
Appeal Decision

Site Visit made on 16 November 2021

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th June 2022

Appeal Ref: APP/E2734/W/21/3282236

Summer Hill, Farnham, Harrogate HG5 9JT

- 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 C.R. and Mrs E.D. Jackson against Harrogate Borough Council.
 - The application Ref: 21/01918/FULMAJ, is dated 27 April 2021.
 - The development proposed is described as: Erection of a new low energy dwelling with access drive and ancillary accommodation, together with biodiversity enhancements.
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Decision

1. The appeal is dismissed, and planning permission is refused.

Preliminary matters

2. Although the appeal has been made against the failure of the Council to issue a decision on the planning application within the prescribed time period, in its appeal submissions the Council has indicated that, had it been in a position to determine the application, it would have refused permission for reasons relating to the design and location of the proposed dwelling, the effect of the proposal on ecology, the lack of a planning obligation to secure biodiversity compensation or enhancement, and the effect of the proposal on two public rights of way. These putative reasons for refusal form the basis of the main issues in this appeal.
3. Whilst the appeal form describes the proposal as "Proposed Paragraph 79 house with innovative low energy installation, associated landscape and biodiversity improvements, new access drive, garage and parking spaces", the planning application form describes it as "Proposed erection of a new low energy dwelling with access drive and ancillary accommodation, together with biodiversity enhancements." I have used this latter description for the purposes of the appeal as that is the description of the development for which planning permission was sought.
4. The address for the appeal site in the Council Planning Officer's report is given as 'Woodland Known as Loftus Hill Fox Covert, Farnham Lane, Ferrensby, North Yorkshire', whereas the planning application form gives the address as 'Summer Hill, Farnham'. The Ordnance Survey Map indicates that the name of the hill where the proposed dwelling would be sited is 'Summer House Hill'. It is clear from the evidence where the appeal site is located and the supporting documentation with the application refers throughout to 'Summer Hill'. I have therefore retained the nomenclature from the planning application form for the purposes of the appeal.

5. In July 2021 a revised version of the National Planning Policy Framework (the Framework) was published. The views of the main parties were sought on implications of the revisions to the Framework on their respective cases. A number of comments were received from the appellant and no further comments were received from the Council. I have taken these comments into account, and I have determined the appeal having regard to the revised Framework.

Main Issues

6. The main issues in this appeal are:
- Whether the appeal site is a suitable location for new residential development having regard to the development plan and, in particular, whether the proposal constitutes an example of exceptional quality, and outstanding design.
 - The effect on the proposed development with regard to biodiversity and protected species; and
 - The effect of the proposed development on public rights of way.

Reasons

Whether the appeal site is a suitable location

7. The appeal site comprises approximately 7.6 hectares of land lying to the north west of the village of Ferrensby. It includes the wooded hill identified as Summer House Hill on the Ordnance Survey Map and a large pond to the west. The red line boundary also includes areas of agricultural land over some of which a new access road would be created from Farnham Lane.
8. Policy GS1 of the Harrogate District Local Plan 2020 (the Local Plan) sets out that the Council intends to deliver minimum of 13,377 dwellings during the plan period to 2035. Local Plan Policy GS2 sets out a settlement hierarchy for the district that seeks to focus growth within the district's main settlements, settlements on the key public transport corridors, and within a proposed new settlement. Ferrensby is not one of the settlements identified within the settlement hierarchy.
9. Policy GS2 states that places not identified in the settlement hierarchy are considered to be part of the wider countryside where development will only be appropriate if permitted by other policies within the Local Plan, a neighbourhood plan, or national policy. It is not in dispute that the appeal site is not within one of the development limits defined by Local Plan Policy GS3, which reiterates that outside development limits new development will only be supported where expressly permitted by other policies in the Local Plan, a neighbourhood plan, or national policy.
10. It is also common ground between the parties that, having regard to the Court of Appeal's judgement in Braintree DC v SSCLG, Greyread Ltd & Granville Developments Ltd [2018] EWCA Civ 610, the proposal would amount to an isolated dwelling in the countryside.
11. Within this context, the appeal site is not normally one where new residential development would be permitted. However, both Policies GS2 and GS3 allow for development that complies with national policy.

