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# Appeal Decision

Hearing held on 16 August 2022

Site visits made on 15 and 16 August 2022

**by J Williamson BSc (Hons) MPlan MRTPI**

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

**Decision date: 5 December 2022**

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## **Appeal Ref: APP/A2335/W/20/3265474**

### **Bank Barn, Crag Road, Warton LA5 9SD**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr P Edmondson against the decision of Lancaster City Council.
  - The application Ref 20/00402/OUT, dated 2 April 2020, was refused by notice dated 3 November 2020.
  - The development proposed is described as 2 new dwellings on land at South Side Crag Rd, Warton, and alterations to existing access.
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### **Decision**

1. The appeal is dismissed.

### **Procedural Matters**

2. The application is in outline; access, layout and landscaping are matters for which approval is sought. Details of scale and appearance are therefore reserved for a subsequent application.
3. Revised plans were submitted during the planning application process, primarily reducing the extent of the proposal from 3 dwellings to 2. The plans to which my Decision relates are referenced H.M. Land Registry SD 4972 and IST/PE001 Rev B. The original submission included a separate access plan. The relevant information from that plan was copied to the Layout Plan shown on Plan IST/PE001 Rev B. This drawing also includes a suggested footprint and example of floorplans for Plot 1. As scale and appearance are reserved matters, I have treated any drawings related to scale and/or appearance as being indicative. I have made my Decision, as did the Council, based on the plans noted.
4. The Council outlined in its statement that, following the submission of the appeal, it had accepted the removal of 2 trees close to the proposed access. Consequently, it was confirmed at the Hearing that the Council withdrew reason for refusal 4 on its Decision Notice.
5. Following submission of the appeal a revised National Planning Policy Framework (the Framework) was published in July 2021. The main parties were given the opportunity to comment on the relevance of any of the changes to the appeal. I have taken account of comments received, and the contents of the revised Framework, in reaching my Decision.
6. The appellant questioned the proposal being appraised against Policy EN3 of A Local Plan for Lancaster District 2011-2031, Part One: Strategic Policies and

Land Allocations DPD (July 2020), (SPLA DPD), as this was adopted after the planning application had been submitted. However, it was agreed at the Hearing that the LP adopted in July 2020 was the most-up-to-date LP and therefore the appeal should be appraised against the policies within it. Since the appeal was submitted the Council has adopted A Local Plan for Lancaster 2020-2031, plan period 2011-2031, Meeting Housing Need Supplementary Planning Document (February 2022), (SPD). I have had appropriate regard to the SPD in reaching my Decision.

7. Due to a serious health matter experienced by the appellant's agent, the parties were unable to produce an agreed, signed Statement of Common Ground (SoCG) or a final draft Section 106 Agreement (s106). I have therefore taken account of the latest (undated) draft SoCG submitted by the Council and the response to that document provided by the appellant the day before the Hearing. I have taken account of the draft s106 also submitted by the appellant the day before the Hearing, a matter I shall comment on below.
8. At the Hearing the appellant asked if he could submit an affidavit. He was given the opportunity to summarise its contents, which broadly related to how he and his family had used the site for various domestic activities over the last 15 or so years. As the Council would not have been able to fully respond to the document during the Hearing, I considered it would have been unfair to accept it, and therefore did not do so. Nevertheless, I agreed to bear in mind the verbal account of its contents provided by the appellant at the Hearing.

### **Main Issues**

9. The main issues are:
  - the effect of the proposal on the character and appearance of the area, the Arnsdale & Silverdale Area of Outstanding Natural Beauty (ASAONB), and the Warton Conservation Area (WCA),
  - the effect of the proposal on the setting of the Grade II Listed St Oswald's Church, and a non-designated heritage asset (NDHA), namely the 'old cock fighting pit', and
  - whether the proposal would make appropriate provision for affordable housing.

### **Reasons**

#### *Character and appearance*

10. For planning policy purposes, the site is located within the open countryside, on the western edge of Warton Village, south of Crag Road. It lies within the WCA and ASAONB. Except for the main access, which is directly off Crag Road, the site is to the rear of 2 detached dwellings, sited either side of the access, and a garden associated with a dwelling on the opposite side of Crag Road. The Council considers there to be an 'old cock fighting pit' just east of the access off Crag Road, which is recorded as a NDHA on the Lancashire Historic Environment Record (LHER).
11. Bank Barn, the appellant's residence, is located just beyond the site's eastern boundary. There is a gated access in the south-western corner of Bank Barn, on the eastern-most boundary of the site, which provides a link between Bank

Barn and the site. To the east of Bank Barn is the George Washington public house, a Grade II Listed Building (LB). Immediately beyond the south-eastern/southern boundary of the site is St Oswald's Church, also a Grade II LB, and its associated graveyard and grounds. There is an open agricultural field immediately beyond the south-western boundary of the site, which has a Grade II Listed Lime Kiln located within it close to its northern boundary. Public Right of Way FP4, (PROW), passes between the north-eastern edge of this field and a drystone wall that denotes the south-western boundary of the site.

