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## Appeal Decision

Site visit made on 18 July 2016

by **H Cassini BSc(Hons) DipTP MRTPI**

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

Decision date: 16 September 2016

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### Appeal Ref: **APP/E0915/W/16/3148536** **Raiselands Road, Morton, Carlisle CA2 6HJ**

- 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 David Robinson of The Riverside Group Limited against the decision of Carlisle City Council.
  - The application Ref 15/0607, dated 26 June 2015, was refused by notice dated 23 October 2015.
  - The development is described as the 'Erection Of 12No. Affordable Dwellings; Construction Of New Access Road Via Levens Drive'.
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### Decision

1. The appeal is allowed and planning permission is granted for the Erection Of 12No. Affordable Dwellings; Construction Of New Access Road Via Levens at Raiselands Road, Morton, Carlisle CA2 6HJ in accordance with the terms of the application, Ref 15/0607, dated 26 June 2015, subject to the conditions set out in the Annexe.

### Procedural Matter

2. I have used the description of the proposal from the appellant's appeal form and Council's decision notice. This description adequately and simply describes the proposed development instead of the longer and more detailed description given on the application form.
3. A planning obligation dated 25 August 2016 has been submitted securing all dwellings as affordable housing. I shall return to this matter below.

### Main Issue

4. The main issue is the effect of the development on the provision of open space within the area.

### Reasons

5. The appeal site is located within a primary residential area as identified within Policy H2 of the Carlisle Local Plan 2008 (the LP) and as defined on the proposals map. The site is currently a substantial rectangular plot, laid mainly to grass. There is evidence of a small number of concrete bases which I understand to be the remnants of play equipment which was removed from the site by Carlisle City Council.
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6. I acknowledge the concerns raised by both local residents and the Council with regard to the potential loss of the site and the view that there is insufficient open space within the locality of a similar quality. Within their statement of case the appellant has put forward alternative areas of open space which they deem to be suitable alternatives to the subject of the appeal. I have assessed each of these.
7. With regard to the use of the space located at Newlathes Infant and Junior School and the former Morton Park Primary School, I accept that neither of these offer viable alternatives. The open space at Newlathes Infant and Junior School is not available for public use and the Council has confirmed that the former Morton Park Primary School site is allocated as a housing site.
8. I further note the concerns with regards to the use of the space between Winscale Way and Dalston Road, which is located approximately 1-2 minutes' walk from the appeal site. Nevertheless, this land is designated as Public Open Space in the Emerging Carlisle District Local Plan 2015-2030 (the ELP) and allocated as a Primary Leisure Area in the LP. Whilst I acknowledge the necessity to cross a road to access this space, the site is substantial and a wide belt of trees would screen Dalston Road from the majority of the site. Whilst I identified a number of trees on the site, their location would not impede recreational activities. Furthermore, at the time of my visit, significant drainage issues were not evident. With regard to safety, whilst being overlooked by dwellings is no guarantee of safety, a number of dwellings on Winscale Way overlook the site.
9. The space on Westrigg Road and Seatoller Close is located approximately 10 minutes' walk from the appeal site. This space is also designated as a Primary Leisure Area within the LP and is relatively well overlooked by existing dwellings. Chance's Park, located off Langrigg Road is approximately 5-7 minutes' walk to the northwest of the appeal site and is also designated as Public Open Space in the ELP and allocated as a Primary Leisure Area in the LP.
10. I accept that Bitts Park, which is approximately 2 kilometres to the north of the appeal site, is not necessarily accessible to all by foot. However, this does nevertheless offer a wide range of facilities including a cricket club, tennis club and formal play equipment.
11. In these circumstances, I therefore consider that there is adequate alternative amenity open space within the immediate locality, which is of a similar quality, to meet the requirements of Policy LC2 of the LP, with regards to the standards of open space provision. I accept that for those residents who regularly use the space, the loss may result in a degree of inconvenience. However, given the availability of a number of similar sites within a short walking distance, I do not consider that the loss would be significantly detrimental to either those occupants whose dwellings surround the site or the wider community as a whole.
12. I accept that my site visit only provides a snap shot with regards to the use of the appeal site. However, it was evident that the local community make use of the space for informal recreation activities such dog walking and unstructured play. Nonetheless, the site is not formally designated as an amenity open space either within the LP or the ELP.

