

Eden District Council

Planning Committee

18 February 2016

Appeal Decision Letters

Report of the Head of Planning Services

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

Application Number(s)	Applicant	Appeal Decision
15/0001	<p>Mr I Davidson Land West of Station Road, Penruddock, Cumbria, CA11 0RR</p> <p>The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015.</p> <p>The development proposed is the change of use of an agricultural building to a dwellinghouse with associated operational development.</p>	<p>The appeal is allowed and approval is granted</p>
14/0919	<p>Mr P Montgomerie Land to rear of Lilacs, Lazonby, Penrith, Cumbria, CA10 1AQ</p> <p>The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.</p> <p>The development proposed is 5 houses.</p>	<p>The appeal is allowed and outline planning permission is granted</p>

Gwyn Clark
Head of Planning Services

Appeal Decision

Site visit made on 9 December 2015

by Brendan Lyons BArch MA MRTPI IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 3 February 2016

Appeal Ref: APP/H0928/W/15/3130644

Land West of Station Road, Penruddock, Cumbria CA11 0RR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mr I Davidson against the decision of Eden District Council.
 - The application Ref 15/0001, dated 2 January 2015, was refused by notice dated 25 February 2015.
 - The development proposed is the change of use of an agricultural building to a dwellinghouse with associated operational development.
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Decision

1. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 for the change of use of an agricultural building to dwellinghouse with associated operational development at Land West of Station Road, Penruddock, Cumbria CA11 0RR in accordance with the terms of the application Ref 15/0001, dated 2 January 2015, and the details submitted with it, subject to the following conditions:
 - 1) The development hereby approved shall be completed within three years starting with the date of this decision.
 - 2) The development hereby approved shall be carried out in accordance with the following approved plans:
 - Location plan;
 - Plans, Sections and Elevations as Proposed, Ref HHL-14.109-02 rev B.

Procedural matter

2. The prior approval application was submitted under Schedule 2, Part 3, Class MB of the Town and Country Planning (General Permitted Development) Order 1995 (as amended). On 15 April 2015 an updated and consolidated General Permitted Development Order came into force. The relevant legislation allows for anything done under the previous provisions to be treated as if carried out under the new provisions. There has been little substantive change to the provisions under Class MB relating to the change of use of agricultural buildings to dwellings, or the associated procedural requirements, but these now make up Class Q of the new Order. The appeal therefore falls to be considered under the now current provisions, and this change is reflected in the heading above.
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3. Government advice on permitted development rights set out in the Planning Practice Guidance ('PPG') has been updated since the Council's original decision¹, and the Council has used its appeal statement to review the matter in the light of the up-to-date guidance, which I have also taken into account in my decision on the appeal.

Main Issue

4. The main issue is whether the location or siting of the building would render the proposed conversion impractical or undesirable, with an adverse effect on the landscape character of the area.

Reasons

5. The appeal building stands among open fields close to a classified road, and is reached by an informal track accessed through a field gate. The small rural villages of Motherby and Penruddock are nearby. On the opposite side of the road is an isolated short cul-de-sac, lined by suburban-type houses. The appeal building comprises a long low single-storey shed originally used to house chickens and more recently to shelter sheep. The building is of rendered concrete block construction with an asbestos-cement roof supported by light-weight trusses. Other than some severe cracking at one gable end, the walls appeared to be in reasonably sound condition at the time of the appeal site visit. Part of the roof was affected by the failure of a roof truss.
6. Class Q of Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the GPDO") permits development consisting of a change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwellinghouses) ("Class Q(a) development"). Additionally Class Q permits building operations reasonably necessary to convert the building to a Class C3 use ("Class Q(b) development"). Paragraph Q.1 sets out the circumstances under which development is not permitted and paragraph Q.2 sets out conditions applying variously to Class Q(a) and Class Q(b) development.
7. In this case, the proposal relates both to a change of use under Class Q(a) and to proposed building operations under Class Q(b). The details of the proposed development show that the walls would be thickened to insulated cavity construction, with many new window and door openings formed, while the roof would be replaced by an insulated slate covering, supported on timber rafters and trusses. A residential curtilage would be defined around the building.
8. The Council accepts that all of the restrictions on the right to permitted development set out in paragraph Q.1 have been met. There is no dispute that the building was used solely for agricultural storage as part of an established agricultural unit at the relevant date; that an agricultural tenancy is not involved; that the area of the existing and altered building and of the defined curtilage would fall within the set limits; that the proposed building operations would be restricted to the installation or replacement of windows, doors, roofs or exterior walls and of services; and that the site is not subject to any heritage or other special designation. I have found no reason to reach a different view on these matters.

