



Appeal Decision

Site Visit made on 31 August 2021

By R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 September 2021

Appeal Ref: APP/A2335/W/21/3270997

Land at Selby Lane, Selby Lane, Melling LA6 2RA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr & Mrs Jason and Rebecca McQuoid against Lancaster City Council.
 - The application Ref 21/00039/FUL, is dated 13 January 2021.
 - The development proposed is the siting of lodge, installation of a septic tank, LPG tank, generator, solar panels and the use of the lodge and associated land for holiday let purposes.
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Decision

1. The appeal is dismissed and planning permission is refused for the siting of a lodge, installation of a septic tank, LPG tank, generator, solar panels and the use of the lodge and associated land for holiday let purposes at land at Selby Lane, Melling LA6 2RA.

Background and Procedural Matters

2. The appeal relates to a roughly triangular piece of land in the open countryside close to the village of Melling. The land is substantially enclosed by hedging, trees and two-sets of gates. The site accommodates landscaped areas including a lawn and gravelled driveway and a small woodland subject of a Tree Preservation Order (TPO). A row of trees along part of the southern boundary are also covered by the TPO. A timber shed with solar panels mounted on part of its roof is located at the westernmost apex of the site. A generator has been installed close by. In the eastern side of the site is a timber cabin/lodge.
3. The site has been subject to enforcement action by the Council. On 13 August 2015 an Enforcement Notice was served requiring the removal of the timber cabin and all associated infrastructure, including the base and a septic tank, from the land and the restoration of the site.
4. On 28 June 2017 an Injunction Order was served on the appellants requiring that the land is not used for residential purposes. The Order also required the removal of the timber cabin and the associated infrastructure, paraphernalia, goods and chattels; the restoration of the land; and, prohibition of building works or engineering operations except for those involved in complying with the requirements of the Order.
5. On 23 March 2018 a Suspended Order for Committal was issued against the appellants subject to compliance with a Schedule of requirements. The Schedule required that the defendants do not use the site for residential purposes; that they remove the concrete base, septic tank and fuel tank and

that they repair and reseed any damaged ground from those works. It also required them to disconnect and remove a filtration system and disconnect and detach the solar panels. It prevented replacement of the installed gates without recourse to the Council.

6. The planning application, dated 13 January 2021, was submitted to the Council. However, the Council considered that the information and plans submitted with the application did not meet the necessary statutory requirements. It issued a letter to the appellant, dated 5 February 2021, which set out the reason why the application was not validated. The appellants subsequently wrote to the Council in the form of an Article 12 notice¹ to provide clarification of the proposal and setting out why they considered the description and information to be appropriate in the circumstances of the case. There is no dispute that the Council subsequently failed to respond to the letter or determine the application within the prescribed period.
7. The planning application sought planning permission for operational development and a change of use of the land. At the time the application was made, some of the works had taken place, including the erection of the timber cabin/lodge, solar panels and a generator. The proposal before me is therefore one to be considered, in part, in the context of s73A of the Town and Country Planning Act 1990 (the Act).
8. Although it was open to the Council to refuse to accept the application under the terms of s70C of the Act because it related to some development subject of the Enforcement Notice, it did not exercise this power.
9. The appeal is made against the Council's failure to determine the application within the prescribed period because of the dispute over information to validate the application. The Council have issued a statement for the purposes of this appeal highlighting that it would have refused the application for planning permission on two grounds. I have had regard to these matters and the submitted documents in framing the main issues.
10. On 20 July 2021, the Government published a revised National Planning Policy Framework (the Framework). In the interests of natural justice both main parties have had the opportunity to submit comments on the relevance of the Framework to this case. I have taken any comments received into consideration and in reaching my decision I have had regard to the revised Framework.

