



Appeal Decision

Site visit made on 7 July 2020

by Sarah Manchester BSc MSc PhD MEnvSc

an Inspector appointed by the Secretary of State

Decision date: 3rd August 2020

Appeal Ref: APP/A2335/W/20/3248933

Land off Kellet Lane, Over Kellet, Carnforth, Lancashire

- 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 Kevin Woodhouse against the decision of Lancaster City Council.
 - The application Ref 19/01190/FUL, dated 19 September 2019, was refused by notice dated 05 December 2019.
 - The development proposed is to create moorings alongside the Lancaster Canal. To create car parking and turning for 4 cars with a stone access track and revised entrance. Landscaping.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The site visit procedure was altered from an access required site visit to an unaccompanied site visit. On the grounds that the appeal site is readily visible from public viewpoints, I am satisfied that I was able to see all that I needed to without entering the appeal site.

Main Issues

3. The main issues are the effects of the proposal on:
 - i) The rural character and appearance of the countryside;
 - ii) Biodiversity, with particular regard to the Lancaster Canal; and
 - iii) Land stability and drainage infrastructure.

Reasons

Character and appearance

4. The appeal site includes part of the edge of an agricultural field that extends from Kellet Lane alongside the Lancaster Canal, together with the adjacent banks and part of the canal. It is in the open countryside over 1km to the north of Over Kellet, close to the traffic-controlled Kellet Lane Bridge Grade II listed heritage asset. There is a boat mooring with car parking on the other side of, and immediately adjacent to, the bridge and there is modest dwelling close to the bridge on the opposite side of the canal.
5. As part of the proposal, the roadside hedgerow would be set back behind an area of hardstanding, with separate access from Kellet Lane to the field and to the appeal scheme. There would be roughly 120m of double wheel stone track

- terminating at a car park for 4 vehicles adjacent to the field hedgerow, with additional parking for a service vehicle partway along the track. The appeal scheme would be separated from the adjacent field by a continuous hedgerow.
6. The mooring and movement of boats is a characteristic feature of waterways and, in this respect, the proposal would not be incongruous. Moreover, the 3 mooring posts and 2 grasscrete boarding areas would not be visually obtrusive. However, the enlarged highway entrance would be prominent and it would not relate well to the narrow and enclosed rural road. The car park would be a discordant feature in the rural context, and it would be conspicuous by virtue of the near continuous parking of vehicles during the busiest times of year.
 7. The evidence additionally indicates the need for canal excavation and bank stabilization works, possibly steel piling. The loss of the soft vegetated banks would be detrimental to the character and appearance of the area, contributing to cumulative significant adverse visual impacts. The proposal would be incongruous and jarring in the context of the tranquil canal and surrounding countryside. Consequently, it would diminish local distinctiveness and it would not contribute positively to a sense of place.
 8. The boundary hedgerow would partially screen the proposal from views across fields to the south, particularly when the hedgerow was in leaf. However, it would not screen the development from locations immediately to the south of Kellet Lane bridge, from the bridge itself, or from users of the canal or the towpath on the opposite bank. Moreover, the movement of vehicles, including during the hours of darkness, would be conspicuous. Consequently, even if it was acceptable to use planting to screen inappropriate development from view, the proposal would not be assimilated into its rural surroundings.
 9. Therefore, the proposal would harm the rural character and appearance of the countryside. It would conflict with saved Policy E4 of the Lancaster City Council Lancaster District Local Plan Strike-Through Edition Adopted September 2008 and Policies DM7, DM12, DM28 and DM35 of A Local Plan for Lancaster District 2011-2031 Development Management DPD Adopted December 2014 (the DPD). These require rural development, among other things, to be in keeping with the character and natural beauty of the landscape and its surroundings, to result in environmental benefits, to avoid adverse impacts on visual amenity and to contribute positively to local character and distinctiveness. It would conflict with the policies in the National Planning Policy Framework (the Framework) that require development to respect and recognise the intrinsic character and beauty of the countryside, to be sympathetic to local character and landscape setting, and to maintain a strong sense of place.

Biodiversity

10. The appeal site includes part of the channel and banks of the Lancaster Canal. The canal is a Biological Heritage Site, which is a non-statutory designated site and part of the ecological network for the purposes of the Framework.
11. In contrast to the opposite side of the canal at this point, the banks in the appeal site are soft and gently sloping with marginal and aquatic vegetation. Although the ecological appraisal does not include the reasons the canal is designated as a non-statutory site, it notes that some of the plant species present are cited in the designation. The appraisal also notes an area of reedbed to the north of the appeal site, which is a Biodiversity Action Plan

habitat and which is listed as a habitat of principal importance for conservation under section 41 of the Natural Environment and Rural Communities Act 2006.

