

Eden District Council

**Planning Committee
17 February 2022**

Appeal Decision Letters

Report of the Assistant Director Development

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

Application Number(s)	Applicant	Appeal Decision
20/0443	<p>Mrs Andrea Harker Land adjacent to Village Green, Swillings Lane, Little Musgrave, Kirkby Stephen CA17 4PQ</p> <p>The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.</p> <p>The development proposed is single storey self- build dwelling and change of use of agricultural land to residential curtilage (Class C3).</p>	<p>The appeal is dismissed.</p>

Fergus McMorro
Assistant Director Development



Appeal Decision

Hearing (Virtual) held on 7 December 2021

Site visit made on 10 December 2021

by J Hunter BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 January 2022

Appeal Ref: APP/H0928/W/21/3272734

Land adjacent to Village Green, Swillings Lane, Little Musgrave, Kirkby Stephen CA17 4PQ

- 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 Mrs Andrea Harker against the decision of Eden District Council.
 - The application Ref 20/0443, dated 2 July 2020, was refused by notice dated 20 November 2020.
 - The development proposed is single storey self-build dwelling and change of use of agricultural land to residential curtilage (Class C3).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. After the close of the Hearing, the appellant submitted a revised Unilateral Undertaking (UU). The parties were given the opportunity to comment on the revised UU and consequently I am satisfied that no one was prejudiced by my acceptance of the late evidence.

Main Issues

3. The main issues are i) whether or not the site is an appropriate and sustainable location for the proposed residential development, having regard to the Council's housing strategy and local and national planning policies in respect of affordable housing; and ii) the effect of the proposal on the character and appearance of the area.

Reasons

Location of development

4. Positioned in a rural location to the west of the small hamlet of Little Musgrave, the appeal site is a roughly rectangular parcel of land located approximately 130 metres west of nearest dwelling. The site is currently accessed via Swillings Lane, a narrow single width road without pavements or streetlighting. The proposal is for a single storey, self build, affordable dwelling for the appellant and their family.
5. The Eden Local Plan 2018 (ELP) policies are relatively recently adopted having been through a process of examination and upon comparing them to the relevant sections of the National Planning Policy Framework (the Framework) I

am content that they are consistent with national policy. Similarly, whilst I accept that the policies of the Upper Eden Neighbourhood Development Plan 2012 (UENDP) are somewhat older, the principles of UENDP Policy 1 echo the sentiment of the Framework and in particular paragraphs 78 and 79, which encourage local authorities to support rural exception sites to meet identified local needs in locations where it will enhance or maintain the vitality of rural communities.

6. Policy LS1 of the ELP sets out the district's locational strategy; the appeal site is located outside of the hamlet of Little Musgrave and therefore falls into the 'Other Rural Areas' category. In such areas, the policy makes provision for affordable housing as an exception to policy provided that the site is in a location considered suitable for affordable housing and where the scheme's benefits justify an exception to policy.
7. Due to its small scale, the benefits the proposal would bring to the locality would be limited in terms of contribution to housing supply. There would be some social and economic benefits associated with the appellant and their family being able to reside and work within the hamlet in which they grew up, although these benefits would be personal and would be unlikely to lead to the provision of more services. The limited benefits would therefore be insufficient to make any meaningful contribution to the vitality of a rural community in line with the Framework and in the context of Policy LS1 would not justify an exception to policy.
8. The site is located approximately 3 miles from the larger settlements of Brough and Kirkby Stephen which provide a large range of services and facilities including a train station. Other than a church and hall shared with Great Musgrave, there are no services or facilities in Little Musgrave and as such, residents in this location rely on the larger settlements of Brough and Kirkby Stephen for their day-to-day needs. Due to the rural location and distance from services, more sustainable modes of transport such as cycling, or walking are unlikely to be undertaken particularly during the dark winter months or in poor weather. Residents are therefore likely to be heavily reliant on private vehicles.
9. I accept that in rural areas the level of accessibility can be lower than in more urban locations and I note the appellant's comments in relation to the definition of rural exception sites held within the Framework which defines such sites as being 'Small sites used for affordable housing in perpetuity where sites would not normally be used for housing.' I also acknowledge the appellant's circumstances in that they live and work in the hamlet which reduces their own travel needs for work purposes. Nonetheless, whilst personal circumstances are a material consideration, any planning permission runs with the land rather than the appellant and I must therefore consider the proposal as a whole.
10. The appellant submitted a Unilateral Undertaking (UU) which seeks to secure the proposed unit as an affordable home in perpetuity. At the Hearing it was established that there were two main areas of disagreement in relation to the proposed UU. The first was the terms of a Mortgage in Possession (MIP) clause which would, as worded in the appellant's original UU, allow the disposal of the property on the open market subject to the payment of compensation to the Council. The UU has since been amended so that the home would first be marketed to those in affordable need for a period of time prior to any

subsequent market sale. Furthermore, all obligations within the deed would be passed on to any purchaser.