12. Local Plan Policy HP3 seeks to ensure that new development incorporates high quality building, urban and landscape design that protects, enhances, or reinforces those characteristics, qualities, and features that contribute to the local distinctiveness of the district's rural and urban environments. The policy sets out several criteria against which proposals will be assessed. Of particular relevance is Criterion E which makes allowance for design of exceptional quality that would significantly enhance its immediate setting to deviate from those architectural features, materials, and traditional building techniques that contribute to the local distinctiveness of the area.
13. Alongside other changes to the Framework, the wording of Paragraph 79 from the previous version was largely carried over to Paragraph 80 in the revised version. This paragraph states that the development of isolated homes in the countryside should be avoided unless certain circumstances apply. One such circumstance is where the design is of exceptional quality, in that it is truly outstanding, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas; and would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area.
14. Paragraph 79 (e) of the previous Framework included the words "is truly outstanding or innovative". Although the test of "or innovative" no longer applies, I note that, outside of the context of isolated homes in the countryside, Paragraph 134 of the revised Framework advises that outstanding or innovative designs which promote high levels of sustainability or help raise the standard of design more generally in an area may be given significant weight, so long as they fit in with the overall form and layout of their surroundings.
15. The crux of the dispute between the parties is whether the design of the proposed new dwelling is of exceptional quality and meets both limbs of the test set out in Paragraph 80(e) of the Framework.
16. The appeal site covers an extensive area. However, the most relevant part is Summer Hill itself, a small, naturally formed, hill rising above the surrounding gently rolling agricultural fields with a large pond adjacent to its west side. The hill is densely wooded and vegetated. Well established trees line the bank of the pond adjacent to the surrounding agricultural land. The new dwelling would be located at the southern end of the hill and partially sunk into the hillside.
17. The principal part of the new house would have an arcing floorplan, facing the adjacent pond, and would be over three levels. Due to the sloping topography of the site, from the mid-level of the house, a single storey wing containing car ports, garages, plant rooms and a two bedroom visitor apartment would extend from the building. This ancillary wing would face over a forecourt to a separate, curved, single storey building opposite containing seven garages and a workshop. The dwelling would have a total floor area of approximately 1,300 m².
18. The building would be flat roofed with the roofline broken by parapet roofs around circular elements within the floorplan and by a tall chimney. The main roof would slightly oversail the floor plan of the top floor and an external terrace to the top floor would form a partial canopy over the terrace around the level below. The single storey wing and the separate garage block would have flat, turfed, roofs and would be built partially within the landform. The proposed

materials are riven stone to the lowest level with limestone cladding and glazed curtain walling above.

19. It is evident from the various reports and assessments submitted with the application that a detailed assessment of the character of the site and surrounding area has been undertaken, and that this has informed the proposed development. I have also noted that the scheme has received support from a design review process/peer review prior to submission.
20. To this end the proposed dwelling has been sited towards the southern end, and on the lower slopes, of Summer Hill where it would reduce the visual effect of introducing a new building into the countryside and minimise the loss of tree cover on the hillside. Nonetheless, whilst it can be seen from the supporting information that the footprint of the dwelling has been designed to mirror the contours of the hill, I am not persuaded that this would be as evident in real life were the house to be built. The three storey façade would be lengthy and although the massing of the building would be recessed on each floor, the oversailing eaves and terraces reduce the visual effect of this recession. Much of the hillside beyond the site of the proposed new dwelling is obscured by tree cover and landform beneath is not clearly legible. Other modifications to the lower slope of the hill to accommodate the forecourt area and garage block would result in an extensive alteration to the topography in this area.
21. In the absence of cross sections showing the landform of the wider site before and after the development, it is not possible to determine the precise extent of this change or the resulting landform, but it is evident from the submitted drawings that this covers a large area to facilitate vehicle turning, and to accommodate the single storey wing to the house and the separate 7 car garage block. As a consequence, I do not consider that the relationship of the building to the landform would be as apparent as the supporting documentation suggests.
22. The riven stone base would serve to root the building into the landscape. However, the smoother and regularly shaped, honed limestone cladding panels to be used on the upper parts of the house, whilst a local material and providing an interesting contrast, would sit less comfortably in the naturalistic setting. I observed that within Ferrensby, brick is a more commonly used material. Although there are some stone buildings, these use coursed rubble or roughly dressed blocks and smooth dressed masonry is only used for detailing. It is suggested that the use of limestone ties the building in with the hillside, however, there are no escarpments or outcroppings nearby where the underlying stone is exposed, making any visual connection to the underlying geology less evident.
23. Integrating a contemporary, modernist, design of dwelling into a very rural landscape is a challenging design exercise as the contrast between the built form and the landscape is very high, and the appeal proposal has gone a long way towards achieving that. However, truly outstanding is a very high bar to reach. Having read the professional documentation that accompanied the application and assessed the site and its surroundings, I accept that the proposal is designed to a high standard and is a well-considered exercise in modernist design that takes advantage of the sloping topography of the site and the proximity of the water body to create an interesting visual composition.