¹ PPG ID 13-101-20150305 to 13-109-20150305, updated 05.03.2015

9. I agree that the proposed change of use would meet the requirements for permitted development set by Classes Q(a) and Q(b) of the GPDO. It is therefore necessary to consider the need for prior approval of the matters set by paragraph Q.2(1).
10. With regard to traffic and highways impacts, the Council has accepted that the existing highway access is onto a straight section of road with reasonably good visibility in both directions. No need was seen to consult the local highway authority. I support that assessment.
11. No objection is raised by the Council on grounds of noise or contamination, or of flood risk, as the site is within Flood Zone 1. I find no reason to disagree.
12. **The Council's chief concern is with** regard to the location or siting of the building being impractical or undesirable for residential use. These terms are not defined in the GPDO and the PPG advises that their ordinary meaning should apply.
13. The application specified the availability of mains electricity in the adjoining road, which is some 50m from the building, and the intention to employ a package treatment drainage system, located in the adjoining field. The appellant has now confirmed that mains water is already available on the site.
14. The existing field access and the informal track across the field are not included in the application site, and no works of improvement are specified. The track appears slightly overgrown, and some upgrading may well be considered desirable in the event of the proposed conversion being implemented. The planning implications of such work would have to be considered in that event. However, the track would be capable of use as existing to access the proposed dwelling.
15. **I consider that the Council's concerns on these points are satisfactorily** addressed and that the siting of the building would not make the proposed conversion impractical.
16. The updated PPG is clear that the permitted development right under class Q does not apply a test in relation to sustainability of location, and recognises that many agricultural buildings will be located outside village settlements. The fact that a building is in a location where planning permission would not normally be granted for a new dwelling is not sufficient reason to refuse prior approval. Tests of the National Planning Policy Framework ('NPPF'), including those relating to isolated dwellings in the countryside², should not normally be applied.
17. **Therefore, little weight can be given to the Council's concern about the 'domestication' of the building and the effect this would have on the** rural setting. The principle of domestication is inherent in the permitted development right, including the ability to insert new windows and doors. Agricultural buildings will normally be found in a rural setting, and some degree of change to setting is to be expected.
18. I accept that in this case, the appeal building stands alone to the west of the road, so that in some views it appears isolated against a backdrop of open fields and distant hills. However, its immediate context is also very much

² NPPF paragraph 55

influenced by the housing development on the opposite side of the road, as a result of which any urbanising effect would be significantly mitigated. The building is not well screened, but some softening by planting could be expected over time. The proposed layout would ensure that car parking and garden spaces were largely hidden from view from the road.

19. As the NPPF tests should not apply, equally little weight can be given to the **appellant's claim that the proposal would gain support from NPPF guidance, as** re-use of a redundant building that would enhance the immediate setting. I agree with the Council that the building has a simple functional character that is not out of place in its rural context. The introduction of a range of domestic window and door openings would not represent an enhancement in design terms. However, I recognise that without further use and investment, the condition of the building would be likely to deteriorate and could become an eyesore. I note the support for the conversion on this ground from a nearby resident.
20. I find that the Council has not shown that the siting and location of the building would make its conversion undesirable or that its proposed design or appearance would have an unacceptably harmful effect on the character of the area.

Conditions

21. The Council seeks the imposition of two conditions: one to require completion of development within three years, and one to ensure compliance with the approved details. Both of these are required in any event by the provisions of the GPDO and the appellant raises no objection.

Conclusion

22. I conclude for the reasons set out above that prior approval of the proposal is required with regard to whether the location or siting of the building would render the proposed conversion impractical or undesirable and to its proposed design and external appearance, but should be granted subject to conditions in respect of completion of development within 3 years and compliance with the approved details.