11. The second area of dispute related to affordable price. Although the appellant was agreeable to a restriction requiring the onward sale of the property at no more than 60% of open market value (OMV), they were unwilling to accept a price cap on the property which would limit its value based upon the average house price in Eden district, currently around £138,000.
12. Since the closure of the Hearing the appellant has submitted a revised UU alters the proposed affordable price so that the property could be sold at no more than 40% of OMV without a price cap applied. The Council has responded with a UU which would limit the sale price of the proposed to no more than 60% of the Open Market Value, subject to a price cap at 60% of the mean open market price of property in the District of Eden.
13. The appellant has provided detailed information around house prices within the Musgrave Parish which indicates that the properties in the location are significantly more expensive than the average house price across Eden. I have not been provided with any forecasted valuation of the appeal property however, given the proposal is for a 4 bedroomed detached dwelling of a substantial size and acknowledging the prices of similar sized properties within the parish it would not be unreasonable to assume that its value would far exceed that of the average house price across Eden district.
14. I acknowledge the appellant's difficulty in relation to the price cap and their suggestion that the build costs of the proposed dwelling would likely exceed the value of the finished dwelling should the price cap be in place. I also note the appellant's concern in relation to whether or not they would be able to secure a mortgage for the property although I have not been provided with any site specific evidence in this regard. Nonetheless, based on the information before me I am not convinced that even with the revised discount of 60% from the OMV, the property would be affordable in perpetuity. So, whilst the UU provides a mechanism for securing the property as an affordable home in relation to its onward sale, in principle, the price of the property and inability to cap the price, would mean that it would unlikely be affordable considering the average price of property within Eden district.
15. Policy HS1 of the ELP is specific to the delivery of affordable housing, the appellant contends that because the policy does not specifically reference rural exception sites it is not relevant to the determination of this appeal. Nonetheless, the proposal comprises an affordable dwelling and consequently I consider Policy HS1 to be relevant in this case. In 'Other Rural Areas' Policy HS1 requires that new development be restricted to affordable housing in an existing settlement comprised of a single group of three or more dwellings, subject to local connection criteria which is set out in Appendix 5 of the ELP.
16. The main parties do not dispute that the appellant meets the local connection criteria having been a resident in Little Musgrave throughout childhood and again as an adult with a young family. The appellant also works within Little Musgrave at a family wedding venue business close to the appeal site. In terms of the positioning of the site, I note that there are no defined settlement boundaries for Little Musgrave, which consists of small clusters of residential and agricultural buildings along both sides of Swillings Lane. The form of development is loose and is punctuated by open areas of varying sizes, there is

not one continuous building line and several of the properties do not have their principal elevation overlooking the road. Consequently, although I accept that that proposed building would be around 130 metres from the nearest dwelling, it would be directly adjacent to the village green and therefore whilst it would not be in a group of buildings, its position would reflect the built form of the locality albeit elongating the hamlet form.

17. Policy 1 of the UENDP permits rural exception sites for single plot affordable housing to meet a local need where this need is evidenced and where the development does not have an unacceptable impact on the visual and landscape amenity of the area. I will return to the latter criterion as part of the second main issue.
18. The submissions refer to a parish level (Musgrave) housing needs survey which was conducted in 2009. Of 79 surveys delivered, there were 7 responders who indicated that they would be in housing need within the next 5 years, at the Hearing, the appellant indicated that they had responded, identifying themselves as a potential person in need. Nonetheless, I note that the survey concluded that none of those who responded at that time met Eden District Council criteria in terms of affordable housing need. I appreciate the survey was conducted some time ago, however, I have not been provided with any recent evidence which would suggest an identified need for any particular type of affordable housing either in the Musgrave parish or the wider locality.
19. I have been provided with very little evidence in relation to affordable housing need in the locality surrounding the appeal site and although I appreciate the appellant's personal circumstances, the property values in the locality indicate that a property of the type proposed would far exceed the value at which the home could be described as affordable. Furthermore, whilst the site is adjacent to an existing settlement to which the appellant has an established local connection, it is in a location with no public transport and poor pedestrian connectivity and would therefore not comprise a suitable location for this type of housing. The limited benefits I have identified in terms of housing supply and social and economic benefits would not be sufficient to justify an exception to policy overall. Consequently, whilst the proposal would comply with the requirements of Policy HS1 of the ELP as set out above, it would fail to accord with the locational strategy of Policy LS1 or the provisions of UENDP 1, with regard to local need and the Framework.