Nonetheless, I struggle to see how it would be so remarkable or excellent as to pass the threshold of being a truly outstanding design.

24. The architectural aesthetic of the proposed house would not be unusual and draws clearly on modernist design which, although as a movement produced some very fine buildings, is a well understood design approach. I have not seen anything in the evidence that demonstrates that the design of the building brings anything new to this design philosophy.
25. Earth sheltered designs and the use of renewable energy technologies such as air source heat pumps and photovoltaic arrays, together with passive ventilation design, are well established. Nor is their use in residential buildings innovative. I accept that approach to the energy design of the building is more sophisticated than the usual application of such technologies but this, of itself, would not elevate the design to the level of truly outstanding.
26. Any well designed scheme is likely to assist in raising standards of design by setting an example that others should follow, and I have found that the appeal scheme would be a good design. Consequently, it would help to raise the standard of design more generally in rural areas. Nevertheless, this does not necessarily mean that planning permission should be granted. Both Policy HP3 of the local plan and the Framework also require isolated homes in the countryside to significantly enhance their immediate setting and be sensitive to the defining characteristics of the local area. Local Plan Policy NE4 seeks to ensure that proposals protect, enhance, or restore the landscape character of the district for its own intrinsic beauty.
27. A detailed Landscape and Visual Impact Assessment LVIA has been submitted with the proposal. From what I saw when I visited the site, I would concur with at least some of the findings of this in that the effect of the proposal on the wider landscape would be localised and that the proposal would only be visible from a limited number of locations. However, the LVIA does not address the effect of the large amount of excavation that would be required to facilitate the development beyond stating that the arisings are to be carefully spread across fields to the north and west. As previously noted, the precise extent of the proposed remodelling is not wholly clear as no comprehensive existing and proposed sections have been provided.
28. I also consider that the LVIA underestimates the effects of the proposed access drive to the site of the new dwelling. The proposed access drive would have a surfaced width of 4.5 metres and the submitted engineering details show this as a gravel surface with the exception of the macadam finished verge crossing and junction with Farnham Lane. Whilst this surface treatment would be less intrusive than a macadam finished wearing course on the entire length, it would, nonetheless, be a lengthy engineered feature crossing what is currently an arable field. Although I have noted the appellant's point that there is a modern agricultural building in the near vicinity of the proposed access track, which is visible as a skyline feature when viewed from the Public Rights of Way to the north of the village and impinges on the views, such buildings are a commonplace and accepted part of the rural landscape.
29. It is proposed that the access drive would have a close mown grass verge to each side which would be reinforced in places on its eastern side to allow for overrun by larger vehicles. It is also shown on the Site Wide Landscaping Plan that, nearer to the site of the house, the close mown grass verge on the eastern

side would be extended to considerably wider than 2 metres. This would increase the domesticating effect of the access track and result in a more substantial effect on the landscape by diminishing and eroding its current rural/agricultural character.

