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## Appeal Decision

Hearing held on 8 April 2025

Site visit made on 9 April 2025

**by Chris Baxter BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20 May 2025

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**Appeal Ref: APP/K0940/W/24/3356961**

**Land at Sherborne Avenue, Barrow in Furness, Cumbria LA13 0GU**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Mullberry Homes Ltd against the decision of Westmorland and Furness Council.
  - The application Ref is B07/2023/0765.
  - The development proposed is described as “full application for residential development comprising the erection of 38 no. dwellings, with landscaping/biodiversity enhancements and associated works including access, car parking and SUDS (amended description).”
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. For the sake of clarity and brevity I have taken the description of development and the site address from the appeal form.
3. A draft Unilateral Undertaking (UU) had been submitted however, this UU had not been completed by the close of the Hearing. I allowed a period up to 28 April 2025 for a completed UU as well as a rebuttal statement from the Council relating only to the UU to be submitted. Both the UU and the Council's rebuttal statement were submitted within the prescribed time.
4. The Council confirmed that they were not defending the fifth reason for refusal. I have dealt with the appeal accordingly.

### Main Issues

5. The main issues are:
  - The effects of the proposal on the surrounding area and future users with particular regard to design, parking arrangements, public open space and play space;
  - The effects of the proposal on highway safety with regards to parking;
  - Whether the proposal demonstrates a net gain in biodiversity; and
  - Whether the proposal provides suitable affordable housing provision with regards to design, local need and integration within the scheme.

## Reasons

### *Effects on surrounding area*

6. The appeal site is situated at the edge of the settlement with built development immediately to the south, and to the east beyond the railway line. The site has been described as white previously developed land which has had previous residential permissions. There are open fields to the north and there is a public right of way running along the west boundary of the appeal site with the Mill Beck adjacent and recreational fields located beyond these. The wider built environment is mixed in terms of architectural designs, layout and sizes. The proposed development would be accessed through the existing housing estate immediately to the south which is characterised by predominately two storey properties of modern design with a spacious built form. It is this environment of openness within the built development that contributes positively to the character of the area.
7. There are two larger properties proposed to the far north end of the site, however, the built form of most of the proposed development would be tight knit, with gaps between properties being close. The proposed development would mainly have parking to the front or to the side of the properties and the hardstanding of these parking/driveway areas would be a dominating feature. The development would not have a spacious environment, appearing cramped with the buildings having an overbearing appearance on the street scene.
8. It was explained at the Hearing that the development includes 83 off street parking spaces which include garages and could rise to approximately 90 spaces given the length of some of the proposed driveways. There are no designated visitor parking spaces as the appellant described that visitors would park within the proposed off street parking. The Council consider a residential scheme of this nature should provide around 106 car parking spaces including eight visitor spaces. I have had regard to the 2021 census data which the appellant argues shows that the proposed parking provision would be acceptable. However, the 2021 census does not provide current data on parking requirements or possible future trends. Given the scale of development and the type of properties along with the number of bedrooms proposed, I do not consider that the proposed parking provision is sufficient to accommodate future occupants parking requirements within the curtilage of each property. Therefore, residents of the development as well as visitors will have to park vehicles on the road. Whilst the appellant explained at the Hearing that parking on streets is common practice, there is a significant difference between the appellants and Council's parking figures, which could lead to a large number of vehicles being parked on the estate road which would dominate the street scene and detract from the spacious character of the area.
9. An open space area (OSA) is proposed in the south west corner of the development adjacent to plot 207. I heard at the Hearing that the size of the OSA would be acceptable, and it would be similar to other open spaces on previous schemes. Whilst the OSA would be connected to the public right of way to the west, its main access for residents of the development would be along the driveway of plots 206 and 207 which does differ from the open space and playground located to the south of the site within the existing housing estate. The property on plot 207 has its gable end facing the OSA with the property on plot 208 being at an obtuse angle to the OSA, therefore there would be a lack of natural surveillance over this area. The OSA would be sited away from the main estate road with views to the

space being restricted by the positioning of the proposed properties. The proposed OSA would be poorly located within the development with an undesirable connectivity to the proposed properties and a lack of natural surveillance that would have a detrimental effect to the safety of future users of this open space.