Brendan Lyons

INSPECTOR

Appeal Decision

Site visit made on 6 October 2015

by G Fort BA PGDip LLM MCD MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 3 February 2016

Appeal Ref: APP/H0928/W/15/3124765

Land to rear of Lilacs, Lazonby, Penrith, Cumbria CA10 1AQ

- 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 P Montgomerie against the decision of Eden District Council
 - The application Ref 14/0919, dated 16 October 2014, was refused by notice dated 16 April 2015
 - The development proposed is 5 houses.
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Decision

1. The appeal is allowed and outline planning permission is granted for the development of 5 houses at land to the rear of Lilacs, Lazonby, Penrith, Cumbria CA10 1AQ in accordance with the terms of the application ref 14/0919 dated 16 October 2014 and subject to the conditions set out in the schedule below.

Procedural Matters

2. The appeal is in respect of an outline planning application including details of access, layout and scale with appearance and landscaping as reserved matters.
3. The original planning application was determined following the guidance contained in the Written Ministerial Statement of 28 November 2014 and related changes to National Planning Policy Guidance with regard to planning contributions for affordable housing. This meant that the application was determined without reference to affordable housing contributions, as the site was below the thresholds outlined in the Written Ministerial Statement.
4. Following the judgement of the High Court in *West Berkshire District Council & Reading Borough Council v Department for Communities and Local Government*¹, and subsequent declaration Order, the guidance in the Written Ministerial Statement is no longer to be treated as a material consideration in the exercise of powers and duties under the Planning Acts.
5. Thus the requirement for the provision of affordable housing arising from policy CS10 in the Eden District Council Core Strategy (Adopted March 2010) (the Core Strategy), and the related Housing Supplementary Planning Document (Adopted November 2010) (the SPD) is a material consideration in the determination of this appeal.

¹ [2015] EWHC 2222 (Admin)

Main Issue

6. The main issue is the effect of the appeal scheme on the character and appearance of the area.

Reasons

7. The appeal scheme relates to a sloping site, currently in agricultural use, to the rear of the Lilacs. The Lilacs itself is adjacent to the B6413, the main thoroughfare through Lazonby. The appeal site is bounded by predominantly residential development of a mix of sizes and types on two sides. Further agricultural land adjoins its other two boundaries, with more open countryside to the north, and further residential development visible to the west. Boundaries of the site are post and wire fencing with some stone walling. The site is open with no existing buildings or trees.
8. Though the site itself is agricultural in character, the close proximity of development, particularly the rears of properties on High Seat Hill, and their modern boundary treatments, gives the wider area a much more residential feel. From the site itself looking back towards the centre of the village, a mixed development pattern is visible with a variety of residential building styles and sizes. To the north-east, the bakery's visual prominence in the landscape and the sound of its operation amplify the urban character in this location in contrast to the much more obviously open countryside to the north. Views into the site from the B6413 are restricted to glimpses through existing frontages.
9. The appeal scheme would secure the development of five detached houses in a cul-de-sac arrangement with attached garages, developed to the rear of the Lilacs and Sunray Terrace. The access to the proposed site would be along an existing public right of way, which is on an upward slope from the B6413. The proposed access would run between the Lilacs and the adjacent workshop, and along the rear of High Seat Hill. A stretch of around 70 metres of the road would be shared between vehicular traffic and pedestrians using the public right of way.
10. Although elevated from the main thoroughfare, the site is not particularly prominent in the landscape. The appeal site is fringed, in the main, by residential development. Development of dwellings of a scale and layout as proposed would not be unduly prominent or dominant in the context of the wider streetscene. The appeal scheme would relate to, and be viewed in the context of, adjacent buildings. Views from the B6413 itself would be restricted to glimpses through the existing built environment and appreciated within this context.
11. Similarly, the proposed site access would be viewed in the context of existing development, including the Lilacs, the adjacent workshop and High Seat Hill and would therefore not be inappropriate.
12. I have had regard to the suggestion that bungalows would be a preferable form of development as these would fit better with the landscape. However, I can only consider the proposal that is put before me, and as demonstrated above I consider it to be acceptable in terms of its effects on character and appearance.
13. The above considerations lead me to the conclusion that the proposed development would have no harmful effects on the character and appearance of the area, and thus would not conflict with the objectives of policy CS18 of

the Eden District Council Core Strategy (Adopted March 2010) (the Core Strategy). Amongst other things this policy seeks to ensure that new development is not harmful to the character and appearance of its surroundings.

