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# Appeal Decision

Site visit made on 27 September 2022

**by F Harrison BA(Hons) MA MRTPI**

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

**Decision date: 15 November 2022**

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**Appeal Ref: APP/Z0923/W/22/3294623**

**Land to North of Ennerdale Country House Hotel, Cleator**

- 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 Andrew Butler of a2bdevelopments Limited against the decision of Copeland Borough Council.
  - The application Ref 4/19/2140/001, dated 20 January 2019, was refused by notice dated 29 October 2021.
  - The development proposed is outline application for residential housing development.
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## Decision

1. The appeal is allowed and planning permission is granted for outline application for residential housing development at land to north of Ennerdale Country House Hotel, Cleator in accordance with the terms of the application, Ref 4/19/2140/001, dated 20 January 2019, subject to the conditions set out in the schedule below.

## Preliminary Matters

2. The application was made in outline with all matters reserved for future consideration apart from access. I have had regard to the indicative site plan (1072:02, 10 December 2018) showing visibility splays and access to the site. This plan also shows layout and circulation around the site. However, these are reserved matters to be determined at a later date. As such I have treated the plan for illustrative purposes only in relation to layout and circulation around the site.

## Main Issue

3. The main issue is the effect of the proposal on highway safety.

## Reasons

4. The access for the proposal would be at a junction with the A5086, a 30 miles per hour (mph) zone. This section of the A5086 serves the Ennerdale Country House Hotel, Flosch Farm House, and further away the cul de sacs of Flosch Meadows and Hawthorn Fields. The road has regular streetlights on one side of the road and is generally level with no obvious changes in gradient. At the time of my site visit the road was lightly trafficked and I saw a number of pedestrians on the footpaths adjacent to the road, walking in both directions.
5. The Highway Authority confirm that 60 metre (m) visibility splays would be suitable where 85<sup>th</sup> percentile speeds are up to 37mph. However, there is dispute regarding the speeds recorded on this stretch of the A5086. In support

of the proposal, the appellant has submitted a second speed survey, undertaken in July 2020, following concerns that the first survey undertaken in 2019 was not fit for purpose. I agree that the outcomes of the first survey cannot be relied upon due to the presence of a 'slow down tree cutting' sign. The summary results of another speed survey are also before me, although I understand this survey was undertaken in 2018 and was for a different access point for a different proposal and as such, it has not been determinative in my decision.

6. Concerns have been raised by third parties about the validity of the applicants second speed survey owing to the timing of the survey during the Coronavirus Pandemic and the presence of a parked van. While it was undertaken when there were still some restrictions in place following the national lockdown during the Coronavirus Pandemic there was not a significantly lower amount of traffic recorded in comparison to the 2019 survey. Moreover, I note that it is not uncommon for fluctuations to occur between speed survey results given the range of influencing variables. From the evidence before me it would appear that the parked van which was present for some of the survey was clear of the highway by almost the full width of the footpath. I am not persuaded that this would have affected speeds considerably, neither would the social media posts, said to have been circulated, incorrectly warning of a speed camera.
7. The surveys were carried out by suitably qualified professionals, using a recognised method, across a number of days to capture a range of recordings. The Highway Authority and Council have confirmed that it can be relied upon. Based on the evidence before me, I have no clear reason to disagree with their conclusions and have dealt with the appeal on the basis that the second speed survey results are valid.
8. The second speed survey identifies average 85<sup>th</sup> percentile speeds of 36mph northbound, 38mph southbound and a total flow 85<sup>th</sup> percentile speed of 37 mph. Guidance contained in the Government's Manual for Streets (MfS) relates to streets that are residential in nature and is applicable for 85<sup>th</sup> percentile speeds up to and including 37mph, as set out in the Cumbria Development Design Guide (CDDG). Despite the southbound 85<sup>th</sup> percentile speed being 38mph I am not persuaded that I should instead look to the Government's Design Manual for Roads and Bridges (DMRB), which has significantly higher standards and have been developed for the strategic road network (SRN). The CDDG advises that the DMRB is not suitable for applying to residential streets without any critical analysis being done. There is no clear evidence before me to this effect.
9. From my site visit, I saw the stretch of the A5086 in the appeal location to be residential in nature, owing to the presence of footpaths on either side of the road and regular streetlights on one side of the road. Moreover, this short section of the road joins up two areas of residential development, as such, travelling in either direction as I did on my site visit, drivers would feel as if they were travelling briefly between the two built up residential areas. Accordingly, this section of the A5086 feels like a continuation of these residential streets. Moreover, at the time of my site visit the road was seen to be lightly trafficked and carrying lower volumes of traffic than could reasonably be assumed to be on the SRN.

