



Appeal Decision

Site visit made on 7 January 2015

by Philip Major BA (Hons) DipTP MRTPI

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

Decision date: 29 January 2015

Appeal Ref: APP/H0928/A/14/2218915

Land at Levens House Farm, Nateby Road, Kirkby Stephen, Cumbria CA17 4AA.

- 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 A Davis against the decision of Eden District Council.
 - The application Ref: 12/0984, dated 20 November 2012, was refused by notice dated 10 April 2014.
 - The development proposed is an outline application for residential development (comprising 24 residential units) with approval sought for access and scale (amended submission dated 02/04/2013).
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Preliminary Matter

1. The description of development above is taken from the appeal form, which itself is taken from the Council's decision notice. The application submitted in 2012 was for 26 units. I have considered this appeal, as required, on the basis of the amended scheme, and the description above adequately describes it.
2. In this case the application does not seek approval for appearance, landscaping or layout. The scale of dwellings is indicated on the submitted drawings in terms of the accommodation proposed and whether dwellings would be one or more storeys in height. The overall scale, at 24 dwellings, is also known. The proposed access is known. In relation to appearance, landscaping and layout I must treat the drawings submitted as being illustrative of how a scheme could be developed.

Decision

3. The appeal is dismissed.

Main Issues

4. The main issues in the appeal are:
 - (a) The effect of the proposed development on the character and appearance of Kirkby Stephen and its rural setting;
 - (b) Whether it has been demonstrated that adequate vehicular and other access can be provided;
 - (c) The impact of the proposal on the setting of heritage assets
 - (d) Whether the proposal, if approved, would prejudice the emerging policy framework for the locality.

Reasons

Background

5. It is not disputed that the Council cannot demonstrate a 5 year supply of deliverable housing sites. As such paragraph 49 of the National Planning Policy Framework (NPPF) is relevant. Local Plan policies for the supply of housing cannot be considered to be up to date, and paragraph 14 of the NPPF bites. This indicates that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits of granting permission when assessed against the NPPF as a whole. That, in a nutshell, encapsulates the balance which must be struck in this case.
6. Part of the balance relates to matters which were not contested by the Council in its reason for refusing planning permission. However, local residents and others have raised the issues of vehicular access, impact on heritage assets, and emerging policy. These are legitimate concerns and I therefore address them in turn as main issues before addressing the planning balance.

Character and Appearance

7. The appeal site is not located within any formally designated landscape. The Cumbria Landscape Character Guidance places it in the Broad Valleys character sub type (LCT 8b) though it is also close to the boundary with Limestone Farmland and Upland Fringes LCTs. There are many characteristics of LCT 8b which can be found on or around the appeal site. These include fields of pasture bounded by stone walls and hedgerows, pockets of woodland, relatively flat valley bottom and valley sides of varying steepness. The site itself also exhibits some of the characteristics of limestone farmland, such as its rolling nature, improved or semi-improved pasture. The landscape is undoubtedly of attraction, and in my view is sensitive to change. This view accords with the guidance expressed in Cumbria Landscape Character Guidance, which recognises that development requires careful siting so as to minimise impact on local character.
8. However, the site is also on the edge of Kirkby Stephen, so the urban area itself exerts a strong influence. Immediately adjacent to the site are traditional buildings to the west, along Mellbecks (also spelt Melbecks in some documents) with more recent development to the north along Riverside. The main part of the historic core of the town lies beyond Mellbecks to the west. Although the town has spread over the years it still retains a noticeable characteristic of appearing to work with the local topography. The urban area does not stand out as being in competition with the landscape, but seems to assimilate itself into the contours so that it appears complementary to it.
9. In my judgement the development proposed on the appeal site would depart from that pattern. The site is part of an undulating bluff which is defined by the curve of the River Eden and stands above the river. It is bounded to the north by a steep bank which falls towards Riverside. Any development on the appeal site would be visible from the north, and indeed from the footpaths to the east. Public rights of way (both statutory and permissive) afford clear views into at least part of the site. The users of those rights of way should be regarded as being sensitive to change since they will almost inevitably be using the rights of way to enjoy the landscape.