Other Matters

14. The appellant and Council entered into an agreement on 17 December 2015 under section 106 of the Town & Country Planning Act 1990 (as amended) to secure one unit of affordable housing on the appeal site.
15. I have assessed this agreement in respect of the relevant tests in paragraph 204 of the National Planning Policy Framework (the Framework) and the Community Infrastructure Levy (CIL) Regulations 2010 regulation 123. I am satisfied that the requirement for affordable housing meets both the statutory and national policy tests: it relates to affordable housing provision so is outside the limits on pooled contributions set out in regulation 123 of the CIL Regulations. Furthermore, as it complies with the adopted policies of the development plan it is necessary to make the development acceptable in planning terms; it is directly related to the development in question through committing to onsite affordable provision; and it is fairly and reasonably related in scale and kind to the proposed development.
16. In regard to the above considerations I am satisfied that the obligation is effective and complies with the relevant statutory provisions and national and **local planning policy. I have thus given the obligation's commitment to provision of affordable housing significant weight in arriving at my decision.**
17. I have considered whether the appeal scheme could create a precedent for further backland development, however, any future development proposals around the area would be assessed on their individual merits, and a generalised concern of this nature does not justify withholding planning permission in this case. In this regard, my attention has been drawn to comments in a previous Strategic Housing Land Availability Assessment concerning **the site's suitability for development.** However, as those comments related to a much larger site of which this is only a part I have attached only limited weight to them in the determination of this appeal.
18. That the mix of housing was unsuitable for the site was put to me in representations, however, I have little substantive evidence before me to suggest that an alternative mix of house types, including extra care for example, would meet an identified local need. Whilst I note concerns regarding the cumulative amount of development within Lazonby, I am also aware that the Council is unable to demonstrate a 5 year supply of housing across the district. Whilst alternative housing sites may be considered in the emerging Lazonby Neighbourhood Plan, the document has not reached a sufficiently advanced stage to give it more than very limited weight in the determination of this appeal.
19. I have considered **the appeal scheme's potential effects** in regard to highways safety and parking. A specific concern is the proposal for pedestrians to share the carriageway with vehicular traffic along a stretch of the access road. When I visited the site, although only a snapshot in time, I encountered no other users of the path. Notwithstanding this, the path was not overgrown to a significant degree and showed some signs of recent use. Although sympathetic

to the concerns of users of the public footpath, in my experience it is not unusual for pedestrians to share the carriageway with vehicular traffic in a variety of contexts. The proposal would be for a reasonably short stretch of the footpath and not result in any significant harm to highway safety in this regard. In coming to this conclusion, **I am also mindful of the Council's access officer's advice in regard to the proposals**, who found that the access would have no significantly harmful effects on users of the footway.

20. The design of the access and potential effects in terms of highways safety on the rears of High Seat Hill adjacent to the road were also brought to my attention. There is a considerable change in levels between the proposed access and the gardens of these properties. The potential for cars to leave the carriageway in wintry conditions and enter these gardens was mentioned in representations. However, there is a buffer of around two to four metres between the carriageway and the rear gardens, and I am confident that the conditions suggested by the Local Highways Authority in relation to approval for the design of the access road will address these concerns.
21. I assessed the proposed junction with the B6413. At the time of my site visit there were temporary traffic lights immediately to the left of the proposed junction and parked cars to the right. However, the proposed visibility splays are appropriate in the context of the B6413 which has a speed limit of 30mph at this location. I have had no substantive evidence put before me which would suggest that the B6413 is substandard or dangerous adjacent to the appeal site, or that the modest amount of additional traffic movements created by the proposal would exacerbate this situation to any degree. I am mindful also of the Local Highways **Authority's comments on the application** which suggested that appropriate visibility splays could be achieved.
22. The proposed access arrangements would remove a modest amount of on street parking space. However, the appeal scheme would include adequate provision for onsite parking for its occupants. Accordingly, I do not consider that the appeal scheme would have any significantly harmful effects in relation to parking.
23. I have considered the developability of the site in relation to its ground conditions, in particular the location of bedrock near its surface, and the environmental effects of the proposal. With little substantive evidence in these regards, I am only able to give limited weight to these considerations in coming to my decision.
24. I have had regard to the capacity of local services and drainage. There is no substantive evidence of a lack of drainage capacity in this location. In terms of the drainage, United Utilities offered no objections to the proposal subject to conditions, which would suggest that the appeal scheme would have a limited effect on current drainage capacity. As no substantive evidence has been submitted regarding the capacity of other services within the locality, I have attached only limited weight to this consideration in my assessment of the appeal.
25. My attention was also drawn to **the appeal scheme's effect on the living** conditions of adjacent occupiers in relation to privacy and natural light, particularly those in High Seat Hill. In this regard, there is a good degree of separation between the appeal site and existing properties and I am confident that adequate arrangements to protect the privacy of neighbouring properties