30. I would agree with the findings of the LVIA that, from most viewpoints, the visual effect on the landscape would be small and localised. Nevertheless, from my observations during the site visit from the Bridleway to the west of the pond and from the Footpath to the south of the site I would disagree with the findings that the visual effect of the proposal when viewed from these areas would be a major, beneficial, effect. I accept the proposition that the new dwelling would provide an opportunity to create a focal point on these public routes where there is currently a landmark in the form of the wooded hill and pond set in the surrounding agricultural landscape. However, I agree with the Council's position that the appeal site is not a degraded or eroded landscape, or in need of significant enhancement.
31. In its present form, the part of the appeal site where the new dwelling is to be located is perceived as an area of natural vegetation and tree cover, which is attractive in its own right. Whilst the proposed new dwelling might also be considered attractive as a result of its architecture and setting, it represents a change as opposed to a quantifiable improvement, and I do not find the argument that it represents a major beneficial effect a convincing one. The effect of the proposal would be to exchange one set of attractive views for a different set and, thus, would be a broadly neutral effect rather than a significant enhancement.
32. The proposal does include various proposals for environmental enhancement. However, this is only to compensate for the effect of the proposed development. Whilst the development could act as a catalyst for these enhancements it, nevertheless, remains the case that, if were it to be required, much of the proposed enhancement could be carried out independently of the construction of the dwelling and is not dependant on the development taking place.
33. The appellant has also included legal advice within the submissions on whether the specific circumstances where permission should be granted for an isolated dwelling house in the countryside exist. Whilst this concluded that they do, the advice accepts the submitted documents on face value and does not appear to assess or appraise these in detail. Nor does it appear that a site visit was undertaken prior to the advice being issued. The assessment of whether a design is truly outstanding is, with respect, not one that can be determined in legal terms and without some form of critical appraisal or assessment of the scheme and its supporting rationale.
34. The Policies in the Local Plan are clear that the appeal site is not one where residential development would normally be permitted. Paragraph 80 of the Framework does allow for isolated dwellings in the countryside provided that both limbs of the test in Paragraph 80(e) are met. I have found that, whilst the proposal is well designed, it would not be truly outstanding, nor would it significantly enhance its immediate setting and, as a result, the tests in Paragraph 80(e) would not be met.
35. I therefore conclude that the appeal site is not a suitable location for new residential development having regard to the development plan and, in particular, would not constitute an example of exceptional quality, and

outstanding design. It would conflict with the relevant requirements of Policies GS1, GS2, GS3, HP3, HP5, NE4, NE5 and NE7 of the Local Plan and the relevant requirements of the Framework which when read together seek to protect the open countryside from residential development, except in exceptional circumstances, and expect new development to be of a high standard of design that responds to its context and preserves the landscape and local distinctiveness of the district.

Ecology

36. The planning application was accompanied by an Ecology Report that included a Phase 1 Habitat Survey and Protected Species Assessment. The submission also included separate surveys for breeding birds, Great Crested Newts, bats, and badgers, which proposed mitigation and enhancements. In addition, a Biodiversity Net Gain Statement was provided. These reports range in date from 2017 to 2018 and consequently were at least 3 years old when the application was submitted in 2021. As such, the information contained may not be up to date.
37. From the application form, the appeal site has an area of 7.6 hectares. The Council consider that, due to the site area, the application is for a major development as defined by the Framework and the appellant does not challenge this position.
38. Local Plan Policy NE3 (E) is supportive of development proposals that protect and enhance features of ecological and geological interest and provide net gains in biodiversity. Policy NE3 sets out a number of criteria by which this will be achieved, including Criterion E which requires proposals for major developments to demonstrate no net loss of biodiversity. The supporting text to Policy NE3 sets out that all major applications will be required to submit a Preliminary Ecological Appraisal and a calculation of the biodiversity impact of the proposed development based on the standard metric jointly published by Natural England and the Department of Environment, Food, and Rural Affairs (DEFRA).
39. Although the supporting text is not part of the Policy, it sets out how the Policy will be implemented. This requirement is formalised in the Council's adopted Providing Net Gain for Biodiversity Supplementary Planning Document 2021 (the SPD) which sets out that all applications subject to the requirement of providing no net loss of biodiversity must submit a completed copy of the most up to date DEFRA/Natural England metric, detailing biodiversity scores for pre-development and post development and full applications must include a Biodiversity Enhancement Management Plan for all features accounted within the metric. These were not included in the application submissions. I do, however, note that the SPD was adopted shortly after the application that forms the subject of the appeal was submitted to the Council. Nonetheless, this is the current Council policy against which the appeal must be determined.
40. The National Planning Policy Framework sets out that new developments should minimise impacts on, and provide net gains for, biodiversity and that if significant harm to biodiversity cannot be avoided, adequately mitigated, or as a last resort, compensated for, then planning permission should be refused.
41. The Ecology Report concludes that the site overall is considered to be of moderate conservation value on a local scale, due to the combination of habitat types providing an area of semi-natural habitat within a predominantly arable

