

SCHEDULE B

SCHEDULE B

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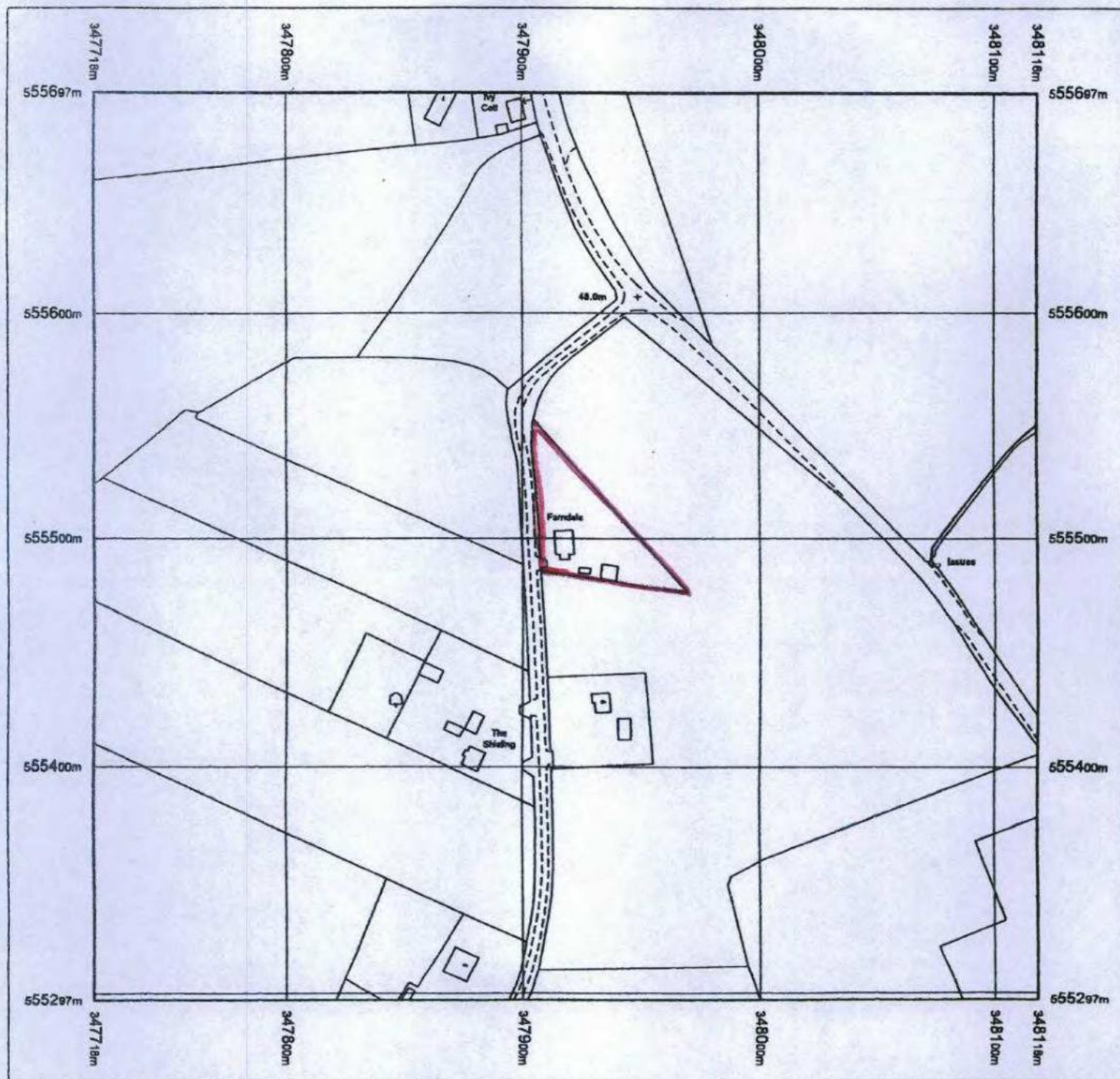
**Item No: 06**

