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## Appeal Decision

Hearing held on 11 September 2018

Site visit made on 11 September 2018

**by Gareth Wildgoose BSc (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 10<sup>th</sup> October 2018**

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**Appeal Ref: APP/M0933/W/18/3194949**

**Land opposite Cark House, Cark in Cartmel LA11 7PF**

- 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 S Hodgkins on behalf of Go Developments Ltd against the decision of South Lakeland District Council.
  - The application Ref SL/2017/0260, dated 22 March 2017, was refused by notice dated 30 November 2017.
  - The development proposed is described as "*erection of 1no. affordable dwelling (self-build)*".
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The application was submitted in outline with all detailed matters reserved for future approval and was determined by the Council on that basis. I, therefore, necessarily determine the appeal treating the details within the submitted plan relating to access, landscaping and layout as illustrative.
3. The site address and description of development provided by the application form have been altered in subsequent documents. During the Hearing, the parties agreed the site address which I have adopted. The parties also agreed a description of development which is included in the decision header, although its accuracy is a matter addressed in the subsequent main issues. In that respect, a completed planning obligation by way of Unilateral Undertaking under Section 106 of the Planning Act (UU) dated 31 January 2018 was submitted by the appellant in advance of the Hearing. A revised version of the completed UU was submitted by agreement on 14 September 2018 following the Hearing to address the omission of a site plan in error. The Council have had an opportunity to provide comments on the revised document.
4. The revised National Planning Policy Framework (the Framework) published on **24 July 2018 sets out the Government's planning policies for England**. Policies within the Framework are material considerations which should be taken into account for the purposes of decision-making from the date of its publication. An opportunity to comment on the revised Framework was afforded to the parties both prior to and during the Hearing. Revisions to Planning Practice Guidance (PPG) were subsequently published on 13 September 2018 and the parties had an opportunity to comment upon them in writing after the Hearing.

## **Main Issues**

5. The main issues are:
  - Whether the development proposed would be consistent with policies relating to the location of housing;
  - Whether the development would be consistent with policies relating to flood risk, and;
  - The effect on the character and appearance of the area, including the setting of Grade II listed buildings.

## **Reasons**

### *Housing in South Lakeland*

6. Policy CS1.2 of the South Lakeland Core Strategy (CS), adopted October 2010, sets out the development strategy in the context of the sustainable development principles in Policy CS1.1. In doing so, Policy CS1.2 seeks to guide development to the most appropriate locations through the identification of groupings of settlements in a hierarchy based on population size, public transport links and availability of local services. In that context, Cark is grouped with the neighbouring settlement of Flookburgh in its designation as a Local Service Centre, which alongside other settlements or grouped settlements form part of the third tier in the hierarchy.
7. Policy CS1.2 of the CS seeks that approximately 21% of new housing will be in the network of Local Service Centres, but is clear that in order to adapt to changing circumstance the apportionment of development may need to be flexibly applied, with changes evidenced and monitored through the Annual Monitoring Report. It also states that the exact scale and level of development supported will be dependent upon, amongst other things, individual character and the desire to meet the need for affordable housing as locally as possible. Policy CS1.2 also seeks that the location of new development will avoid areas at risk of flooding in line with national policy, which I consider separately as part of a subsequent main issue.
8. The housing requirement set out in Policy CS6.1 of the CS indicates that 8,800 dwellings will be built between 2003 and 2025, estimated at an annual average of 400 dwellings per annum in locations which accord with Policy CS1.2, having regard to the needs of each location and their capacity to support additional development. The policy indicates that allocations of new residential developments will be identified in the Allocations of Land DPD, with consideration of unallocated sites assessed against criteria, which amongst other things includes prioritisation and assessment of suitability, availability and achievability of sites in terms of available evidence.
9. With regard to the above, Policy LA1.1 of the South Lakeland Local Plan Land Allocations Development Plan Document (LP-LA), adopted December 2013, sets out the development boundaries for Cark which lie immediately to the east of the site and to the south on the opposite side of the road. The construction of a dwelling on the site would, therefore, result in built development in open countryside.
10. Policy CS1.2 of the CS indicates that exceptionally, new development will be permitted in the open countryside where it has an essential requirement for a

rural location, including where it provides for affordable housing. In that respect, Policy CS6.4 of the CS consists of a rural exception policy which indicates that housing development proposals outside of the settlement boundaries in the Service Centres will only be considered where they provide 100% affordable housing, together with a list of other exception site criteria.