12. Statutory duties require me to have regard to the purpose of conserving and enhancing the natural beauty of the ASAONB<sup>1</sup>; to pay special attention to the desirability of preserving or enhancing the character or appearance of Conservation Areas (CAs)<sup>2</sup>, and to have special regard to the desirability of preserving the setting of LBs.<sup>3</sup>
13. Additionally, the Framework advises that great weight should be given to conserving and enhancing landscape and scenic beauty in specified areas, including AONBs, which have the highest status of protection in relation to such issues<sup>4</sup>. The Framework also advises that great weight should be given to the conservation of designated heritage assets<sup>5</sup>, and that the effect of a proposal on the significance of a NDHA should be considered in determining applications<sup>6</sup>.
14. The Council refer to the land use of the site as being agricultural. However, the appellant strongly believes that, as he has mown the site for around the last 15 years and he and his family have used it for domestic purposes during that time, it hasn't been used for agricultural purposes for a considerable period, and therefore should not be referred to as agricultural land.
15. It is not within the remit of this appeal, nor do I have sufficient evidence before me, to settle a debate about the site's lawful use. Moreover, regardless, its use is not a determining factor. What is of concern is its existing character and appearance, the contribution it makes to the area, WCA, ASAONB, its relationship with neighbouring heritage assets, and the effect the proposal would have on these factors.
16. The village sits at the base of the south-eastern slopes of the hillside of Warton Crag, which forms the backdrop to the village as one approaches it from the south. The topography of the area has shaped the village's development. The central core of the village, which essentially constitutes the WCA, is comprised of development either side of Main Street. I acknowledge that there is development beyond this main ribbon, although such development is beyond the boundaries of the WCA. Furthermore, except for a few properties at the eastern end of Crag Road, there is little development along this road. I acknowledge that a dwelling has been constructed on the road in recent years, Underbank, just east of the site's main access. However, even though Underbank is within the WCA, the site is very different to the appeal site and therefore not directly comparable to it. For example, the site of Underbank is a

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<sup>1</sup> Section 85 of the Countryside Rights of Way Act 2000 (CRoW)

<sup>2</sup> Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

<sup>3</sup> Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

<sup>4</sup> Paragraph 176 of the Framework

<sup>5</sup> Paragraph 199 of the Framework

<sup>6</sup> Paragraph 203 of the Framework

lot smaller, it does not extend to the boundary of St Oswald's Church and the dwelling is sited close to the road, not to the rear of development on the road, as is the case with the proposed development.

17. The village is surrounded by an ancient pattern of narrow fields, sloping down from Warton Crag, levelling out and extending in most directions beyond the extents of the built development. The fields are bounded by a mix of drystone walls and hedgerows. These features indicate the agricultural origins of the village. Many lie within the setting of the WCA. Given the historic relationship between the village and the surrounding landscape, I consider the setting contributes to its significance.
18. Except for the presence of a single domestic style, outdoor seating bench sited close to the northern boundary of the site, at the time of my visit the site had the appearance of an open field, all-be-it one that was mown. It broadly slopes down in a southerly direction from the northern boundary to the south-eastern/southern boundaries of the site, as well as sloping down in an easterly/south-easterly direction from the north-western corner/south-western boundary to the eastern boundary of the site.
19. There are drystone walls along the south-western boundary of the site and the boundary extending from the eastern side of the Crag Road access to the access into Bank Barn. There is a stone wall along the south-eastern/southern boundary of the site (the boundary with the Church), and a stone retaining wall along a section of the northern boundary of the site that forms the rear, southern boundaries of the dwelling west of the Crag Road access and the garden referred to above. The site is therefore very similar in appearance to the agricultural field immediately west of the site, and many other fields visible from Crag Road a short distance west of the site. Its open, spacious character and appearance provide an important link between the western edges of the village and WCA and the surrounding historic landscape; a landscape that forms part of the special quality of the ASAONB.
20. The proposal would site 2 dwellings and an internal service road to the rear of existing development on the southern side of Crag Road. Siting the dwellings as proposed would require cutting into the landscape. The appellant suggests that there are examples of other dwellings within the village that are set back from the main ribbon of development and where their construction has required cutting into the landscape. However, although this may be the case, the proposal must be assessed on its merits within the site-specific circumstances. I consider the ad hoc siting of 2 dwellings and an extensive access/service road away from the frontage with Crag Road, and to the rear of the limited development that exists on the southern side of the road at its eastern end, to be out of keeping with the pattern of development within proximity of the site.
21. I acknowledge that the presence of proposed dwellings would be minimised by cutting into the landscape, and that only 2 dwellings are proposed. However, as noted, the proposal would include an extensive internal service road. The road would extend from the access off Crag Road, beyond the rear boundaries of both dwellings either side of the access, before extending in a westerly direction to serve the 2 dwellings and in an easterly direction down to the access gate to Bank Barn on the eastern boundary. A turning head would also be provided at the end of the section of road serving the 2 dwellings.

