



Appeal Decision

Site visit made on 23 January 2018

by Andrew McGlone BSc MCD MRTPI

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

Decision date: 13 February 2018

Appeal Ref: APP/A2335/W/17/3186598

Land at Hala Carr Farm, Bowerham Lane, Lancaster LA1 4LR

- 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 Anthony Ruchwaldy against the decision of Lancaster City Council.
 - The application Ref 16/01515/OUT, dated 15 March 2017, was refused by notice dated 10 April 2017.
 - The development proposed is the erection of 30 dwellings and associated access (all other matters reserved).
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 30 dwellings and associated access (all other matters reserved) at land at Hala Carr Farm, Bowerham Lane, Lancaster LA1 4LR in accordance with the terms of the application, Ref 16/01515/OUT, dated 15 March 2017, subject to the conditions in the attached schedule.

Procedural Matters

2. No post code is detailed on the application and appeal forms. I have, however, used the post code for Hala Carr Farm which is next to the appeal site in the address at the top of this decision. Furthermore, while there are three names on the application form, the appeal has been made by the individual named on the appeal form.
3. The application was submitted in outline with all matters reserved for future consideration, except for access. Indicative plans have been submitted. These have formed part of my consideration of this appeal.
4. The appellant has submitted a signed and executed agreement under Section 106 of The Town and Country Planning Act 1990 (as amended). It provides for the provision of affordable housing, an open space contribution and the provision, management and maintenance of open space. I have taken account of this document in my consideration of this case.

Main Issues

5. The main issues are: (i) the effect of the proposal on the character and appearance of the area, including its effect on a Key Urban Landscape (KUL); (ii) the effect of the proposed access arrangements on highway safety in Bowerham Lane; (iii) whether the proposal would provide acceptable living conditions for neighbouring and future occupants, with regards to privacy,

light, air and noise; and (iv) whether the proposal is justified on the basis of the contribution to the provision of affordable housing, and the provision, management and maintenance of open space.

Reasons

Character and appearance, including the Key Urban Landscape

6. The appeal site is part of a tract of land that extends alongside the eastern flank of the M6 motorway. The land is a KUL in the Lancaster District Local Plan Strike-Through Edition (Local Plan). The KUL extends to the north and south of the appeal site. Paragraph 5.6.9 of the Local Plan explains that these landscapes are particularly important to the setting of the urban area, and that the Council attaches great importance to maintaining the open nature of these areas and will refuse proposals which would erode this character. Bowerham Lane forms the western boundary of the site. From here, the land gradually rises to the eastern boundary. Trees and hedgerows line the north, south and east boundaries. Hala Carr Farm is to the south. To the north is a detached bungalow. Residential properties are to the north and west.
7. Saved Local Plan policy E31 explains that *development will only be permitted which preserves the open nature of the area and the character and appearance of its surroundings*. The appeal site forms part of the side-slopes of a drumlin landform. It is characterised by open fields of improved grazing land that slope up to the M6 motorway. The two fields are enclosed by hedgerows and a roadside wall. A mixed hedgerow extends up the centre of the two fields, but the appeal site has an open nature which allows views across it. As such, the proposed development would not preserve the open nature of the KUL, which provides a green buffer between existing development and the M6 motorway, even if it is not unique or rare.
8. The Review of Key Urban Landscape Allocations in Lancaster District, Review Stage 1: Assessment of Key Urban Landscapes, November 2012 recognises that the site has limited scenic quality and that there is potential pressure for development and scope for increased woodland cover. The Review of Key Urban Landscape Allocations in Lancaster District, Review Stage 2: Evaluation of Key Urban Landscapes, November 2012 evaluates the KUL's in Lancaster. Both documents form part of the evidence base for the emerging Development Management DPD and the Strategic Policies and Allocations DPD. While, the emerging plans are progressing, they are at an early stage in their preparation, and I understand public consultation is to start at the end of January 2018.
9. If the emerging policy is adopted in its current form, land currently designated as KUL would be sub-divided into two categories. Although the appeal site may become a Urban Setting Landscape, it is also not the role of this appeal, even in light of the Council's Strategic Housing Land Availability Assessment to perform a quasi-examination of the emerging plans and whether the appeal site or any other should or should not be allocated for housing. Given the public consultation has yet to finish; there are unresolved objections; and the plans are yet to be examined, I attach them little weight.
10. The appeal site has a semi-rural character due to its current use for grazing livestock, and an appearance which would be considerably changed by the introduction of 30 no. dwellings, even though the residential dwellings to the west do form an integral part of the character and appearance of the site's