Between 03/07/2020 and 30/07/2020

**Appn Ref No:**  
19/0540**Applicant:**  
Dr J Deeble**Parish:**  
Wetheral**Date of Receipt:**  
10/07/2019**Agent:****Ward:**  
Wetheral & Corby**Location:**  
Pennine View, Sandy Lane, Broadwath, Heads  
Nook, Brampton, CA8 9BQ**Grid Reference:**  
347925 555515**Proposal:** Removal Of Condition 4 (Closure of Existing Access) Of Previously  
Approved Permission 17/0857**Amendment:**  
  

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**REPORT****Case Officer:** Richard Maunsell**Decision on Appeals:****Appeal Against:** Appeal against refusal of planning perm.**Type of Appeal:** Written Representations**Report:****Appeal Decision:** Appeal Allowed with Conditions      **Date:** 24/07/2020



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**PROPOSED REPLACEMENT DWELLING - FARNDALE - SANDY LANE - HEADS NOOK**  
**LOCATION PLAN**

**DRG. NO. 3001/1**

**SCALE : 1-2500**



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## Appeal Decision

Site visit made on 6 July 2020

**by Philip Lewis BA (Hons) MA MRTPI**

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

**Decision date: 24<sup>th</sup> July 2020**

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**Appeal Ref: APP/E0915/W/20/3247551**

**Pennine View, Sandy Lane, Broadwath, Heads Nook CA8 9BQ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Dr Jennifer Deeble against the decision of Carlisle City Council.
  - The application Ref 19/0540, dated 8 July 2019, was refused by notice dated 30 August 2019.
  - The application sought planning permission for the erection of replacement dwelling (revised application) without complying with a condition attached to planning permission Ref 17/0857 (APP/E0915/W/18/3201371), dated 11 April 2019.
  - The condition in dispute is No 4 which states that: Within 3 months from the date of this permission, the existing accesses to the highway shown on the Block Plan As Existing Drawing no. 3001/2 serving the property formerly known as Farndale, shall be permanently closed and the highway crossings and boundaries shall be reinstated in accordance with details have been submitted to and approved in writing by the local planning authority.
  - The reason given for the condition is to re-enforce the impression of Farndale being ancillary to Pennine View and from that single point of access, access to both buildings would be both clear, convenient and logical.
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of replacement dwelling (revised application) at Pennine View, Sandy Lane, Broadwath, Heads Nook CA8 9BQ in accordance with the application Ref 19/0540 made on 8 July 2019 without complying with condition No 4 set out in planning permission Ref 17/0857 (APP/E0915/W/18/3201371) granted on 11 April 2019, but otherwise subject to the attached schedule of conditions.

### Application for costs

2. An application for costs was made by Carlisle City Council against Dr Jennifer Deeble. This application is the subject of a separate Decision.

### Background and Main Issue

3. Pennine View is a detached dwelling which was permitted as a replacement dwelling for a bungalow known as 'Farndale', which was to be demolished. The original planning permission<sup>1</sup> set out that the existing access for Farndale should be closed permanently and the boundaries reinstated. This matter was

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<sup>1</sup> Council reference 13/0916



subsequently considered in a Planning Appeal<sup>2</sup> which sought development of the land without complying with that requirement along with another planning condition. That appeal was dismissed.

4. Farndale has since been permitted to be retained on the basis that it is occupied solely as ancillary accommodation to Pennine View<sup>3</sup>. Condition 4 of that permission, which is in dispute in this appeal, requires the access to be closed permanently and the boundary to be reinstated. The reasoning given in the decision is to re-enforce the impression of Farndale being ancillary to Pennine View, with a single point of access to both buildings being clear, convenient and logical.
5. Therefore, the main issue for the appeal is whether the condition is necessary, having regard to development plan policies relating to housing in the countryside and the living conditions of the occupiers of the Farndale annex with regard to accessibility.