22. Even if the 2 dwellings would not be visible from Crag Road (bearing in mind that scale is a reserved matter), a large part of the extensive, hard surfaced service road would be, especially from the Crag Road access point. The view from near this access point, looking across the site that has the appearance of an open field, devoid of development, down towards the listed Church, is identified as one of the significant views within the WCA. The introduction of the internal service road into this landscape would significantly harm its character and appearance, and consequently the character and appearance of the area, WCA and ASAONB.
23. Additionally, much of the service road would also be visible from the grounds of the Church and, even with the proposed landscaping along the southern edge of the edge of the proposed bund<sup>7</sup>, I consider the dwellings, car parking areas and associated domestic paraphernalia would also be visible, at least partially, from the Church grounds.
24. Furthermore, parts of the proposed internal service road, as well as vehicles using it (eg domestic cars, delivery vans and refuse trucks), and the proposed dwellings, would also be visible from other locations within the area. For example, from Main Street, between the George Washington pub and the old Church Hall.
25. The proposal would result in the loss of an open area that has historically been an agricultural field and still has the character and appearance of a field associated with the surrounding ancient field pattern, despite being mown and used to some extent domestically over the years. The proposal would therefore remove part of the special landscape quality of the ASAONB and part of the landscape that contributes to the significance of the WCA. The proposal would also erode the open countryside at the western edge of the village.
26. For the reasons outlined above, I therefore conclude that the proposal would have a considerable, detrimental impact on the character and appearance of the WCA, the ASAONB and therefore the area generally.

#### *Setting of LB and NDHA*

27. I respect the appellant's opinion that the proposed dwellings would not be within the setting of St Oswald's Church and therefore would not harm it. However, taking account of guidance provided in the Framework<sup>8</sup>, which defines the setting of a heritage asset as "*the surroundings in which a heritage asset is experienced*", I am of the view that the proposal would be within the setting of the Church. Thus, at minimum, this heritage asset is experienced from within the Church grounds/graveyard. Additionally, partly due to its tower, it is also experienced from many points within the village and the surrounding area, including, as noted, from where the main access to the site would be, off Crag Road.
28. The appellant suggests that the dwelling recently constructed east of the site access, Underbank, would be nearer to the Church than the 2 dwellings proposed. I accept that, as a matter of fact, this would be the case. However, as noted above, the proposal includes an extensive access/service road, which, as a result of extending beyond the rear boundary of Underbank, would be

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<sup>7</sup> Although not depicted on the drawings, the bund is referred to in the appellant's Planning Statement and the construction of such a feature was confirmed at the Hearing

<sup>8</sup> Annex 2 of the Framework

much closer to the Church boundary than this dwelling. Furthermore, I have outlined above why I consider the appeal site/proposal are not directly comparable with Underbank.