10. It may well be that Cumbria County Council has designated the A5086 a key priority road, and I accept that the third parties would have local knowledge of the area and the road. However, from the evidence before me and the observations from my site visit, the proposed 60m visibility splays are considered suitable in this location. The indicative site plan shows that 60m splays can be achieved, which from my site visit I saw would not be compromised by obstructions following the removal of the heavily overgrown vegetation and derelict building as part of the proposal.
11. Given the results of the southbound speed survey being marginally over the standard for a 30mph street, and in line with advice from the Highways Authority, traffic calming measures to manage vehicle speeds on the approach to the proposed access should be secured through condition. I note the concerns of the Council and third parties relating to the illustrative scheme within the appeal submissions. However, subject to amendments discussed below, I have a mechanism before me that meets the relevant tests of the planning practice guidance (PPG) and will ensure that full details of a scheme are provided to secure traffic calming measures to the satisfaction of the Council.
12. Concerns have also been raised with regard to the cumulative effects of existing and proposed accesses on this section of the A5086. However, the Highways Authority have confirmed that they have taken into account all accesses and have no objection to the proposal, subject to a scheme of traffic calming. As discussed above, full details of a traffic calming scheme can be secured through condition.
13. Third parties have raised concern regarding existing permissions for sites accessed from the A5086 in the area immediate to the appeal proposal, where different visibility standards have been applied. I do not have the details of these other permissions before me, and it has not been shown that they are directly relevant. Moreover, I can only assess the current proposal on the basis of the information before me and my site visit.
14. For the reasons set out above, the proposal would not adversely affect highways safety and accords with Policy T1 of the Copeland Local Plan. This policy seeks to improve accessibility, and amongst other things, expects improved transport safety and attention to traffic environments to feature in all new development proposals.
15. The National Planning Policy Framework (the Framework) (2021) in Paragraph 110 and 111 states that safe and suitable access to site should be achieved for all users and that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety. The proposal would therefore comply with the Framework in this regard.

## **Other Matters**

16. Nearby to the site is the Grade II listed building The Flosh. Neither party has concerns regarding the impact of the proposal on the significance of this designated heritage asset. However, having regard to the duties imposed by the Act<sup>1</sup>, I have assessed the proposal against the heritage asset.

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<sup>1</sup> Sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

17. The Grade II listed building known as The Flosh, A5086, CA23 3DT is a large house, previously converted for use as District Council Offices, and noted current use as a hotel. It was built in 1832 with the south front added in 1886 and subsequent later additions and alterations. The 20<sup>th</sup> Century roofed extension adjoining the north side is not of interest. The buildings significance derives from its architecture and remaining historic fabric. Its setting includes the landscaped gardens to the side, the open fields adjacent to the A5086, and includes the appeal site and the area to the rear.
18. Development at the appeal site will involve the demolition of the now derelict barns. It is my understanding that these farm buildings would have historically been part of The Flosh, and that it is accepted by the Council's conservation officer that it is not possible for them to be retained. Were the general layout of the indicative plan to be adhered to, the appeal proposal would introduce new dwellings at a distance from The Flosh itself, which would to a large degree be screened behind the wall between the two sites. The new dwellings would also be closest to the 20<sup>th</sup> Century extension which is not of interest. As such, there would to some extent be a degree of physical and visual separation with the architectural interest of the asset, and the proposal would have a neutral effect on its setting.
19. Consequently, the proposal would preserve the special architectural and historic interest of The Flosh, A5086, CA23 3DT, in accordance with sections 16(2) and 66(1) of the Act. I am therefore satisfied that the proposal complies with the heritage protection policies of the Framework (2021).
20. I have considered concerns raised by third parties regarding vehicle emissions and levels of pollution and whether there is a need for housing given existing permissions in place. However, there is no substantive evidence before me on these matters and I can only assess the current proposal on the basis of the information before me. These matters are therefore of limited weight.

### **Conditions**

21. The conditions requested by the Council have been considered and amended as necessary in light of the PPG. I have imposed conditions which concern the statutory time limit and the reserved matters. In the interests of certainty, I have also imposed a condition concerning the approved plans that reflect that access is a matter before me, as is the indicative layout plan showing the visibility splays.
22. A condition relating to the submission of a design for a traffic management scheme is required to manage vehicle speeds on the approach to the proposed access and should be approved before the commencement of development to ensure that a suitable scheme can be achieved. In the interest of highway safety, I have imposed a condition requiring the construction of the visibility splays before the commencement of development. The submission and approval of a Construction Management Plan is also required in the interest of highway safety and before the commencement of development as the details relate to the construction phase.
23. A surface water drainage condition is necessary to secure proper drainage and to manage the risk of flooding and pollution. It is required before the commencement of development to ensure a suitable scheme can be achieved. I have also imposed a condition relating to Japanese Knotweed which is

necessary before the commencement of development in the interest of preventing the spread of invasive species and to protect local biodiversity. It is necessary to impose a heritage condition to ensure that an appropriate record is made of the historic building fabric that may be affected by the development.