Main Issues

11. The main issues are:

- whether or not the planning application contains adequate information to enable it to be validated and determined
- if so, whether or not the development is suitably located with particular regard to protecting the intrinsic character and beauty of the countryside, maintaining the vitality of the local community and sustaining local services

¹ Article 12 (1) of the Town and Country Planning (Development Management Procedure)(England) Order 2015

- whether the proposed development would preserve or enhance the character and appearance of the Melling Conservation Area (CA) and locally listed buildings
- whether or not the proposed development and use of the site would be suitably located with regard to flood risk.

Validity

12. Paragraph 016² of the Planning Practice Guidance (PPG) sets out what is required to make a valid application for planning permission. It includes a completed application form, compliance with national information requirements, the correct fee, and provision of local information requirements.
13. The Council's primary concern was that there was no 'existing' plan to reflect what the Council considered to be the lawful use of the site. The Council's correspondence referred to the fact that a Lawful Development Certificate (ref 10/00931/ELDC) had been granted for an established use of the siting of one caravan (non-residential) together with recreational use of garden area. As the proposal included a change of use, the Council deemed that this should be reflected in the site plan.
14. The national requirements for accompanying plans and drawings, set out in Paragraph 023 states that, 'as a minimum, applicants will need to submit a location plan that shows the application site in relation to the surrounding area'. It goes on to state 'Additional plans and drawings will in most cases be necessary to describe the proposed development, as required by the legislation. These may be requested by the local planning authority through their local list of information requirements, where it is reasonable to do so'.
15. The Council's letter of 5 February 2021 directed the appellants to the Council's Planning Application Validation Guide, and I am referred to the specific requirements in Paragraph N5 for the purposes of the appeal. In relation to elevational plans, sectional plans and floor plans, this states that 'The application must be accompanied by existing and proposed plans at an appropriate metric scale, usually 1:50 or 1:100, which explain the proposal in detail. Existing and proposed elevational plans are required for all applications where elevational change is proposed; similarly, existing and proposed floor plans are required for all applications which include new buildings, alterations to buildings or changes to the use of any space within a building'.
16. However, the proposal seeks permission for the introduction of new structures. As a s73A application, it does not include changes to pre-existing structures or buildings which may have been demolished or removed from the site. Indeed, for much of the development proposed, the 'existing' site reflects the 'proposed' site. The criteria for sectional drawings within the Validation Guide were not triggered by the proposed development.
17. The Council also refer me to requirements under Article 7 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 which, amongst other things, require 'any other plans, drawings or information necessary to describe the development which is the subject of the application'. On review of the submitted plans, it seems to me that the development proposals are clear. The site arrangement, dimensions and appearance of

² Ref ID: 14-016-20140306

development and their intended use are clear within the documentation submitted.

18. The fact that a lawful development certificate (LDC) had been issued only confirmed the status of development on the site on the date of that application. It does not necessarily reflect the site's subsequent status or development introduced after the date of its issue.
19. In the appellants' response letter, dated 22 February 2021, it was confirmed that the lodge element of the proposals had already taken place in 2015. This was identified in Sections 5 and 6 of the submitted planning application form. As a s73A application, it was not therefore necessary to require drawings showing the former status of the land at a time preceding the date of the planning application.
20. Taking the above together, I find that, in the circumstances of the case, there was sufficient information provided by the appellants to validate and determine the planning application in accordance with the relevant statutory requirements.