10. The location of housing on the appeal site would be seen as an intrusive and discordant element in the landscape surrounding the town. It would clash with the existing character in which built development appears recessive and in harmony with the landscape. The introduction of new development, however, well designed, would result in harsh skyline views and a noticeable erosion of the pastoral setting to the east of the town. In my judgement the harm to the character of the landscape surrounding the town would be significant.
11. The visual impact caused would be exacerbated by the fact that the public footpath to the north is part of the Coast to Coast walk, an important recreational route. Furthermore, the local footpath network appears to be exceptionally well used, as I observed on a cold and wet January day. There would therefore be a significant adverse impact on the visual enjoyment and appreciation of the landscape by users of the local footpaths.
12. Taking this issue in the round, I am satisfied that the proposal would introduce built development into the landscape with significant and demonstrable harm resulting to both the character and visual appearance of the locality. As such there would be conflict with the objectives of the Eden District Council Core Strategy policies CS16 and CS18. Taken together these policies seek to ensure that the relationship between development and the natural environment is understood and that development minimises impact. The policies are consistent with the objectives of the National Planning Policy Framework (NPPF) in recognising the intrinsic character and beauty of the countryside.

Vehicular and Other Access

13. This is not a matter contested by the Council. The proposal indicates that access to the site will be taken from Mellbecks, at the point where access is already taken to serve the dwellings constructed under previous permissions. That access is unmade, and is at present no more than a track between a wall and a stone building. I have no detailed drawings with this appeal of how the access to Mellbecks would be constructed – the nearest I have are drawings entitled 'overall 38 unit masterplan' and '40 unit drainage strategy'. The location of the access from Mellbecks is outside the appeal site, but within land shown to be in the control of the Appellant.
14. I share the misgivings of local residents for a number of reasons. First, Mellbecks is a narrow lane and turning into and out of the site access can be made difficult by parked vehicles. There is no definitive drawing which shows the width of Mellbecks, but it is indicated in representations that part of the hard surfaced area, though appearing to be highway, is actually private land. In any event the parking of vehicles does not make use of the site access easy.
15. Secondly, the access to Nateby Road from Mellbecks is close to the traffic lights in the town centre. Mellbecks itself is constrained at the junction, and it is entirely possible that there would be conflict between vehicles wishing to turn into or out of that junction. The introduction of a further 24 dwellings, with associated vehicular movements, would be likely to add significantly to traffic using that junction.
16. Although I am informed that discussions took place with the County Council, the Transport Statement submitted does not seem to give much consideration to either of these junctions, but concentrates on the capacity of the traffic light junction in the town centre. Whilst that shows adequate capacity with the new

development, there seems to be no detailed study or commentary on the access into and out of Mellbecks, and into and out of the site itself.

17. I am also concerned that the Transport Statement suggests that it would be possible to construct a 2 way junction into the site from Mellbecks, though the photograph within the statement is incomplete in its measurements and does not justify the conclusion reached in itself. Having seen that access in detail, including the uneven ground adjacent to the existing building, I have my doubts about whether an access suitable for an extra 24 dwellings would be reasonably achievable. In this respect I note that the earlier schemes have developed from a position of requiring access to be approved for a limited number of dwellings, then extending into a private drive for another limited number of dwellings. Although drawings with those permissions have been sent to me I do not know whether there has been any formal approval of the access from Mellbecks. Certainly no access to adoptable standards has been constructed, and the degree of engineering at the junction adjacent to existing structures leaves doubt in my mind about whether a suitable access is feasible.
18. Mellbecks has no footways and other parts of the local highway network are similar. Mellbecks leads to local dwellings and cricket and bowling clubs. I have limited information on traffic or pedestrian flows, but it seems to me that the introduction of vehicles associated with 24 more dwellings onto Mellbecks would be likely to increase risk to highway and pedestrian safety. I am not satisfied that it has been demonstrated that this risk has been shown to be at an acceptable level.
19. In essence, therefore, I am not convinced that it would be possible to introduce an access which would be suitable for the proposed development as an addition to those dwellings already permitted. I recognise that the County Council has not objected to this proposal, but having read the comments made it appears that that Council feels it could not object as the previous permissions have effectively created a position of incremental growth of access to dwellings, and there would not be scope to object to this proposal alone. That is not a position with which I agree. The County Council has indicated that if all of the schemes proposed to be served from Mellbecks had been submitted together, then it would have sought improvements to Mellbecks. I see no reason why this scheme, as the one which would trigger necessary improvements, should not be treated as such. In any case, so far as I am aware, there is no currently approved access from Mellbecks which could be utilised for access to the appeal site.
20. The NPPF indicates (paragraph 32) that development should only be prevented or refused on transport grounds if residual cumulative impacts are severe. There is no definition of severe, but the paragraph is in any event aimed at development which generates significant amounts of movement such that a Transport Statement is required. It is not clear that a Statement would be required in a case such as this, though I note that discussions took place with the County Council following commissioning of the Statement by the Appellant. The advice in the NPPF seems to me to apply to schemes which are likely to be of a greater magnitude than the one before me. As noted above I have reservations about the content of the Transport Statement.
21. In passing I note that the intention would be to 'continue' the as yet unbuilt access to dwellings which have planning permission into the appeal site. There