## **Reasons**

*Is the disputed condition necessary?*

*Housing in the countryside*

6. Policy HO2 (Windfall Housing Development) of the Carlisle District Local Plan 2015-2030 (CDLP) sets out where new housing development would be acceptable. In the rural area that means within or adjacent to villages. CDLP Policy HO6 (Other Housing in the Open Countryside) sets out the special circumstances where new housing will be allowed in the countryside, including replacement dwellings. Pennine View was allowed in the countryside as a replacement dwelling. The supporting text to Policy HO6 is clear that in terms of replacement dwellings, the existing house on the site must be demolished on completion of the new dwelling. In this case, Farndale has been retained solely as an annex to Pennine View and in planning terms is no longer permitted as an independent dwelling.
7. The existing access, subject to the disputed condition, provides a separate and independent access to the Farndale annex and to a detached garage. I saw at my site visit that retention of the access erodes the appearance of Farndale as an annex to Pennine View and gives the appearance of it being a separate dwelling when viewed from Sandy Lane. This is despite similarities in the external finishes of Pennine View and the Farndale annex. Whilst condition 3 of the permission sets out that Farndale should not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as 'Pennine View' and shall not be sold separately or occupied as a separate dwelling, the retention of the access sought undermines the purpose and reason for that condition. This is because it facilitates independent access and occupation of the Farndale annex, the retention of which as an independent dwelling would be contrary to the CDLP, given that Pennine View has been permitted as a replacement dwelling. The retention of the access would therefore be contrary to CLP Policies HO2 and HO6 and a condition is necessary to secure the removal of the access to the Farndale annex.

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<sup>2</sup> APP/E0915/W/16/3160411 Council reference 16/0196

<sup>3</sup> APP/E0915/W/18/3201371 Council ref 17/0857

### *Living conditions*

8. I saw at my site visit that land to the front of Pennine View is largely surfaced in unbound gravel, with areas of paving near to both Pennine View and Farndale. I have had regard to the health considerations put forward by the appellant and agree that the gravel surface may affect accessibility to Farndale from the Pennine View parking area for people with mobility problems. However, that matter could be readily addressed through a change in surfacing materials which would provide appropriate access for the long term, including use of a buggy and allow for any such future changes in health of occupiers of the annex. Whilst compliance with the condition would involve some further expense, this has been a consistent requirement of the development of Pennine View as a replacement dwelling.
9. Although the closure of the access would effectively prevent vehicular access to the retained garage for Farndale as presently configured, a large garage has been erected with Pennine View and the gravel parking area provides for parking for a number of vehicles, where electric car charging could be facilitated. The use of these facilities in a shared way would accord with the ancillary use of Farndale.
10. The appellant has referred to paragraphs 59 and 61 of the National Planning Policy Framework in respect of meeting the housing needs of different groups and the Planning Practice Guidance regarding housing for older and disabled people. I am satisfied that the removal of the access does not conflict with this national policy and guidance, as appropriate vehicular and pedestrian access can be provided for all users within the site utilising the Pennine View access.
11. The disputed condition would not have an unacceptable effect on the living conditions of the occupiers of Farndale and this matter does not persuade me that the condition is unnecessary.
12. To conclude on this matter, I find that the retention of the access would be contrary to CDLP Policies HO2 and HO6. A planning condition to secure the permanent closure and reinstatement of the existing access to Farndale is therefore necessary.

### **Other matters**

13. Sandy Lane is a single track road and I have had regard to the comments from the Highway Authority that the retention of the access would not be prejudicial to highway safety. Whilst the retention of the entrance may provide some benefit as a passing place, I consider that this would be of limited benefit given the nature of the road.
14. In the Council Officers Report there is discussion of whether an access could be formed to the Farndale annex in the future as a fallback position. However, I have not been provided with details of such a scheme to consider. Consequently, the question of whether there is a potential fallback position is one which does not change my decision.