29. St Oswald's Church derives its significance from its many architectural details and its historical and cultural importance. Its graveyard to the rear extends towards the site, the open agricultural fields to the west and Warton Crag to the north. I consider these features to be within the Church's setting. I also consider its setting to contribute to its significance, given the link it provides with the adjacent ancient field pattern and the historic landscape beyond.
30. I acknowledge that the proposed dwellings would be sited as far from the church as possible within the site; and I have acknowledged above that their presence would be minimised by cutting into the landscape. However, as described above, the proposal would significantly alter the character and appearance of the site. It would no longer have the character and appearance of an open field in keeping with the historical field pattern that surrounds the built-up extents of the village. The existing open space between the northern/north-western boundaries of the Church grounds and Crag Road would be mostly lost. Built development would encroach close to one of the remaining boundaries that link the Church site with the surrounding historical landscape. The proposal would therefore substantially alter the surroundings within which this LB is experienced, in a manner I consider to be detrimental. I therefore conclude that the changes would considerably harm the setting of the Church.
31. As noted, the Council considers there to be an 'old cock fighting pit' close to the proposed access off Crag Road, though not within the site, which is recorded on the LHER as a NDHA. The Council concluded that insufficient information had been provided with the planning application to assess the potential impact of the proposal on the NDHA. At the Hearing, however, the appellant gave an account of the research he had undertaken regarding the matter since the determination of the application. Notwithstanding the existing record on the LHER, I was persuaded by the research undertaken by the appellant that it was highly unlikely that an 'old cock fighting pit' exists in the said location. Based on the evidence provided by the appellant at the Hearing, I conclude that the proposal would not result in harm to a NDHA.
32. I note that the Council has not raised any concerns regarding the impact of the proposal on the settings of either the listed George Washington public house or the Lime Kiln. Given the locations of these LBs and the intervening development and/or landscape features between the LBs and the site, I have no substantive reasons to reach a different view to the Council.
33. I have found that the proposal would harm the WCA, ASAONB, the area generally and the setting of St Oswald's Church. The appellant has drawn my attention to several developments within/around the village which he considers to have had a greater impact on these facets than the proposal would have. I viewed each of the developments identified by the appellant during my site visit. Although I have not been presented with full details of each, given their locations, specific features, size, relationship with and proximity to the features of concern, I believe none of the developments referred to are directly comparable with the site and the development proposed. I therefore attach little weight to them in support of the proposal.

34. Regarding section 16 of the Framework, I consider the harm to the designated heritage assets identified to be less than substantial, but nevertheless of considerable importance and weight. In such circumstances, paragraph 202 of the Framework advises that the harm identified should be weighed against the public benefits of the proposal.
35. Although the proposal is for 2 dwellings only, within the context of the Council's 5YHLS shortfall (a matter I return to below) I attach moderate weight to the provision of 2 dwellings. The proposal would provide some economic benefits, during the construction phase and from future occupants contributing to the local economy. However, given such benefits would be small scale, I attach limited weight to the economic benefits.
36. I therefore conclude that the public benefits identified would not outweigh the significant harm I have found in respect of the proposal failing to preserve the character and appearance of the WCA, ASAONB, the area generally and the setting of the Grade II listed St Oswald's Church.
37. Consequently, the proposal does not accord with policies EN2 of the SPLA DPD, DM29, DM38 and DM46 of A Local Plan for Lancaster District 2011-2031, Part two: Review of the Development Management DPD (July 2020), (RDM DPD), or AS02, AS07 and AS08 of the Arndale & Silverdale Area of Outstanding Natural Beauty DPD (March 2019), (ASAONB DPD). Collectively, and among other things, these policies and guidance require new development in AONBs to have the highest standards of design, to conserve and enhance the landscape, built environment, distinctive settlement character and historic features, and to protect, conserve and enhance the significance of heritage assets and landscape character, including any contribution made by their setting. New development is required to preserve and enhance the character and appearance of CAs; and in general, positively contribute to the surrounding landscape.
38. Additionally, the proposal does not accord with the range of policies in Sections 12, 15 and 16 of the Framework that seek to achieve high standards of design, create beautiful places, be sympathetic to local character and history (including the surrounding built environment and landscape setting), protect and enhance valued landscapes and take account of the desirability of sustaining and enhancing heritage assets. Nor does the proposal satisfy the requirements of the statutory duties referred to above.

#### *Provision for affordable housing*

39. Policy DM3 of the RDM DPD requires proposals for new residential development to contribute towards the provision of affordable housing, in accordance with the details outlined in ASAONB DPD. The Policy allows for the provision of a lesser contribution than is specified, where compelling and detailed evidence demonstrates that the required contribution would make the proposal unviable. Policy AS03 of the ASAONB DPD supports residential development of 2 units or more that *"...deliver no less than 50% affordable housing. Only where this is demonstrably unachievable will a lower percentage be acceptable."*
40. The Framework advises that in rural areas, local policies may require an affordable housing contribution on developments of 5 units or fewer<sup>9</sup>. This

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<sup>9</sup> Paragraph 64

should be provided on-site unless "a) *off-site provision or an appropriate financial contribution in lieu can be robustly justified; and b) the agreed approach contributes to the objective of creating mixed and balanced communities*<sup>10</sup>."