Locations for holiday accommodation

21. The site lies within the Open Countryside as defined by the Local Plan for Lancaster District Part One: Strategic Policies and Land Allocations Development Plan Document (SPLA). Policy EN3 of the SPLA states that any development proposals located within the open countryside should have due regard to all relevant policies contained within the Local Plan, in particular policies within the Development Management DPD relating to development in the rural areas.
22. Policy DM47 of the Local Plan for Lancaster District 2011-2031 Part Two: Review of the Development Management Development Plan Document [2020] (DMDPD) which supports economic development in rural areas, states that 'proposals should be located in sustainable locations and represent sustainable development. A preference should be given to the re-use of Previously Developed Land (PDL) and the conversion and re-use of existing rural buildings, in accordance with Policy DM49 of this document and National Planning Practice Guidance (PPG). Development proposals on greenfield sites within the open countryside will only be supported where it is clearly demonstrated through a robust assessment that no alternative suitable locations exist within local settlement areas.'
23. Policy DM52 of the DMDPD provides a criteria-based policy for the assessment of holiday caravans, chalets, camping pods and log cabins. It acknowledges that holiday sites including chalets and cabins provide a valuable source of visitor accommodation and can contribute significantly to the local economy and the sustainability of rural settlements. However, they can also have significant impacts on the local amenity of an area, through the creation of traffic or their intrusion on the local landscape. Amongst other things, this policy also prioritises the use of previously developed land for new holiday accommodation over greenfield sites.
24. It is the appellants' contention that the site constitutes PDL as defined in Annex 2 of the Framework. This is based on the fact that the timber lodge has

- been on site since 2015. However, the cabin/lodge is subject of an extant Enforcement Notice and an Injunction Order requiring its removal.
25. It is the appellants' case that the omission of reference to the requirement to remove the cabin/lodge within the subsequent Suspended Order for Committal renders the building lawful in planning terms. However, that Order relates only to the suspension of the committal and the conditions and timescale associated with that suspension. It does not remove either the Injunction Order as made, or the separate Enforcement Notice which both retain a requirement for the cabin's removal. It cannot therefore be the case that the lodge has become lawful because of the Suspended Order for Committal.
26. The appellants assert that the Council have not pursued further action since a site visit in 2020 and that their solicitor wrote to the Council in 2018 confirming their understanding that there was no requirement to remove the cabin. However, a copy of the solicitor's letter has not been provided. In the absence of evidence to demonstrate that the cabin has become lawful by other means, the presence of the cabin and existing associated infrastructure cannot lead me to the conclusion that the lawful status of the land constitutes PDL.
27. Furthermore, the appellants have not directed me to any other reasons to identify the land as PDL. I therefore find that the site constitutes a greenfield site for the purposes of the Policy DM52 and DM47 assessments. In those circumstances it is necessary for the appellant to demonstrate that no other brownfield [PDL] sites exist in the locality.
28. The site is not located in a settlement area as required by Policy DM47, and there is little information before me to demonstrate that a robust assessment of alternative sites has been carried out, or that it can be concluded that no other PDL exists in the locality. Furthermore, although the site benefits from established screening about much of its borders, there is clear evidence of development on the site from elsewhere. The solar panels are visible from the area to the south of the site and the sets of high domestic styled gates can be readily seen from an adjacent track. It therefore visibly extends an otherwise relatively consistent edge to development on the western side of the settlement area and encroaches into the area of undeveloped fields bordering the site to the north, south and west.
29. The location of the site lies adjacent to the hamlet of Melling which primarily consists of residential and community buildings centred about a parish church. Although the settlement accommodates some commercial services and a school, there are few facilities to support day-to-day living needs, food and drink venues nor indoor leisure facilities which visitors might wish to utilise. In this regard it is considered unsustainable by the Council due to the associated travel requirements.
30. The nature of the area is one where visitors are likely to be primarily attracted by the landscape and proximity to the Yorkshire Dales National Park and Forest of Bowland Area of Outstanding Natural Beauty. The location would provide opportunities for outdoor activities in addition to those interested in visiting local towns.
31. The site is within walking distance of a bus stop serving the hamlet and a train station exists in a nearby settlement providing access to the wider area. Alongside the propensity for a more leisurely pace of living during holiday

