

STATEMENT OF CASE

Appeal against the refusal of Planning Permission in Principle for One Residential Dwelling, Syke Whins, Lowca, Whitehaven

Planning Ref:- 4/20/2466/PIP

Introduction

- 1.0** This Statement of Case supports an appeal by Lakeland Building Design on behalf of Mr Pitchford, against the above refusal of Planning Permission in principle dated 21st December 2020. This Statement of Case is directed towards the Council's reasons for refusal.
- 1.1** Matters in relation to the proposal are set out generally within the Planning Application. Those matters will not be repeated within this statement other than to address matters within the "reasons for refusal" noted within the decision notice.
- 1.2** The application was made for "Planning Permission In Principle" for a single residential development on land currently used as part of the applicants garden associated with Syke Whins, the applicants current home. The site is situated between the villages of Lowca, Harrington and Distington and between the two larger towns of Whitehaven and Workington.
- 1.3** The local authority has given two reasons for refusing the application:-

Reason 1:-

The Site is located approximately 1.5 miles north of Lowca in an area of open countryside. A need for the dwelling to be located outside the Borough's recognised settlements has not been demonstrated. Community facilities in the general wider vicinity of the Site are limited. Access to services from the Site is also extremely limited being beyond distances which residents could reasonably be expected to walk or cycle. There are no footways or direct access routes from the Site to the available services. Given the distances involved to the services and facilities, travel by more sustainable methods would be unlikely to offer a feasible alternative to private car. The proposal is therefore contrary to policies ST1, ST2 and SS3 of the Copeland Local Plan 2013-2028, and Paragraphs 8, 9, 11, 79, 102 and 108 of the National Planning Policy Framework.

Reason 2.....

The Site comprises part of the undeveloped land that is located to the north west of a small group of traditional buildings and is adjoined by a Public Right of Way. The proposal would extend development beyond the existing building envelope and would be at odds with the simple form, configuration and character of the existing building group. The creation of a new access to serve a dwelling in this location would extend development into the open countryside. Overall the development would have the effect of further extending and urbanizing this small collection of rural buildings to the detriment of the prevailing local landscape character and setting. The development is in conflict with the provisions of Policy ENV5, Policy DM10, and Paragraphs 20, 122 and 127 of the NPPF.

2.0 Planning Policy Context and Matters for Consideration

2.1 The material planning policy documents considered are as follows:

- (i) Copeland Local Plan 2013 – 2028
- (ii) National Planning Policy Framework (February 2019)

2.2 We will also take into consideration recent determinations and judgements made in cases which relate in principle to this application.

3.0 Discussing Reason for Refusal 1.

3.1 *“The Site is located approximately 1.5 miles north of Lowca in an area of open countryside. A need for the dwelling to be located outside the Borough’s recognised settlements has not been demonstrated..... “* The application was made to determine the principle of development on the application site for a single dwelling. The applicant currently lives at “Syke Whins” which is a substantial two storey dwelling and now, as family circumstances have changed, the applicant is seeking to establish a small dwelling on the site. If the principal for development is favourably established, the applicant would “downsize” and construct a modest dwelling designed to accommodate the setting and one that would suit his families foreseeable circumstances. We agree that the site is located outside the boroughs recognized settlement limits but we would contend that there are specific circumstances that should allow the Borough Council to grant “permission in principle”. These circumstances will be discussed later in the statement.

3.2 The reason continues” *Community facilities in the general wider vicinity of the Site are limited. Access to services from the Site is also extremely limited being beyond distances which residents could reasonably be expected to walk or cycle. There are no footways or direct access routes from the Site to the available services. Given the distances involved to the services and facilities, travel by more sustainable methods would be unlikely to offer a feasible alternative to private car.*”

We respectfully suggest that “Community facilities in the general wider vicinity of the Site” are more than adequate. The “general wider vicinity of the site” offers facilities within the towns of Whitehaven and Workington. The distances to each of the two towns is not exceptional and not incomparable with what to expect within the county of Cumbria. The two villages closer to the site offer limited services but are well connected to a wider network of public services via public transport.