landscape. It also concludes that the majority of the habitats within the site are not of significant ecological interest in themselves in terms of rarity or plant species composition, but they combine to provide an area of habitat of value to a range of species. This conclusion is not disputed by the Council.

42. The appeal site is not within or adjacent to a protected site, however, the supporting survey information indicates that the development will have an effect on protected species, namely bats and Great Crested Newts, which are European Protected Species, and badgers, which are protected under UK law.
43. The proposed development would involve the clearance of vegetation and trees from part of the site and excavation of the hillside to accommodate the built form of the new dwelling. The provision of a jetty as illustrated on the submitted drawings suggests some form of recreational use of the large pond on the site.
44. The submitted reports conclude that there will be some effect on bats and Great Crested Newts through the loss of suitable foraging and terrestrial habitat. The Badger Report indicates that there will be a high impact on badgers and although the report concludes that there will be no impact on any connective routes that the badgers currently use, elsewhere the Badger Report indicates that there is a badger path that runs through that part of the site where the new dwelling would be sited.
45. However, the reports also set out that there would be mitigation works during the construction period and compensatory works consisting of habitat and foraging area creation in the wider part of the appeal site, provision of bat and bird boxes, the creation of a new pond and habitat suitable for Great Crested Newts, and the construction of an artificial badger sett.
46. Local Plan Policy NE3 requires that the proposal results in no net loss of biodiversity. It may well be the case that the proposed mitigation and compensatory would achieve this. However, Local Policy NE3 expects this to be demonstrated using the DEFRA/Natural England metric and this Policy was an adopted policy at the time the application was submitted. I am mindful that the SPD which reinforces this requirement was not adopted until after the date of submission, nonetheless, the supporting text sets out what is expected to meet the policy requirements. This notwithstanding, the appellant did submit a Biodiversity Statement – Net Gain document with the application. Whilst this sets out what is proposed by way of mitigation and enhancement, it does not assess the present biodiversity value of the site or the resulting value post development or assess the mitigation proposed against the potential harm that would be caused. In addition, the surveys and reports on which this mitigation is predicated are potentially no longer accurate due to their age. Consequently, the evidence submitted does not demonstrate that the proposal would result in no net loss of biodiversity and the proposal, therefore, conflicts with the relevant requirements of Local Plan Policy NE3.
47. The appellant suggests that, as all the works would be within the red line boundary of the appeal site and on land within the appellant's ownership, the mitigation and compensatory works could be secured through a Construction Ecological Management Plan and a Biodiversity Enhancement Management Plan that sets out the actions required to achieve and maintain the biodiversity value of the site for a period of 30 years. It is suggested that the submission of these could be the subject of appropriately worded planning conditions.

