

Eden District Council

Planning Committee

21 April 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
21/0330	<p>Mr Graham Lund Fallowfield, Cliburn, Penrith, CA10 3AL</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 the construction of 4 dwellings.</p>	The appeal is dismissed.
21/0086	<p>Mr Bruce Johnson 42 Wordsworth Street, Penrith, Cumbria, CA11 7QY</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 a replacement single storey extension.</p>	The appeal is dismissed.
21/0159	<p>Mr and Mrs T Cockburn Land southeast of Sawmill Cottage, Penriddock, CA11 0RD</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 erection of a dwelling including associated operations.</p>	<p>Appeal A against the decision of Eden District Council</p> <p>Appeal A is dismissed.</p>

Application Number(s)	Applicant	Appeal Decision
7/2021/3032	<p>Mr and Mrs T Cockburn Land southeast of Sawmill Cottage, Penruddock, CA11 0RD</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 erection of a dwelling including associated operations.</p>	<p>Appeal B against the decision of Lake District National Park Authority</p> <p>Appeal B is dismissed.</p>

Fergus McMorrow
Assistant Director Development

Appeal Decision

Site visit made on 15 March 2022

by Alison Partington BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 March 2022

Appeal Ref: APP/H0928/W/21/3287566

Fallowfield, Cliburn, Penrith, CA10 3AL

- 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 Graham Lund against the decision of Eden District Council.
 - The application Ref 21/0330, dated 31 March 2021, was refused by notice dated 1 November 2021.
 - The development proposed is the construction of 4 dwellings.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in the appeal are:
 - Whether or not the proposed development represents piecemeal development of the wider site and whether or not it makes adequate provision for affordable housing;
 - Whether or not the proposed development provides an adequate mix of housing;
 - The effect of the proposed development on biodiversity;
 - Whether or not the proposed development makes adequate provision of amenity space;
 - Whether or not the proposed development adequately incorporates sustainable design features; and
 - Whether or not the proposed development would be provided with adequate drainage.

Reasons

Whether piecemeal development

3. The appeal site consists of vacant land either side of Fallowfield, a cul-de-sac serving a number of houses. The settlement hierarchy in Policy LS1 of the *Eden Local Plan 2014 – 2032 (adopted October 2018)* (ELP) designates Cliburn as one of the **'Smaller Villages and Hamlets'**. In such locations development is restricted to: infill sites, which fill a modest gap between existing buildings; **'rounding off'**; and the reuse of traditional buildings. It is not disputed by the parties that the site is an infill site and I agree with this conclusion.

4. In addition, Policy HS2 of the ELP indicates that in such locations new dwellings should not have a gross internal floorspace of more than 150 sqm and that on greenfield sites a condition or legal agreement will be applied to restrict occupancy to those meeting a local connection.
5. On sites with 11 or more houses, ELP Policy HS1 seeks to ensure that 30% of new houses are provided as affordable housing. More detailed guidance on the application of this policy is provided in the *Housing Supplementary Planning Document (adopted April 2020)* (SPD). This indicates that it is not acceptable to sub-divide sites and submit applications in a piecemeal fashion to avoid making affordable housing contributions. In considering whether this is the case, it states that matters such as landownership, connectivity between the sites (including services and access), the fragmentation of units and land and the age of previous permissions will be taken into account.
6. The Council have suggested that the entire site, which with the proposed development would provide a total of 13 houses has been developed in a piecemeal way to circumnavigate the need to provide affordable housing.
7. The appeal site together with the adjacent land on which the other houses on Fallowfield have been built has a planning history dating back to 1989 which is set out fully **in the appellant's appeal statement**. This shows that the entire site first gained outline planning permission in 1990¹. Attached to this permission was a condition requiring no more than 4 houses to be completed / offered for sale in any one year.
8. The appellant has stated that due to the practice of the local authority at the time, rather than reserved matters applications being made for the entire site a series of full applications were made for various plots between 1998 and 2000, which led to the construction of the 9 properties on the wider site. These comprise a terrace of 3 dwellings, a pair of semi-detached houses, 2 detached houses and 2 detached bungalows.
9. On the appeal site itself outline permission for 4 houses, two of which were to be affordable housing, was granted in 2008. The appellant has stated that the provision of affordable housing was in accordance with both the *Joint Structure Plan for Cumbria and the Lake District (adopted April 2006)* which allowed a negotiated affordable housing split on suitable sites and the emerging Eden Core Strategy policy that required 50% affordable housing. An extension of time for this permission was granted in 2012, and reserved matters were approved in 2017. The appellant started the construction in 2021 but stopped when it was discovered that the planning permission had expired.
10. The application which is the subject of this appeal was submitted in response to this. In accordance with Policy HS2 of the ELP the gross internal floor areas of the proposed houses have been limited to 150 sqm and the appellant accepts a local occupancy condition would be applied.
11. It is not disputed that the appeal site is in the same ownership as the wider site and that the proposed development would utilise the same access road and other services. However, I have not been provided with any evidence to indicate that prior to 2006 there was any policy that required the provision of affordable housing. On this basis, the other 9 houses on the wider site were