surroundings. A Landscape Visual Impact Assessment (LVIA) has been submitted by the appellant. The Council and residents consider the proposed dwellings would be overbearing and have a significant visual impact.

11. The LVIA recognises that the development would result in a major adverse effect. The effect would be significant, albeit one that is localised due to the topography of the area, as the development would be a very noticeable change in the local area and result in the extension of the urban environment towards the M6 motorway. However, the appeal site is not widely visible from the surrounding area, including from the open countryside to the east, other than from local views from neighbouring dwellings to the north, south and west and to passers-by using the road. I note outline planning permission¹ has been granted for residential development on KUL land to the south.
12. The appellant submits that the proposal would result in a density of 28 dwellings per hectare. The National Planning Policy Framework (the Framework) encourages the effective use of land and require schemes to respond to local distinctiveness. The residential dwellings to the north and west of the appeal site form a tight-knit layout comprising of detached and semi-detached properties. While the proposed dwellings are shown near to the lane, the density of development indicatively shown on the site would not be uncharacteristic, even accounting for the site's ground levels.
13. Saved Local Plan policy E27 encourages woodland planting. The proposal would introduce a large area of native woodland planting on the upper slopes of the site on its eastern side. This would be some 40 to 50 metres deep and 130 metres long. The woodland would fulfil several roles, subject to details being secured through planning conditions, which include: screening of the proposed houses from the east; a leafy backdrop to the proposed houses from the south and west; an attractive transition between the urban area and the open countryside; a barrier to tackle noise from traffic on the M6 motorway; and recreational benefits to residents. This aspect of the proposal would deliver against the requirements of saved Local Plan policy E27, which has at present not resulted in the formation of woodland on the site, despite the Council's aspirations and intentions. The site is also of a sufficient size to accommodate the proposed quantum of dwellings and the associated infrastructure without encroaching into the woodland area.
14. Consequently, the proposed dwellings would not, over time, appear as dominant or overbearing even if part of the existing green buffer would be lost and interventions would be required in order to develop the appeal site for the number of houses proposed. This would lead to a moderate degree of harm. Even so, planning applications must be determined in accordance with the development plan, unless material considerations indicate otherwise.
15. Hence, I conclude, on this issue, that the proposal would result in a moderate harm to the character and appearance of the area, and the open nature of the KUL. As such, the appeal scheme would, in this regard, conflict with saved Local Plan policy E31 and policies DM28, DM35 and DM41 of A Local Plan for Lancaster District 2011-2031 Development Management DPD (DPD). These policies jointly, among other things, seek to only permit development affecting KUL's that preserves the open nature of the area and the character and appearance of its surroundings, having regard to local distinctiveness. I also

¹ Council Application Ref: 15/00714/OUT

conclude that the proposal would accord with saved Local Plan policy E27 due to the proposed woodland belt.