11. In response to the above, the appellant has submitted a UU with a planning obligation relating to the future submission to the Council of affordable housing details such as the proposed rent or price of the dwelling, the arrangements to ensure it remains affordable beyond the first occupier, and the occupancy criteria. In that context, the planning obligation includes a clause to embody such details as may be agreed in writing by the Council (as amended or otherwise) in a Section 106 Agreement if required by the Council.
12. The Council have offered no specific objections to the form of the planning obligation relating to affordable housing in the UU or the approach of deferring the detail to reserved matters stage. Nonetheless, I have concerns relating to such an approach as I consider that certainty of the delivery of affordable housing should be fully dealt with as a matter of principle at outline application stage where it would be necessary to comply with Policies CS1.1, CS1.2 and CS6.4 of the CS. In that context, the Council have expressed concerns that the proposal would not meet the exception site criteria in Policy CS6.4, including a failure to provide clear evidence of the viability of the delivery of affordable housing.
13. With regard to the above, the appellant has indicated an intention to sell the site as a self-build affordable housing opportunity if planning permission were to be granted, but has not undertaken a detailed viability assessment to justify that an affordable house would be deliverable within the site. Furthermore, there is no evidence that there is interest from a social housing provider. During the Hearing, it was confirmed that the site was acquired prior to Storm Desmond with an intention to develop a number of houses upon it. Storm Desmond resulted in levels of flooding that have influenced revisions to the Environment Agency Flood Maps with the extent of the site that is subject to Flood Zones 2 and 3 having increased. As a consequence, the appellant has accepted that the site may have to be sold at a loss due to the increase in constrained land.
14. Nevertheless, even if that were the case, when taking account of the necessary build costs, finance, professional fees, together with any purchase cost of the land, it has not been demonstrated that an affordable dwelling within the site could be constructed for the value or less than the affordable house prices (initial fixed sale) for property types in South Lakeland as set out in the **Council's Strategic Housing Market Assessment (SHMA), October 2017**<sup>1</sup>. The more up-to-date affordable house prices provided by the Council during the Hearing make little difference to my findings in that respect given that development costs are also subject to inflation.
15. In reaching the above view, I have taken account of the cost and price information from the Building Cost Information Service (BCIS) as confirmed during the Hearing which suggests a minimum build cost of £950 per sq.m with **a range of up to £1,500 per sq.m. I agree with the appellant's view that a self-**

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<sup>1</sup> SHMA, Figure 6.5, pg. 126 - £90,321 for 1 bed house/bungalow (60 sq.m), £100,947 for 2 bed house/bungalow (65 sq.m), £116,886 for 3 bed house (75 sq.m) or £132,825 for 4 bed house (85 sq.m)

builder in certain circumstances may be able to reduce the build costs through the omission of labour costs. However, it is reasonable that the particular constraints of the appeal site, including the differences in land levels, relationship to nearby heritage assets and the mitigation measures indicated by evidence as necessary to address matters such as flood risk and tree protection, also have the potential to result in considerable development costs. Consequently, I am not satisfied that any reductions to the BCIS build costs would be so significant as to enable affordable housing to be deliverable, when the other development costs and purchase of the land are added.

16. With regard to the above and based upon the evidence before me, it has not been demonstrated that affordable housing would be secured in perpetuity by the planning obligation in the UU which defers the full details to reserved matters stage and therefore, I can offer little weight to any stated benefits in that respect. The deliverability of affordable housing relates to the principle of the development before me and such matters should necessarily be resolved prior to the grant of an outline planning permission. Consequently, I offer little weight to the planning obligation in the UU when determining this appeal.
17. It follows from the above, that the development would not meet the requirements of Policy CS6.4 of the CS or paragraphs 71 and 77 of the Framework so as to be considered a rural exception site or entry-level exception site, given that there is no certainty that it would contribute to meeting affordable housing needs in Cark/Flookburgh, Lower Holker or the Cartmel Peninsula as a whole. In that respect, there is also conflict with Emerging Policy DM14 of the South Lakeland Development Management Policies Submission Version - February 2018 (DMP), which can be afforded significant weight as the examination in public has taken place and there are no outstanding objections to the policy. In such circumstances, as the site lies in open countryside beyond the development boundary of Cark in Policy LA1.1 of the LP-LA it also conflicts with the development strategy set out in Policies CS1.1 and CS1.2 of the CS as it does not meet the criteria for an essential requirement for a rural location in the latter policy.
18. The appellant has drawn to my attention that the Council have recently granted planning permission for two dwellings at Land adj to 47 Allithwaite Road, Flookburgh (Council ref: SL/2018/0028) in a location outside of the settlement boundary. However, the application was determined by Members of the **Council's Planning Committee contrary to** an officer recommendation and I do not have the full details of the circumstances that led to the development being accepted. In any case, it is necessary that I determine this appeal on its own merits.
19. When having regard to all of the above, I conclude that there is conflict with Policies CS1.1, CS1.2 and CS6.4 of the CS and the associated objectives relating to the location of housing and the protection of the countryside.