could be addressed in detailed designs at the reserved matters stage.

Similarly, appropriate landscaping and design of the access to the scheme would help to limit any effects in regard to disturbance, light pollution and noise emanating from the appeal scheme.

26. I have also considered the effects on the living conditions of the occupants of the Lilacs arising from the construction of the access road. At the front of the Lilacs the existing stone boundary wall and the proposed buffer between this wall and the access would limit any disturbance caused through the glare of headlights or engine noise. The limited amount of structural openings on the side elevation of the Lilacs which would face the access would also mean that disturbance is not likely to be significantly harmful in this regard.
27. I have considered the view that the proposed access would make the Lilacs into **an 'island' between two accesses. However, I have found no harm to the area's** character or appearance or to the living conditions of the Lilacs occupants arising in this regard.
28. The potential effects of the scheme in relation to the retaining walls to the rear of High Seat Hill could be controlled by an appropriate condition regarding the design and construction of the access road. There is no substantive evidence before me that would indicate that the provision of the access road would harm the structural integrity of the Lilacs.
29. **A lack of substantive evidence regarding the appeal proposal's effects in** regards to surrounding property prices has led me to attach only very limited weight to this consideration.

Conditions

30. I have had regard to the list of suggested conditions suggested by the Council in the context of the guidance in paragraph 206 of the Framework.
31. I have attached conditions relating to the submission of reserved matters, and implementation in the interests of the proper planning of the area. A condition relating to the approved plans is attached in the interests of certainty and for the avoidance of doubt.
32. I have attached a condition in respect of the detailed design of the roads within the development in the interests of highways safety. A condition is also attached in regard to the access road to ensure that its construction does not have any adverse structural effects on adjacent retaining walls in the interests of highways safety and the living conditions of adjacent occupiers.
33. Conditions are attached to ensure that the development makes adequate provision for drainage.

Conclusion

34. Respondents suggested that due weight should be given to the democratic process and local opinions in reaching a decision on this appeal. Whilst I have sympathy with this view, I have found that the scheme would not have any harmful effects that would outweigh the benefits of providing both open market and affordable housing. The appeal proposal thus complies with the relevant Core Strategy policy (CS18) and as no material considerations indicate

otherwise, I conclude for the reasons given above, and having regard to all other matters raised, that the appeal should succeed.

G Fort

INSPECTOR

Schedule of Conditions

- 1) Details of the appearance of the development and landscaping (**hereinafter called "the reserved matters"**) **shall be submitted** to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for the approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: 1404-0; and 1404-2.
- 5) No development shall take place until details of the standards to which the carriageway, footways and footpaths of the roads serving the development are to be constructed shall have been submitted to and approved in writing by the local planning authority. The details shall be in accordance with the Cumbria Design Guide. No house shall be occupied until the roads have been constructed in accordance with the approved details.
- 6) None of the dwellings hereby permitted shall be occupied until works for the disposal of sewage shall have been provided onsite to serve the development hereby permitted, in accordance with details that have first been submitted to and approved in writing by the local planning authority.
- 7) No building hereby permitted shall be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, **having regard to Defra's non-statutory technical standards** for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall: provide details about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters; include a timetable for its implementation; and, provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 8) Notwithstanding condition (4) no development shall take place until details and a construction method statement for the proposed access

road have been submitted to and approved in writing by the local planning authority. The details and construction method statement shall be informed by a structural survey and demonstrate that that there will be no adverse effects on the structural integrity of the adjacent walls along the boundary to the north east of the Lilacs and south west of High Seat Hill. Development shall be carried out in accordance with the approved details and construction method statement.