Highway safety

16. Although the Council did not refuse planning permission on the basis of the proposed access arrangements, residents have raised concerns about the effect of the development on highway safety and from congestion due to the proximity of a number of schools.
17. I have had regard to the consultation responses from Lancashire County Council and Highways England. There is no doubt that there are peaks and troughs in the use of the highway, especially around school pick up and drop off times. The proposal would result in a modest increase in the number of cars using the lane. However, having regard to the existing highway conditions along the lane, which do not include a footway on the eastern side of the carriageway, I agree, however, that there would be an increased risk to pedestrian safety as a result of the proposal. These risks could be mitigated by a range of off-site highway improvement works which would make the application acceptable in highway terms, subject to a planning condition.
18. The access roads within the appeal site would respond to the site's ground levels, but concessions would be made which would lessen the gradient. Footways would also be provided. Overall, the development would be accessible for all. I note concerns about the size of the garages, but this is a matter which can be resolved at reserved matters stage.
19. I therefore conclude, on this issue that the proposal would accord with DPD DM20, DM21, DM22 and DM23; which collectively seek to ensure there is convenient access for walking and cycling so that no adverse impacts are created; create places accessible for the whole community; make appropriate parking and cycle parking provision; be designed to ensure safe streets and reduce the negative impacts of vehicles; and improve the safety of the pedestrian environment through use of appropriate design and lighting.

Living conditions

20. Any residential development on the site would need to respond to its specific circumstances, to ensure future occupants living conditions would not be harmed. However, matters relating to the layout, scale and appearance of the proposed dwellings are not before me. The principal matter before me in this appeal is whether the appeal site is capable of being developed for the number of houses proposed rather than assessing the precise details of the relationship and the resulting effect upon neighbouring and future residents living conditions. Based on the indicative plans that are before me, the appeal site would allow the proposed number of residential dwellings to be suitably spaced and laid out in a manner that would not result in the privacy of neighbouring and future residents being harmed, notwithstanding the ground levels.
21. Due to the necessity to accord with a mains sewer easement, the proposed dwellings would need to be set back from the road. Although vehicles using the internal access road would be elevated, they would be a sufficient distance away from residents in dwellings on the western side of the lane, so that there would not be a significant detrimental effect.

22. The local environment is influenced by noise from vehicles using the M6 motorway. This is far more perceptible towards the rear of the site next to its eastern boundary compared to the area next to the lane. I note the criticisms of the appellant's Road Noise Assessment and the flaws highlighted. That said, a planning condition would allow details to be agreed with the Council for acoustic fencing, suitable glazing and vent specifications. The proposed woodland belt would also mitigate to some extent, noise from the motorway.
23. It is suggested that future occupants would be harmed by air pollution due to vehicle emissions from the M6 motorway. Although, traffic may not always be free flowing on the motorway, there is no substantive evidence before me which shows that a significant detrimental effect would be felt.
24. I therefore conclude, on this issue, that the proposal would accord with DPD policy DM35; which expects development to ensure no significant detrimental impact to amenity in relation to privacy.

Provision of affordable housing and open space

25. The proposed development includes the provision of 12 no. affordable homes on the appeal site, with 50% being social rented housing and 50% intermediate affordable housing. Each would offer a range of bedroom numbers, and thus, there would be different sized dwellings which would go towards addressing the acute need for affordable homes. The number and mix of the units would be secured as jointly required by DPD policy DM41, policy SC4 of the Lancaster District Core Strategy (Core Strategy) and the Meeting Housing needs Supplementary Planning Document (SPD). There is no reason for me to consider that they would not be constructed to the most relevant design and quality standards.
26. The agreement provides for a financial contribution towards off-site open space. The precise sum of which would be determined at reserved matters stage in accordance with the Council's Open Space Provision within New Residential Developments Planning Advisory Note (Open Space Note). The agreement also requires further details of the long-term management and maintenance arrangements for the open space, which includes the landscaping, play equipment, general open space, non-adopted highways and non-adopted surface water arrangements.
27. I am satisfied that, in respect of the submitted s106 agreement that, it would meet the tests of the Framework and Regulation 122 of the Community Infrastructure (CIL) Regulations, namely: (i) it is necessary to make the development acceptable in planning terms; (ii) is directly related to the development and; (iii) fairly and reasonable related in scale and kind to the development. The proposal would accord with DPD Policy DM41, Core Strategy policy SC4, the SPD, the Open Space Note, CIL Regulations 122 and 123 and Framework paragraph 204 as it would secure the provision of affordable homes on the appeal site to address an identified need; the provision of open space; and future management and maintenance arrangements for the open space land within the appeal site.