appears to be some discrepancy between the approved plan of the unbuilt dwellings and the plan before me in terms of the configuration of that transition point between sites. My understanding is that the dwellings permitted closest to the appeal site would be served by a private drive arrangement. It is now suggested that the access would be built to adoptable standards, but no detail is before me. This is a matter which further illustrates that access to the site is not clearly presented despite it being part of the application. In light of my concerns that an access to serve a significantly increased number of dwellings requires a greater degree of consideration than appears to have been undertaken so far, I do not consider that the imposition of conditions to deal with this matter would be reasonable in this case. I note that conditions were imposed on previous permissions, but so far that has not resulted in the provision of any adoptable access arrangement.

22. To summarise on this issue: in my judgement the scheme before me is pushing the acceptability of the use of Mellbecks for residential development access too far on the basis of the information before me. In my judgement it would be likely to result in unacceptable highway conditions leading to unacceptable harm to highway safety. This would run counter to the objective of the NPPF which seeks to provide safe and suitable access.

Setting of Heritage Assets

23. There are 3 main heritage assets which have been brought to my attention. These are Franks Bridge, a Grade II listed building, Manor House, Mellbecks, also a Grade II listed building, and the Kirkby Stephen Conservation Area. My duty under S.66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to have special regard to the desirability of preserving or enhancing a listed building or its setting or any features of special architectural or historic interest which it possesses. In relation to the Conservation Area my duty under S.72 of the same Act 1990 requires me to have special regard to the desirability of preserving or enhancing the character or appearance of a conservation area. I deal with the heritage assets in turn.
24. Franks Bridge is at the northern end of Mellbecks and provides pedestrian access from the town to the cricket ground and footpath network on the eastern bank of the River Eden. It is listed as a C17th footbridge. The bridge itself would not be affected by the proposal. The setting of a heritage asset is defined in the NPPF as the surroundings in which a heritage asset is experienced. For Franks Bridge that includes the River Eden, the open land to the north and east, and the town and its environs to the south and west. The open land around the town is significant to the setting of the bridge as it enables understanding of the transition from countryside to town. The appeal site would, in part be visible from the bridge. The new built development would have an impact on the experience of being on the bridge. Instead of experiencing the low key settlement edge formed by Riverside, there would be a clearly apparent development at higher level on the bluff above the river. This would, to some extent, detract from the appreciation of the bridge's setting since it would include an extension of built development into open countryside. The understanding of the history of the bridge and its transitional role between country and town would be diluted, and the setting of the bridge would therefore incur some harm, but the harm would be less than substantial.

25. The Manor House is located on the east side of Mellbecks. It is an imposing building whose main elevation faces away from the appeal site. However, its rear garden abuts the appeal site and although the setting here is affected by trees in the garden, it is by no means limited to the curtilage of the property. I was able to see on my site visit that there is a clear sense and view of the pasture beyond, which is within the pastoral setting of the building. This is an important element of the setting in that it allows an understanding of the significance of the asset at the edge of built development. The introduction of the proposed dwellings, with a roadway and activity associated with it, would intrude upon this setting. The level of intrusion would depend upon final design, but I am satisfied that there would be harm to the setting of Manor House, though again at a less than substantial level.
26. The Conservation Area is located immediately to the west of the appeal site. I am not aware of any formal Conservation Area Appraisal, but the boundaries appear to be drawn in such a way that the area is concentrated on the historic core of the town. There is no equivalent provision for the requirement to have special regard to the desirability of preserving or enhancing the setting of a conservation area, but adjacent development can impact upon character or appearance. In this case, however, design is a reserved matter and I am satisfied that it would be possible to design buildings which would not be at odds with the essential character of the Conservation Area.
27. Drawing these threads together, it is my judgement that there would be less than substantial harm to the setting of Franks Bridge and Manor House but, with good design, no harm to the setting of the Conservation Area. These findings will be added to the planning balance.

Emerging Policy Framework

28. There are 2 extant policy documents of importance which have been made or adopted. The first of these is the Upper Eden Neighbourhood Development Plan (UENDP) which I understand was the first Neighbourhood Plan to be made in England. The second is the Core Strategy as referred to above. My understanding is that neither of these documents encompasses allocated housing sites, though the UENDP sets a target of providing 24 dwellings per year which I am told is not being met at present. Representations made indicate that there is now an emerging Local Plan, and that as part of the process of taking that document forward the District Council is working with Kirkby Stephen Town Council to identify housing sites. The Town Council's preferred housing sites are incorporated in the draft Local Plan. My understanding is that the sites proposed for allocation (KS3, KS13, KS15 and KS17) do not include the appeal site, despite it having been considered for inclusion at an earlier stage.
29. The Council is probably being optimistic in its suggestion that the Local Plan might be adopted as soon as the end of 2015. Nonetheless, the simple fact that the community, through the Town Council, has expressed its preference that the appeal site is not developed for housing is a material consideration which I must take into account.
30. The acknowledged lack of a 5 year supply of deliverable housing sites is also a material consideration of importance, and in some circumstances can be the most important consideration in determining whether an appeal should succeed. The thrust of the NPPF is that a step change in housing delivery is

