



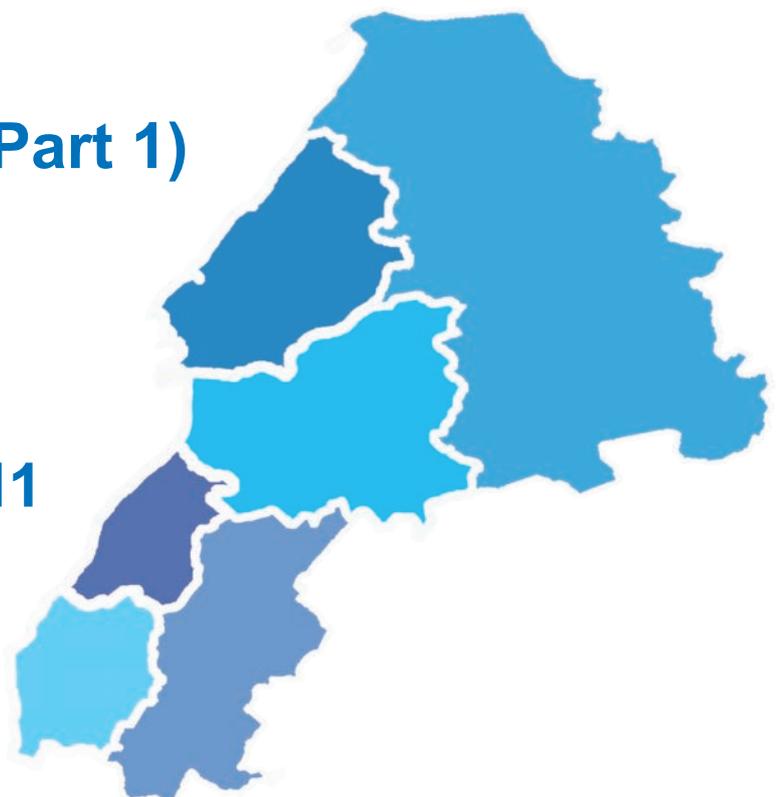
Allerdale Borough Council



Allerdale Local Plan (Part 1)

Response to Hearing Statements on Matter 11

January 2014



Response to representations regarding Matter 11

Introduction

1. This further Statement has been produced by Allerdale Borough Council to outline its response to Hearing Statements **[HS6-8]**. This statement provides further clarification on specific points made in **[HS6-8]**; however, these should be read in conjunction with the Positions Statements produced by the Council, in addition to the Topic Papers and extensive evidence base. Where this response to **HS6-8** is silent, the Council's position on the Initial Matters **[ED3]** is detailed in the Position Statements available on the examination webpage.

Position of the Council regarding Matter 11

2. In determining the settlement hierarchy the Council sought to group settlements that shared a common role, illustrated in part by a common set of services or facilities. However, it is acknowledged that the individual settlements identified in the same tier of the hierarchy can display different characteristics and potential for development. In order to reflect this paragraph 79 of the Local Plan **[CD1]** outlines a set of principles which will guide the identification of specific sites for development, as part of the site allocations process. In addition Modification **[MM13]** provides further clarification that existing planning permissions within a settlement will be taken into account when considering the scale or need for future site allocations.
3. The current Local Plan [1999] defines a Local Centre as having public transport, a school and shop plus one of a public house, church or community hall/ sports facility and as such Brigham qualified then as a Local Centre rather than an Infill Village. However, the existing local plan took the approach that although a village may fulfil the necessary criteria for a particular tier of the hierarchy, there may be reasons to either promote or demote settlements to a different tier. In the case of

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Brigham it is understood that a particular drainage constraint in the village at the time necessitated it to be demoted to an Infill Village. As outlined in the Strategy for Infrastructure [DSE4] no critical drainage issues have been raised by United Utilities that would undermine the delivery of the proposed settlement hierarchy.

4. A number of references have been made to an appeal decision for 24 affordable dwellings and 10 open market dwellings at Ellerbeck Brow Brigham [Appeal Ref: APP/G0908/A/2193690]. For ease of reference the decision letter can be found in appendix A of this response.