### ***Flood risk***

20. Policy CS8.8 of the CS indicates that most new development should be located in Flood Zone 1 and that development within Flood Zones 2 and 3 will only be acceptable when it is compatible with national policy and when the sequential test and the exception test, where applicable, have been satisfied. The policy predates the publication of the Framework, but is broadly consistent with the approach of national policy.

21. With regard to the above, the Framework at paragraph 158 indicates that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding, and that development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. Whilst the Framework suggests that the strategic flood risk assessment provides the basis for applying the test, the South Lakeland Strategic Flood Risk Assessment - October 2007, is now somewhat dated and preceded the updates to Environment Agency Flood Maps following the flooding which occurred in South Lakeland during Storm Desmond. The resultant changes to Flood Zone designations affected the appeal site, together with other parts of South Lakeland.
22. The appellant has provided a Flood Risk Assessment & Outline Drainage Strategy (FRA-ODS) to reflect the more up-to-date Environment Agency Flood Maps. The FRA-ODS confirms that the site is located within Flood Zone 1 (low probability), Flood Zone 2 (medium probability) and Flood Zone 3 (high probability) with respect to tidal and fluvial flood risk arising from the proximity to the River Eea. British Geological Survey records also indicate potential for groundwater flooding to occur at the surface based on topography and soil type. The risk of flooding from other sources is considered to be low. Notwithstanding photographic evidence of the adjacent road having been previously flooded, the FRA-ODS indicates that the site is not recorded as having previously flooded on the Environment Agency Historic Flood Maps.
23. With regard to the above, the rising land levels from the public highway within the site results in a small section of Flood Zone 1 at the northern extent close to Sunny Bank, with around a quarter of the remaining eastern section of the site within Flood Zone 2 and the remainder of the site in Flood Zone 3. Based upon my observations of the site and the evidence before me, including the illustrative layout plan, a dwelling could not be built on only the small section of Flood Zone 1. However, I am satisfied that it is technically feasible for a dwelling to be located entirely within Flood Zone 2 in accordance with the recommendations of the FRA-ODS, with a safe egress to Flood Zone 1, which could be secured by condition. Nonetheless, within Flood Zone 2, more vulnerable development as defined by the PPG such as the dwelling proposed on an unallocated site is subject to the sequential test.
24. The appellant has undertaken a sequential test based upon the provision of an affordable dwelling and self build opportunity, including a search of plots of land for sale or houses capable of being demolished in Cartmel Peninsula and identified that no other land is available at a lower flood risk. The area of search is consistent with Policy CS4 of the CS, which groups Cark/Flookburgh as part of the Cartmel Peninsula Strategy, and the most up-to-date evidence of affordable housing need identified in the SHMA which provides data for the Cartmel Peninsula Housing Market Area. However, based upon my previous findings and for the reasons previously given, I am not satisfied that there is sufficient certainty that affordable housing would be secured by the planning obligation or would be delivered within the site.
25. It follows that, the scope of the sequential test is unnecessarily restricted to affordable housing and self build opportunities only. Other parts of Cark/Flookburgh and the wider Cartmel Peninsula fall within Flood Zone 1 and the evidence does not demonstrate that there are no reasonably available sites for a dwelling in those areas at lower risk of flooding, including allocated sites

and windfall sites. Consequently, in the particular circumstances of this case, the proposal does not meet the requirements of the sequential test.

26. The FRA-ODS indicates that the house would have flood resistance and resilience measures, including finished floor levels of no lower than 8.48m and would be capable of providing safe refuge within the building. The FRA-ODS also includes measures to limit surface water run off through a surface water drainage strategy. Those measures together with other recommendations such as a flood plan for flood warnings could be secured by condition, together with details of foul and surface water drainage. The Environment Agency and United Utilities have raised no objections in those respects. However, such matters relate to the exception test which need not be considered where the proposal fails to meet the requirements of the sequential test.
27. When having regard to the above, I conclude that the development would not be consistent with policies relating to flood risk. The proposal would conflict with Policy CS8.8 of the CS and the Framework in terms of their approach to managing flood risk due to the failure to meet the requirements of the sequential test.