Character and appearance

20. The appeal site is a shallow linear plot that is bounded by a watercourse (Blind Beck) to the north and west, a small village green to the east and Swillings Lane to the south. The site is relatively flat and there is an existing field gate on the eastern boundary. The proposal would introduce a new access point on the southern boundary leading to a single storey building finished in stone and timber with a 'green roof.'
21. Little Musgrave is characterised by a linear form of development consisting of clusters of residential and agricultural buildings punctuated by pockets of open fields. Residential properties are predominantly two storey, double fronted, detached buildings with simple fenestration detailing providing a vertical emphasis. I saw during my site visit that there were some single storey dwellings and conversions toward the eastern end of the village.

22. The hamlet has a limited palette of materials that is dominated by red sandstone and limestone with some painted/rendered elevations and grey slate roofing. Agricultural buildings in the locality are generally more simplistic metal 'A' frame buildings clad with vertical timber although the smaller more traditional buildings are constructed using stone similar to the residential properties.
23. UENDP 1 requires that proposals do not have an unacceptable impact on the visual and landscape amenity of the area, whilst ELP Policy DEV5 supports high quality design, which reflects local distinctiveness, subject to a range of criteria.
24. The proposed dwelling would be a large, single storey building of around 300sqm. The wide, shallow pitched roof and use of vertical timber would be reflective of the agricultural sheds within the locality whilst the use of stone on parts of the eastern and western elevations would be characteristic of the surrounding dwellings. Notwithstanding this, I consider that the mix of agricultural styling and materials on a domestic scale building designed for residential use would appear contrived and incongruous when viewed in the context of the surrounding locality. Furthermore, the number and variety of different sized openings would complement neither the agricultural nor residential buildings in the vicinity.
25. Overall, I consider the proposal to be of a poor design that fails to appropriately consider local distinctiveness or show an understanding of the form and character of the district's built and natural environment. The fusion of agricultural and domestic architecture, scale and materials would result in a building that would appear discordant, thus failing to reflect the existing street scene. As a consequence, the proposal would cause harm to the character and appearance, visual landscape and amenity of the area thus failing to accord with the requirements of UENDP 1 and DEV 5 of the ELP as set out above.

Other Matters

26. In coming to my decision, I have had regard to a number of court judgments referenced by the appellant which emphasise the need for a decision maker to assess a proposal against the development plan as a whole and in the context that there are sometimes competing policies within a plan.
27. Furthermore, the appellant has drawn my attention to an appeal case (APP/C3430/W/19/3237890) in which an Inspector allowed an appeal for ten dwellings in a location without services and facilities. I do not have the full details of the case before me and I must determine this case on its own merits however, based on the information before me the proposals are not directly comparable. This is because the other appeal related to a situation where there was a recent housing needs survey identifying need, a larger number of dwellings thus potentially providing greater benefits and closer proximity to a larger settlement and services.
28. In the comments submitted following the closure of the Hearing the appellant references communications between the parties and with third parties in relation to the contents of the UU. I have not been party to these communications and these elements were not discussed during the Hearing, therefore I can afford them little weight in the overall balance.

Conclusion

29. There are no material considerations that indicate the application should be determined other than in accordance with the development plan when taken as a whole. Therefore, for the reasons given above I conclude that the appeal should be dismissed.

J Hunter

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Edward Broadhead MRTPI -Agent
Andrea Harker- Appellant)
Alex Birtles -Solicitor

FOR THE LOCAL PLANNING AUTHORITY:

Nick Atkinson – Planning Services Development Manager
Emily Battrick – Planning Policy Officer
Rachael Armstrong – Planning Policy Officer
Rebecca Harrison – Solicitor