24. A condition relating to sustainable drainage management and maintenance is necessary to secure proper drainage and in the interests of environmental management. Conditions are imposed in relation to the approved access to ensure highway safety. Hours of construction and contamination conditions are necessary in the interest of the living conditions of neighbouring occupiers and to ensure the protection of controlled waters. A condition relating to the mitigation strategy in relation to bats, barn owls and breeding birds is necessary to prevent harm to protected species.
25. I have not imposed a condition relating to the specification of the carriageways and footpath as these are part of layout considerations, which is a reserved matter. Similarly, in relation to tree protection, this will be covered by landscaping details to be submitted at the reserved matters stage.

### **Conclusion**

26. For the reasons given above I conclude that the proposal accords with the development plan. Material considerations have not been shown to carry sufficient weight as to indicate a decision otherwise than in accordance with it. Therefore, the appeal is allowed.

  
INSPECTOR

### **Schedule of Conditions**

- 1) Details of the appearance, landscaping, layout and scale (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of the approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan and Indicative Site Plan, but only in respect of those matters not reserved for later approval.
- 5) Prior to the commencement of development, a design for a traffic management scheme for the A5086 including full engineering, drainage, and construction details shall be submitted to and approved in writing by the local planning authority. The approved traffic management scheme shall be implemented in accordance with the approved details prior to occupation of any dwelling.
- 6) No development shall commence until visibility splays providing clear visibility of 60 metres in both directions, measured 2.4 metres down the centre of the access road and the nearside channel line of the carriageway edge have been provided at the junction of the access road with the A5086. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order), no structure, vehicle or object of any kind shall be erected, parked or placed and no trees, bushes or other plants shall be planted or be permitted to grow within the visibility splay which obstruct the visibility splays.
- 7) No development shall commence until a Construction Management Plan (CMP) has been submitted to and approved in writing by the local planning authority. The CMP shall include details of:
  - Pre-construction road condition established by a detailed survey for accommodation works within the highways boundary, conducted with a Local Highway Authority representative and details of how and when any damaged will be repaired; with all post repairs carried out to the satisfaction of the Local Highway Authority at the applicants expense;
  - Areas for vehicle parking, manoeuvring, loading and unloading for their specific purpose during the development;
  - The storage of plant and materials used in construction;
  - Cleaning practices of the site entrances and the adjacent public highway;
  - Wheel washing facilities;
  - The sheeting of all HGVs taking spoil to/from the site to prevent spillage or deposit of any materials on the highway;
  - Construction vehicle routing;



- The management of junctions to and crossings of the public highway and other public rights of way/footway;
  - Any proposed temporary access points (vehicular / pedestrian);
  - Surface water management during the construction phase;
  - Measures to control dust, emissions, sediments and pollutants arising from the development, specifically including measures to prevent the discharge of such materials to the River Ehen; and
  - A scheme for recycling/disposing of waste resulting from construction works.
- 8) No development shall commence until a surface water drainage scheme has been submitted to and approved in writing by the local planning authority. The development shall be completed, maintained and managed in accordance with the approved details.
- 9) No development shall commence unless and until a scheme detailing the method and timescales for the removal and disposal of Japanese Knotweed within the site has been submitted to and approved in writing by the local planning authority. The removal and disposal of Japanese Knotweed shall be undertaken in accordance with the approved scheme and timescales.
- 10) Prior to any demolition work, a programme of historic building recording and analysis shall be secured and implemented, in accordance with a Level 3 survey as described by Historic England, which has first been approved in writing by the local planning authority. Within two months of that recording work being done three copies of the resultant Level 3 Survey Report shall be submitted to the local planning authority.
- 11) Before the dwellings are occupied a sustainable drainage management and maintenance plan shall be submitted to and approved in writing to the local planning authority. Foul and surface water shall be drained on separate systems, and the development shall be maintained and managed in accordance with the approved details.
- 12) Before the dwellings are occupied the existing access to the highway shall be permanently closed and the highway crossing and boundary shall be reinstated in accordance with details which have been submitted to and approved by the local planning authority.
- 13) There shall be no vehicular access to or egress from the site other than via the approved access, unless otherwise agreed by the local planning authority.
- 14) Demolition or construction works shall take place only between 7:30am to 6:00pm on Mondays to Saturdays, and not at any time on Sundays and bank holidays, unless otherwise agreed in writing by the local planning authority.
- 15) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended until the developer has submitted and obtained written approval from the local planning authority for a remediation strategy detailing how this contamination shall be dealt with. The remediation

strategy shall be carried out as approved before the development is resumed or continued.

- 16) No development hereby permitted shall be carried out except in accordance with the mitigation strategy described in Survey for Bats, Barn Owls and Breeding Birds – Flosch Farm, Cleator, Cumbria prepared by Steve Wake dated 15 April 2019.