



Appeal Decision

Inquiry held on 16-18 January 2018

Site visit made on 17 January 2018

by Michael Boniface MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 February 2018

Appeal Ref: APP/M0933/W/17/3176185

Land to the south of Underbarrow Road, Kendal, Cumbria

- 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 Oakmere Homes (North West) Limited against the decision of South Lakeland District Council.
 - The application Ref SL/2016/0582, dated 10 June 2016, was refused by notice dated 24 November 2016.
 - The development proposed is 80 dwellings, associated access, landscaping/bunding, footpath/cycleway and foul pumping station with associated compound.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. During the course of the planning application the Council accepted amendments to the proposed scheme, resulting in a reduction to the number of dwellings from 81 to 80. The Council determined the application on this basis and I have done the same in determining the appeal.
3. Further amendments were submitted during the course of the appeal, including minor changes to the proposed landscaping and house types. The council did not object to the appeal proceeding on this basis and I am satisfied that no party would be prejudiced by me taking the amended drawings into account. Consequently, I have done so in reaching my decision.
4. In advance of the Inquiry, the parties continued to discuss the reasons for refusal with a view to narrowing the areas of dispute. As a consequence of these discussions, the submission of additional information and the withdrawal of drainage proposals by the appellant, the Council opted not to pursue reasons for refusal 3 (accessibility), 4 (highway safety) and 5 (drainage), subject to suitable conditions, and no evidence was presented in these regards.
5. The parties further agreed that reason for refusal 6 (play equipment provision) was not a reason to withhold consent and that this issue could be overcome by way of a planning obligation, albeit that there remains dispute as to whether this is necessary. I will consider this matter later in my decision.
6. After the Council had made its decision the Lake District National Park, which directly adjoins the site boundary, was formally designated a World Heritage Site. An updated Heritage Impact Assessment (October 2017) was

subsequently submitted, followed by a Statement of Common Ground – Heritage (January 2018) between the parties. The latter agrees that the development would not harm the Lake District as a World Heritage Site, and no harm is identified with regards to any other heritage assets in the vicinity. Having regard to the evidence before me, I have no reason to take a different view on this matter.

Main Issues

7. In light of the above, the main issue is the effect on the character and appearance of the area, including the Lake District National Park.

Reasons

Landscape effects

8. The site includes a series of agricultural fields on the edge of Kendal and forms part of a housing allocation¹ within the Local Plan Land Allocations Development Plan Document (December 2013) (LADPD). The eastern part of the allocation has been granted planning permission by the Council and the appeal concerns the remainder of the allocation site. As a consequence, the proposed development is currently removed from the existing residential built edge of the town, pending the adjacent site's development. Kendal currently sits within a bowl in the landscape with rising ground surrounding it, along with significant woodland planting screening development on its peripheries.
9. The site, and the wider allocation, comprises steeply undulating ground which rises from the existing residential edge of the town to the west. At present, it has a distinctly rural character despite its edge of town location, owing to the undeveloped nature of the fields, the dry stone wall boundaries and country road passing by. This is emphasised when travelling west along Underbarrow Road by the apparent cessation of built development on the south side of the road and the opening up of views across countryside, including towards the hills of the National Park. It can be expected, however, that the landscape character will alter when the site is developed in line with the development plan.
10. Policy LA2.8 of the LADPD deals specifically with the allocation site with a stated purpose to ensure that the site delivers high quality sustainable development and that landscape, transport, drainage and biodiversity impacts are effectively mitigated. The policy is also clear that a development brief will be prepared to guide the development. A series of policy requirements are set out, in addition to those of the Core Strategy (September 2010) (CS), including a strong landscaped buffer along the boundary with the National Park and landscaping along the northern boundary, amongst other things.
11. The Development Brief (April 2015) for the site has been adopted by the Council as a Supplementary Planning Document. I heard that it had been produced in light of the site's sensitivities and in accordance with Policy LA2.8 of the LADPD. Crucially in this case, it sets out in further detail what is expected by the Council with regards to the requirements for a strong landscaped buffer along the boundary with the National Park and landscaping along the northern boundary, matters which were key to the site's allocation.

