
Appeal Decision

Site visit made on 26 January 2016

by **B.Hellier BA(Hons) MRTPI**

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

Decision date: 22 February 2016

Appeal Ref: **APP/H0928/W/15/3135971**

Land at Beacon Farm, Kemplay Bank, Eamont Bridge, Cumbria, CA10 2BD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by Mr John Heath against the decision of Eden District Council.
 - The application Ref 15/0095, dated 3 February 2015, sought approval of details of reserved matters pursuant to condition No.3 of planning permission Ref 11/0046, granted on 1 March 2012.
 - The application was refused by notice dated 9 April 2015.
 - The development proposed is 24 dwellings and an access road.
 - The details for which approval is sought are the siting, design and appearance of the buildings, the means of access thereto and the landscaping of the site.
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Decision

1. The appeal is dismissed insofar as it relates to plots 23-24.
 2. The appeal is allowed insofar as it relates to plots 1-22 and the reserved matters are approved, namely the siting, design and appearance of the buildings, the means of access thereto and the landscaping of the site, submitted in pursuance of condition No.3 attached to planning permission Ref 11/0046, granted on 1 March 2012, subject to the following conditions:
 - 1) The approved reserved matters shall be carried out in accordance with the following approved plans so far as relevant to that part of the development hereby permitted: 1325-PL100 Rev C (site location plan); 1325-PL200 Rev C (site layout); 1325-PL300 Rev B (house type A); 1325-PL301 Rev B (house type B); 1325-PL302 Rev B (house type C); 1325-PL303 Rev B (house type D); 1325-PL304 (bin store and wall treatment); 1325-PL400 Rev B (site sections).
 - 2) No development shall take place until details, including samples and colours, of the materials to be used in the construction of the external surfaces of the dwellings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
 - 3) No development shall take place until further details of the landscaping scheme including the interface between the access road and the floodplain, the finish of the garden retaining walls, means of enclosure and soft landscaping have been submitted to and approved in writing by the local planning authority. The details shall include a timetable for
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implementation and the scheme shall be carried out as approved in accordance with the agreed timetable.

- 4) Trees on site shall be retained and protected and trees adjacent to the northern site boundary shall be protected during construction in accordance with the recommendations set out in the Lowther Arboricultural Survey, Arboricultural Implication Assessment and Tree Protection report dated April 2015.

Application for costs

3. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Procedural matters

Background

4. The development was first approved in outline in 2009 as an affordable housing scheme which was to have been undertaken by a housing association. Due to lack of funding the housing association pulled out. However the permission was renewed in 2012 with the granting of a further outline permission as set out in the header above. Both outline planning permissions were granted with a S106 agreement in place to ensure that the dwellings would be 100% affordable. The design of the estate road access onto Kemplay Bank is not a reserved matter, having been approved at the outline stage. A layout was approved in the 2009 but this was not part of the 2012 outline permission.

Reasons for refusal overcome

5. There were four reasons for refusal. Two are no longer being pursued by the Council. The first of these relates to the lack of an adequate assessment of the impact of the development on the trees along the northern boundary. An arboricultural assessment has now been submitted which concludes that development would be outside the root protection area. A protective barrier should be maintained during the construction phase.
6. The second relates to the cross sections submitted with the application which showed the land to the south of the proposed access road being graded down into the paddock. This would result in a loss of floodplain in contravention of condition 11 of the outline permission. Revised cross sections have been submitted removing the fill within the floodplain.

Amended plans

7. The appellant submitted amended plans with the appeal showing changes to the external appearance of the four house types and their distribution within the layout. The Council agrees that they are an improvement on the refused details. Taking them into account would not materially prejudice the interests of objectors or other parties. Consequently I have considered the proposal on the basis of the revised plans.

Main issues

8. I consider the main issues are the effect of the siting, design and external appearance of the development on, firstly, the character and appearance of the area and, secondly, on nearby heritage assets.