¹ Application reference 89/1151

developed before there was any policy requirement to provide affordable housing. As such, the site cannot have been sub-divided in an attempt to avoid making provision for affordable housing because those requirements were not there when the rest of the site was developed.

12. Furthermore, this conclusion is supported by the fact that the appellant sought to start the construction of the previously approved scheme which included the provision of affordable housing in 2021, before it was realised that the permission had in fact expired. Whilst the current scheme no longer proposes any affordable housing this reflects the fact that, notwithstanding the need for affordable housing in the area, it is not a policy requirement for schemes of only 4 houses. However, the scheme would comply with the appropriate requirements set out above in Policy HS2 for residential development in '**Smaller Villages and Hamlets**'.
13. All in all, I am satisfied that the proposal does not represent piecemeal development and therefore as a development of 4 houses does not need to make provision of affordable housing. As a result, there is no conflict with Policy HS1 of the ELP outlined above.

Housing Mix

14. The appeal scheme consists of 2 bungalows and 2 houses all of which would have 4 bedrooms. No evidence has been provided to explain why this mix of dwelling types has been provided, nor why they are all 4 bedroomed properties. This is contrary to the requirements of ELP Policy HS4 which requires residential developments to address local need through reference to various criteria. No substantive evidence has been provided to demonstrate that the housing mix requirement should not be met on the site.
15. **The Council's evidence shows that demand on the Choice Based Letting System** in the area is for 1, 2, and 3 bedroomed properties. Given that to comply with Policy HS2, the appeal scheme would be subject to a local occupancy condition, in the absence of evidence to the contrary, I am not satisfied that the proposal would provide the types and sizes of houses needed to meet local need.
16. The appellant has suggested that Policy HS4 only applies to major residential developments. However, unlike other policies such as HS1 and HS5, which clearly state that they only apply to developments of more than 10 dwellings, Policy HS4 has no such caveat and therefore applies to all residential development irrespective of size.
17. Therefore, in the absence of any evidence to show how the proposed development would meet local need, I consider that it would not provide an adequate mix of housing and would be contrary to Policy HS4 outlined above.

Biodiversity

18. The site is currently grassland. Whilst the appellant suggested that it is likely to have limited ecological value no formal assessment has been carried out to confirm this is the case. Nor to establish a baseline to ensure the development avoids any net loss of biodiversity and preferably provides a net gain in accordance with Policy ENV1 of the ELP.
19. Whilst a condition could be used to ensure the provision of some details, the provision of an ecological assessment to establish the baseline position is

necessary at this stage to ensure the design and layout of the development is appropriate and would avoid adverse effects on biodiversity.

20. Consequently, I am not satisfied that the proposed development would not have an unacceptable effect on biodiversity. Thus, it would conflict with ELP Policy ENV1 set out above.