¹ Policy LA1.3: Housing Allocations

12. These expectations are set out, indicatively, in Figures 1.2 and 1.3 of the document with greater detail being provided in the text. In relation to the landscaped buffer along the western boundary, the document explains that built development should avoid the higher ground within the site, identified as land above the 130-132 metre contours so as to reduce landscape and visual impacts, including from the sensitive National Park. Land beyond the point roughly defined by these contours is that anticipated to be landscaped, providing a density of planting considered sufficient to effectively screen views whilst also keeping houses off of the higher ground within the site where it is likely to be more prominent.
13. The proposed development would extend far beyond these land contours, breaching the 135 metre contour and significantly reducing the extent of the proposed landscaped buffer, even below the 65 metre width referenced by the Council, which itself is somewhat short of the indicative 130-132 metre contour. The appellant suggests that the western buffer would range between 12m – 28 metres. The disparity between the two positions appears to arise from the appellant's intention to optimise the use of the site and a view that the proposed buffer would be sufficient to mitigate landscape and visual impacts.
14. Of primary concern, in landscape terms, is the effect on the National Park and there is little between the parties. The appellant's Landscape and Visual Impact Appraisal (May 2016) (LVIA) expects a moderate adverse landscape impact on completion, reducing to minor adverse once the proposed landscaped buffer matures. Mr Etchells' position for the Council, is that the initial effect would be moderate adverse, reducing to slight adverse after 10 to 15 years.
15. However, Mr Etchells goes on to give a view on the likely effect of a putative scheme that was in accordance with the detailed expectations of the Development Brief, concluding that the effects after maturation of the landscaped buffer would be negligible. The appellant does not undertake a similar exercise and no evidence was submitted to challenge the Council's position in this respect. Whilst I note that the Development Brief does not provide a definitive scheme against which to carry out an assessment, having identified harmful effects in respect of the appeal proposal, it is useful to give an alternative scenario consideration in my view. Furthermore, it is entirely logical that dwellings standing at a significantly lower ground level and screened by a much more extensive landscaped buffer would have lesser landscape effects, potentially reducing to negligible.
16. At present the landscape within which the site sits is rural in its character and appearance, complementing the rural ruggedness of the National Park. It is somewhat inevitable that the immediate character will change as a result of the site's allocation for development but the extent of that change on the National Park remains important. The proposed development would bring the urban fringe of Kendal much closer to the National Park, visibly extending the town closer and onto higher ground. The appellant accepts that the landscape effect of the proposed development would be moderate adverse initially, representing a noticeable effect on the landscape and changing the character of the view. This is despite the proposed landscaped buffer, which would take many years to form an effective screen and even then, the appellant accepts that minor adverse effects would persist.

17. Minor effects might be insignificant in many contexts, but National Parks have the highest status of protection and great weight should be given to conserving their landscape and scenic beauty. In this context there is an imperative to minimise the adverse effects of development, even where a site is allocated for housing. It seems to me that this is the intention of the Council's Development Brief, which specifically seeks to facilitate development whilst avoiding unnecessary harm. The ultimate difference, after maturation of the landscaped buffer, may only range between minor adverse and negligible but if it is possible to develop the site without minor adverse effects then strong justification would be needed for failing to do so. I am not persuaded by the evidence before me in this case.
18. The LVIA also expects moderate adverse landscape effects on the site and immediate surroundings. Some adverse effects are to be expected in this respect, given that the site will change from undeveloped fields to a residential development. However, there is little evidence of the advice in the Development Brief being followed or any meaningful attempt to meet the policy requirement for landscaping along the northern boundary with Underbarrow Road, interpreted as expressed in the Development Brief.
19. The Development Brief sets out a clear and important objective to ensure that any development achieves an appropriate transition between town and country and this sits alongside the requirement for good design contained in both national policy and the development plan. The proposal would retain very limited space between the proposed buildings and Underbarrow Road and so little space would be available for landscaping. A lack of landscaping in this part of the site would undoubtedly increase the effects of the development on the local landscape as the proposed two storey dwellings would be seen more prominently in their context. Such impacts are emphasised by the fact that the scheme would involve removal of a number of trees from the site frontage (which are subject of Tree Preservation Orders), albeit that the Council accepts this to be necessary.