48. However, I also note that the SPD requires a legal agreement between the council and developer to be drawn up requiring a financial guarantee that the actions of the Biodiversity Enhancement Management Plan are undertaken. This would be in the form of a financial bond to cover the council's cost should intervention be required to remedy any failure to comply with the obligations agreed in the Biodiversity Enhancement Management Plan.
49. Whilst an ongoing operational condition would be enforceable over the period of the Biodiversity Enhancement Management Plan, the Planning Practice Guidance is clear that conditions cannot be used to require financial payments and could not, therefore, secure the provision of a bond in the event that action in default was required. Moreover, it is not clear how a condition would address potential future changes in land ownership with regard to undertaking the Biodiversity Enhancement Management Plan and the maintenance of the bond. These matters would have to be addressed through a legal agreement that ensured responsibilities could be passed on to successors in title. No mechanism has been put to me in the appellant's submissions that would achieve this.
50. Drawing these strands together, based on the evidence before me, I cannot be certain that the proposal would result in no net loss of biodiversity and would not cause harm to protected species.
51. Although appellant states that Natural England do not object to the proposal, I note that the consultation response only refers to impacts on statutorily protected nature conservation sites or landscapes. In respect of protected species, Natural England's response refers to its standing advice. Whilst the standing advice does allow for mitigation and, as a last resort, compensation for any negative effects on protected species, as set out above, I have found that it has not been demonstrated that the proposed measures would overcome the harm that would be caused.
52. I therefore conclude that it has not been demonstrated that the proposal would not result in a loss of biodiversity and would not adversely affect protected species. The proposal would conflict with the relevant requirements of the Framework, Policy NE3 of the Local Plan and the Council's Providing Net Gain for Biodiversity Supplementary Planning Document.

The effect on Public Rights of Way

53. There are two Public Rights of Way (PRoW) in the vicinity of the appeal site. One is a Public Footpath (Route 15.36/5/1) and the other a Bridleway (Route 15.36/4/1). Although largely outwith the appeal site boundary, both routes pass through it. The Public Footpath enters the appeal site boundary to the north east of the site of the proposed new dwelling and then crosses an arable field in a north easterly direction before entering the woodland to the west and north west of Loftus Hill Farm. The Bridleway enters the appeal site just to the south west of the proposed new dwelling and runs through it in a north-northwesterly direction for a short distance before exiting the appeal site boundary and running alongside the large pond then turning generally northward following the west side of a copse of trees. Both routes have a termination point on Farnham Lane at Ferrensby and continue for some distance beyond the appeal site.
54. Local Plan Policy HP5 seeks to ensure that the routes and the recreational and amenity value of Public Rights of Way are protected.

55. Neither PRow passes through the part of the site where it is proposed to locate the new dwelling. The proposed new access road running across the fields from Farnham Lane would, however, intersect with, and cross, the Bridleway just to the south of the large pond.
56. Whilst this would result in vehicles crossing the PRow, this would not be a high frequency occurrence and there would be sufficient forward visibility that users of the PRow and drivers of vehicles would be aware of each other's presence with sufficient time to act accordingly. Consequently, I do not consider that there would be any significant degree of conflict at this crossing point. I also note that the submitted drawings show that whilst the entry point to the part of the site where the new dwelling would be located would be gated, this is shown as a sliding gate and, therefore, this would not obstruct the PRow upon opening.
57. At present where the Bridleway passes through the appeal site, the surface is generally compacted, trodden, earth. The submitted landscaping and planting drawings illustrate that this part of the site would be laid to close mown grass. As a result, the walking/riding surface of the PRow would not be substantively altered by the proposal. There is also no evidence before me which would indicate that the recorded width of the PRow would be altered or reduced as a result of the proposal.
58. The route of the Public Footpath would not be affected by the new access road as the Footpath passes to the east of the site of the new dwelling. Where this PRow crosses the northern part of the appeal site, it is proposed to reinstate a historic hedgerow boundary across the arable field. The PRow has not been shown on the submitted Site Wide Landscape Plan, however, the proposed reinstated hedgerow does not appear to cross the definitive route of the PRow. There is, similarly, no evidence before me that would indicate that either the walking surface, or the recorded width of this PRow would be altered by the appeal proposal.
59. In terms of views from the PRow, both routes run from Farnham Lane roughly parallel to each other approaching Summer Hill from the south. I saw during the site visit that, when walking north towards Summer Hill, elements of the proposed building would be visible from both routes, albeit partly screened and filtered by vegetation and trees. The Footpath then runs to the east of Summer Hill, at which point the landform would occlude views of the proposed dwelling. Travelling south on the Footpath, the proposed building would be much less noticeable. Some elements may be visible through the trees on the lower slopes at the south end of Summer Hill, before the building was then behind the viewer as they progress towards Ferrensby.
60. The route of the Bridleway passes much closer to the site of the proposed dwelling crossing the new access road and the entrance to the enclosed part of the site before running alongside the large pond to the west of Summer Hill. At this point the presence of the proposed dwelling house would be very noticeable as a large built form with managed grounds in a landscape otherwise characterised by arable fields and areas of woodland and natural vegetation. Similarly, approaching the site from the north, the new house would be a feature in the view for some distance as the tree coverage at the west side and north end of the pond is less dense.
61. The presence of the proposed new dwelling would undoubtably alter the kinetic views obtained from both PRow and particularly so from the Bridleway.