3.3 Recent months have highlighted a massive shift in the way that people connect to the requirements for “sustainable living” and people have been encouraged to work from home. The Government has invested Billions of pounds to improve technology that facilitates a home working environment.

People have been encouraged to stay at home and have engaged with local suppliers to have food and groceries delivered. All this has offered a feasible alternative and has highlighted to people that it is possible to live in an area “outside of established settlement limits” without reliance on a private car.

3.4 This site has the benefit of being acknowledged as a “Brown Field” site, which we will detail later in the statement, and as such should be viewed sustainable and given priority for development purposes.

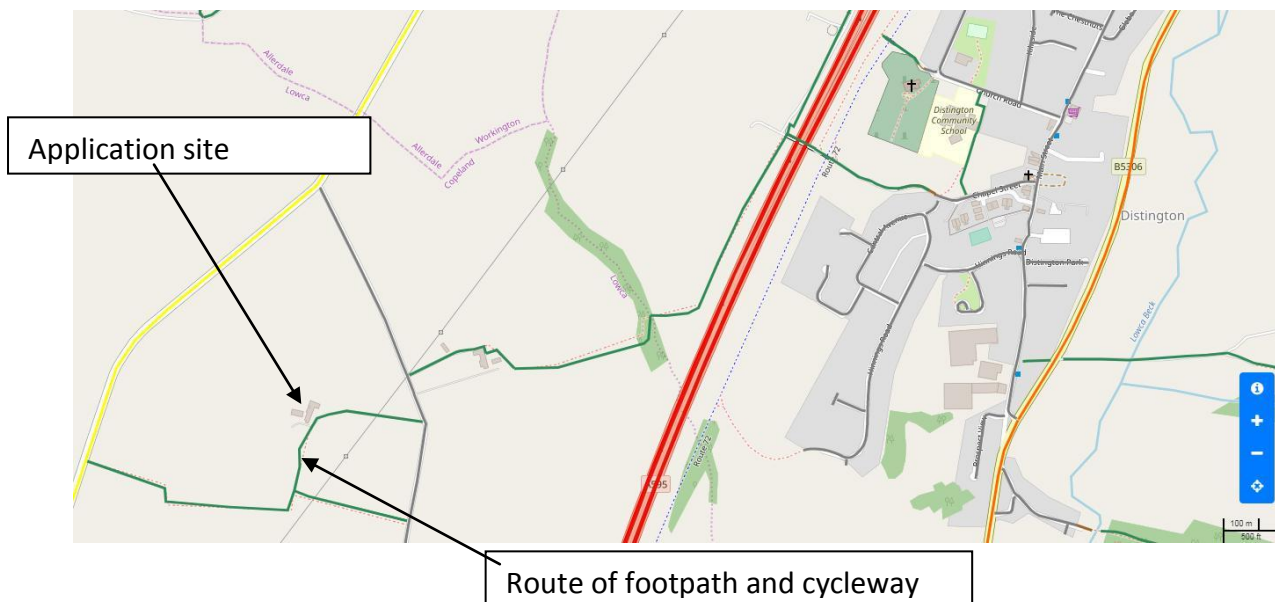
3.5 In all likely-hood, recent events will not over ride people’s desire for independent transport, but it can now be acknowledged that it is at least possible to live in a rural area without having to rely on a private car. That said it should also be acknowledged that we are now witnessing the advent of the electric car; the use of which can be employed as a more sustainable means of transport.

It should also be recognized that Cumbria is a “Rural County” with many people living in outlying areas. The application site does however have the benefit of not being isolated and within a group of three other dwellings.