required and it is incumbent on Councils to facilitate that by ensuring sufficient land is available. In this case the local evidence is that there is no overriding and pressing need for the release of sites in advance of the Local Plan. Indeed the delivery rate on the Appellant's own planning permissions seems to be at a rate which supports that evidence. The objective of providing 24 dwellings per year may be falling into arrears, but housing supply rarely follows an even trajectory. Hence a short term shortfall need not be disastrous to long term provision.

31. I also note the Council's view that the need to obtain reserved matters approval for this scheme means that it would be unlikely to be capable of implementation in advance of the adoption of the Local Plan. I afford some credence to this view. Adoption of the Local Plan may not, though, lead to immediate development on allocated sites, but I notice that the Council is prepared to work proactively to seek early release of sites in advance of Local Plan adoption.
32. Having noted these points, Planning Practice Guidance (PPG) indicates that refusal of planning permission on grounds of prematurity can only be justified if the proposal is so substantial that granting permission would undermine the plan making process by predetermining decisions about the scale, location or phasing of new development. Given that this scheme is for 24 dwellings I would find it difficult to conclude that it is so substantial that it would have such far reaching consequences.
33. I note here that the scheme would provide affordable housing, which is a matter in its favour. I have noted that the Appellant indicated that an executed (signed) S106 Obligation would be provided, but such a document has not been submitted to me. I have seen only the draft Obligation. As a result, whilst the provision of affordable housing is to be supported, the weight I can give to this is reduced by the lack of a finalised Obligation.
34. Drawing together the strands of this issue it seems to me that there is, in the absence of demonstrable and significant harm, a strong case for finding that planning permission should be granted, since there is an acknowledged lack of a 5 year supply of deliverable sites at present, and to do so would not place insurmountable problems in the path of the emerging Local Plan. However, it is the case that granting planning permission would clearly fly in the face of expressed local preferences in a situation where overriding urgency for housing delivery has not been demonstrated. However, on balance I do not find that planning permission should be withheld on the grounds that the development would conflict with the preferred options of the emerging Local Plan.

Other Matters

35. A number of other matters have been raised which it is necessary to address briefly.
36. Concern has been expressed that the proposal would lead to overlooking and loss of privacy. With the illustrative scheme as drawn that is a consideration of merit as the gardens above Riverside could well provide elevated positions from which to see into the dwellings below. But this is a matter which is capable of being 'designed out' at the reserved matters stage.

37. I have read the concerns relating to drainage. Whilst understanding those concerns I do not have sufficiently compelling evidence to enable me to set aside the advice given by the experts in this field. I am therefore satisfied that a satisfactory drainage scheme could be designed for the site.
38. Finally I note that the Council is not suggesting that the development would have any impact on the nearby River Eden Special Area of Conservation despite it being mentioned in the reason for refusal. This is a matter which has been properly dealt with and there is no evidence in this respect that any adverse impact would result from the proposed scheme being implemented.

Balance

39. I turn, then to the final planning balance. My overall findings are these on the main issues:
- The proposed development would result in significant and demonstrable harm to the character and appearance of the locality, and conflict with the development plan;
 - It has not been demonstrated that adequate vehicular and other access could be provided, and in my judgement this would lead to unacceptable harm to highway safety;
 - There would be less than substantial harm to the setting of 2 listed buildings, but harm to the Conservation Area could be avoided;
 - The lack of a 5 year supply of available housing land is a matter in favour of the proposal, as is the proposal to provide affordable housing. I do not find that the scheme should be refused because of any impact on the emerging Local Plan;
 - Other matters, as set out above, are not determinative in this case. I have also given consideration to all the other points raised in written representations but none is of sufficient weight to alter my findings on the appeal.
40. The harm to character and appearance, highway safety, and heritage assets means that the scheme cannot be regarded as sustainable when assessed in terms of the NPPF as a whole. The harm I have identified is significant and demonstrable, and clearly outweighs the fact that the scheme would provide benefits in the provision of housing. For that reason the presumption in favour of development set out in paragraph 14 of the NPPF does not apply and the appeal must fail.

Philip Major

INSPECTOR