Visual effects

20. A number of visual effects would also arise from the proposed development. The LVIA expects minor adverse visual effects for receptors viewing the site from the National Park, specifically from a viewpoint above Scout Scar (Viewpoint 1). The Council anticipates a moderate adverse visual effect but notes that this would reduce over time. I am inclined to agree with the Council's position having regard to the Visually Verified Montages (VVM's) (Figures 1-3) contained at Appendix D of Mr Laws' evidence.
21. Kendal currently nestles within a bowl in the landscape and is heavily screened by existing woodland planting to the west of the town. The proposed development would be clearly visible in the foreground to the town, in front of the established woodland planting surrounding the settlement. It would form a visual anomaly, involving residential development on higher ground apparently protruding into the landscape. It would be a noticeable feature that would change the character of the view.
22. There is dispute between the parties regarding the likely effectiveness of the landscaped buffer as proposed. Even if I were to accept the appellant's assumptions regarding growth rates the width of the planting would be far less than anticipated within the Development Brief. I have had regard to the

appellant's examples of other woodland buffers, including that surrounding the nearby Kendal Fell Quarry and Scrogg's Wood. However, when I visited, there were clear views through the woodland to the sky beyond in the case of the quarry, and to houses in the case of Scrogg's Wood, albeit filtered by the trees so that the detailed appearance of the buildings was not discernible.

23. In some parts of the proposed development the width of the proposed woodland buffer would be somewhat less than these examples, as narrow as 12 metres. I am not convinced that this would be sufficient to effectively screen the proposed development, notwithstanding any intention to include large amounts of understorey planting. The development would remain visible at year 10 in the VVM's and I consider it would be likely to continue to be visible, albeit to a lesser extent by year 15 and beyond such that the effect would remain no less than moderate/minor adverse, reflecting a persisting change in the landscape. Even on the appellant's case, there would be a number of years before the landscaped buffer would provide effective screening and this would harm the landscape character of the National Park for some time.
24. I have had regard to the Examining Inspector's view in his report² into the LADPD that development on this site will be visible from the National Park but that views of this sort are not unusual. I have no reason to disagree with this position but the site was included as an allocation with the expectation that a high quality scheme would be secured, informed by a development brief. The fact that other houses are visible from the National Park does not alter the need to minimise effects as far as possible and prevent avoidable harm to the character of the area. It is not the Council's case that the development should be screened entirely; it is accepted that even a development in line with the Development Brief would be likely to have negligible adverse effects.
25. The development would become prominent for visual receptors using Underbarrow Road, running along the northern boundary of the site. The LVIA assesses the effect in this area to be moderate/minor adverse but I consider the Council's higher anticipated effect of moderate adverse to be more likely. Underbarrow Road is an approach into Kendal from the National Park and vice versa. Existing rural views of the site and longer distance views across the town towards the hills beyond would be interrupted by houses in close proximity to the road. The rural approach to the town would be significantly diminished and the development would become a noticeable intrusion, creating an abrupt urban edge to the town. This effect is aptly illustrated by the VVMs accompanying the appeal³. It seems to me that there is significant scope for reducing these effects by reference to guidance in the Development Brief.

Design

26. As set out above, one of the key objectives of the Development Brief is to ensure an appropriate transition between town and country. This is an objective that might be appropriate to many edge of town developments but it is particularly important given the sensitive landscape context of the appeal site.