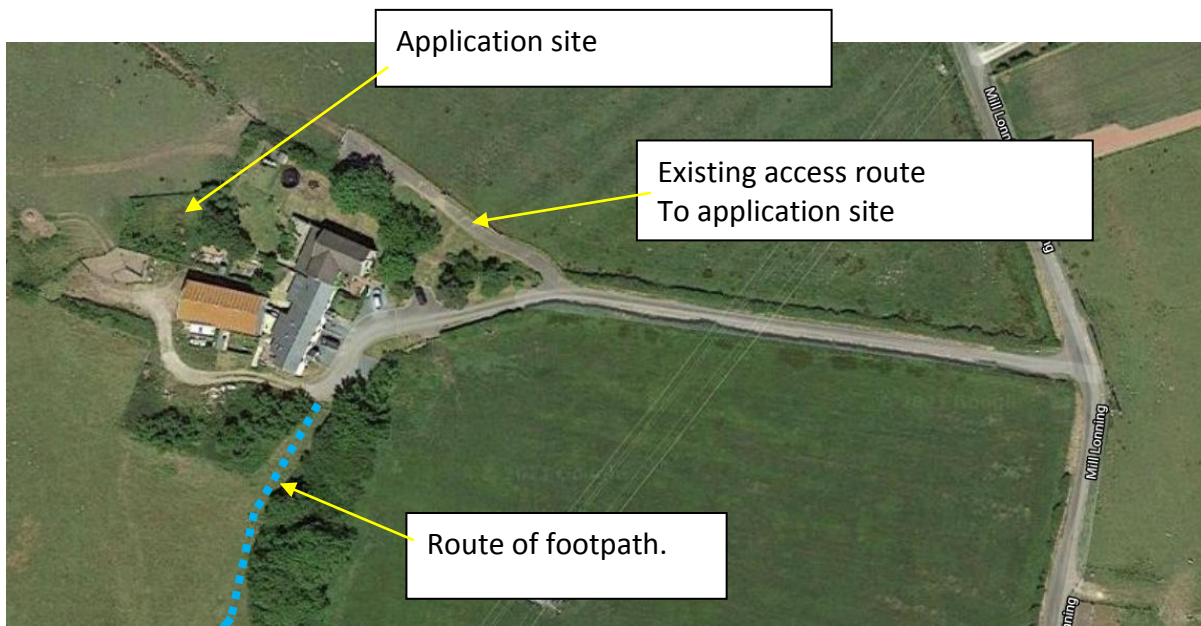


Photograph to illustrate relationship of the site to the two nearby villages

The proposed site has a more direct road access to the village of Lowca, however the village of Distington is somewhat closer with a public footpath and cycle way link.



Extract from Cumbria County Council's map illustrating public footpaths and cycle routes



Photograph of site to illustrate existing development and access to public highway

3.6 The reason continues.....” *The proposal is therefore contrary to policies ST1, ST2 and SS3 of the Copeland Local Plan 2013-2028,*

Responding to the stated “contravention” to local plan policies; it should be noted that Copeland cannot yet demonstrate a ratified and adopted 5 year + 20% land supply document to support their local plan. The guiding principles of the NPPF should therefore take precedent.

Paragraphs 47 and 49 of the NPPF state that relevant policies in the development plan for the location and supply of housing should not be considered up to date if a 5 year supply cannot be demonstrated. Such relevant policies within the local plan would be ST1, ST2 and SS3 as they would seek to restrict the location of housing and, consequently, its supply. We would contend that such policies are not up to date and should be afforded limited weight in the determination of this appeal.

3.7 Turning to the NPPF policies referred to in the decision. The LPA go on to state:-

.....“and Paragraphs 8, 9, 11, 79, 102 and 108 of the National Planning Policy Framework.”

In dealing with sustainable development; **Paragraph 8** sets out the three objectives; namely:-

1. An Economic Objective.

We would contend that this proposal is in line with this objective. The land is available and should be considered brown field in line with recent case law.

2. A Social Objective:- This site will provide a home more suited for a couple whose needs have changed and don't now require the space needed to raise a large family. The need for the applicant is to downsize and given that the land should be considered brown field, it should be considered suitable priority land for the purpose of providing a dwelling.

3. An Environmental objective: We contend that the proposal makes effective use of the land. A suitably designed dwelling with a low carbon footprint can be constructed that will have no significant impact upon the existing infrastructure. Current standards dictate energy efficient homes and promote the use of sustainable solutions for lighting, space and water heating.

The “Golden Thread” throughout and at the heart of the governments planning guidance is the requirement for sustainable development solutions. There is nothing to suggest that the development of a dwelling on this site could not employ “best practice” to enable a “low carbon” innovative dwelling with minimal reliance on the established public infrastructure.