Other matters

28. The Council accept that they are currently unable to demonstrate a five-year supply of deliverable housing sites as required by Framework paragraph 47. The Council's Housing Land Monitoring Report, 2017 points to a 2.2 year supply

of deliverable housing sites. While calculating whether there is or there isn't a five year housing land supply is not an exact science, this is a serious and significant shortfall in housing supply, and there is nothing before me to indicate that this position has changed. As a result, the relevant policies for the supply of housing are out-of-date by virtue of Framework paragraph 49, and the fourth bullet point of Framework paragraph 14 therefore applies.

29. In these circumstances, Framework paragraph 14 explains that for decision-taking this means where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless: any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or specific policies in this Framework indicate development should be restricted.
30. The proposal would result in 30 no. new houses, which are likely to come forward within the next five years. The Framework is a material consideration and it seeks to boost significantly the supply of housing. There is a clear need for affordable housing in the local area, and the development would deliver 12 no. affordable homes. Even if the site to the south would deliver less affordable homes, I attach significant benefit to the proposal's provision of housing and affordable housing given the shortfall and the need in Lancaster.
31. The appeal site is in an accessible location close to services and facilities, including public transport and schools. This attracts a limited positive social benefit. There would also be moderate economic benefits from the proposal in the form of jobs within the construction industry and the associated supply chain, and increased spending from future occupants in local shops and businesses.
32. Despite ecological concerns raised by residents, planning conditions would secure off-site highway improvement works and public open space, including a woodland area and a play facility. I attach a limited positive weight to highway matters and moderate positive benefit to the public open space, woodland area and the play facility. Although a mixed hedgerow would be removed, a planning condition would ensure that this is adequately mitigated for in any landscaping scheme that comes forward. This attracts a neutral weight. Despite the objection from the Council's Tree officer, the layout of the development is not a matter that is before me. Hence, their concern could be overcome in a reserved matters application. This attracts a neutral weight.
33. The proposal would be in a low-risk flood zone. I note the representations by residents, including details of recent flood events, but subject to planning conditions, based on the appellant's Flood Risk Assessment and Outline Drainage Strategy, I am satisfied that the appeal scheme could be developed without leading to a risk of flooding, especially given the proposed woodland. This attracts a neutral weight along with the need to ensure the dwellings do not encroach within an easement of a mains sewer.
34. I have had regard to the various examples cited by the appellant, but I have, in any event, considered this appeal on its own planning merits, especially given the characteristics of each site are not precisely the same or they are not part of a protected landscape.

Conditions

35. The Council have suggested a series of planning conditions as part of the

appeal process. I have amended, and where appropriate, amalgamated them, in the interests of avoiding duplication. A condition would be necessary specifying the approved plans as this provides certainty. Conditions would be necessary, in the interests of the character and appearance of the area, to secure details of the finished floor, gardens and site levels including all open space and any necessary bunding. For the same reason, a condition would be necessary regarding trees.

36. A condition to secure mitigation measures to address noise would be necessary in the interests of future residents living conditions. To help move to a low carbon economy a condition is necessary for electric vehicle charging points. In the interests of ecology, conditions are necessary for a mitigation and enhancement scheme and to ensure habitat is not harmed during particular times of the year.
37. In the interests of highway safety, conditions are necessary for off-site improvement works, so that the means of access is suitably constructed, and so that the visibility splay is maintained free from obstruction. Given the ground levels of the site, residents' concerns and the consultation comments received, conditions are necessary regarding drainage connections and future management and maintenance arrangements. In the interests of the environment and the safety of future occupants, a contaminated land condition is necessary. The Planning Practice Guidance² explains that conditions restricting the future use of permitted development rights or changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances. I have not imposed a condition that would result in blanket removals of freedoms for small-scale domestic alterations.