Amenity Land

21. Policy COM3 of the ELP requires that residential schemes of more than 10 dwellings (major residential development) should make provision on site for open space. In addition, in areas where there is a demonstrable under provision of existing open space, contributions may be sought from smaller residential schemes towards the provision of additional and accessible open space or for the upgrading of existing facilities. Given my conclusion that the proposal is not piecemeal development, it is not major residential development. Moreover, the Council have not provided any evidence to show there is a demonstrable under provision of open space in the area.
22. In the light of this, I consider that it is not necessary for the proposal to either provide on site provision of open space or a contribution to off-site improvements. Therefore, there is no conflict with Policy COM3 outlined above.

Sustainable Design Features

23. Similarly, Policy ENV5 of the ELP requires major residential development to demonstrate how the proposed scheme has considered various environmentally sustainable design features. However, as the proposal is not major residential development, the appeal scheme does not need to comply with the requirements of this policy.

Drainage

24. It is proposed that surface water drainage would be discharged by soakaways and the appellant provided percolation test results to show these would perform adequately to the Council several months before the decision on the application was made. The Council has not disputed the findings of these tests or provided any evidence to the contrary. Moreover, I understand that the wider development also makes use of soakaways.
25. Given this, and the fact that further details could be provided by a condition, I consider that the proposed development would be provided with adequate drainage and would accord with the requirements for water management set out in Policy DEV2 of the ELP.

Other Matters

26. In coming to my decision, I have had regard to concerns raised by third parties, most of which are addressed in the main issues. Other matters included parking and the need for a ground condition assessment. Given my overall findings in respect of the main issues it has not been necessary for me to consider these matters in detail. However, the Council have not raised any objection with regard to the level of parking nor have they identified a need for a ground condition survey. None of the evidence before me leads me to a different conclusion, and if needed a ground condition survey could have been required by condition.

Planning Balance and Conclusion

27. I have found that the proposal would not be piecemeal development of the wider site and so the development does not need to provide the various policy requirements for major residential schemes set out in Policies HS1, COM3 and ENV5 of the ELP. I also consider that the proposal would be provided with adequate drainage. However, an absence of harm in all these matters is a neutral factor. Consequently, they would not outweigh the harm I consider the scheme would cause in respect of the housing mix and its impact on biodiversity.
28. Therefore, for the reasons set out above I conclude the appeal should be dismissed.

Alison Partington

INSPECTOR

Appeal Decision

Site visit made on 15 March 2022

by Alison Partington BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd March 2022

Appeal Ref: APP/H0928/D/21/3279753

42 Wordsworth Street, Penrith, Cumbria, CA11 7QY

- 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 Bruce Johnson against the decision of Eden District Council.
 - The application Ref 21/0086, dated 20 January 2021, was refused by notice dated 4 June 2021.
 - The development proposed is a replacement single storey extension.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in the appeal is the effect of the proposed extension on the living conditions of the occupiers of No 41 Wordsworth Street with particular regard to outlook and light.

Reasons

3. The appeal property is a mid-terrace property. It, like other houses in the row, has a narrow single storey outrigger at the rear. It is proposed to replace this with a flat roof single storey extension that would extend much of the width of the house.
4. On the ground floor the adjacent property, No 41, has a window on the main rear elevation and 2 windows and a door on the side of the outrigger facing the boundary with the host property. The windows on the outrigger appeared to serve non-habitable rooms. At present, the common boundary closest to the houses has a 1.8m high fence between them. No 41 has an area of decking between this and the outrigger, which I observed at my site visit to be the only seating area in the garden.
5. The proposed extension would be set in slightly from the common boundary. Although the flat roofed design of the extension means that its height is limited, it would still be significantly higher than the existing boundary fence. It would be clearly visible from the decking and window on the rear elevation of the house.
6. The tight relationship between the houses and their projecting outriggers, means that light to, and the outlook from, the rear window on No 41 is already restricted. The appellant has produced diagrams which he states show that the proposed extension would not cause significantly greater levels of overshadowing than the existing outrigger and fence. Be that as it may, the

height and depth of the extension is such that even if it would not significantly reduce direct sunlight to the rear room, it would still adversely impact the amount of light it receives.