Paragraph 9 ... Suggests that these objectives should be delivered through the preparation and implementation of development plans. As previously stated, we respectfully suggest that the policies governing the development of land within the borough should be afforded little weight given the lack of identified land available.

Paragraph 11..... Deals with the “Presumption in Favour of Sustainable Development” Section (d) specifically deals with “out of date” development plans and states that permission should be granted unless:-

- i). the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for

refusing the development proposed

; or

ii) . any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

We respectfully contend that the application site is not located within an area designated for particular importance and that any adverse impacts due to the approval of permission in principle would not demonstrably outweigh the benefit, when assessed against the framework as a whole.

Paragraph 79; deals with isolated housing. We contend that this development is not isolated given that other dwellings are situated close by. This point is expanded later in the statement.

Paragraph 102; deals with sustainable transport. Given the location of the available land, links to the public transport infrastructure are not ideal. For reasons previously discussed we contend that granting permission in principle for a single dwelling on the application site will not have a significant impact upon congestion. That, together with the benefit of improved technological infrastructure; the impending revolution of electric vehicles and the “Brownfield” status of the land, all taken together, we respectfully consider outweighs the harm that would be due to a single dwelling in this rural location.

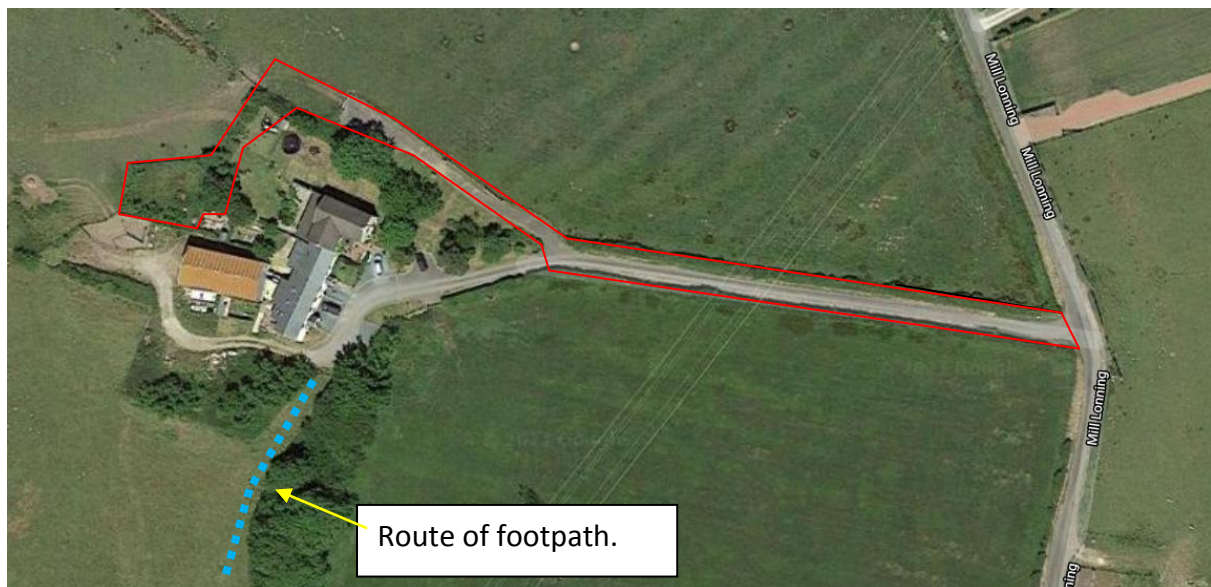
Paragraph 108 deals again with aspects of sustainable transport.

In regard to the points stated within the paragraph we contend that

- i) Opportunities to promote / partake in sustainable modes of transport will not be diminished. In addition to the advent of electric vehicles, the site is adjacent to a public footpath and cycle route which links to the nearby villages and towns.
- ii) Safe and suitable access to the site can be achieved by all users, and;
- iii) The development of a single dwelling on the site will have no significant impact on highway safety.