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Appendix A



Appeal Decision

Site visit made on 9 September 2013

by Geoffrey Hill BSc DipTP MRTPI

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

Decision date: 17 September 2013

Appeal Ref: APP/G0908/A/13/2193690

Ellerbeck Brow, Brigham, Cockermouth, Cumbria CA13 0SZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Home Group / Thomas Armstrong Construction Ltd. / Hearthstone Homes Ltd., against the decision of Allerdale Borough Council.
 - The application Ref 2/2012/0660, dated 28 August 2012, was refused by notice dated 18 December 2012.
 - The development proposed is residential development for 24 affordable dwellings and 10 open market dwellings including associated infrastructure.
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Preliminary Matters

1. The application was initially for 24 affordable dwellings and 11 open market dwellings. The application was revised prior to determination by the Council by the deletion of one of the open market dwellings. The description of development given above reflects this revision.
2. It is acknowledged by the Council in its appeal submissions that there is no Grade 3a agricultural land on the appeal site¹. In which case the fifth of the Council's reasons for refusal is not substantiated and I need make no further comment on this matter.

Decision

3. The appeal is dismissed.

Main Issues

4. There are four main issues in this appeal; these are, the effect of the proposed development on:
 - i) the character and appearance of the area,
 - ii) the living conditions of neighbouring residents,
 - iii) the free flow of traffic and highway safety for pedestrians,
 - iv) nature conservation interests.

¹ Confirmed in the ADAS report dated 4 February 2013

Reasons

Policy context

5. The planning policies referred to in the Council's Reasons for Refusal are those of the Allerdale Local Plan (ALP), adopted in 1999 - some 14 years ago. Paragraph 215 of National Planning Policy Framework (NPPF) says that the weight attributable to local plans adopted prior to the publication of the NPPF has to be considered according to their degree of consistency with the NPPF.
6. Paragraph 47 of NPPF expects a local planning authority to be able to demonstrate that it has a 5 year supply of deliverable housing sites against their housing requirements, with an additional 'buffer' of either 5% or 20%, depending on whether there has been as a history of persistent under delivery. The Council accepts that it does not have a 5-year supply, with the latest published Annual Monitoring Report showing only 4.0 years supply². Whereas the Council argue that subsequent planning permissions mean that the 5 year supply requirement "is likely to be met", no firm evidence of an actual planning permission (subsequent to the conclusion of a Section 106 planning obligation) has been provided. This is not a reliable basis on which to assess the availability of housing sites in this appeal. Furthermore, no appraisal is given on whether this would allow for the relevant 'buffer' figure. That is, on this basis of the information provided in this appeal I consider that the Council cannot demonstrate a 5-year supply of housing sites and, in this respect, there is an inconsistency with the requirements of NPPF. This brings into question a complete reliance on the policies of the ALP.
7. Alongside the matter of the 5 year housing land supply is the need for affordable homes, as identified in the Brigham Housing Market Assessment. This assessment saw the need for 26 affordable homes in the parish. The proposed scheme includes 24 affordable homes. This would be a significant contribution to meeting the identified need.
8. Paragraph 49 of NPPF puts forward a presumption in favour of sustainable housing development which, in view of the shortfall in supply noted above, gives some support to the principle of the scheme proposed here. However, the concept of sustainable development takes into account social, amenity and environmental considerations which have to be assessed in the balance. The housing supply figures argue in favour of a grant of permission in principle and, in this circumstance, any possible adverse effects of a scheme have to significantly and demonstrably outweigh the benefits of granting permission.
9. Those possible adverse effects are addressed through other policies of ALP. The other policies referred to in this appeal (and discussed in greater detail below) are generally consistent with the NPPF insofar as they seek to promote good design, create a safe environment for road users, protect the appearance of the countryside and safeguard nature conservation interests.

Character and appearance

10. I note that an appeal was dismissed on this site in 1988, in part, on the grounds of its visual impact on the landscape. The policy context has changed over the intervening 25 years, with – not least - the adoption of the

² Paragraph 5.8 of the Annual Monitoring Report 2011/12; dated December 2012.

Allerdale Local Plan and the NPPF. In the intervening years the trees and hedges in the surrounding area will have become more established in the landscape. Also, with an unmet need for additional housing sites, it is almost inevitable that some of this will have to be on presently undeveloped (ie green field) sites, with the corollary that it would extend development into the rural landscape.