- periods, the quality of the local landscape, the surrounding rural lanes and the opportunities provided by the network of footpaths would offer some incentive to those choosing to holiday in a countryside setting to utilise those routes as alternatives to travel by private vehicle.
32. The Framework recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. The limited scale of development would be unlikely to generate a high number of daily trips but it would have some limited capacity to sustain the public services. Additionally, where private vehicle travel necessity arises, it is unlikely that these would be to any significantly greater extent to those generated by rural vacation opportunities provided in small settlements elsewhere.
33. I recognise that one of my colleagues has previously determined that the remote setting of a proposal for two cabins in another place were not located well in relation to services and accessibility by a choice of transport. However, given the nearby bus route and acknowledging the restrictions to new accommodation within the nearby protected landscape areas, it would not be wholly realistic to anticipate private vehicle trips would not occur to access the wider places of interest in the area.
34. In respect of contribution to the community, there is little to demonstrate that a single part-time job generated by the development would involve a local person. Given the limited facilities in Melling there would be little demonstrated economic benefit to that community. However, as recognised by Policy DM52, other rural settlements would be likely to benefit from additional visitor accommodation in their wider locality.
35. Whilst I find that the site would be in a location accessible to leisure and tourist attractions through sustainable forms of transport and would potentially support local community sustainability in other villages, these are benefits that could arise from sites within the settlement area or through the redevelopment of PDL. However, the appellants have failed to demonstrate that the proposals would meet the aim of protecting the intrinsic value of the countryside and their open and rural character by prioritising the use of PDL and sites within existing settlements before greenfield or Open Countryside locations. The proposal therefore conflicts with the requirements in Policies DM47 and DM52 of the DMDPD which seek the aforesaid aims.

Heritage Assets

36. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to have special regard to the desirability of preserving or enhancing the character or appearance of the adjacent CA. Section 66(1) of the Act, requires a decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest.
37. The significance of the CA derives from the area's 17th to early 19th century houses and barns set about St Wilfrid's Church, which has a significantly longer history and is located close to the site of a former mott and bailey castle. The predominantly stone and slate/stone tile buildings provide high quality examples of the local vernacular-built traditions and architectural styling. Some

of these buildings are listed, most notably along the western side of High Street (A683).

38. The site appears detached from the cluster of built development within the settlement on account of intervening green spaces but has a common boundary with the CA. The appellants' heritage assessment³ of the effect of the development on the CA recognises that the solar panels sitting atop the timber shed at the western extent of the site are a detracting feature against the CA and the setting of those listed buildings.
39. At my site visit, I saw that the panels were conspicuous by virtue of their dark glossy appearance and position in an otherwise predominantly green landscape. The panels introduce a form of development which is incongruous in its location and therefore is conspicuous in the rural setting of the village. Although views are limited, the panels visually draw the eye in the approach from the south-west along the elevated A683 and detracts from the character and appearance of the CA.
40. For the same reasons, and despite the detachment from the individual listed buildings, the effect of the panels erodes the countryside setting of the buildings to the western side of the settlement. Although the effect is minor, it fails the test to preserve or enhance the listed buildings' including their setting.
41. The suggested mitigation to screen the panels is rejected by the appellants on the basis of the loss of their effectiveness. As such, it would not be appropriate to seek mitigation screening through a planning condition.
42. In the context of the Framework, the extent of overall harm to the CA and listed buildings are less than substantial given the nature of the development. Paragraph 202 of the Framework identifies that where less than substantial harm to the significance of a designated heritage asset occurs, this harm should be weighed against the public benefits of the proposal. I undertake this assessment within the overall conclusion of this decision. However, at this stage it is important to recognise that the proposal would be contrary to Policy DM39 of the DMDPD as it seeks to preserve or enhance the setting of identified heritage assets.