10. Landscaping and planting are proposed within the scheme although the majority of the structural landscaping would be along the west and east boundaries, to the rear of properties, with only a small landscaping section adjacent to plots 234 and 235. Planting is proposed in the front garden areas of the properties however the lack of substantial landscaping in designated public areas, visible within the proposed street scene, would have a detrimental effect on the character of the area.
11. My attention has been drawn to an appeal decision<sup>1</sup>. However, I do not consider the appeal decision to be directly comparable to the scheme subject of this appeal, particularly with regards to the scale of development, location and main issues. In any case, I have determined this appeal on its own merits.
12. The proposed scheme is dictated by the existing access with the railway line and public right of way flanking the east and west. The scheme would have a density of around 29 dwellings per hectare and the design and size of the individual properties are in keeping with the modern styles of the existing properties to the south. Nevertheless, the built form would be cramped with properties and vehicles dominating the street scene, and a lack of well-integrated landscaping, that would be detrimental to the surrounding environment. The OSA would be poorly located within the site, lacking natural surveillance and would be undesirable to future users. The layout, design and positioning of proposed properties would introduce a development that would be mostly cramped with buildings in a tight knit arrangement. The cumulative effect of all these matters creates a scheme that would be of poor quality that would not create a safe and accessible environment. The proposal would not reflect a high-quality residential scheme that would be an extension of the previous residential phases to the south.
13. Accordingly, the proposal would have a harmful effect on the character and appearance of the surrounding area and future users with particular regards to design layout, parking arrangements and public open space. The proposal would be contrary to Policies DS2, DS5, DS6, HC5, HC10, N1, H7 and H9 of the Barrow Borough Local Plan (BBLP) which seeks development to contribute to character enhancement, make effective and efficient use of a site, have integrated landscaping, create a safe and accessible environment, have well designed play space, protect and enhance landscape character, provide a density appropriate to the character of the location and ensure that buildings are well designed.

### *Highway safety*

14. The Council argues that the proposed parking provision does not meet the number recommended in the Cumbria Development Design Guide as well as some of the parking spaces not being of suitable dimensions. I have accepted that the proposed parking provision would likely lead to on-street parking, whether this being parking of vehicles on the estate road, footways or verges.
15. The Council consider parking of vehicles on-street would be to the detriment of highway safety, further describing a cramped layout, compounded by a poorly

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<sup>1</sup> Ref: APP/W0910/W/24/3341921

designed parking strategy which would not function well in reality, creating inconvenient or unusable spaces. Nevertheless, given the design and width of the proposed road layout, vehicle speeds are not likely to be excessive with vehicles parked on-street not being significant obstructions and visibility being acceptable. Whilst the proposed parking may not meet the Council expected off-street provision, I do not find that the proposed development would have a harmful effect on highway safety. The proposal would not be contrary to Policy I6 of the BBLP which seeks the design of on and off-site parking provision to be safely accessible.

### *Biodiversity*

16. Part 6 of the Environment Act 2021 deals with biodiversity which details a requirement for developers to provide quantified evidence of at least a 10% net gain in biodiversity. This requirement applies to applications for development made on or after the 12 February 2024. The application for the development subject of this appeal was submitted 4 December 2023.
17. Policies DS2, N3 and N4 of the BBLP, amongst other things, requires new development to minimise impacts on biodiversity and provide net gains in biodiversity where possible, as well as the Councils Biodiversity and Development Supplementary Planning Document May 2018 supporting the delivery of net gain in biodiversity. The National Planning Policy Framework (the Framework) also identifies that development should secure measurable net gains for biodiversity.
18. The appellant has submitted a number of documents in relation to biodiversity and ecological matters. These include a Preliminary Ecological Appraisal (PEA) dated March 2023 which was updated on 19 April 2024, a document<sup>2</sup> supporting the statement of case, a landscape plan<sup>3</sup> and a revised biodiversity metric. The metric details a result in a net habitat unit gain of 1.03, with the PEA indicating that the proposal would provide enhancements which include the provision of 15 bird boxes and 16 bat boxes, and the landscape plan details various planting that would be introduced. The PEA does conclude that if works had not begun by April 2025 then a site visit would be required to assess the habitats within the site.
19. Whilst the biodiversity metric shows a net habitat unit gain, there are some discrepancies and inaccuracies in particular with the baseline figures of the metric including with the overall site area and also the vegetation, such as bramble scrub, which is on the site. Given these discrepancies, as well as requirements for further habitat assessments to be undertaken, leads me to consider that there is insufficient evidence to clearly determine whether the proposal would provide a biodiversity net gain. I note that Policy N3 refers to providing biodiversity net gain 'where possible', however there is no compelling evidence before me to suggest that biodiversity net gain cannot be achieved.
20. There is insufficient evidence to demonstrate that the proposal provides a biodiversity net gain, nor is there substantial information detailing that a biodiversity net gain at the site is not possible. The proposal therefore conflicts with Policies DS2, N3 and N4 of the BBLP.