### **Conclusion and conditions**

15. For the reasons set out above, I find that a condition to secure the closure of the existing access to the Farndale annex and the reinstatement of the boundary is necessary. However, given that the disputed condition required

the access to be closed within 3 months of the date of the permission and the works have not been carried out, that condition has been breached.

16. Consequently, I am allowing the appeal and issuing a new permission with a modified condition 4. The Parties were given the opportunity to comment on the wording for the modified condition and I have had regard to the response received in reaching my decision. The modified condition 4 is imposed to ensure that a scheme for closing the existing access is submitted, approved and implemented in full so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and it is not possible to use a negatively-worded condition to secure the approval and implementation of the closure of the access before the development takes place. The condition will ensure that the development can be enforced against if the requirements are not met.
17. The guidance in the PPG makes clear that decision notices for the grant of planning permission under Section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose them all. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties. I have imposed a plans condition for certainty, a condition to removed permitted development rights to ensure that Farndale remains ancillary to Pennine View, a condition to ensure that Farndale is not occupied or sold as a separate dwelling from Pennine View to prevent the creation of a new dwelling in the countryside, and a condition in respect of the provision of visibility spays in the interests of highway safety.

*Philip Lewis*

INSPECTOR

## **Schedule of conditions**

- 1) The development shall be undertaken in strict accordance with the approved documents for this Planning Permission which comprise:
  1. the Planning Application Form received 4th October 2017;
  2. the Planning Statement received 4th October 2017;
  3. the Planning Statement Appendix received 4th October 2017;
  4. the Notice of Decision;
  5. And the following plans : Drawing no. 3001/1; Drawing no. 3001/2; Drawing no. 3001/2C; Drawing no. 3001/4; Drawing no. 3001/5; Drawing no. 3001/6; the Supportive Statement received 20th November 2013; the Stage One Desk Top Study Assessment of Likelihood Of Contamination Of Proposed Development received 20th November 2013; the Hedge Survey Schedule received 20th November 2013.
- 2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking and re-enacting that Order) there shall be no enlargement or external alterations to the dwelling unit to be erected in accordance with this permission, within the meaning of Schedule 2 Part (1) of these Orders, without the written approval of the Local Planning Authority.
- 3) The bungalow known as 'Farndale' shall cease its independent residential use and shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as 'Pennine View' and shall not be sold separately or occupied as a separate dwelling.
- 4) Unless within 2 months of the date of this decision a scheme for the permanent closure of the existing access to the highway shown on the Block Plan Drawing no. 3001/2D serving the Farndale Annex and for the reinstatement of the highway crossing and boundary is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented and completed within 3 months of the local planning authority's approval, the occupation of the Farndale Annex shall cease until such time as a scheme is approved and implemented in full.

Upon completion of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.
- 5) Visibility splays providing clear visibility of 2 metres by 45 metres measured down the centre of the access road and the nearside channel line of the major road shall be provided at the junction of the access road with the county highway in both directions. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking and re-enacting that Order) relating to permitted development, 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 grown within the visibility splay which obstruct the visibility splays. The visibility splays shall be constructed before general development of the site commences so that construction traffic is safeguarded.

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**Item No: 07**

Between 03/07/2020 and 30/07/2020

**Appn Ref No:**  
19/0588**Applicant:**  
Mr Monkhouse**Parish:**  
Stanwix Rural**Date of Receipt:**  
22/08/2019**Agent:****Ward:**  
Stanwix & Houghton**Location:**  
25 Whiteclosegate, Carlisle, CA3 0JA**Grid Reference:**  
341068 557859**Proposal:** Change Of Use Of Agricultural Land To Garden (Retrospective)**Amendment:**  
  