13. In reaching their decision, the Council made reference to conflict with criterion 1 of Policy H2 of the LP which seeks, amongst other things, to protect amenity space for the benefit of local communities. In this instance, whilst I accept that the area is not formally designated as open space, it does informally function as such. Accordingly, I have therefore given significant weight to Policy H2 of the LP. However, despite a technical breach of criterion 1 of Policy H2, the site specific circumstances of this appeal and the availability of a number of similar sites within the locality mean that the scheme would still comply with the overall protection of amenity aims of Policy H2.
14. Accordingly, I find that the loss of the site would not have a significant effect on the provision of open space in the area. Furthermore, the proposal for 12 affordable homes would help to meet the need to provide 295 additional affordable homes per annum as identified within the Carlisle City Council Strategic Housing Market Assessment Update 2014. I also note the support for the scheme by the Council's Housing Services team. The identified harm would be outweighed by the need to provide affordable housing within the locality.
15. It was evident from my visit that the site is surrounded by residential properties, all of which back onto the site. The majority of the dwellings have average sized rear gardens, which appeared to be well tended and in regular use. Rear boundary treatments varied, although many of the dwellings are afforded a good level of screening from the appeal site. It is however noted that views from the first storey windows directly overlook the site. However, as separation distances would range from approximately 20-30 metres from the existing dwellings, I do not consider that any significant material harm to the living conditions of the occupants of any of the surrounding dwellings, with particular regard to loss of privacy, would result. I further note that the proposed dwellings would generally exceed the minimum separation distances detailed within the Carlisle City Council Achieving Well Designed Housing Supplementary Planning Document 2011 (the SPD).
16. The erection of 12 new dwellings on the site would inevitably result in a loss of a significant part of the vacant land. As a consequence of the development of the site, to a degree, the sense of spaciousness currently afforded to those dwellings which back on to the site would be altered. However, I do not consider that the reduction in the level of spaciousness would be so significant to be materially harmful to the living conditions of the occupiers of the existing dwellings. Furthermore as the proposed site is largely contained by the existing dwellings, I do not find that it makes a significant contribution to the character of the wider estate. As such, I also do not consider that the reduction in spaciousness would harm the character of the area. Accordingly, I find no conflict with the protection of amenity aims of Policy H2 of the LP.

### **Other Matters**

17. In the event of the appeal being allowed, the Council suggested that the planning permission should be subject to a condition that sought to secure the proposed affordable housing on the site. The parties were advised that this would not be appropriate based on the circumstances of the case. The parties were therefore given the opportunity to submit a planning obligation to deal with this matter. While I have not had to rely on the concept of affordability of the houses to find the appeal scheme acceptable, it was clearly important to

the Council to be able to secure affordable dwellings on the site which is also the purpose behind the application as proposed by the appellant and would result in a significant benefit.