Whether this would be harmful to the enjoyment and experience of using the routes, is a more subjective matter.

62. I accept that for some users the presence of the naturally wooded hill as a prominent visual feature adjacent to the pond, juxtaposed with the generally gently rolling farmland surrounding them may be a focal point on the route, that is enjoyed for its own intrinsic merits. Indeed, the appellant refers to it in the Design and Access Statement as “a special place”. From this perspective the introduction of the proposed dwelling would be seen as a negative feature.
63. However, regardless of my findings that in terms of Paragraph 80(e) of the Framework the appeal proposal does not constitute a truly outstanding design, the appeal proposal is, nonetheless, a striking, modern, house design and would have dramatic setting adjacent to the pond. The proposed house would be gradually revealed in sequential views approaching on the Bridleway from either the south or the north and would also provide a focal point on the route. The juxtaposing of the modern design of the house with the rural surroundings would also be a rewarding visual experience for some users.
64. Whilst it would be noticeable in the landscape, there is no evidence before me that would indicate that the proposed dwelling would interrupt any important or key views that are an intrinsic part of the experience or enjoyment of using either PRow.
65. Drawing these strands together, the appeal proposal would not affect the route, surface, or recorded width of either PRow. Although the proposed access road would cross the Bridleway, there is no evidence that would indicate that this would result in a situation that was inherently unsafe. The proposal would alter the kinetic views from the PRows. However, change is not synonymous with harm, and I have no substantiated evidence that would indicate the proposal would be detrimental to the experience or enjoyment of using the routes. Overall, I find that the effect of the proposal on the PRows would be a neutral one.
66. I therefore conclude that the proposed development would not cause harm to the Public Rights of Way in the vicinity of the appeal site. It would comply with the relevant requirements of Policy H5 of the Local Plan.

Other Matters

67. The appeal site is within the vicinity of the Grade II listed buildings of Loftus Hill [List Entry: 1263000] and the Barn to the west of Loftus Hill [List Entry: 1250970]. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building, or its setting, or any features of special architectural or historic interest which it possesses.
68. The application was accompanied by a comprehensive Heritage Statement that sets out the significance of the heritage assets. This is not challenged by the Council.
69. The Heritage Statement indicates that the appeal site may be within the wider setting of the two listed buildings although there is no direct intervisibility between these and the appeal site. From what I have read and from what I saw

when I visited the site there is nothing that would indicate that the area covered by the appeal site contributes to the understanding of the significance of the heritage assets. I therefore find that the proposal would not affect the setting of these nearby listed buildings.

70. The Council have not raised any concerns in respect of the effect of the proposal on the living conditions of the occupiers of nearby residential properties, trees, highways and access, flood risk and drainage, land contamination, or air quality. Based on the evidence that I have been provided with, I have no reason to find differently.
71. I have also had regard to the representations made by interested parties in respect of the proposal. None of the points raised in these representations would lead me to a different conclusion on the proposal.

Conclusion

72. I have found that the appeal site is not a suitable location for new residential development and would not meet the requirements of Paragraph 80(e) of the Framework. I have also found that it has not been demonstrated that the proposal would not result in a loss of biodiversity and would not adversely affect protected species. As such, the proposal would not comply with a number of Policies in the development plan that are most important for determining the application.
73. These are important matters that lead me to find that the proposal would not comply with the development plan when taken as a whole, notwithstanding that I have found that the proposal would not adversely affect nearby Public Rights of Way and may comply with other policies in the development plan.
74. In the circumstances of this case there are no material considerations to indicate that the decision should be made otherwise than in accordance with the development plan.
75. For the reasons set out above, I therefore conclude that the appeal should be dismissed, and that planning permission should be refused.

John Dowsett

INSPECTOR