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**REPORT****Case Officer:** Alanzon Chan**Decision on Appeals:****Appeal Against:** Appeal against refusal of planning perm.**Type of Appeal:** Written Representations**Report:****Appeal Decision:** Appeal Dismissed**Date:** 28/07/2020



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## Appeal Decision

Site visit made on 6 July 2020

**by F Cullen BA(Hons) MSc DipTP MRTPI IHBC**

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

**Decision date: 28 July 2020**

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**Appeal Ref: APP/E0915/W/20/3250546**

**25 Whiteclosegate, Carlisle CA3 0JA**

- 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 Mr N Monkhouse against the decision of Carlisle City Council.
  - The application Ref: 19/0588, dated 30 July 2019, was refused by notice dated 17 October 2019.
  - The development proposed is a change of use of agricultural land to garden.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. I have used the Council's description of the development proposed in the banner heading above as it is more precise.
3. I observed on my site visit that the change of use of the land has taken place and that it has been enclosed by a fence. I have therefore determined the appeal on the basis that the development has already occurred and with regard to the plans submitted with the application.

### Main Issue

4. The main issue is the effect of the development on the character and appearance of the area.

### Reasons

5. The appeal site is a small rectangular parcel of land, of approximately 55m<sup>2</sup>, adjoining the rear garden of No 25 Whiteclosegate (No 25). Around three sides of its perimeter is a fence made up of concrete gravel boards, concrete posts and solid wooden panels which are stated by the appellant to vary in height from about 1.2m to about 1.8m.
6. Although some of the occupants of houses along this side of Whiteclosegate have extended their rear gardens from the original boundary line, the majority have not. In this respect, the original demarcation of the rear residential curtilages in this area still remains substantially defined.
7. The prevailing character and appearance of the area is quite different on either side of the original rear boundary line. The area to the east is characterised by medium density residential development, comprising detached and semi-detached houses within generous and mature plots which are enclosed to

- the rear by a variety of boundary treatments. Whereas the area to the west is characterised by open agricultural fields that are interspersed by isolated trees and field boundaries of hedges and/or post and wire fences.
8. The development extends the manicured domestic garden of No 25 beyond the original residential curtilage into agricultural land. In doing so it detrimentally forms a suburban incursion into an open, semi-rural landscape. This combined with the domestic nature and very solid appearance of the concrete frame and wooden panels which border the appeal site, creates a discordant feature which is out of keeping with the prevalent characteristics of the area.
  9. Whilst the size of the garden extension is modest, given the topography of the land, the change of use and its enclosure cause it to be unduly conspicuous when viewed from the nearby public footpath accessed from Brampton Road. This emphasises its incongruity within the open landscape setting of this side of Whiteclosegate and its adverse effect on the character and appearance of the area.
  10. The appellant has highlighted the inconsistency of the Council in its decisions, and has drawn my attention to the grant of recent planning permissions for similar proposals<sup>1</sup>, along with an example of a close boarded fence to the curtilage of another property in the wider area. Nevertheless, I do not know the full details or exact circumstances that led to these permissions being granted. From the information before me and my observations on site, the permission and other example within the wider area which incorporate close boarded fences, relate to either a different use of the land or the enclosure of an original residential curtilage. While, the permissions to the rear of other properties along Whiteclosegate incorporate post and rail or post and wire fences of a more open and agrarian form. On this basis, I do not consider any of these developments to be directly comparable to the appeal before me.
  11. Additionally, in my judgement and notwithstanding the form and materials of the enclosures permitted, the examples along Whiteclosegate referred to further demonstrate the harmful impact that sporadic, domestic interruptions into open agricultural land can have on the intrinsic character of a semi-rural landscape. Therefore, the presence of apparently similar proposals is not, in itself, a reason to allow more inappropriate and unacceptable development. I have determined the appeal before me on its own planning merits and found that it causes harm.
  12. Drawing the above points together, I conclude that the development has a harmful effect on the character and appearance of the area. This is contrary to Policies SP 6 and GI 1 of the Carlisle District Local Plan 2015-2030 (CDLP) insofar as they seek development to respond to local context, respect local landscape character and to be fully integrated into its surroundings; and to protect the intrinsic character of landscapes from excessive, harmful or inappropriate development.
  13. It also conflicts with provisions within the National Planning Policy Framework (the Framework) which aim to achieve well-designed places, along with