### ***Character and appearance***

28. Cark House, opposite to the site, is a mid to late 18<sup>th</sup> century farmhouse that sits prominently within landscaped grounds facing the southern riverbank of the River Eea, where it adjoins a group of more modest rural properties. The significance of the Grade II listed Cark House is derived from its historic association with agriculture at the edge of Cark and the River Eea, together with the architectural style, imposing scale, form and detail of the building. Similarly, the significance of the nearby Grade II listed stone bridges over the River Eea and adjoining walls arises from their association with the water body and their architectural style, construction methods and materials. Cark Manor consists of a late 18<sup>th</sup> century house and flat with some modern extensions and alterations that sit with in a set back position on raised land levels further to the north of the site within a substantial curtilage consisting of landscaped grounds. The significance of that Grade II listed building is derived from its architectural style and detailing with evident Tuscan influences.
29. The site is located close to a curve in the road where it crosses the River Eea to the east of the junction with Sunny Bank. The highway frontage adjoining Sunny Bank consists of stone walls and part of a landscaped bund separating it from Cark Manor. In contrast, post and rail fencing faces toward the River Eea and Cark House, supplemented by overgrown vegetation and trees within the site. The verdant character of the existing site forms part of the transition from the higher density of built form within the built up area of Cark to the east of the junction with Sunny Bank, to sparser development in the countryside on the northern side of the River Eea. The undeveloped nature of the site and the predominance of landscaping on the northern side of the River Eea emphasises the presence of the Grade II listed Cark House, together with the bridges over and walls adjoining the River Eea and thereby, makes a positive contribution to their rural setting. In contrast, the house and flat of Cark Manor are largely screened from the site and views along the adjoining roads by significant intervening tree screening both within the curtilage of the listed building and along the shared boundaries.



30. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special regard to be paid to the desirability of preserving listed buildings and their settings. The Framework states that when considering the impact of a proposal on the significance of designated heritage assets, great **weight should be given to the asset's** conservation. It also indicates that harm or a loss of significance can occur from development within the setting of a designated heritage asset.
31. As the proposal before me consists of an outline application with all matters reserved, the submitted layout is taken as illustrative. Nonetheless, it is inevitable that notwithstanding my findings above, if a dwelling were to be built on the site it would need to be located close to the highway frontage and the junction with Sunny Bank. This would be due to the constraints associated with flood risk and associated mitigation measures set out in the FRA-ODS, together with tree protection measures relating to retained trees that adjoin the northern boundary with Cark Manor as set out in the Arboricultural Impact Assessment.
32. The reserved matters would determine the specific details in terms of the layout, scale and appearance of the dwelling which could be similar to the varied character of the properties within the settlement boundary of Cark to the east of the site and to the north of the River Eea. However, the siting and resultant bulk, scale and massing of a dwelling, together with associated access arrangements and domestic paraphernalia, would inevitably lead to a loss of the existing verdant nature of the site. In that respect, the dwelling would appear physically detached from the existing dwellings in Cark, including Cark House and surrounding buildings on the opposite side of the River Eea, when approaching the site from the east. The introduction of a dwelling in a solitary position to the west of the junction with Sunny Bank would appear incongruous and would harm the existing rural character of the site on the edge of the Cark settlement.
33. Having regard to the above, the proposal would result in harm to the setting of listed buildings. However, the harm in that respect would be less than substantial to the significance of the Grade II listed Cark House and the Grade II listed bridges and walls nearby given the localised nature of the public vantage points from which the site would be viewed as part of their setting. The presence of a background of existing trees to the north and west and the potential for boundary screening or landscaping would not mitigate the harm identified, but would prevent any specific harm to the setting of Cark Manor.
34. The Framework requires that less than substantial harm be weighed against the public benefits of the proposal. In that respect, the appellant has provided a planning obligation which seeks to secure the dwelling as affordable housing. However, based upon my previous findings and for the reasons previously given, I am not satisfied that there is sufficient certainty that affordable housing would be secured by the planning obligation or would be delivered within the site. I, therefore, can offer little weight to the suggested benefits in that respect. The proposal would utilise an undeveloped site in an accessible location close to the settlement boundary of Cark and therefore, would make a positive contribution to support for local services and the local supply chain during construction of a single dwelling which is intended to be a self-build opportunity. The development would also result in financial benefits in terms of New Homes Bonus and Council Tax. However, the public benefits associated

with the delivery of a single dwelling in those respects are not sufficient to outweigh the great weight given to the identified harm.

35. I conclude that the development would have a harmful effect upon the character and appearance of the area and would fail to preserve or enhance the setting of the Grade II listed Cark House and the Grade II listed bridges over and walls adjoining the River Eea. The development would, therefore, conflict with Policies CS1.1, CS4, CS8.2, CS8.6, CS8.10 of the CS and Saved Policy S2 of the South Lakeland Local Plan, adopted September 1997. When taken together the policies seek to ensure that development maintains the settlement character, special qualities and local distinctiveness of an area, including safeguarding and where possible, enhancing historic assets including their characteristic settings. The policies are consistent with the Framework.