7. Moreover, in combination with the outrigger on No 41, the extension would **create a 'tunnelling'** effect for both this window and the area of decking. As such, the proposal would exacerbate the already limited outlook from the rear window and create an unneighbourly sense of enclosure to the rear of the house and the area of decking.
8. Consequently, I consider that the proposed extension would unacceptably harm the living conditions of the occupiers of No 41 Wordsworth Street with particular regard to outlook and light. Therefore, it would be contrary to Policy DEV5 of the Eden Local Plan (adopted October 2018) which requires developments to protect the amenity of existing residents.
9. I note that the extension would provide the host property with a larger kitchen, which the appellant considers would be more appropriate for a dwelling of this size. Nevertheless, I consider that this benefit to the appellant would not outweigh the harm that the proposal would cause.

Other Matters

10. The appeal property is located within Penrith New Streets Conservation Area. The Council have not indicated that the proposal would have any adverse impact on the character and appearance of the host property or the surrounding area. I have no reason to disagree. Consequently, I am satisfied that the proposal would preserve the character and appearance of the conservation area.

Conclusion

11. For the reasons set out above, I conclude the appeal should be dismissed.

Alison Partington

INSPECTOR



Appeal Decisions

Site visit made on 14 March 2022

by Caroline Mulloy BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th March 2022

Appeal A

Appeal Ref: APP/H0928/W/21/3285289

Land southeast of Sawmill Cottage, Penruddock CA11 ORD

- 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 and Mrs T Cockburn against the decision of Eden District Council.
 - The application Ref 21/0159, dated 22 February 2021, was refused by notice dated 26 April 2021.
 - The development proposed is erection of a dwelling including associated operations.
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Appeal B

Appeal Ref: APP/Q9495/W/21/3285290

Land southeast of Sawmill Cottage, Penruddock CA11 ORD

- 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 and Mrs T Cockburn against the decision of Lake District National Park Authority.
 - The application Ref 7/2021/3032, dated 22 February 2021, was refused by notice dated 29 April 2021.
 - The development proposed is erection of a dwelling including associated operations.
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Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Procedural Matters

3. The appeal site is mainly situated within Eden District Local Planning Authority area; however, a small part of the site which includes the southern visibility splay is within the Lake District National Park Authority (LDNPA) area. Appeal A relates to the application submitted to Eden District Council for consideration, whilst Appeal B relates to the application considered by the LDNPA.

Main Issues

4. The main issue in the case of Appeal A is the effect of the proposal on the character and appearance of the area.
5. The main issue in the case of Appeal B is the effect of the proposal on the character and appearance of the Lake District National Park and UNESCO World Heritage Site.