² Para. 161

³ Figures 6 and 7, Appendix D of Mr Laws' Proof

27. The appellant has made some attempt to incorporate objectives of the Development Brief, such as the green corridor proposed through the centre of the site, an area of public open space adjoining the adjacent development and the incorporation of two dwellings on the west periphery of the site with a 'farm house and barn style' appearance. However, these features of the scheme are not sufficient to achieve the important vision for the site in my view⁴.
28. I have already outlined the harm that would be caused by proposals for a landscaped buffer of the width proposed on the western boundary of the site. I need not rehearse that again here, other than to emphasise the likelihood of views through the buffer on approaching the site along Underbarrow Road. The proposed dwellings would be large two storey properties in this part of the site and people passing would be likely to experience the development as a new urban edge to the town, albeit filtered by trees, as opposed to a gradual transition between town and country.
29. The primary issue in design terms relates to the appearance of the development along the Underbarrow Road frontage. Dense terraced housing is proposed in the north east corner of the site, close to the road and with very little opportunity for meaningful landscaping in front. The Council does not object to the overall site density proposed and there is no reason why density should not vary in different parts of the site. However, in this location, the terraced dwellings would contrast with the scheme-granted planning permission on the adjacent site which is of much lower density at its western extent and is set back from the road behind significant tree planting, much of which are existing trees to be retained. An area of open space would separate the two sites but the transition achieved on the adjacent development would be abruptly interrupted by the proposed dwellings in this part of the site.
30. A staggered pair of semi-detached dwellings and the side elevation of a large detached property would be located similarly close to the road frontage and whilst some intervening landscaping is proposed this would be relatively modest given the space available. It would not be sufficient to effectively soften the appearance of the proposed buildings and again, this is abundantly clear from the submitted VVMs⁵. The proposed 'farm house and barn' house types would appear as no more than token gestures towards creating a rural appearance and their mock agricultural appearance would be less than convincing. These buildings would also be very close to the road frontage on the highest part of the site.
31. Overall, the proposed development would likely appear as a generic suburban housing estate bolted on to the edge of the town. The proximity of buildings to the road frontage and lack of meaningful landscaping on the northern boundary would fail to create distinct character areas, a soft rural edge or an effective transition between town and country.
32. The Development Brief is not planning policy in itself and need not be slavishly adhered to where alternatives have merit. In that respect, I concur with the Inspector's view in a local appeal at Brigsteer Road⁶. However, it is a material consideration that provides greater detail and explanation surrounding the policy requirements of the LADPD and these are fundamental to achieving an

⁴ As expressed at paragraph 1.2 of the Development Brief

⁵ Figures 6 and 7, Appendix D of Mr Laws' Proof

⁶ APP/M0933/W/15/3133218

appropriate high quality scheme on this site. The guidance contained in the Development Brief would be likely to assist applicants in submitting successful planning applications. I am not persuaded by the evidence before me, including the Townscape and Design Assessment (May 2016), that the design of the scheme has evolved by an appropriate understanding of the Development Brief objectives and little explanation has been provided for setting aside some of its important design principles. Ultimately, in light of my considerations above, the proposed development cannot be considered to represent good design in the context of the appeal site.

33. Full accordance with the Development Brief might result in fewer houses being accommodated on the site though that would not necessarily be the case if the design and density of the properties was altered. I also note that the scheme, along with that granted planning permission adjacent to the site, would deliver less than the 153 dwellings anticipated by the site allocation in the LADPD. However, Ms Clark explained that this figure was derived from a broad brush exercise that did not take account of specific site features or requirements for a landscaped buffer in this case. Delivering less housing than anticipated is not necessarily an issue in light of the Council's uncontested position that it can currently demonstrate a 12.53 years housing land supply. In any case, this matter does not negate the local and national requirement for good design.
34. No evidence has been submitted to suggest that a scheme involving fewer houses would not be financially viable.

Conclusion on character and appearance

35. The proposed development would not constitute good design and would harm the character and appearance of the area for the reasons I have set out. As such, it would be in conflict with Policies CS1.1, CS2, CS8.1, CS8.2 and CS8.10 of the CS, which require high quality, localised and appropriate design which retains distinctive character, promotes a sense of place and the protection of countryside and landscape character, particularly having regard to the National Park; Policy LA2.8 of the LADPD, which seeks to ensure that the site delivers high quality sustainable development and that landscape impacts are effectively mitigated; Policies S2 and S3 of the South Lakeland Local Plan (2006) which have similar objectives in respect of design and landscape; the Development Brief which sets out detailed guidance to support a high quality and environmentally sensitive design for the site; and the design and natural environment objectives of the National Planning Policy Framework (the Framework).

Other Matters

36. The Council accepted in advance of the Inquiry that sufficient public open space would be provided within the development. However, both parties agree that a suitable equipped children's play area in accordance with Policies CS8.3a and CS8.3b might be better provided in conjunction with the adjacent development. It is agreed between the parties that an area of 238sqm of space is necessary as a result of the appeal proposal. The balance of the required space for the provision of an equipped area of play is secured by condition and S106 agreement on the adjacent site, forming part of the housing allocation.
37. The appellant argues that there is no need for any provision within the appeal site or any financial obligation as the adjacent developer could be required to

provide the entire equipped play area. However, the adjacent developer made clear in a written submission prior to the inquiry that it has no intention of doing so, reinforcing the Council's position that it should only be required to provide space commensurate with the scale of its development. Details are required of the equipped play area by condition on the adjacent site, but there seems little likelihood that the Council will pursue the entire play area from the adjacent developer or that it would be forthcoming. Nor would this be a reasonable approach in my view as developers should only be expected to mitigate the impact of their developments as a matter of law.