### **Other Matters**

36. The effect on highway and pedestrian safety is not a matter contested by the Council. The development would not increase the demand for on-street parking or increase traffic flows on surrounding roads to an extent that existing highway conditions and parking arrangements would be significantly altered or worsened. I am, therefore, satisfied that the development would not have a detrimental impact upon highway and pedestrian safety, subject to full details of the access and appropriate visibility splays as part of the reserved matters if the appeal were allowed.
37. The proposal would be capable of achieving adequate separation distances to neighbouring properties to preserve the living conditions of their occupiers and future occupiers of the development in terms of outlook, light and privacy, subject to details of window positions that would be provided as part of a subsequent reserved matters submission. Existing views from neighbouring properties would be affected by the development. However, that is generally the case with development on the edge of an existing settlement. I am, therefore, satisfied that the detailed issues in those respects could be appropriately addressed through the reserved matters relating to layout, scale, appearance and landscaping, taking account of the variations in topography. The development would also be able to overcome matters relating to contaminated land through the imposition of suitable conditions. Nonetheless, the absence of concern in those respects is a neutral factor.

### **Planning Balance**

38. The Framework does not change the statutory status of the development plan as the starting point for decision making. Based upon my previous findings, the proposal is not in accordance with the policies of the development plan in terms of their objectives relating to the location and supply of housing, managing flood risk given the failure to meet the requirements of the sequential test, and due to the harmful effect upon the character and appearance of the area and failure to preserve or enhance the setting of the Grade II listed Cark House and the Grade II listed bridges over and walls adjoining the River Eea.
39. During the Hearing, it was confirmed that it is not a matter of dispute that the housing requirement in Policy CS6.1 of the CS is now out of date for the purposes of the Framework. Furthermore, if there is a shortfall relative to the **Council's ability to demonstrate** a deliverable five year supply of housing, then



the policies which are most important for determining the application are out-of-date and planning permission should be granted unless certain specified circumstances apply. In this case, there has been discussion relating to housing need and housing land supply in the submission and in considerable detail during the Hearing to which I have had due regard. In that respect, the Council indicates that it can demonstrate a deliverable five year supply of housing land relative to evidence of local housing need in the SHMA, whilst the appellant has indicated that it has a supply of a little over four years.

40. Even if, I were to agree with the appellant, when the proposal is considered relative to paragraph 11 of the Framework it falls under footnote 6 for the purposes of 11d(i). In that respect, based on my previous findings, the application of policies in the Framework relating to areas at risk of flooding and designated heritage assets provide a clear reason for refusing the application. Moreover, notwithstanding that, even if I were to consider the scheme against paragraph 11d(ii) the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits of the single dwelling proposed. Consequently, the presumption in favour of sustainable development does not apply in the particular circumstances of this case.
41. The conflict with the development plan and the Framework when taken as a whole and the associated harm identified are significant and overriding factors. Consequently, the material considerations in this case, including the limited contribution to housing supply and associated benefits previously identified, do not indicate that the application should be determined otherwise than in accordance with the development plan.

### **Conclusion**

42. For the reasons given above, I conclude that this appeal should be dismissed.

*Gareth Wildgoose*

INSPECTOR

## **APPEARANCES**

FOR THE APPELLANT:

Kate Bellwood MSc BSc PGDip MRTPI      Kate Bellwood Associates

FOR THE LOCAL PLANNING AUTHORITY:

Chris Harrison BA (Hons) DipTP MRTPI      South Lakeland District Council  
- Planning Officer

Laura Chamberlain      South Lakeland District Council  
- Senior Policy Planner

## **DOCUMENTS SUBMITTED AT THE HEARING**

- 1 Environment Agency Flood Maps – Rivers and Surface Water - Cark, received from Appellant.
- 2 South Lakeland Local Plan Development Management Policies Examination – Inspector Note dated 28 June 2018 – Modifications to the South Lakeland Development Management Policies, received from Council.
- 3 **Council's Updated** Housing Supply Calculations (taking account of units the Council agreed to remove during the Hearing), received from Council following request from Inspector.

## **DOCUMENTS SUBMITTED AFTER THE HEARING (BY AGREEMENT)**

- 1 Revised version of Unilateral Undertaking – to include plan omitted in error – signed and dated 31 January 2018 received from the appellant on 14 September 2018.
- 2 Written representations relating to revisions to PPG – received from the appellant on 26 September 2018.
- 3 Written representations relating to revisions to PPG – received from the Council on 27 September 2018.