18. As such, I find that the planning obligation is necessary to make the development acceptable in planning terms and is both directly and reasonably related to the proposal. Accordingly, I find that the planning obligation meets the three tests stated in paragraph 204 of the National Planning Policy Framework (the Framework).
19. Concerns have been raised regarding several matters not dealt with in the substantive issue above. These include the impact on highway safety and car parking, the drainage of the site and flooding, noise and light pollution, property values and the impact on ecology.
20. In terms of impact on highway safety, I find that sufficient car parking is proposed and the width of the footway would provide adequate space for both pedestrians and vehicles to travel safely. Furthermore, the County Highway department raises no objection to the proposal, subject to conditions.
21. In relation to surface water run-off and the potential for flooding in the area, I note that the appeal site is not within an identified flood risk area. Furthermore, I have no substantive evidence before me to support the assertion that either the proposed site or the area around the site floods. Also United Utilities, the Environment Agency and the Lead Local Flood Authority, raise no objection to the proposal, subject to conditions. As a result, I am satisfied that any relevant effects of the proposal regarding these matters could be appropriately dealt with by conditions dealing with site drainage.
22. With regard to property values, the Planning Practice Guidance (PPG) states that planning is concerned with land use in the public interest. Accordingly, the protection of purely private interests, such as the impact of a development on the value of a neighbouring property, is not considered to be a material planning consideration.
23. A number of neighbouring residents raised concerns about the effects of the proposed development on noise and light pollution, impact on the availability of school places and ecology. I have taken these matters into account but they have not led me to a different overall conclusion.
24. Whilst I do not underestimate the importance of the above matters to those involved, I give only limited weight to them in my determination of this appeal.

### **Conditions**

25. I have considered the conditions suggested by the Council against the tests in the Framework and advice within the PPG. I find the majority to be reasonable and necessary in the circumstances of this case, although I have combined and amended the wording of others in the interests of clarity and precision.
26. In addition to the standard commencement condition, a condition is necessary requiring that the development is carried out in accordance with the approved plans in order to provide certainty. Conditions relating to boundary enclosures, details of materials and landscaping are considered necessary in the interests of the protection of both residential amenity and the character and appearance of the area.

27. A condition relating to surface water and foul water drainage is appropriate in order to the means of managing drainage disposal. A condition relating to managing land contamination is necessary to minimise risk to neighbouring occupiers, workers and ecological systems.
28. Conditions relating to footpaths, cycle ways and the estate road are required in the interest of highway safety and the provision of suitable access. Conditions relating to a Construction Method Statement and construction hours are necessary in terms of residential amenity. A condition relating to trees is appropriate and necessary to ensure their preservation and protection. A condition with regards to the securing of Diversion Orders in relation to the public rights of way is both reasonable and necessary, in order to ensure the footpaths are diverted prior to the commencement of works on site.
29. Conditions 3, 4, 5, 6, 9, 10, 12 and 13, are specified as pre-commencement conditions which are justified as they cover fundamental aspects of the scheme which require consideration and control before the commencement of development.
30. The Council have also suggested a condition requiring the removal of Permitted Development Rights with regard to the prohibition of additional buildings, structures or alterations permitted by Part 1 of Schedule 2 of the 2015 Order. The PPG states that conditions restricting permitted development rights 'will rarely pass the test of necessity and should only be used in exceptional circumstances'. A clear justification for the removal of permitted development rights has not been demonstrated and therefore I consider that this condition is not necessary.

### **Conclusion**

31. I therefore conclude that, subject to appropriate conditions, the appeal should be allowed.

*Helen Cassini*

INSPECTOR

## **Annexe**

### **Schedule of Conditions**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans listed in the Drawing Schedule to this decision.
- 3) No development shall commence until details of the materials to be used in the construction of the external surfaces of the extension hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall commence until details of both hard and soft landscape works, including a phased programme of works, have been submitted to and approved in writing by the local planning authority. The works shall be carried out as approved prior to the occupation of the dwellings and thereafter retained. Any trees or plants which, within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 5) No development shall commence until details of any walls, gates, fences and other means of permanent enclosure and/or boundary treatment to be erected have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 6) No development shall commence until details of a scheme for surface water and foul water drainage (including how the scheme shall be maintained and managed after completion) have been submitted to and approved in writing by the local planning authority. The scheme shall be in accordance with the Drainage Strategy, ref K31465/0/FRA/PF Issue 1, January 2015. The approved drainage works shall be completed before the first occupation of the permitted dwellings and retained thereafter in. Development shall be carried out in accordance with the approved details.
- 7) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. An investigation (following the guidance in BS10175) and risk assessment must be undertaken and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the relevant phase of development is resumed or continued. Development shall be carried out in accordance with the approved details.
- 8) Prior to the development first being occupied, the vehicular access (including pedestrian visibility splays) and site turning requirements for each dwelling must be constructed in accordance with drawing numbers 1597-SI-10 Rev E (Proposed Site Layout), 1597-SI-12.01 (External