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<sup>1</sup> Application Ref: 19/0682 Change Of Use Of Agricultural Land To Garden at 7, 9 and 15 Whiteclosegate, Carlisle, CA3 0JA; Application Ref: 18/0504 Change Of Use Of Agricultural Land To Garden at 29 Whiteclosegate, Carlisle, CA3 0JA; and Application Ref: 15/1142 Change Of Use Of Part Field To Provide Horse Arena (Manege) For Private Use.



guidance in the National Design Guide which advocates the need for development to respond to and be integrated into its context.

### **Other Matters**

14. I have had regard to the fact that the appeal property is located within Hadrian's Wall Vallum, which is designated as a World Heritage Site and Scheduled Monument, and given consideration to any impact of the development on its significance.
15. The Framework declares that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). It goes on to advise that significance can be harmed or lost from an asset's alteration or destruction, or from development within its setting and that this should require clear and convincing justification<sup>2</sup>.
16. World Heritage Sites and Scheduled Monuments are identified within the Framework as designated heritage assets of the highest significance, which substantial harm to or loss of should be wholly exceptional<sup>3</sup>.
17. From the evidence before me and insofar as it pertains to this appeal, I consider that the significance of Hadrian's Wall Vallum to be largely derived from its historical illustrative value and evidential value, as an internationally significant asset of one of the frontiers of the Roman Empire and Roman military planning. The wider landscape setting of the Vallum also contributes to its significance.
18. Taking into account the relatively modest size and nature of the development and noting the comments made by Historic England, I consider that the development has a neutral impact on the identified significance of this designated heritage asset and its setting. As such, the change of use of the land and its enclosure does not conflict with Policy HE 2 of the CDLP which states that development will not be permitted where it would cause substantial harm to the significance of a scheduled monument. It also complies with provisions within the Framework which seek to protect the significance of designated heritage assets. Nonetheless, a neutral impact in this regard does not amount to a consideration in support of the appeal.
19. Whilst no objections to the development were submitted regarding highways or flood risk and no concerns were raised in relation to any impact on the living conditions of neighbours, these are neutral considerations in the planning balance. Furthermore, although the appellant contends that no verbal or written complaints or comments have been made in the two years since the fence was erected, this does not denote a lack of harm. Therefore, these matters do not alter my conclusion on the main issue.
20. I am aware of the clause within the legal contract entered into by the appellant when the land was purchased, requiring a fence of a minimum height of 1.5m to be erected and maintained around the appeal site. I also note the appellant's concerns in relation to the use of the adjacent and neighbouring field to hold livestock (horses) and the effectiveness of a post and rail fence to enclose his land. However, these are legal and/or civil matters and not for me to consider

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<sup>2</sup> National Planning Policy Framework Paragraphs 193 and 194.

<sup>3</sup> National Planning Policy Framework Paragraph 194 (b).

in the context of an appeal under Section 78 of the Town and Country Planning Act 1990.

21. I note the appellant's comments regarding alleged procedural impropriety by a Councillor who sits on Stanwix Rural Parish Council. However, it is not within the remit of the appeals process to comment on the internal procedures of the Parish Council or the Council. Consequently, this matter is not determinative in this appeal.
22. I recognise that a decision to dismiss the appeal may well cause inconvenience and expense to the appellant. However, unauthorised development has been undertaken and I must deal with the appeal having regard to the development plan and all other material considerations.

### **Conclusion**

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

*F Cullen*

INSPECTOR