41. The appellant considers that the provision of 50% affordable housing on-site, ie one of the 2 properties proposed, would result in the scheme not being viable. However, he acknowledges that a contribution is required. A draft s106 agreement was submitted by the appellant the day before the Hearing, within which it is proposed to provide a contribution of 7.5% of the market value of the 2 properties towards the provision of affordable housing off-site. The figure of 7.5% is based on the appellant's understanding of the level of contribution provided on a recent approval of a single dwelling close to the site and planning approval on a scheme for 9 No. dwellings also within proximity of the site. The appellant also suggests that releasing his existing 5-bedroom house into the housing market would contribute to the housing needs of the area.
42. Notwithstanding the appellant's reasoning, the fact is that no substantive, robust information has been provided to demonstrate a) that an on-site affordable housing contribution of 50% is not viable, or b) that the proposed off-site financial contribution of 7.5% of market value of the 2 proposed dwellings would be appropriate. In such circumstances, it is highly unlikely that the draft s106 submitted would be executed. As such, I attach little weight to the s106 in support of the proposal. Consequently, I conclude that the proposal does not make appropriate provision for affordable housing. Therefore, the proposal does not accord with Policy DM3 of the RDM DPD, Policy AS03 of the ASAONB DPD, or paragraphs 63 and 64 of the Framework.

### **Other considerations, planning balance & conclusion**

43. The Council acknowledges that it does not have a 5-year housing land supply, (5YHLS). The Council contend that its HLS Statement of September 2021 concludes that it can demonstrate a supply of 2.6 years. In his response to the Council's draft SoCG, the appellant refers to a shortfall in terms of number of units (ie 302), and within his Planning Statement he refers to recent work having concluded that level of supply is 2.3 years. I have therefore made my Decision based on the Council's 5YHLS being somewhere in the region of 2.3-2.6 years.
44. I consider the extent of the shortfall to be significant. Taking account of paragraph 11 d) of the Framework, and footnote 8, in such circumstances the policies that are most important for determining the application are deemed to be out of date and planning permission should therefore be granted...unless one of 2 circumstances apply. The first of these, 11 d) i., says unless "*the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed.*"
45. Hence, bearing in mind the harm I have found above, the application of policies in the Framework that protect the ASAONB, WCA and the Grade II listed St Oswald's Church (ie areas/assets of particular importance) provides clear reasons for refusing the proposal. Consequently, the proposal does not benefit from a presumption in favour of sustainable development. Nevertheless, the

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<sup>10</sup> Paragraph 63

planning balance required by s38(6) of the Planning and Compulsory Purchase Act 2004 still needs to be undertaken.

46. The proposal would provide 2 additional dwellings. As noted above, within the context of the Council having a substantial 5YHLS shortfall, I attach moderate weight to the provision of 2 additional dwellings. Also as noted above, the proposal would provide some economic benefits, both during construction and from future occupiers contributing to the local economy. However, as the scale of such benefits would be minor, I attach limited weight to this matter.
47. Notwithstanding my conclusion regarding the effect of the proposal on the NDHA, for the reasons outlined, I conclude that the proposal does not accord, as a whole, with policies in the development plan. Furthermore, there are no other considerations, including policies in the Framework, that lead me to conclude other than in accordance with the development plan. I therefore conclude that the appeal is dismissed.

### **Other Matters**

48. Approximately 1.3 kilometres to the southwest of the site is Morecambe Bay, which is designated as a Special Protection Area, Site of Special Scientific Interest, Special Area of Conservation and Ramsar Site. As I am dismissing the appeal for other substantive reasons there has been no need for me to pursue this matter.

*J Williamson*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

Mr I Thompson      Agent for the appellant - BA Arch, Dip Arch, BA (Hons) TP,  
MRTPI

Mr P Edmondson    The appellant - Retired Head Teacher

### **FOR THE LOCAL PLANNING AUTHORITY:**

Mr Robert Clarke      Planning Officer

Mr David James      Principal Conservation Officer

### **OTHER INTERESTED PERSONS:**

Mr Sam Robinson      Planning Assistant

### **ADDITIONAL DOCUMENTS SUBMITTED PRIOR TO THE HEARING**

1. Draft Section 106 Agreement.
2. Unsigned Statement of Common Ground and appellant's response to its content.

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