12. Correspondence from the Canal & River Trust (the CRT) states that the canal is approximately 16-19m wide at this point with roughly 4.5m of overgrowth on the bank which spreads out further during the summer. The CRT identifies the need for bank stabilization and protection together with excavation of the channel to ensure an adequate navigable width when the boats were moored. The CRT concludes that the proposal would result in the loss of a significant extent of reed bed which provides essential habitat for nesting birds and amphibians in particular. Consequently, there is a need for compensation such as reed bed creation in a suitable location.
13. In contrast, the submitted ecological appraisal considers that the moorings would result in no direct loss of reed bed and very little loss of aquatic habitat, although it does not quantify or qualify the loss. However, it does identify operational impacts including boat wash damage to the reed bed, disposal of refuse, spillages and discharges of oil, with indirect impacts on the wider canal network and hence the ecological network. Recommendations for mitigation include avoidance of impacts on protected species and protection of the reed bed during works. However, there would be no compensation for habitat loss.
14. Therefore, there appears to be a degree of inconsistency between the ecological appraisal and the CRT's assessment. This may be in part due to the early timing of the ecological survey, when the aquatic vegetation was in its early growth phase and not in flower. Certainly, at the time of my visit, there was a wide continuous fringe of marginal and aquatic vegetation extending out into the canal. The earlier ecological survey does not therefore appear adequate to comprehensively establish the biodiversity value of the site, the extent of harm arising from the proposals or the need for mitigation and compensation.
15. Therefore, on the basis of the evidence, the proposal would result in significant harm to biodiversity including non-statutory sites, the ecological network, priority habitats and the habitat of protected and priority species. It would conflict with Policy DM27 of the DPD in relation to avoiding adverse effects on biodiversity including priority habitats and wildlife corridors and, where adverse effects are unavoidable, providing a net gain for biodiversity. It would conflict with the policies in the Framework that require the protection and enhancement of sites of biodiversity value, and for development to minimise impacts and provide net gains for biodiversity including by establishing coherent ecological networks that are resilient to current and future pressures.

Land stability and drainage infrastructure

16. The drainage culvert under the canal near the northernmost extent of the appeal site is owned by the CRT and it is therefore one of its assets. In this regard, the CRT requires a stand-off limit from the culvert, within which no works or operational plant would be permitted and where vibration monitoring would be required to ensure the integrity of the asset.
17. While the culvert may be outside of the appeal site, such that there would be no direct impacts on it, the plans suggest that one of the moorings and the car park would be in close proximity to it. On this basis, it appears that there would be works within the stand-off limit including canal excavation and

cleaning, bank stabilisation and car park creation. Therefore, notwithstanding that the proposal would enable the closure of the agricultural access across the culvert, it would potentially result in adverse effects on the drainage infrastructure and hence the structural integrity of the canal in this location.

18. In the event that the appeal was allowed, the Council has recommended a planning condition to address this matter. I accept that the appellant has indicated that this would be acceptable. However, there is no assessment of the condition of the culvert or the need for, or impact of, works within the stand-off limit. The proposal fails to demonstrate that significant adverse impacts would be avoided. Consequently, I am not satisfied that this a matter that could be dealt with by condition.
19. Therefore, there is insufficient information to establish the effects of the proposal on land stability and the integrity of the canal drainage infrastructure. The proposal would conflict with the aims of Policy DM35 of the DPD in relation to ground conditions and land stability. It would conflict with policies in the Framework that relate to ensuring that sites are suitable for the proposed use taking account of ground conditions and any risks arising from land instability.

Other Considerations

20. The appeal scheme is a resubmission of an earlier withdrawn application (ref 19/00602/FUL) that was amended to address the concerns of the Council including through the removal of a wooden mooring deck, siting of the car park further from the canal bridge and altered access arrangements. However, the revisions to the scheme do not provide a justification for the appeal proposal.
21. Policies DM7 and DM12 of the DPD provide support for development in rural areas, including leisure facilities, subject to meeting a number of criteria. These include that a rural location is necessary and justified, that the development is in keeping with the location and, where greenfield sites are affected, that there are no alternative sites in more suitable accessible locations. This is broadly consistent with the rural development aims in the Framework that encourage the use of previously developed land and sites that are physically well-related to existing settlements.
22. The appellant previously operated his canal boat hire business from Tewitfield Marina. However, this no longer capable of accommodating the excess length of the appellant's boats. He is therefore seeking alternative mooring locations in the northern reaches of the Lancaster Canal within a reasonable distance of his home. I accept that former moorings in Carnforth have been developed and that the appeal site is the appellant's preferred location. Nevertheless, there is no substantive evidence to demonstrate that there are no alternative sites either in sequentially preferable locations closer to settlements or elsewhere in the countryside such as would avoid the conflict with the development plan.
23. The appellant states that his business would not be viable if the appeal should fail. However, no details have been provided in relation to the resale value of the boats, the cost of smaller boats or the loss in revenue arising from the operation of smaller boats. Therefore, it has not been demonstrated that the business could not continue to function or that it would not be economically viable without the proposed development. I acknowledge that the business supports the equivalent of 1 full-time employee and that paying guests might support local services and facilities. However, the relatively small contribution

to the local rural economy and the wider tourism industry is a matter that carries only limited weight in my assessment.

24. The access track would be a buffer between the canal and the field, potentially reducing agricultural runoff into the watercourse. However, the movement and parking of vehicles adjacent to the canal would be likely to result in a degree of contaminated runoff including oil, tyre and brake pollutants, trace metals and hydrocarbons. In any case, the protection of the watercourse, as encouraged by the code of good agricultural practice, is not dependent upon the appeal scheme. Therefore, this does not weigh in favour of the proposal.
25. The proposed hedgerow would provide habitat for wildlife. However, it would not compensate for the loss of the marginal and aquatic vegetation which already provides a significant biodiversity benefit. The hedgerow would not be a net gain for biodiversity and it does not weigh in favour of the proposal.
26. Given the nature of the proposal, I am satisfied that details of the maintenance and servicing of boats and the disposal of waste could be addressed by planning condition. The proposal would not result in adverse impacts on the safe operation of the highway. Impacts on breeding birds could be avoided. However, these are not matters that weigh in favour of the scheme.

Conclusion

27. For these reasons, the proposal would conflict with the development plan and there are no material considerations that would outweigh that conflict. Therefore, the appeal should be dismissed.

Sarah Manchester

INSPECTOR