Reasons

Appeal A

6. The appeal site consists of a railway embankment which is part of the former Penrith to Keswick railway, situated on the east side of the U3144 Penruddock to Motherby Road.
7. Policy LS1 '**Locational Strategy**' of the Eden Local Plan (2014-2032) (Local Plan) states that development should be focused in the most sustainable locations, including the main town of Penrith, market towns and key hubs. Development of an appropriate scale would be permitted in the smaller villages and hamlets (part 4). **Outside of these settlements in 'other rural areas'**, development will be restricted to the re-use of traditional buildings, the provision of affordable housing as an exception to policy only or where proposals accord with other policies in the Plan. Some market housing may be acceptable in accordance with the criteria in Policy HS1. To qualify as rural exceptions housing, a site must be in a location considered suitable for the development of affordable housing.
8. The part of the appeal site within Eden District is not identified as a named settlement under Policy LS1 and would, therefore, normally be considered as within '**other rural areas**' under the terms of the policy. However, the Council consider that had the whole of Penruddock been within Eden District, the village would be considered as a '**Smaller Village and Hamlet**' as defined under Policy LS1. Within smaller villages and hamlets development is limited to infill sites or '**rounding off**' of a settlement. Policy HS2 of the Local Plan further restricts development within smaller villages and hamlets to housing with a gross internal floorspace of 150m². The Council has determined the application on this basis. However, the site is not situated within a settlement identified as a smaller village or hamlet and so there is no policy basis for this approach. The appeal site must, therefore, be considered **as an 'other rural area' within Policy LS1**. The proposal does not involve the re-use of a traditional building or affordable housing. Consequently, the proposal would be contrary to Policy LS1.
9. The proposal is located close to the village of Penruddock which is designated as a 'village' in **Policy 02 'Spatial Strategy'** of the Lake District National Park Core Strategy (CS). The village comprises around 85 dwellings and has some services including a school, pub and village hall. Development in villages is required to relate well to the form of the settlement and protect, maintain or enhance local distinctiveness.
10. Penruddock is a linear village focussed on the main road through the village with another spur along the U3144 Penruddock to Motherby road. Groups of dwellings are separated by green space and agricultural fields. The village is situated within a rural setting surrounded by open countryside with agricultural fields, hedgerows, stone walls and trees.
11. The appeal site is under 0.1ha which includes the former railway embankment with two strips of land on either side of the access to allow for visibility splays. As acknowledged at paragraph 2.2 of the introduction to the Heritage, Design and Access and Planning Statements the site has primarily been left to nature. It was clear on my site visit that the embankment had grassed over with evidence of trees and small shrubs having been removed.
12. The site is bound to the north, south and east by open countryside, and to the west by the U3144 Penruddock to Motherby highway. Most of the development

associated with the village lies on the west side of this road whilst the eastern side is characterised mainly by open agricultural land. The nearest development on the eastern side of the road to the north is Penruddock Hall which is some 100m away and is set well back from the road. To the south, All Saints Church is the nearest development on the eastern side of the road, apart from some greenhouses.

13. The appeal dwelling would be built into the railway embankment with covered parking and a garage/workshop situated behind the dwelling. The front elevation facing the road would have a projecting double height glazed feature with aluminium frames with some stone elements at the side. The front section of the proposal would have a flat roof with the remainder being covered with mesh, soil, stone and planting. External materials would include local sandstone walls, limited timber cladding a large-glazed section and aluminium windows and doors. Window openings would be restricted to the south and west facing elevations.
14. The southern edge of the driveway would be flanked by a stone wall which would be backfilled with soil and vegetation which would partially conceal the driveway and the lower sections of the proposed windows. Whilst the proposal to build the dwelling into the embankment is an interesting design concept, the appeal site is, nevertheless, detached from the existing built form of the village and the proposed dwelling would appear as an incongruous addition.
15. As the contextual elevations show, the glazed front section and upper sections of the proposed windows would be visible in views from the west and south. The glazed front elevation would also be highly visible to pedestrians and road users. The extent of glazing together with levelling of the embankment to create a garden to the front would result in an urbanising effect detracting from the distinctly rural character of the eastern side of the road. Whilst the extent of glazing could be reduced there is no assessment before me with regards to the effect of this on the light available to the proposed dwelling. Furthermore, this would not overcome my concern regarding the location of the proposal.
16. The remaining embankments are a prominent feature and an integral element of the landscape and history of the area. The removal of land to the front of the embankment and development along one side of it would undermine the historical integrity of this landscape feature. Whilst hard and soft landscaping could be secured by condition, this would do little to overcome the loss of part of this feature and the urbanising effect of the proposal. Overall, I consider that the proposal would not relate well to the settlement of Penruddock and would be at odds with the rural character and appearance of the eastern side of the road.
17. I acknowledge the proximity of the appeal site to Penruddock; however, even were I to consider the proposal against part 4 of Policy LS1 of the Local Plan, or Policy 02 of the CS, due to the detached nature of the appeal site from the village and the open nature of the east side of the road, the proposal cannot be considered as infill development or rounding of the village. Nor would the proposal reflect the built form of the settlement. The second reason for refusal relates to the size of the dwelling which, based on **the Council's calculations**, would exceed the size threshold set out in Policy HS2. However, as I do not consider that Policy HS2 applies in this case this has not been a determinative factor in my decision.