11. Brigham village occupies an elevated position in this undulating rural landscape. Development here is clearly seen against the skyline in approaches from the east along Ellerbeck Brow. The appeal site is part of this hilltop setting, with views out to the east and the north. New housing here would be seen as an expansion of built development into the countryside.
12. However, I saw at my site inspection that a characteristic of this local landscape is that villages are not hidden, buildings are clearly seen over some distance either by virtue of their prominent location or the pale colours used for the walls, or both. As well as Brigham being prominent, I saw that the nearby village of Papcastle is also conspicuous in the landscape.
13. Although new housing on the appeal site would be seen, it would be a relatively small expansion of the present built up area, rather than an entirely new incursion. That is, it would be very much in keeping with the siting and setting of the village as it is at present. Furthermore, retaining the hedgerow across the northern boundary of the site would be a partial screen to the built development when viewed from the Papcastle direction. Samson's Wood and the small group of trees or copse adjacent to Ellerbeck Brow as it crosses the beck would interrupt a clear view of houses on the site when approaching from the direction of Cockermouth. In time, landscape planting as part of the appeal scheme could further screen or soften some of the landscape impact. That is, in broad landscape terms I do not consider that the scheme would appear incongruous and it would not result in unacceptable harm to the rural character of the wider area.
14. However, in more detailed terms, the proposed layout does not seem to draw upon any pattern or form of development found elsewhere in the village. ALP Policy HS8 sets out a number of criteria for new development including consideration of (amongst other matters) building lines, form and massing and spaces between buildings. Whilst I acknowledge that there is a considerable variety in the type of housing at present in the village. In this south-eastern part the housing is generally larger-scale and spaced apart. Closer to the village centre, the development is at a higher density, with terraces of relatively small houses or cottages, set close to the road.
15. The proposed scheme has houses laid out at varying distances set back from the untypically serpentine estate road. Although there would seemingly be generous space between the buildings, many of the back gardens would be notably short, which would appear unusually cramped in this edge of village context. The street scene would be fragmented by numerous parking bays, failing to create an integrated townscape, which would neither relate to the adjacent development, nor to the other development on the appeal site. The group at the western end of the site would have a particularly poor visual presence, with parking bays and back garden fences (for plots 28 and 29) dominating the end of the cul-de-sac.

16. Furthermore, with only a single point of access, the development would be poorly connected to the rest of the village, particularly for pedestrians. Those living at the western end of the scheme (that is, mainly the smaller affordable housing units) would have a walk of 200 metres (m) or more just to get to Ellerbeck Brow, at a point on the scheme which would be furthest from the centre of the village and its facilities, and the primary school at the far end of the village.
17. Therefore, although the proposed expansion on the rural edge of the village would not be unacceptable in broad landscape terms, the detailed design of the scheme would not relate well to the established urban form of the village, and it would appear incongruous and isolated. Taking all of these points into consideration, the proposed scheme would not meet the requirements for good design set out in ALP Policy HS8.

Living conditions of neighbours

18. Many of the occupiers of houses adjacent to the appeal site have expressed concern that their properties would be overlooked or that the new houses would obscure their view over the open countryside. It is well established principle that nobody has a right to a view over another person's property. Whilst the loss of a presently open outlook from a property may be a matter for regret, this is not a legitimate planning concern. What would be of concern is an interference with the reasonable expectation of the quiet enjoyment of one's house in terms of privacy, overlooking and overbearing visual impact.
19. I have not been provided with any policy guidance which is used by the Council to regulate the juxtaposition of new and existing housing. Most of the houses on High Brigham have long gardens and established fences or hedges along the boundary with the site and I do not consider that these properties would suffer an unacceptable interference with their privacy or peaceful enjoyment of their gardens.
20. I note that the proposed scheme sets new buildings no closer than 21 m from present housing – notably 'Brookside' and 'Hywyns'. In my experience, this is the minimum separation to ensure adequate privacy between neighbouring houses. Having said that, it would appear unusually close in the more spacious context of this end of the village, which adds to my concerns over the compatibility of the overall design with the present village form.
21. Of particular concern is the impact of the scheme on some individual properties. The back garden of 'Brookside' and 'Hywyns' are notably short and, although screening to ensure privacy could be provided in the form of a hedge or fence, this would appear uncomfortably overbearing in the outlook from the living rooms at the back of these properties, and create a very poor and enclosed area of garden space with a low amenity value, particularly for 'Brookside'. The amenity value would be diminished further by the shortness of the garden, which would make it difficult to keep a respectable distance away from whatever activities may take place at the end of the neighbouring garden for the bungalow on plot 1. Similar concerns apply for the occupants of No.42 High Brigham.
22. Moreover, there is a conservatory / dining area for 'Brookside' on the side adjacent to the proposed access. This would have windows within 3 m of the

access road. With the access road this close this would result in considerable disturbance to those using this room both visually and in terms of the noise of passing traffic and pedestrians. It is proposed to provide a 1.2 m wall along this boundary, but this would not be high enough to give the privacy those using the room should expect, and a higher wall would have all the same unacceptably enclosing effects of a screen across the back of the property.

