



Appeal Decision

Site visit made on 24 April 2024

by Elaine Moulton BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 June 2024

Appeal Ref: APP/B2355/W/23/3329803

Wesley Old Hall, Burnley Road, Healdtown, Weir, Bacup OL13 8RA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Ms R Moores against Rossendale Borough Council.
 - The application Ref is 2023/0332.
 - The development proposed is an agricultural building (consequent to the demolition of a wooden storage building).
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Decision

1. The appeal is allowed and planning permission is granted for an agricultural building (consequent to the demolition of a wooden storage building) at Wesley Old Hall, Burnley Road, Healdtown, Weir, Bacup OL13 8RA in accordance with the terms of the application, Ref 2023/0332, subject to the following conditions:-
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: RM.040723A and WHO-06-06-23.
 - 3) Foul and surface water shall be drained on separate systems.
 - 4) The development hereby permitted shall not be brought into use until a biodiversity/habitat enhancement of the site has been carried out in accordance with a scheme (demonstrating how a net gain in the biodiversity/habitat status of the site will be achieved as part of the development) that has been submitted to and approved in writing by the local planning authority beforehand.

Applications for costs

2. An application for costs was made by Rossendale Borough Council against Ms R Moores. This application is the subject of a separate decision.

Procedural Matters

3. This appeal against the Council's failure to give notice of a decision results from a validation dispute between the main parties. An assessment by the Council of the scheme's planning merits has now taken place at appeal stage. I have identified the main issues in this appeal having considered the Council's

Statement of Case, which sets out their main concerns should it be determined that a valid planning application was in fact made.

Main Issues

4. The main issues are:

- Whether or not the planning application should have been validated by the Council; and, in the event that I find it should have been validated,
- The effect of the proposal on the character and appearance of the area.

Reasons

Validation

5. Planning fees are set nationally by the government and are detailed in the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 (as amended) (Fees Regulations). The Fees Regulations set out 13 categories of development and the fee that the local planning authority will require to determine an application under each of the categories.
6. The planning application, that is now subject of this appeal, was made on 6 July 2023. The Council then wrote to the appellant, on 31 July, stating it would not be able to validate the application as, in the absence of evidence that the proposal was on land used for agricultural purposes, the fee was incorrect. It thereby indicated that the fee had been calculated under the incorrect fee category, 3, and the planning application could not be validated and determined.
7. In response, the appellant requested that the application be validated with the fee that had been paid, claiming that the Council was trying to dictate the type of application which should be submitted when that was for the applicant to decide. This was, effectively, a notice under the validation dispute process at Article 12 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (DMPO).
8. The Council's subsequent response reiterated that the incorrect fee had been submitted, further explaining its reasons for reaching that conclusion. Such correspondence represented a Non-Validation Notice under Article 12 of the DMPO
9. The outcome is that the application is classified as a non-validated application, and the time periods for decisions set out under article 34 of the DMPO apply. This enables an appeal to be made under section 78(2) of the Town and Country Planning Act 1990 (the Act). The relevant time period for making an appeal is set out under article 37(2) of the DMPO. I am satisfied the appeal has been lodged in the relevant time frame.
10. Section 79 of the Act states that on determination of an appeal under section 78 the Secretary of State may allow or dismiss the appeal, or reverse or vary any part of the decision of the local planning authority (whether the appeal relates to that part of it or not), and may deal with the application as if it had been made to him in the first instance. Essentially it gives the power to the Inspector to look at the fee issue at appeal. Furthermore, by reference to 'in the first instance' it ties the fee to the Fees Regulations that were in place at

the point at which the application was made. Accordingly, the 2023 amendment to the Fees Regulations is not relevant to the determination of this appeal.

11. The appellant considers that the fee required to determine the application is set out under category 3. At the point the application was made, category 3 of the Fees Regulations was development comprising 'the erection, on land used for the purposes of agriculture, of buildings to be used for agricultural purposes (other than buildings in category 4)'. Accordingly, there are two elements which both need to be satisfied if the scheme is to be determined as category 3 development; it must be on land used for the purposes of agriculture and must be a building to be used for agricultural purposes.
12. An annotated plan submitted by the appellant to the Council shows the approximate extent of agricultural land at Wesley Old Hall. This indicates that the application site is not fully in agricultural use. Nonetheless, the wording of category 3 does not indicate that the whole of the site should be land used for agricultural purposes. In this case, as the proposed building would be located partially on agricultural land, it is still correct to say that it is on land used for agricultural purposes. The element of category 3 that relates to the use of the land is, therefore, satisfied.
13. Based on the description of development on the application form and the details of the proposed building as shown on the submitted plan, what is proposed is a building to be use for the purposes of agriculture. Moreover, I note for the purposes of calculating the fee the Council has not disputed this. As such the second element of category 3, relating to the use of the building, is also satisfied.
14. Accordingly, the proposal is category 3 development. I thus find that the submitted fee has been calculated against the correct fee category.
15. For the reasons set out above, I conclude that the planning application should have been validated by the Council.

Character and appearance

16. The appeal site comprises an area of land in the open countryside outside of any settlement. It is set to the rear of Wesley Old Hall which is surrounded by fields enclosed by stone walls and fences.
17. The proposed building is of a functional utilitarian design that would be constructed in commonly used external materials. As such it would be typical of many modern agricultural buildings found within the open countryside. Whilst it would be larger than the building to be demolished, it would be of a modest size and scale. In the context of its open countryside setting, it would not appear as a disproportionately large building. Furthermore, its siting close to other buildings would ensure that it would not appear overly prominent or dominant and that it would not represent an alien or discordant feature.
18. The appellant indicates that the proposed building would be for storage purposes in connection with the use of two parcels of land, one of which is located some distance from the appeal site at Burnley Road East. I have been presented with no justification as to why such land, which is identified on a submitted plan, should not be taken into consideration in the determination of this appeal.

19. The main parties agree that agricultural buildings are an appropriate form of development within the open countryside and that there is no requirement in local or national policy to demonstrate that there is a need for a proposed agricultural building. Nonetheless, the Council has significant doubts over whether the building would be used for the agricultural purposes proposed, as it considers that there is very little information regarding the nature of the agricultural holding or the farming activities taking place at the site. However, I have been presented with no compelling evidence that the identified parcels of land are not used to produce hay or that the building is unsuitable for storage of machinery associated with such production. Furthermore, there is nothing before me to suggest that it would be inappropriate to locate a building, that meets the storage needs associated with the agricultural use of the two parcels of land, on the appeal site. Accordingly, I find that the appeal site is a suitable location for the proposed building.
20. I therefore, conclude that the proposed development would not harm the character and appearance of the surrounding area. As such, it would accord with Policy ENV3 of the Rossendale Local Plan 2019 to 2036 which supports development that is in scale and keeping with the landscape character.

Conditions

21. The Council has suggested a number of conditions which I have considered against the Framework and Planning Practice Guidance.
22. In addition to the standard time limit condition limiting the lifespan of the planning permission I have also, in the interests of certainty, attached a condition specifying that the development is carried out in accordance with approved plans.
23. I have imposed a condition relating to foul and surface water drainage to prevent flooding and pollution. In addition, whilst I have concluded that it is not necessary for the details to be prior to commencement of development, I have included a condition to secure biodiversity enhancement measures in the interests of nature conservation.

Conclusion

24. For the reasons given above I conclude that the appeal should be allowed.

Elaine Moulton

INSPECTOR