18. The appellant contends that Penruddock would be considered as a 'Key Hub'; under Policy LS1; however, the settlement clearly does not have the range of services and facilities that would be expected of a key hub.
19. Attention is drawn to an outline planning permission (18/0689) for two dwellings on the opposite of the U3144 opposite the appeal site. However, this case is situated on a small field between the railway embankment and Sawmill Cottage and, therefore, relates well to the built development on the western side of the road. Consequently, this case is not directly comparable to the appeal proposal which limits the weight which I can attach to it in my Decision.
20. For the reasons stated, the proposal would harm the character and appearance of the area and would, therefore, be contrary to Policy LS1 of the Local Plan. Furthermore, the proposal would be contrary to Dev5 of the Local Plan which seeks to ensure, amongst other things, that development shows a clear **understanding of the district's built and** natural environment, complementing and enhancing the existing area.

Appeal B

21. The southern visibility splay which would serve the development is situated within the LDNP. The two purposes of the National Parks, as revised in the Environment Act 1995 (the Act), are to conserve and enhance the natural beauty, wildlife and cultural heritage of the National Parks and to promote opportunities for the understanding and enjoyment of the special qualities of the Parks by the public.
22. The Penruddock to Motherby Road is a narrow lane edged by grass verges, stone walls and hedgerows in places. To the eastern side of the road are open fields defined by stone walls, hedgerows and intermittent trees. These features contribute to the distinctive, rural character of the LDNP.
23. The works to create the southern visibility splay would involve reducing the roadside wall in height, reducing the ground level within the field and the roadside hedge would be moved back around 2m. The works would disrupt the characteristic pattern of the roadside verge and detract from the rural character of the road. Furthermore, the glazing of the southern elevation of the proposal would be visible from within the LDNP. Overall, the proposal would detract from the landscape character of the LDNP. Consequently, the proposal would conflict with the first purpose of the LDNP.
24. Moreover, by virtue of the disruption to the characteristic pattern of the roadside verge, the proposal would harm the distinctive cultural landscape of the UNESCO World Heritage Site. Paragraph 202 of the National Planning Policy Framework (the Framework) requires less than substantial harm to the significance of a designated heritage asset to be weighed against the public benefits of a proposal. Whilst the harm would be less than substantial, the limited public benefits of the proposal in terms of the very small contribution to housing land supply would not outweigh the harm which I have identified.
25. For the reasons stated, the proposal would conflict with Policies CS01, CS02, CS10, CS11 and CS25 of the CS (2010) which collectively, amongst other things, seek to ensure that development relates well to the form of settlements, reinforce local character and distinctiveness, protect the landscape and conserve and enhance the special qualities of the LDNP.

26. Furthermore, the proposal also conflicts with paragraph 176 of the Framework which requires great weight to be given to conserving and enhancing landscape, scenic beauty and cultural heritage in National Parks.

Other matters

27. Paragraph 12 of the Framework states that the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. Where a planning application conflicts with an up-to-date development plan, permission should not usually be granted. I have concluded that the proposal would conflict with the development plan. Furthermore, there is no evidence before me to suggest that the Council cannot demonstrate a five-year supply of deliverable housing sites. Consequently, paragraph 11d of the Framework is not engaged. Moreover, there are no material considerations which indicate a decision other than in accordance with the development plan.

Conclusion

28. For the reasons stated, Appeal A and Appeal B are dismissed.

Caroline Mulloy

Inspector