Flood Risk

43. Policy DM33 of the DMDPD seeks to limit the risks to people and property associated with flooding. It states that new development will need to satisfy the requirements of the sequential test and exception test where necessary in accordance with the requirements of national planning policy and any other relevant guidance.
44. The site lies on the edge of the modelled floodplain of the River Lune. The topography of the site is such that the modelling results in the site including areas within Zones 1-3 as defined by the Government's Flood Map for Planning. Evidence of site flooding has been provided by the Council.
45. As a proposal for holiday accommodation, the development is classified as a 'More vulnerable' form of development as defined in Annex 3 of the Framework. The PPG advises that proposals should be subject to a sequential test to direct development to areas at little or no risk of flooding. More

³ Heritage Statement July 2019 by Minerva Heritage Ltd

- vulnerable development should be avoided in flood zone 3 but is acceptable in zones 1 and 2.
46. The lodge is sited in flood zone 1, as the septic tank and LPG tank would be. These are/would be sited in the area of lowest flood risk. However, in contrast to the appellants flood risk assessment⁴ (FRA), the storage shed supporting the solar panels and the generator are within flood zone 3. Accordingly, the flooding of the western part of the site would cause some risk to the operational development present in that area.
47. The siting of these elements in flood zone 3 fails to meet the sequential test given the availability of other areas within the site which are at less risk of flooding. Accordingly, the exceptions test referred to in the Framework applies. This requires the appellants to demonstrate that the development would provide wider sustainability benefits to the community that outweigh the flood risk and that the development would be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk elsewhere.
48. There is little before me to indicate wider community benefits would accrue from the proposal. I acknowledge that the creation of 1 part-time position to support the use of the site would arise, however, as previously identified, there is little to suggest that would be taken by someone from the local community. Nevertheless, there is general acknowledgement though the local development plan that holiday accommodation can bring about wider economic benefits to the area through visitor spend and servicing requirements.
49. Given that the effect of this small area of the site being inundated would be limited to some minor works and the potential interruption in power supply only, I find the overall associated risks would be minimal. Furthermore, given that the structures aren't sealed they would have a negligible effect on flood storage capacity at the edge of the floodplain or risk of flooding elsewhere. Moreover, these elements of the proposal could be made to be flood risk resilient to ensure they could be quickly brought back into use. I therefore conclude that the exceptions test against the minor risks is met.
50. For those reasons, I find that the proposals would be consistent with the aims of Policy DM33 of the DMDPD and the Framework as they seek development to minimise the risks from flooding both on and off site.

Planning Balance

51. The development conflicts with Policies DM52 and DM47 of the DMDPD and thereby EN3 of the SPLA as they seek to protect the intrinsic value of the countryside and its open and rural character by prioritising the use of PDL and sites within existing settlements before greenfield or Open Countryside locations. As a potentially permanent form of development, this is a matter to which I attribute considerable weight.
52. The development also causes less than significant harm to the character and appearance of the CA in conflict with Policy DM39 of the DMDPD. In accordance with Paragraph 199 of the Framework this is a matter to which I must attach great weight.

⁴ Flood Risk Assessment Jan 2021 by Lees Roxburgh Ltd

53. I acknowledge that the use of the site for holiday letting could generate new or sustain existing employment opportunities commonly associated with holiday accommodation. As a single unit providing a single part time job this benefit is of limited weight. The scheme could provide economic benefits from visitor spend. These are public benefits and, whilst there is little before me to quantify it, they are nevertheless benefits of the scheme to which I attach moderate weight.
54. My findings in relation to site accessibility and flood risks reflect the requirements in the local development plan and the Framework. They are not therefore benefits in favour of the development.
55. Taking all of the above together, I find that the benefits would not outweigh the totality of the harm I have identified to the heritage asset and the intrinsic value of the countryside arising from its open and rural character.

Other Matters

56. I acknowledge the representations of third parties in relation to the proposed development. However, consequent to my findings in relation to the local plan requirements, my decision does not turn on those matters.
57. I note the Council's concerns in relation to the address of the appellants provided on the planning application form. However, this is not a matter of relevance to my consideration of the appeal.

Conclusion

58. The development would be contrary to the adopted development plan and there are no material considerations indicating a decision otherwise than in accordance with it. For those reasons, I conclude that the appeal should be dismissed.

R Hitchcock

INSPECTOR