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<sup>2</sup> Ref: P.1562.21

<sup>3</sup> Drawing number WW-L01 Rev I

### *Affordable housing provision*

21. The proposed development includes four two bed affordable housing units located centrally within the scheme. The proposed affordable housing therefore exceeds the 10% requirement detailed in Policy H14 of the BBLP. The Council raised concerns with regards to the lack of a Registered Provider being attached to the affordable units however, it is noted that the submitted UU does provide the offer of a prospect of a Registered Provider being involved.
22. Nationally Described Space Standards (NDSS) were discussed at the Hearing. The NDSS states that a two storey dwelling with two bedrooms for three persons should have a minimum gross internal floor area of 70 square metres (sqm). The proposed affordable units have been described as having around 58sqm gross internal floor area. Whilst Registered Providers have not raised any concerns, the lack of sufficient internal floor space would mean the properties would have a cramped environment that would be to the detriment of the living conditions of future occupiers of the properties.
23. The affordable units are therefore not designed to a high quality and are not well integrated with other properties in the development with regards to internal floor space. The proposed affordable units would have a harmful effect on the living conditions of future occupiers in terms of living space. The proposal would not be in accordance with Policy H14 of the BBLP which supports the delivery of affordable housing where proposals meet national and local policy. The proposal would conflict with the Framework, the NDSS and the National Design Guide which seeks proposals to achieve well-designed places and provide quality internal spaces.

### **Planning Balance and Conclusion**

24. In terms of the Framework's three overarching objectives, there would be social benefits in providing additional residential accommodation which would contribute to housing land supply and is attributed significant weight in this regard. There would also be economic and environmental advantages rising from the occupation of new residential accommodation, including creation of jobs which is afforded moderate weight. The design of the properties and housing mix would not have an adverse effect on the surrounding area, and the principle of residential development being in this location is accepted, these factors would have limited benefit. An UU has been provided that would secure affordable housing within the scheme as well as contributions towards healthcare, ecology and open space. These contributions are primarily mitigation measures required by policy although they would benefit residents in the local area and therefore attracts limited weight. There would be no harm to highway safety with cycle provision proposed, and no significant objections have been raised in terms of drainage and proximity to the railway line. These matters would be required by policy and therefore attributed limited weight. The proposed development would also contribute towards the aims set out in the letter from the Deputy Prime Minister titled "Playing your part in building the homes we need" dated 30 July 2024.
25. Good design and protecting the environment are key aspects of achieving sustainable development. There would be harm to biodiversity, the character and appearance of the area, as well as harm to the living conditions of future occupiers of the proposed scheme with respect of internal floor space, layout design, parking arrangements and open space. So, on this basis, the harm and the conflict with the

proposal and the development plan policies, I attribute substantial weight in this planning appeal.

26. The Council cannot demonstrate a five-year supply of housing. It is an agreed matter between the parties that the Council can demonstrate a 3.10-year housing supply and on this basis I do not consider the shortfall to be significant. In these circumstances footnote 8 of the Framework establishes that the policies which are most important for determining the application are deemed out-of-date. Consequently, permission should 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. The site is not within a protected area.
27. Taking account of the above factors, I find that the adverse impacts of granting permission would outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Therefore, the proposed development cannot benefit from the presumption in favour of sustainable development. There are no other material considerations to indicate that the proposal should be determined otherwise than in accordance with the development plan. I have already identified significant conflict with relevant development plan policies.
28. I conclude for the reasons given above that the appeal should be dismissed.

*Chris Baxter*

INSPECTOR



## APPEARANCES

### FOR THE APPELLANT:

|             |                     |
|-------------|---------------------|
| R Gascoigne | Planning Consultant |
| W Sypnicka  | Planning Consultant |
| M Peet      | Highways Consultant |
| L Kenyn     | Ecology Consultant  |
| R Gadsden   | Gadsdens            |

### FOR THE LOCAL PLANNING AUTHORITY:

|                 |         |
|-----------------|---------|
| M Smith         | Council |
| C Attwood-Parry | Council |
| M Park          | Council |
| M. Waning       | Council |
| A. Blackshaw    | Council |

### DOCUMENTS SUBMITTED AT THE HEARING:

1. Legal note from Local Planning Authority

### DOCUMENTS SUBMITTED AFTER THE HEARING:

1. Unilateral Undertaking
2. Legal note from Local Planning Authority on Unilateral Undertaking