38. The parties have agreed that a suitable financial contribution towards the provision of an off-site play area could be secured by Unilateral Undertaking, the amount dependent on whether a local area of play is also provided on site. Both scenarios are covered in the submitted Unilateral Undertaking and I consider that one of the obligations would be necessary in the event that planning permission were granted. I am satisfied that either obligation would accord with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (CIL Regulations).
39. A S106 agreement has also been provided to secure a range of planning obligations dealing with matters of affordable housing, a rural wheels contribution, travel plan monitoring, SuDS management, open space management and a temporary access. The parties agree that, with the exception of the rural wheels contribution, the obligations are all necessary and otherwise accord with the CIL Regulations. In light of my conclusion on the main issue, I need not deal with this in any detail as the S106 will not take effect.
40. However, in so far as the rural wheels contribution seeks funding for a community transport scheme designed to improve accessibility to services and facilities for people in rural areas, I do not consider that the contribution is necessary in this case. The site is located on the edge of Kendal, the main urban area in the district, and a settlement which is specifically excluded from the scheme according to the literature contained at Appendix 10 of the Statement of Common Ground. The Council suggests that the appeal site falls outside of the settlement as shown in this document but that does not alter the relative accessibility of the site which is close to local bus stops and only a short journey from an extensive range of services and facilities in the town by other means. This obligation would conflict with Regulation 122 of the CIL Regulations as I do not consider it necessary to make the development acceptable in planning terms.

Planning Balance

41. The development would conflict with numerous development plan policies which seek to ensure a good standard of design and require appropriate regard to landscape character. The harms that I have identified in these respects are fundamental issues that go to the heart of the development plan, read as a whole.
42. The appellant has identified a range of benefits that would arise from the development and contribute to the economic, social and environmental objectives of the Framework. These include the delivery of part of an allocated housing site, comprising 28 affordable homes and 52 market homes that would add to the supply and mix of housing in the area. In light of the Government's

objective to boost significantly the supply of housing and the local need for affordable housing, I give this matter significant weight. I also attach moderate weight to the provision of local jobs in construction and increased spending in the local economy that would result, as well as financial contributions towards local infrastructure projects through the Community Infrastructure Levy.

43. However, these benefits are not sufficient to outweigh the harm that I have identified or indicate a decision other than in accordance with the development plan.

Conclusion

44. In light of the above, and having considered all other matters, the appeal is dismissed.

Michael Boniface

INSPECTOR

Richborough Estates

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Timothy Leader, Counsel

He called:

Fiona Clark BSc (Hons) Principal Planning Officer
DipTP MRTPI

Jon Etchells MA BPhil Director, Jon Etchells Consulting Ltd
CMLI

FOR THE APPELLANT:

Anthony Crean QC

He called:

Stephen Laws BA (Hons) Chartered Landscape Architect
DipLA CMLI

Deborah Smith MRTPI Director, Smith & Love Planning Consultants Ltd

DOCUMENTS SUBMITTED AT THE INQUIRY:

- 1 Appeal decision – APP/K3415/A/14/2224354
- 2 Appeal decision – APP/G1630/W/16/3164033
- 3 Appeal decision – APP/G1630/W/16/3154464
- 4 Topography drawing c-1267-11 Rev A
- 5 Development Brief SPD – Stainbank Green, Kendal
- 6 Arial photograph showing 'local woodland buffers'
- 7 Photograph of Scrogg's Wood
- 8 Opening submissions for the appellant
- 9 Opening statement by the Local Planning Authority
- 10 Draft S106 agreement
- 11 Draft Unilateral Undertaking
- 12 List of conditions agreed between the parties
- 13 Suggested itinerary for site visit
- 14 Court of Appeal Judgement: Millgate Development Ltd v Wokingham Borough Council [2011] EWCA Civ 1062
- 15 Draft Unilateral Undertaking
- 16 Draft S106 agreement
- 17 CIL Compliance Statement
- 18 Closing submissions on behalf of the LPA
- 19 Appellant's closing submissions

DOCUMENTS SUBMITTED AFTER THE INQUIRY:

Completed S106 agreement and Unilateral Undertaking