



Appeal Decision

Site visit made on 23 January 2024

by N Teasdale BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 February 2024

Appeal Ref: APP/A2335/W/23/3325149

Land adjacent to Kirkby Lonsdale Road, Over Kellet LA6 1DS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant full planning permission.
 - The appeal is made by Mr & Mrs Guy Constantine against the decision of Lancaster City Council.
 - The application Ref 23/00518/FUL, dated 2 May 2023, was refused by notice dated 28 June 2023.
 - The development proposed is construction of a new single detached dwelling with associated highways access and hard and soft landscaping.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. An update to the National Planning Policy Framework (the Framework) has been published dated 19 December 2023 but there are no material changes relevant to the substance of the appeal.

Main Issues

3. The main issues are the effect of the proposed development on;
 - The character and appearance of the site and surrounding area, including whether it would preserve or enhance the character or appearance of the adjacent Over Kellet Conservation Area (CA) and preserve the setting of the Grade II listed building, Old Hall located to the west of the site; and
 - The living conditions of existing occupiers of The Bowers and The Stables in relation to privacy of the private garden spaces.

Reasons

Character and appearance

4. The appeal site relates to an agricultural field located to the north of Kirkby Lonsdale Road within a prominent position within the village of Over Kellet. The field is steeply sloping increasing in gradient from the northwestern corner up to the southeastern corner. A small cemetery is located in the northwestern corner falling outside of the appeal site but is accessed via a footpath which runs along the west of the site. The site boundaries largely comprise low stone retaining walls with some hedging. A number of properties surround the site

which are of varying ages and form including Old Hall which is located to the west of the site and is Grade II listed.

5. The site is not located within the CA, but it forms a gap immediately between two separate areas which together, form the CA designation. As referred to, Old Hall located to the west of the site is Grade II listed. As such, I have a duty under Section S66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA requiring special regard to be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. I have also had regard to paragraph 205 of the Framework which states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
6. The CA is noted for its medieval origins, retention of nucleated plan form of the village around a green and retention of houses, farmhouses, and barns with an overriding traditional built character. The Over Kellet: Conservation Area Assessment (CAA) notes the rural setting of the village, surrounded by open agricultural fields explaining that the areas of greenery and mature trees within the CA enhance its rural setting and agricultural history. Old Hall is located to the west of the site and is Grade II listed. The buildings' significance is derived from its historic and aesthetic merits and is typical of the village character, being close to the road, creating intimacy and spatial enclosure.
7. The fields between built form connect the village to the surrounding countryside which is key to the settlement's history. The gaps between each group of buildings are important to the character and appearance of the CA and its setting allowing views to and from the surrounding countryside. The appeal site forms a gap immediately between two separate areas of the CA covering a good distance along Kirkby Lonsdale Road offering for open views of the area out across the landscape and wider countryside. The land can be seen from both parts of the CA and thus forms an integral part of the village setting. This is despite the CAA making no reference to the existing field as well as it being excluded from the CA designation or listed as a heritage asset.
8. I appreciate that the land is private with no public access and that new development in the surrounding area may alter existing views of the village and appeal site from certain vantage points. Nonetheless, the contribution of the open parcel of land and views afforded when travelling along Kirkby Lonsdale Road are still apparent and I have no compelling evidence to suggest that this would change in the near future, and I must determine the appeal based on present circumstances. I also note claims regarding foot traffic being limited and that the wall to the front prevents views/eliminates any perception of openness including for those travelling through the village in a car. Given the topography of the land and the boundary wall to the front of the site, some views are restricted depending on the direction of travel. However, from my site visit, I did not consider this or any claims of low foot traffic to undermine the sites overall value as it still forms an important component of the settlement and still highly visible offering for pleasant open views.
9. The proposed development relates to the erection of a single dwelling built into the slope of the site and would be split level with an associated access point

onto Kirkby Lonsdale Road. The dwelling would be located just south of the centre of the field. The access would be located slightly further to the west with a driveway sweeping in front of the building. The domestic gardens would extend around all sides of the property. Infilling this gap would erode the distinctive dispersed character and appearance of the settlement and would harm the separation of the historic components of the village impeding key views into and out of the village and CA.

10. Further and although there may be some diversity in the wider area in terms of built form, it is for the most part characterised by relatively modest, rural vernacular style houses that are traditional in their size, form, proportions, fenestrations, and detailing. Most of the dwellings particularly those along the northern side of this part of Kirkby Lonsdale Road both to the east and west of the appeal site have active roadside frontages built tight up to the roadside or pavement creating a level of intimacy and spatial enclosure. The proposed dwelling, particularly its set back from the road, dominant form, large scale and massing and the sweeping driveway and large garage would not be reflective of the existing pattern of traditional residential development despite using local materials, and it would be seen as an incongruous feature that would neither relate to nor reflect the character and appearance of the village and surrounding heritage assets. Even with the set back from the road, the proposed development would still appear particularly prominent within the street scene given its overall positioning and rather suburban character. This, together with its close proximity to the listed building, would unacceptably draw the eye to the detriment of the listed building and its setting. Reference to other developments being allowed in the surrounding area would not alter my findings on this as I am determining the scheme based on its own site-specific merits.
11. For the reasons given above, the proposed development would unacceptably harm the character and appearance of the site and surrounding area and thus would fail to preserve the character or appearance of the adjacent CA. It would also fail to preserve the setting of the listed building located to the west of the site. Although considerable, the harm would be localised and would therefore be less than substantial.
12. Paragraph 208 of the Framework explains that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. There would be some minor economic and social contribution to the local community from a new dwelling and I note the sustainability features proposed and biodiversity net gain. However, given that the scheme relates only to a single new dwelling, the extent to which these factors would be beneficial is limited and would only make a small difference to the overall supply of housing. Consequently, these benefits attract limited weight. Reference has been made to the appellant being registered on the self-build register and has been searching for a suitable plot although I have very limited detail to be able to consider this further. In any event, it would not be sufficient to outweigh the harm identified. Accordingly, I find there to be very limited public benefits to offset the identified harm to the adjacent CA or the setting of the listed building to which I have attached great weight given the requirements of the Framework.

