised its planning judgement in reaching its decision. As can be seen from my appeal decision, I concurred with the Council's assessment and have dismissed the appeal accordingly.

7. I appreciate that the Council's decision will have been a disappointment to the applicants and that costs have been incurred in pursuing the appeal. However, the applicants exercised their right of appeal and the parties are expected to meet their own costs in the appeal process. The Council did not behave unreasonably in refusing to grant planning permission on the grounds of conflict with the development plan. It therefore follows that the Council did not delay development that should clearly have been permitted and planning permission was not unjustifiably withheld.

Conclusion

8. I therefore find that unreasonable behaviour by the Council, resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. A full award of costs is not justified.

Sarah Manchester

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 6 July 2020

by Philip Lewis BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date:21 July 2020

Appeal Ref: APP/H0928/W/20/3247919
Rynrew Barn, Newton Reigny, Penrith CA11 0AY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr John Davidson against the decision of Eden District Council.
- The application Ref 19/0500, dated 8 July 2019, was refused by notice dated 10 September 2019.
- The development proposed was originally described as a one and a half storey three bedroom detached residential dwelling.

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr John Davidson against Eden District Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues for the appeal are:

   - The effect of the proposed dwelling on the living conditions of occupants of nearby properties with particular regard to outlook, and/or privacy; and
   - Whether the proposed dwelling would be in a suitable location having regard to local planning policies concerned with housing in rural areas.

Reasons

Living conditions

4. The irregularly shaped appeal site consists largely of areas of domestic garden and parking. The proposed one and a half storey dwelling would be situated within an enclosed garden area in close proximity to the neighbouring Meadow Cottage, itself a one and a half storey dwelling. The private amenity space for Meadow Cottage is provided by a modest garden area to the front of its west gable. I saw at my site visit that this garden area is accessed via patio type doors which open out onto a small paved area.

5. The proposed dwelling would project beyond the west gable of Meadow Cottage and would be sited close to the common boundary for much of the length of the garden area of Meadow Cottage. Being of one and a half storeys, the proposed dwelling would be considerably higher than the existing timber

boundary fence. Consequently, the appeal scheme would present a significant area of wall close to the common boundary with Meadow Cottage and alongside most of its garden. Therefore, it would give rise to an unacceptable sense of enclosure and would have harmful effects on outlook for the occupiers of Meadow Cottage. Although the proposed dwelling is situated to the north of Meadow Cottage, it would also have a minor harmful effect in terms of loss of light to the cottage, both to windows and the garden area.

6. The proposed dwelling would extend out close to the boundary with the garden of Saddleback Barn and would have a Juliet type balcony on the north elevation serving a bedroom. This would face towards the neighbouring gardens of Saddleback Barn and beyond to that of Blencathra Barn. The existing hedge would effectively screen the proposed ground floor windows and doors and such screening could be secured by way of a planning condition were I minded to allow the appeal. However, the proposed Juliet balcony would, despite the height of the hedge and difference in levels, give rise to overlooking of the neighbouring gardens and dwellings causing a loss of privacy. I acknowledge that there will already be mutual overlooking between neighbouring properties, but find that the proposed dwelling would give rise to an unacceptable loss of privacy for the occupiers of Saddleback Barn and Blencathra Barn.

7. The proposed dwelling would be adequately separated from Rynrew Barn. The privacy of the occupiers of Rynrew Barn and future occupiers of the proposed dwelling could be adequately addressed by way of a planning condition to ensure that windows on the elevation facing Rynrew Barn were obscure glazed and non-opening were I minded to allow the appeal.

8. The appellant has referred to an appeal decision[1] but I have limited details and do not know what information was before that Inspector. However, even if the development and circumstances are similar, it should not provide an example that should inevitably be followed given the harm found. Additionally, I have had regard to the Council's Supplementary Planning Document Housing, but that does not lead me to a different conclusion on this matter.

9. The proposed dwelling would give rise to harm to the living conditions of the occupants of nearby properties contrary to Policy DEV5 of the Eden Local Plan 2014-2032 (ELP) which includes, amongst other things, that new development optimises the potential use of the site and avoids overlooking and protects the amenity of existing residents and business occupiers and provides an acceptable amenity for future occupiers. The proposal is also contrary to the National Planning Policy Framework, which in paragraph 127 includes, amongst other things, that planning decisions should ensure that development creates places that are safe, inclusive and accessible, which promote health and well being, with a high standard of amenity for existing and future occupiers.

Whether the proposed dwelling would be in a suitable location

10. ELP Policy LS1 sets out the settlement hierarchy for the District. Newton Reigny is one of the Smaller Villages and Hamlets where in principle development of an appropriate scale, which reflects the existing built form of the settlement and adjoining and neighbouring development to the site, and the service function of the settlement, will be permitted in defined circumstances. In particular, Policy LS1 includes that development in Smaller

[1] APP/G4240/D/14/2224097

Villages and Hamlets will be restricted to infill sites, which fill a modest gap between existing buildings within the settlement. ELP Policy HS2 is concerned with housing in Smaller Villages and Hamlets where housing development would be permitted should a number of criteria are met, relating to whether the proposal constitutes infilling and rounding off of the current village settlement pattern, the size of the resultant dwelling and regarding the development of 'greenfield' sites and use of local occupancy restrictions.