Works Layout Sheet 1) and 1597-SI-12.02 (External Works Layout Sheet 2) and brought into use. Each vehicular access and site turning provision shall be retained and capable of use at all times thereafter and shall not be removed or altered without the prior written consent of the local planning authority.

- 9) No development shall take place until details of the standards to which the carriageway and footpaths including longitudinal/cross section drawings are to be designed and constructed to have been submitted to and approved in writing by the local planning authority. Submitted details shall accord with the standards laid down in the current Cumbrian Design Guide or any future guidance that replaces it. No dwelling shall be occupied until the carriageway, footpaths and cycle ways have been constructed in accordance with the approved details.
- 10) No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 11) Construction work, including any construction deliveries to the site, shall only be undertaken between the hours of 07.30 and 18.00 Monday to Friday and 07.30 and 13.00 on a Saturday and shall not take place at any time on a Sunday or Bank Holiday.
- 12) No development shall commence until the Tree Protection measures outlined in the Arboricultural Impact Assessment (Revision A, dated 13 January 2015) are implemented. The measures shall be retained throughout the construction period.
- 13) No development shall commence until The Town and Country Planning Act 1990 – Section 247 Diversion Order for public rights of way 109300 and 109301 have been obtained.

## Drawing Schedule

<u>Drawing Number</u>	<u>Drawing Title</u>
1597-SI-01	Site Location Plan
1597-SI-03	Existing Site Layout
1597-SI-03	Existing Site Elevations
1597-SI-10 Rev E	Proposed Site Layout
1597-SI-11 Rev A	Proposed Landscape Layout
1597-GA-AD.106.1	Block A and D- Ground Floor Furniture Layout
1597-GA-AD.106.2	Block A and D- First Floor Furniture Layout
1597-GA-AD.107.1	Block A and D – Front Elevation
1597-GA-AD.107.2	Block A and D – Rear Elevation
1597-GA-AD.107.3	Block A and D – Gable Elevation
1597-GA-AD.107.4	Block A and D – Gable 2 Elevation
1597-GA-BC.106.1	Block B and C – Ground Floor Furniture Layout
1597-GA-BC.106.2	Block B and C – First Floor Furniture Layout
1597-GA-BC.107.1	Block B and C – Front Elevation
1597-GA-BC.107.2	Block B and C – Rear Elevation
1597-GA-BC.107.3	Block B and C – Gable Elevation
1597-GA-BC.107.4	Block B and C – Gable 2 Elevation
1597-GA-E.106.1	Block E – Indicative Ground Floor Furniture Layout
1597-GA-E.106.2	Block E – Indicative First Floor Furniture Layout
1597-GA-E.107.1	Block E – Front Elevation
1597-GA-E.107.2	Block E – Rear Elevation
1597-GA-E.107.3	Block E – Gable Elevation
1597-GA-E.107.4	Block E – Gable 2 Elevation
1597-GA-FG.106.1	Blocks F and G – Ground Floor Furniture Layout
1597-GA-FG.106.2	Blocks F and G – First Floor Furniture Layout
1597-GA-FG.107.1	Blocks F and G – Front Elevation
1597-GA-FG.107.2	Blocks F and G – Rear Elevation



1597-GA-FG.107.3	Blocks F and G – Gable Elevation
1597-GA-FG.107.4	Blocks F and G – Gable 2 Elevation
1597-SI-12.01	External Works Layout Sheet 1
1597-SI-12.02	External Works Layout Sheet 2
PS-1098-TS	Topographical Survey

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