23. Drawing these points together, whilst I do not accept that a general loss of a view over open farmland is a relevant objection in planning terms, the proposed development would bring development unacceptably close to 'Hywyns' and 'Brookside', harming the living conditions of the occupants of those properties.

Highway safety

24. ALP Policy HS9 requires a development proposal to have a direct access on to an adopted highway. Guidance on the design of an appropriate access is given in Manual for Streets³ (MfS). The proposed access would be on to Ellerbeck Brow at a point where there is a 30mph speed limit in force.
25. The guidance in MfS is that, having regard to the measured speed of passing traffic, the access should provide clear visibility in each direction of 49 m at a point 2.4 m back from the edge of the carriageway⁴. Evidence produced in support of the application demonstrated that this requirement can be met, with minor adjustments to the alignment and width of the carriageway. The design was acceptable to the local highway authority. Nevertheless, at my site visit I saw that parked cars interfered with the visibility to either side of the proposed access. No clear or definite proposals have been put forward to demonstrate how this potential obstruction to visibility could be addressed before development commences.
26. A local resident has claimed that the proposed visibility should be more than 49 m, taking account of a survey conducted in the late summer, the speed of passing traffic and the gradient of Ellerbeck Brow. The date and data for this survey, and who carried it out, have not been provided to me nor to the appellant and it is not possible to verify if the methods and equipment used for the survey meets the relevant protocols. Without such substantiation the comments provided in the e-mail from the local resident (dated 24 May 2013) can only be regarded as hearsay evidence which has not been tested and, as such, carries very little weight in this appeal.
27. I also have regard to the advice given in Manual for Streets 2 (MfS2). Here paragraph 10.5.9 advises that visibility below the recommended levels will not necessarily lead to a significant problem, and section 10.6 of MfS2 says that the absence of wide visibility splays encourages drivers to emerge more cautiously. That is, even if the design of the access would not meet the calculations reported by the local resident, this would not necessarily make the access unsafe or unacceptable.
28. Whilst local residents may have their concerns over the extent of the visibility which should be available, the expectation is that the local planning authority should produce evidence at appeal stage to substantiate each reason for

³ Manual for Streets: Communities and Local Government, Department for Transport, Welsh Assembly Government, 2007

⁴ MfS Paragraph 7.6.4 and Table 7.1, page 91

refusal⁵. No such evidence has been produced by the Council in this appeal. In its appeal statement it has simply given a list of points made by interested persons at application stage. In view of there being no evidence from the Council (supported by the Local Highway Authority as necessary) that the proposed access would not meet the current guidance I accept that, in principle, the design put forward in the appeal scheme would not unacceptably interfere with the safety and free flow of traffic on Ellerbeck Brow.

29. However, there is a degree of uncertainty over whether the submitted scheme can be achieved in practice. The Council have suggested a planning condition be attached to any permission that development should not commence until the visibility splay has been secured. That implies that it is not compliant at the moment, but it is not clear how it could be made compliant or when. That is, although a 'Grampian' style condition could be attached to a permission to cover the point, there is no certainty that its terms could be met, and particularly if it relies upon works taking place on land outside the ownership or control of the applicant. A highway contribution is included in a unilateral undertaking, but this is not specific about what works are to be funded by the contribution or how this would be directly related to the proposed development in terms of a specific problem and a specific solution. This leaves some doubt over whether the scheme could be implemented within the lifetime of a planning permission.
30. Other concerns raised relate to additional traffic passing through the centre of the village where the highway is narrow and where there are no footways in places. It is inevitable that additional housing would bring additional traffic through the village. However, notwithstanding the narrowness of the streets - and in particular the pinch point opposite the Methodist chapel - and the lack of footways, no evidence of recorded accidents has been put forward in this appeal. That is, whilst the conditions in the centre of the village might not meet current guidance for new development, it does not appear to be inherently unsafe. Indeed the narrowness of the streets, further narrowed by parked vehicles, must act as a means of traffic calming, slowing vehicle speeds. Where there is a calm traffic environment the shared use of the carriageway by vehicles and pedestrians can create conditions where pedestrians may not feel intimidated by motor traffic⁶.
31. Additional traffic through the village centre may cause a greater degree of waiting at the narrow points, but this cannot be regarded as a serious form of congestion interrupting the free flow of traffic on a main road. This is essentially a local street through the village where slow speeds and occasional, short, delays are not uncommon and not unacceptable. The present conditions would not be made substantially different or worse, to the point where it could be regarded as representing an unacceptable interruption to the free-flow of traffic or a significantly increased risk to the safety of pedestrians.
32. Whereas there would be adjustments to the carriageway width and geometry in Ellerbeck Brow at the proposed point of access, this would not materially alter the circumstances for the use of access points on opposite side of road.