Conclusion

38. I have concluded in my main issues that the proposal would be contrary to saved Local Plan policy E31 and DPD policies DM28, DM35 and DM41 as moderate harm would be caused to the character and appearance of the area, including the KUL. Balanced against this are my conclusions on highway matters, living conditions and the agreement. Added to this is the scheme's contribution to the supply of housing and the provision of affordable houses, to which I have given significant weight, and the moderate and limited positive weights that I have found in relation to the other considerations presented.
39. The balancing exercise in Framework paragraph 14 is a 'tilted balance' because planning permission must be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. In this case, I find that the adverse impacts identified would not significantly and demonstrably outweigh the benefits. Thus, planning permission should be granted and the proposal would represent sustainable development.
40. For the reasons given above I conclude that the appeal should be allowed.

Andrew McGlone

INSPECTOR

² Ref ID: 21a-017-20140306

SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale, (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. Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission. 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.
- 2) The details indicated on the submitted plans shall be regarded as illustrative only (other than the approved red edge LA864177 and the access as indicated on Drawing Number 3243:04 Rev M) and are not approved as part of the application.
- 3) No development shall commence until full detailed plans, including constructional details of the access road connection to the existing highway at Bowerham Lane have been submitted to, and approved in writing by, the Local Planning Authority. The site's means of access shall be constructed in accordance with the Lancashire County Council document "Specification for Construction of Estate Roads (2002)" to at least base course level before any other part of the development takes place within the site and the access arrangements shall be completed in accordance with the approved details as part of a phased programme to be agreed in writing by the Local Planning Authority.
- 4) A scheme for the construction of a range of off-site highway improvement works shall be submitted to and approved in writing by the Local Planning Authority. These shall include:
 - Setting back of the boundary treatment along the sites frontage with Bowerham Lane sufficient to allow for the construction of a 2.0m wide length of pedestrian footway and tying into existing footway adjacent to the "Fox & Goose" public house;
 - Provision of street lighting along the sites frontage and in the vicinity of Bowerham Lane / Kempton Road junction;
 - Construction of a pedestrian refuge facility on Bowerham Lane in the vicinity of its junction with Kempton Road;
 - Improved carriageway thermoplastic lining at the sites junction with Bowerham Lane.

The scheme shall be implemented and carried out in accordance with the approved details prior to the first occupation of any part of the development hereby approved.

- 5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 there shall not at any time in connection with the development hereby permitted be erected or planted or allowed to remain upon the land hereinafter defined any building, wall, fence, hedge, tree, shrub or other device over 1m above road level. The visibility splays to be the subject of this condition shall be that land in front of a line drawn from a point 2.4m measured along the centre line of the proposed road from the continuation of the nearer edge of the carriageway of Bowerham Lane to points measured 43m to the north and south of the proposed access, in accordance with a scheme to be agreed by the Local Planning Authority in

conjunction with the Highway Authority which should provide for the setting back and reconstruction of the existing stone wall.

- 6) No development shall commence until a detailed surface water drainage scheme based on SuDS principles, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include, as a minimum:
- a) Information about the design storm period and intensity (1 in 30 & 1 in 100 year +30% allowance for climate change), discharge rates and volumes (both pre and post development), temporary storage facilities, means of access for maintenance and easements where applicable, the methods employed to delay and control surface water discharged from the site (and if connecting to the existing sewer restricted to 6.1 l/s), and the measures taken to prevent flooding and pollution of the receiving groundwater and/or surface waters, including watercourses, and details of flood levels in AOD;
 - b) Any works required off-site to ensure adequate discharge of surface water without causing flooding or pollution (which should include refurbishment of existing culverts and headwalls or removal of unused culverts where relevant);
 - c) Flood water exceedance routes, both on and off site;
 - d) A timetable for implementation, including phasing where applicable;
 - e) Site investigation and test results to confirm infiltrations rates; and
 - f) Details of water quality controls, where applicable

The scheme shall be implemented and subsequently maintained, in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the Local Planning Authority.