13. The proposed development would therefore be contrary to Policies DM29, DM38, DM39 and DM46 of the Review of the Development Management DPD, 2020 (DPD) which together, amongst other matters, explains that new development should be as sustainable as possible and make a positive contribution to the surrounding landscape and / or townscape. The Council recognises the contribution that the setting of a designated heritage asset can make to its significance and will look for opportunities for new development within the setting of heritage assets to enhance or better reveal their significance.
14. The proposed development would not conserve the heritage asset in a manner appropriate to its significance, or positively contribute to local character or distinctiveness in line with the aims of sections 12 and 16 of the Framework relating to achieving well-designed and beautiful places and conserving and enhancing the historic environment.

Living conditions

15. A number of the properties to the west of the site including properties known as The Bowers and The Stables are orientated where their rear elevations and garden areas face eastwards onto the appeal site albeit at a lower level given the topography of the land. They are also separated by the access path to the cemetery and low boundary walls.
16. The proposed development includes a large balcony to its western elevation, and I note the Councils' concerns regarding privacy of the existing occupiers of The Bowers and The Stables given the level difference where the balcony would be situated at an elevated position than the existing garden areas to the west. However, as set out within the officer's report there would be a separation distance of approximately 38 metres from The Bowers and 43 metres from The Stables measured between the edge of the balcony and the boundaries of these residential garden areas. It appears undisputed that the separation distances as set out within the DPD is exceeded when applying additional standards taking into account the elevation change and although minimum distances does not mean that development would always be acceptable, the separation distances in this case are in excess of even the minimum requirements and I am content that there is sufficient distance between the balcony and the garden areas to the west to not result in an undue loss of harm for existing occupiers despite the level differences.
17. The proposed balcony would have a sizable footprint, and whilst matters relating to noise and disturbance did not specifically form part of the Councils' reasoning for refusal, I note the concerns in relation to the regular use of the space for future occupiers including the potential for gatherings of an increased number of people. This is claimed to lead to increased levels of noise and disturbance as well as sense of overbearingness when compared to a smaller balcony area which may be used for occasional sitting out. However, any balcony/amenity area could be used for social gatherings, and I do not have any compelling case to suggest that the size of the balcony area would lead to significant levels of noise and disturbance or overbearingness over and above what can otherwise be expected in a residential setting. The level of separation distances between properties would also further minimise this. Many residential properties benefit from amenity spaces which vary in terms of their overall size/relationship with their neighbours and such situations are not uncommon

in residential areas. On balance, I do not therefore find that the balcony size in this case would result in unacceptable noise nuisance and disturbance or overbearingness to existing residential amenity.

18. For the above reasons, I conclude that the proposed development would not have a harmful impact on the living conditions of the existing occupiers of The Bowers and The Stables in relation to privacy of the private garden spaces. The proposed development would therefore comply with Policy DM29 of the DPD which amongst other matters, ensures there is no significant detrimental impact to amenity. For the same reasons, the proposed development would accord with section 12 of the Framework relating to achieving well-designed and beautiful places in this regard.

Other Matters

19. The Council do not raise any particular concern regarding the location of the site within the identified sustainable rural settlement and I note comments regarding some positive feedback received from pre-application advice with the Council as well as changes made to the scheme. However, such matters would not alter my findings on the above main issues.
20. I am aware of the appellants' claims that the dwelling would meet Building Regulations requirements for accessible and adaptable dwellings and that the new dwelling would be constructed to suit the appellants' family needs for the foreseeable future. However, this would not be sufficient to outweigh the harm identified.

Planning Balance and Conclusion

21. I have found that the proposed development would not harm the living conditions of existing occupiers of The Bowers and The Stables in relation to privacy of the private garden spaces. It would however unacceptably harm the character and appearance of the site and surrounding area and thus would fail to preserve the character or appearance of the adjacent CA. It would also fail to preserve the setting of the listed building to which I attribute great weight.
22. The Council has confirmed that they do not have a demonstrable 5-year housing land supply with the current figure being 2.1. Consequently, because of the provisions of footnote 8, paragraph 11d) of the Framework should be applied. This explains that the policies which are most important for determining the application are in such circumstances considered out of date. Planning permission should therefore be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
23. On this basis, significant weight must be given to the Framework which clarifies at footnote 7 that the policies referred to are those in the Framework (rather than those in development plans) relating to amongst others, designated heritage assets. On this basis and despite the shortfall in housing, the proposed development would still unacceptably harm the character and appearance of the site and surrounding area and thus would fail to preserve the character or appearance of the adjacent CA. It would also fail to preserve the setting of the

listed building located to the west of the site. As a result, the presumption in favour of sustainable development as set out at paragraph 11d) does not apply. Notwithstanding, and as set out earlier, the adverse impacts in respect of matters relating to character and appearance would significantly and demonstrably outweigh the limited benefits, when assessed against the policies in the Framework taken as a whole.

24. Bringing everything together, the proposed development would conflict with the development plan and there are no material considerations, including the advice of the Framework, which outweighs this conflict. The appeal should therefore be dismissed.

N Teasdale

INSPECTOR