⁵ Circular 03/2009 Costs Awards in Appeals and Other Planning Proceedings; Paragraph B16

⁶ MfS paragraph 7.2.8

The visibility at the entrance to 'The Warren' would be unchanged and, taking account of the swept path diagrams provided with the appeal submissions, the variation in the width of the highway would not prevent the manoeuvring of a motor home into and out of that access.

Nature conservation

33. ALC Policy EN32 states that development will not be permitted where it may have an unacceptable adverse effect on an animal species protected by law. The pre-application survey of the site noted a red squirrel in one of the hedgerows across the site. The breeding and resting places of the red squirrel are protected under the Wildlife and Countryside Act 1981.
34. Although a red squirrel was spotted on the site, this was not noted to be within a breeding or resting place. So, even though the proposed scheme would lead to loss of part of that hedgerow, it would not affect part of its protected habitat and hence there would be no conflict with its legal protection nor, by extension, Policy ENV32.
35. Other species of wildlife interest may be found on or close to the site (badgers or bats) but the proposed scheme would have no direct harmful effect on these species or their habitats and any indirect effects can be mitigated through the imposition of appropriate planning conditions.
36. It is very relevant that Natural England, the agency charged safeguarding nature conservation interests, has raised no overriding objections. On the fourth main issue I conclude the proposed development would have no unacceptably harmful effects on nature conservation interests.

Other Matters

37. A planning obligation (unilateral undertaking) has been submitted, made under Section 106 of the Town and Country Planning Act 1990 which secures the affordable housing element of the scheme, as well as financial contributions, practical works or transfers of land, to cover open space provision, surface water drainage highways improvements and education provision.
38. Having regard to the three tests for a planning obligation set out at paragraph 204 of NPPF, I consider that, for the most part, the offered obligation is necessary to make the development acceptable in planning terms, is directly related to the development and is fairly and reasonably related in scale and kind to the development. However, as discussed at paragraph 29 above, the relevance of the offered highway contribution is unclear and this element of the undertaking can be seen not to meet the NPPF tests.
39. A suite of suggested planning conditions has been submitted by the Council, to which the appellant has not objected. Although the detail of some of the suggested conditions might need a little further examination were the appeal to be allowed, I consider that, apart from the condition requiring that the development should not commence until the visibility splay has been secured (as discussed at paragraph 29 above), the matters raised in the suggested conditions are relevant, reasonable and necessary.

Overall Conclusion

40. There is a shortfall in the Council's housing land supply, which introduces an underlying presumption in favour of allowing the scheme, subject to it being acceptable in other regards. The scheme has several benefits in that would address the shortfall in housing and bring forward a significant number of affordable houses – of which there is a shortage in this area. Furthermore, the scheme would not appear incongruous in the landscape, and there would be no unacceptable harm to nature conservation interests.
41. Whilst the shortfall in housing land supply and affordable housing are serious concerns, these are in essence, temporary circumstances and these short-term problems have to be weighed against the permanent harm the scheme would cause to the character of the area and the living conditions of nearby residents, which would be contrary to the objectives of the development plan policies. There is also a degree of uncertainty over how and when the visibility at the access on to Ellerbeck Brow could be secured. I consider these harms to be significant and they demonstrably outweigh the benefits. Accordingly, the appeal should be dismissed.

Geoffrey Hill

INSPECTOR