- 7) No occupation of any residential dwelling shall occur until details of an appropriate management and maintenance plan for the sustainable drainage system for the lifetime of the development which, as a minimum, shall include:
- a) the arrangements for adoption by an appropriate public body or statutory undertaker, management and maintenance by a Residents' Management Company
 - b) arrangements concerning appropriate funding mechanisms for its on-going maintenance of all elements of the sustainable drainage system (including mechanical components) and will include elements such as:
 - i. on-going inspections relating to performance and asset condition assessments;
 - ii. operation costs for regular maintenance, remedial works and irregular maintenance caused by less sustainable limited life assets or any other arrangements to secure the operation of the surface water drainage scheme throughout its lifetime; and
 - iii. means of access for maintenance and easements where applicable has been submitted to, and agreed in writing by, the Local Planning Authority. The plan shall be implemented in accordance with the approved details prior to first occupation of any of the approved dwellings, or completion of the development, whichever is the sooner. Thereafter the sustainable drainage system shall be managed and maintained in accordance with the approved details.
- 8) In the event that any unforeseen soil contamination is found during the development hereby permitted, it shall be quarantined and reported immediately to the Local Planning Authority. An investigation and risk

assessment shall be undertaken by a competent person in accordance with a scheme agreed with the Local Planning Authority prior to commencement and, where additional remediation is necessary, a supplementary Remediation Scheme shall be agreed in writing with the Local Planning Authority. The agreed scheme shall be completed before work recommences unless otherwise agreed in writing with the Local Planning Authority. Following completion of the supplementary Remediation Scheme as approved, a verification/validation report and certificate shall be agreed with the Local Planning Authority.

- 9) Prior to occupation of any residential dwelling a scheme for ecological mitigation and enhancement shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include a timetable for implementation and arrangements for subsequent management and maintenance of the mitigation/enhancement Measures. The scheme shall be implemented as approved and permanently retained thereafter.
- 10) Prior to development above ground, details of noise mitigation in line with the recommendations as contained within the Martec Environmental Noise report dated 12th September 2016 (Report Ref: 20160912) shall be submitted to, and approved in writing by the Local Planning Authority to reflect the proposed layout and shall include details of any necessary acoustic fencing, including the height, type and location, together with glazing and vent specifications.
- 11) No development, site preparation/clearance or demolition shall commence until the following details have been submitted to, and approved in writing by, the Local Planning Authority:
 - Tree Works Schedule (for works proposed to any on or off site trees and hedges);
 - Arboricultural Implication Assessment and Arboriculture Method Statement; and
 - Tree Protection Scheme.

The development shall then be carried out in accordance with the approved details, with the approved protection measures being fully implemented prior to any equipment, machinery or materials are brought onto site, and retained in situ for the duration of the works, and only removed once the development is complete and all machinery and works materials are removed from the site.

- 12) No removal of, or works to any hedgerows, trees or shrubs shall take place during the main bird breeding season 1st March and 31st July inclusive, unless a competent ecologist has undertaken a careful, detailed check of vegetation for active birds' nests immediately before the vegetation is cleared and provided written confirmation that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest on site. Any such written confirmation should be submitted to the Local Planning Authority.
- 13) No development (other than the creation of the sites access) shall commence until schemes for:
 - the disposal of foul water for the entire site, including any timing/phasing and maintenance arrangements;
 - the finished floor, gardens and site levels including all open space and any necessary bunding;
 - the provision of electric vehicle charging points on all residential properties. The scheme shall provide for the location, type and timetable for the implementation for the vehicle charging points; and

- open space (to include landscaping, bunding towards the east of the site, woodland, and play provision and amenity land). The scheme shall detail the location and type of open space including a timetable for implementation and arrangements for its ongoing management and maintenance.

have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved schemes.

END OF SCHEDULE

Richborough Estates