4.0 Discussing reason for refusal 2

4.1 Reason for refusal 2 states.....*“The Site comprises part of the undeveloped land that is located to the north west of a small group of traditional buildings and is adjoined by a Public Right of Way. The proposal would extend development beyond the existing building envelope and would be at odds with the simple form, configuration and character of the existing building group.”*



The above aerial photograph serves to illustrate the context of the site



The application outlines the site for permission in principle. All matters relating to siting and design can be addressed at the technical detail stage. We contend that there is nothing to suggest that the siting of a new dwelling would be at odds with the existing form of development. The LPA mention the adjoining public right of way, however, development of the site would not conflict or be at odds with the footpath. The development of the site is very well screened by the topography of the existing land form and adjacent buildings. There is nothing to suggest conflict when viewed from the footpath or surrounding public vantage points.

4.2 *The reason goes on to say..... “The creation of a new access to serve a dwelling in this location would extend development into the open countryside.”*

The existing access to Syke Whins has been utilized with a minimal extension to reduce conflict with the existing dwelling. The impact attributed to the small extension to the track can be addressed at the technical detail stage. There are many suitable finishes available that would harmonize with the landscape.

4.3 *The reason continues..... “Overall the development would have the effect of further extending and urbanizing this small collection of rural buildings to the detriment of the prevailing local landscape character and setting.*

We do not agree with the Councils assessment that the proposal would have the effect of extending and urbanizing this small collection of rural buildings. The design of the proposal is not the subject of the application. We would suggest that a dwelling can be designed to integrate with the collection of dwellings that exist adjacent to the site. The application requests “planning permission in principle” and all other matters can be dealt with as technical details

As previously stated we do not consider that there is conflict from public vantage points and that all aspects concerning visual amenity can be addressed in terms of design at the technical detail stage.

4.4 The reason concludes..... “ *The development is in conflict with the provisions of Policy ENV5, Policy DM10, and Paragraphs 20, 122 and 127 of the NPPF.*”

Policies EN5 and DM10 predominately address issues of design and landscape. We respectfully suggest that these matters can be addressed as a “technical detail”, given that there is a reasonable expectation that a suitable design can be detailed to minimise further concern to the LPA.

We also respectfully suggest that the consideration of paragraphs 20,122 and 127 of the NPPF can suitable be addressed as part of the technical details should this appeal be allowed and permission in principle be approved.

Dealing with the measures within the NPPF.

i) Parra 20..... We do not agree with the LPA assessment that this proposal is at odds with the strategic policy guidance of the NPPF. This is a proposal for “permission in principle” and we consider that all measures contained within Parra 20 can be addressed in favour of the development.

ii) Parra 122..... We do not agree that this provision is at odds with the proposal. The council have identified that there is a need for different types of housing. However they cannot demonstrate a suitable land supply that will accommodate the need. This proposal is contiguous to the existing built form, It should be considered “Brownfield”, it has a suitable form of access, as confirmed by the local highway authority and will not have an adverse impact on the capacity of the existing infrastructure and services.

iii) Parra 127..... We do not agree with the council’s assessment of this application when measured against this policy. We would respectfully suggest that all measures applicable due to this policy can be dealt with as “technical details”. We consider that the development of this site will “function well” and “add to the quality of the area” for the lifetime of the development. The development of “Brownfield” land should be at the forefront of the council’s requirements especially due to the lack of identified land supply in order to maintain the core strategy and strategic policy requirements.

We do not consider that this proposal would cause a “significant and demonstrable harm” that would outweigh the benefit of a development on this “Brownfield” Site

5.0 Matters to be considered.

5.1 There are two issues which the Applicant considers are relevant to the proposal. The first is that this is a “brownfield” site or “previously developed land” as it forms part of the substantial garden of Syke Whins and secondly; that the site is not isolated in the context of recent case law.

5.2 The general perception of local planning authorities is that garden land is exempt from the definition of previously developed land as set out in Appendix 2, Glossary, of the NPPF. That definition reads: *Previously developed land: Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure.*

This excludes: land that is or was last occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill, where provision for restoration has been made through development management procedures; land in built-up areas such as residential gardens, parks, recreation grounds and allotments; and land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape.