11. Firstly, I am satisfied that the appeal site is situated within the settlement of Newton Reigny. However, the nature of the existing pattern of development is such that the assessment of whether the proposed development would infill a modest gap between existing buildings requires careful exercise of planning judgement, given that the terms 'infill' or 'modest gap' are not defined in the ELP. Whilst Rynrew Barn and Meadow Cottage are situated to two sides of the site of the proposed dwelling, there is the garden of Saddleback Barn and a track with the garden of Beckside House beyond to the other sides. On balance, I find that rather than being in a modest gap between buildings, the proposed dwelling would be situated in a garden area which forms part of a wider gap including neighbouring gardens.

12. The appellant has drawn my attention to the pre-application advice and planning permission granted by the Council for 3 dwellings on land adjacent to Beckside House, which I note previously had planning permission for a bungalow. However, from the information provided, I consider that the circumstances are not the same as those before me and this information does not therefore lead me to a different conclusion in this appeal.

13. To conclude on this matter, the proposed development would not be in a suitable location and is contrary to ELP Policies LS1 and HS2.

Other matters

14. I have taken into account the evidence in regards to the appellant meeting the local connection criteria set out in ELP Policy HS2. I also have had regard to the intention of building the dwelling as a self-build / design and build sustainable home. These factors do not however lead me to a different decision.

15. I have also taken into account the comments made regarding inaccuracies in the Council Officers report. Any such errors have not however led me to a different decision. The comments made regarding the Council's handling of the planning application and inconsistency in its decision making are matters for local government accountability.

Conclusion

16. For the reasons given above and having considered all matters raised, the appeal is dismissed.

Philip Lewis

INSPECTOR

The Planning Inspectorate

Costs Decision

Site visit made on 6 July 2020

by Philip Lewis BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 July 2020

Costs application in relation to Appeal Ref: APP/H0928/W/20/3247919
Rynrew Barn, Newton Reigny, Penrith CA11 0AY

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr John Davidson for a full award of costs against Eden District Council.
- The appeal was against the refusal of planning permission for development originally described as a one and a half storey three bedroom detached residential dwelling.

Decision

1. The application for an award of costs is refused.

Reasons

2. The National Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Paragraph 031 of the PPG states that unreasonable behaviour in the context of an application for an award of costs may be either procedural, relating to the process or substantive, relating to the issues arising from the merits of the appeal.

3. Paragraph 047 of the PPG provides examples of behaviour which may give rise to a procedural award against a local planning authority. These include delay in providing information or other failure to adhere to deadlines. Paragraph 049 of the PPG states that examples of unreasonable behaviour by local planning authorities include failure to produce evidence to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposals impact which are unsupported by any objective analysis.

4. The applicant submits that the Council acted unreasonably through not co-operating with other parties, in delaying in providing information, not agreeing a statement of common ground, providing information that is shown to be manifestly inaccurate or untrue and deliberately concealing relevant evidence. Furthermore, it is said that the Council has prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations, made vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; have acted contrary to, or not following, well-established case law; not determining similar cases in a consistent manner and refusing to enter into discussions, or to provide reasonably requested information, when a more helpful approach would

probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal.

5. The applicant states that they have incurred wasted time and expense through unnecessary communication, including seeking information via Freedom of Information (FOA) provisions, reading, researching and responding on various planning subjects and making a formal complaint to the Council.

6. In respect of the substantive matters, I have found that the appeal fails in respect of each of the main issues. Consequently, the Council has not prevented or delayed development which should otherwise be permitted. It follows too that the Council has substantiated its reasons for refusal. Whilst I have had regard to the claim that the Council has been inconsistent in decision making in respect of the application of Local Plan policy, I nevertheless find the scheme contrary to the development plan policies cited by the Council in its reasons for refusal. The claim that the Council has acted contrary to, or not followed, well-established case law has not been substantiated.

7. Whilst the applicant has said there are some inaccuracies in the Council Officers report, I have nevertheless found the appeal scheme unacceptable and upheld the Council's decision. Equally, the applicant had made a FOI request to obtain information from the Council. Whilst I have not been convinced that there was an attempt to deliberately conceal the requested information, which was ultimately provided by the Council, this information did not in any event lead me to a different decision. Although it may have been helpful to the applicant if the information was provided in a more timely way, it would not have avoided the need for the appeal nor narrowed matters in dispute, nor resulted in a reduction in expenses.

8. The applicant sought to agree common ground with the Council. There is no requirement for a statement of common ground in an appeal proceeding by way of written representations. Whilst it is commendable that the applicant sought to narrow the matters in dispute in this way, this does not in itself constitute unreasonable behaviour and even if it did, I have not been convinced that there has been unnecessary expense for the applicant during the appeal process.

9. In respect of the procedural matters and comments relating to the lack of communication by the Council in the planning application process, these are outside of the scope of this costs application and are matters for local government accountability.

10. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is not justified.

Philip Lewis

INSPECTOR