Reasons

Planning policy

9. Policy CS18 of the Eden Core Strategy supports high quality design resulting in usable, durable and adaptable places which reflect local distinctiveness. Development proposals should, amongst other things, show an understanding of the built and natural environment, complementing and enhancing the area. They should also reflect the existing built context through the use of appropriate scale, mass, form, layout, high quality architectural design and use of materials.
10. The National Planning Policy Framework (NPPF) confirms that developments should establish a strong sense of place, using streetscapes and buildings to create attractive and comfortable places to live, work and visit. They should also be visually attractive as a result of good architecture and appropriate landscaping¹.
11. Core Strategy Policy CS17 seeks to conserve and enhance listed buildings and their settings. This reflects the statutory duty in relation to listed buildings in Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which states: *In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.*

Character and appearance

12. Eamont Bridge is a small village which has grown up around a road crossing of the River Eamont. The road is the A6, once the principal west coast route into Scotland, passing through Penrith just to the north. The M6 now takes most of the traffic but it remains an important local route. Much of the older part of the village lies within the floodplain. The appeal site is a strip of land, part fairly level and slightly above the main floodplain² and part a high, steep bank which appears to be an old river bluff.
13. The site is accessed from the A6 as it climbs north up Kemplay Bank out of the river plain. The estate road would drop down onto the lower part of the site and run for about 170m from east to west. Including the road the site has an average depth of some 35m. At the Kemplay Bank end there is a height gain within the site of 12m which reduces to about 5m at the western end where the site tapers to a depth of around 20m. At the back of the site, alongside but outside the boundary is a row of poplars. These trees and the upper parts of the bank form a backcloth to the village travelling along the A6 from the south. Immediately to the south of the site is a low lying paddock and beyond this is Skirsgill Lane where the properties are also low lying and subject to flooding.
14. Having regard to the slope and linear form of the site the original approved layout represents a logical way to develop the site. It has been repeated in the current proposal with all the dwellings sited on the north side of the access road facing across the paddock to the rear of properties on Skirsgill Lane some 70m away. Starting from the Kemplay Bank end there would be 7 pairs of

¹ NPPF paragraph 58

² Until December 2015 when it was flooded

three storey houses, 2 pairs of two storey houses, a turning head, a terrace of 4 two storey houses, and finally a further pair of three storey houses.

15. The three storey houses would be set against the rising land behind with the ridge height generally below the base of the line of poplar trees. In most views they will be seen as sympathetic to the village form, with roofs rising above the development on Skirsgill Lane but still contained by the trees and land form. The land rises less dramatically behind the two storey part of the development but it would still provide visual containment.
16. When seen at close quarters from Skirsgill Lane and Kemplay Bank the density and regular pattern of the semi-detached blocks would appear as a prominent and urban form of development. It would not be characteristic of the more organic streetscape and loose mix of building age and style in this part of the village. However, given that the principle of development its plot density is already established and given the linear form of the site, then I consider the proposal represents an acceptable design solution. In particular the three storey houses make good use of the site characteristics with ground floor garages built into the slope. The amended plans give improved vertical emphasis to the elevations and break up the horizontal form of the terrace block by varying the footprints of its two halves. Overall I find that the proposed siting, design and external appearance of the development would not cause unacceptable harm to the character and appearance of the surrounding area.
17. I have one reservation. The semi-detached block (Plots 23/24) at the western end of the site would have a restricted curtilage. It has very little private open space and has been situated forward of the general building line. The landform here does not require a three storey development and the remaining properties at this end of the development are two storey. I consider it would appear cramped and incongruous.

Heritage assets

18. The row of residential properties bordering the northern side of Skirsgill Lane includes four Grade II listed buildings. North Bank, Eamont Lodge and the adjoining No.2 Eamont Lodge, and the Welcome Inn and attached stable and barn are of interest for the quality of their domestic architecture and their positive contribution to the street scene.
19. North Bank is a nineteenth century single storey property with a square footprint and wings to either side. It is notable for its symmetry, hipped slate roof and, on its front elevation, a classical entrance flanked by three-bay arched mullioned windows. It is the last property on Skirsgill Lane and makes a fine entrance to the village. Behind it is a large converted barn which screens views of the appeal site from this western approach. To the rear there would perhaps be an oblique view of the western end of the proposed development but an adjoining bungalow also intervenes.
20. The other listed properties are nearer to the centre of the village and are built up to the footway edge giving form and enclosure to the street. Yet to the west there are modern houses and bungalows set back from the road often in individual plots which are unsympathetic to the scale and massing of the listed buildings. The Welcome Inn faces only into the village. The Eamont Lodge

properties overlook the paddock and appeal site to the rear. At present the view is of two large poorly maintained chicken sheds.