5.3 That definition clearly and specifically excludes private residential gardens in a built-up area. However, the Court of Appeal decision of *Dartford Borough Council v Secretary of State for Communities and Local Government and another (2017)* has found that the term “*previously developed land*” does include private residential gardens in an area that is not built-up. The application site cannot be described as being in a built-up area and, in accordance with the Dartford Court of Appeal ruling, it must therefore be considered as a “brownfield” site.

5.4 The NPPF and the Copeland Local Plan both give substantial weight and priority to the redevelopment of previously developed land and in that respect, the proposal accords with both national and local planning policies. The issue of isolated homes in the countryside is often used to prevent proposals such as that subject to the application and paragraph 79 is normally quoted as the relevant policy. However, the Applicant

considers, and the council agree, that the site is located within a distinct group of housing and buildings and, therefore, is not isolated.

5.5 In *Braintree District Council v SSCLG (2018)* the issue of what represented *isolated* was considered in the context of paragraph 79 of the NPPF. The Court of Appeal, whilst indicating that whether a site was isolated or not was for the judgement of the decision maker, the word isolated *should be given its usual plain English meaning ie. a site for residential development in a rural area should not be considered to be isolated if there are other houses close by.*

5.6 In the case of this application site, there are clearly other houses close by and, as such, the proposed dwelling is not in an isolated location and not, therefore, contrary to the provisions of paragraph 79 of the NPPF.

5.7 The Applicant recognises the need for new dwellings to present sustainable forms of development. However, sustainability is not just restricted to whether a site forms part of a settlement or it is close to services (see *Braintree DC v SSCLG*). It is considered that the proposed site is sustainable in that it represents the re-use of “brownfield” land, it is not liable to flooding, it does not take the best or most versatile agricultural land and it will not place a burden on public services. The Braintree case also recognises that not all settlements, hamlets, groups of dwellings in rural areas have services such as shops, pub, church or other social facilities.

Lord Justice Lindblom commented: *In my view a settlement would not necessarily exclude a hamlet or a cluster of dwellings, without, for example, a shop or post office of its own, or a school or community hall or a public house nearby, or public transport within easy reach.* It is all these small clusters of houses and hamlets that make up the character of this rural area and they play an important role in protecting and supporting the services that are available in nearby towns and villages; a principle advocated by paragraph 78 of the NPPF.

5.8 The Applicant contends that this is a “brownfield” site which should receive priority in the housing land supply chain in accordance with the NPPF and the adopted Local Plan. In so doing, the proposal would not be at conflict with other policies in the NPPF, indeed, it would meet those policies relating to housing land supply in a modest form, economic benefits and sustainability.

6.0 Conclusion

- 6.1** Due to the nature of this PIP application, we respectfully suggest that there is more than reasonable expectation that all measures required to enable a satisfactory standard of development can be achieved on this site.
- 6.2** Given that the LPA have concluded the need for a range of housing within the borough but have not sufficiently identified enough land to accommodate that need, diminished weight can be afforded to the councils development policies. That said, we consider that this proposal does accord with the requirements of those policies contained within the reasons for refusal.
- 6.3** As the land supply is not sufficient, it falls to the specific requirements of the NPPF. Given that this proposal is considered sustainable due to its “Brownfield” status we respectfully suggest that there should be a presumption in favour of approval for the proposal.
- 6.4** The proposal is subject to the “technical detail” stages and as such we would respectfully suggest that it can be expected that the development of the land will not bring about demonstrable harm to the surrounding area. We suggest that agreed layout and design matters will enable development on the site to assimilate into the landscape and will not be seen as intrusive to the extent that planning permission should be withheld.
- 6.5** We respectfully suggest that we have established that a satisfactory access can be achieved to the site that will not be to the detriment of highway safety.
- 6.6** We would also suggest that the provision of such an access can be designed to assimilate into the landscape and will not bring about demonstrable harm to the visual amenity of the area
- 6.7** In light of the matters contained within this statement, we respectfully suggest that this appeal be allowed and that approval for Planning Permission In Principle be approved.