21. I am satisfied that the appeal site does not form part of the setting of North Bank or the Welcome Inn. The bank rising above the floodplain and the trees provide a pleasant backcloth to the Eamont Lodge properties. However, given that the principle of development has been established, my finding on character and appearance, and the very mixed quality of surrounding development, I find there would be no adverse effect on the setting of the listed Eamont Lodge properties arising from the current proposal.
22. In summary therefore I find that there would be no material harm to the heritage significance of the setting to any of the four nearby listed buildings.

Conclusion on the main issue

23. I conclude that in relation to Plots 1-22 the proposed siting, design and external appearance of the development would not have a significant adverse effect on either the character or appearance of the surrounding area or on nearby heritage assets. It would accord with the principles of good design set out in Core Strategy Policy CS18 and in the NPPF. In preserving the setting of heritage assets it would also satisfy Core Strategy Policy CS17 and the statutory duty set out above.
24. I conclude that in relation to Plots 23-24 the proposed siting, design and external appearance of the development would have a significant detrimental impact on the character and appearance of the surrounding area although I do not find harm to heritage assets.

Environment Agency

25. The Environment Agency (EA) objects to the application on two main grounds: the infill of floodplain to the south of the access road; and the need for compensatory storage where floodplain is lost as a result of the development. The first of these matters forms the basis of one of the reasons for refusal and has now been addressed to the satisfaction of the Council (see paragraph 6 above). The second matter is the subject of condition 12 of the outline consent. It states: *No development shall be commenced until a scheme for the provision of floodplain storage has been provided. The scheme shall be in accordance with details submitted by Tweddle and Slater Ltd in support of this proposal.*
26. Recently the lower, flatter part of the appeal site flooded in December 2015 on an occasion when Eamont Bridge was flooded to an extent and depth greater than has ever been recorded. With the increase in the land now liable to flood the EA suggests that it may not be possible to arrive at a satisfactory compensatory floodplain storage scheme. The EA stresses that the preservation of the remaining floodplain is critical in helping to mitigate the risk of flooding to any new and existing properties.
27. I do not underestimate the importance of dealing with the concerns of the EA and the need to address Condition 12. Indeed the wording of the condition is clear that until it has been addressed development cannot commence. But it is not a reserved matter and Condition 12 is not before me in this appeal. The Council makes the point that any works necessary to satisfy Condition 12 may impact on the layout. They may do and there may be a need to reassess the

layout at that time but that does not preclude determining the reserved matters on the basis of the submitted layout.

Other matters

28. In its written statement the Council introduces housing need and housing supply as issues. They are not. They would undoubtedly have been issues when the outline application was being considered but, having come down in favour of development on the site, the reserved matters stage does not allow the original decision to be reconsidered.

Conditions

29. The Council suggests a condition referencing approved plans would be necessary. I agree and in addition I consider details/samples of materials and colours should be agreed together with further details of landscaping including the means by which the change in level between the lower paddock and the new access road is treated, the finishing of the garden retaining walls, means of enclosure and soft landscaping. The recommendations of the arboricultural report should also be secured by condition.

Conclusion

30. I have found that reserved matters for plots 1-22 are satisfactory but that those for plots 23-24 are not. The two elements of the proposal are clearly severable both physically and functionally. I therefore shall issue a split decision. For the reasons given above I conclude that the appeal should be allowed in respect of plots 1-22 and dismissed in respect of plots 23-24.

Bern Hellier

INSPECTOR