



Appeal Decision

Site visit made on 11 January 2022

by **F Wilkinson BSc (Hons), MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27 January 2022

Appeal Ref: APP/A2335/W/21/3282884

Land Southwest of Church Bank, Main Road, Over Kellet, Lancashire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Lee Ogley of Fellside Land Developments Ltd against the decision of Lancaster City Council.
 - The application Ref 20/01246/FUL, dated 16 November 2020, was refused by notice dated 13 July 2021.
 - The development proposed is the erection of 9no dwellings including associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The address of the appeal site given on the application form is 'land south east of Church Bank, Church Bank, Over Kellet, LA6 1DT'. The address on the Council's decision notice describes the location as 'land southwest of Church Bank, Main Road, Over Kellet, Lancashire'. From the submitted plans and from what I observed when I visited the site, this latter description more accurately defines the location of the appeal site. I have therefore used this address for the purposes of the appeal.
3. As this appeal relates to development proposed within the setting of listed buildings, I have approached the appeal mindful of the provisions of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
4. I have taken the National Planning Policy Framework 2021, (the Framework) into account in my decision. The substantive elements of the new Framework have not changed from the previous iteration so far as they relate to the main issues of the case.

Main Issues

5. The main issues are the effects of the proposed development on:
 - the character and appearance of the area; and
 - the setting of nearby listed buildings.

Reasons

Character and Appearance

6. The appeal site is an undulating area of land to the south of the village of Over Kellet, with its high point being towards its eastern boundary and reducing in

- height towards the north, west and south west. It is separated from the properties on the southern edge of the village by a hedgerow together with a number of trees and a Public Right of Way (PRoW).
7. The proposed development would comprise nine two storey dwellings composed of three pairs of semi-detached properties and three detached dwellings. These would be located in the northern part of the site. The southern part would remain undeveloped, with planting proposed to the south of the access road. Whilst some site levelling may be required, based on the submitted plans, the sloping nature of the land would be retained, with the dwellings shown to be in a broadly linear pattern rising up from the north to the south east.
 8. A Landscape and Visual Impact Assessment (LVIA) has been prepared by the appellant to support the proposal. This concludes that the site is well screened by existing landforms, dwellings, topography and vegetation to the east, south, west and north, meaning that the visual and landscape character impacts are confined to within 150m of the site. The LVIA states that whilst the site has some features associated with the landscape character of the area, these are significantly diluted by the presence of the highway boundary and the relatively dense arrangement of 20th century dwellings which form the partial setting of the site. The LVIA considers that the site is tied more to the village rather than the wider surrounding landscape. For the identified receptors, which are mainly transient being users of the PRoWs, highways and the Church of St. Cuthbert, the LVIA assesses the effects as moderate adverse at worst where there are open views of the site, with this generally reducing to minor adverse at worst in the long term.
 9. The landscape character of the area is one of rolling drumlins and open fields. This rolling drumlin landscape is clearly apparent along the southern edge of the village. The undulating nature of the site is very characteristic of the landscape of the area. Its rolling drumlin appearance would effectively be lost with the proposed development.
 10. The site is recognisably part of the open countryside that lies beyond the well-defined hedge line and tree belt to the south of the existing built development on Church Bank, irrespective of the location of the 30mph speed limit, the presence of a pavement, the fact that the nearby dwellings would be seen in views of the site and the proposed location of the dwellings. It forms an important part of the countryside setting of the village.
 11. The proposed development would visually extend built development into the open countryside. Although views of the proposed development would be relatively localised, it would be clearly visible from Nether Kellet Road on the approach to the village from the south and when leaving the village. Whilst there is variation in topography within Over Kellet, the elevated position of the site would exacerbate the prominence of the dwellings on this approach to and from the village. The proposed development would have an encroaching urbanising effect that would be markedly at odds with the site as it is at present and with the rural character of the wider area.
 12. Although designed to be attractive and to exhibit a rural style, the proposed dwellings would nevertheless have a residential character due to the fenestration, domestic curtilages, parked vehicles and activities associated with a residential use. This would further exacerbate the urbanising effect. The need

to provide access and visibility splays would further detract from the rural character of the route into the village, which the use of more traditional road surfacing materials would not adequately mitigate.

13. A number of applications granted permission in proximity to the site have been drawn to my attention, which the appellant considers have similarities to the appeal scheme. However, from the information submitted and my own observations, the landscape context for these other proposals is not directly comparable to the site. I cannot therefore draw any direct comparisons that would weigh in favour of the appeal scheme.
14. The proposed development, by virtue of resulting in incongruous development within an essentially open and rural site which contributes positively towards landscape character, would have a significant detrimental effect on the character and appearance of the area. The proposed development would therefore conflict with Policies DM4, DM29 and DM46 of the Local Plan for Lancaster District 2011-2031, Part Two: Review of the Development Management DPD, adopted 2020 (the DM DPD). These policies require proposals to be well related to the existing built form of the settlement and respect the existing scale and character of the village; contribute positively to the identity and character of the area having regard to local distinctiveness and character; and be in scale and keeping with the landscape character and preserve the locality's distinct sense of place, amongst other matters.
15. It would also conflict with the design objectives in paragraphs 126 and 130 of the Framework and paragraph 174 which states that decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes amongst other considerations.

Setting of Listed Buildings

16. The Church of St. Cuthbert (list entry no. 1071877) (the Church) is a 16th century Grade II* listed building with early 13th century remains. Its significance as it relates to the proposed development is derived from the evidence it provides of the architectural style and building techniques of the time, the retention of the historic fabric, and its association with local architects and the development of Over Kellet. In addition, historical maps indicate that the Church has always stood apart from the village and its location on the brow of a hill enhances its prominence as a focal point in the landscape.
17. The immediate setting of the Church is provided by the graveyard to the north which is bounded by a wall and provides views over the surrounding landscape. Whilst noting the appellant's position that it is the immediate setting that has the highest value, the Church's wider setting, including the open agricultural fields to the north and west, is also an important element of its significance. These fields provide an open aspect that enhance its setting and prominence in the landscape and reinforces the links with the area's farming history.
18. The proposed development would bring built development closer to the Church, reducing the current openness of the area between it and the village that contributes positively to its setting, and would interrupt views of the Church from the north and its visual association with Kirkhouse. This would reduce the legibility of the wider site and the understanding of the historic extent and functions of the land associated with the Church.

19. The proposed dwellings would largely block views of the Church from the PRoW to the north of the site. Whilst there is a relatively tall hedgerow and trees along the boundary of the PRoW, clear views of the Church would be possible when these are not in leaf.
20. The site is very visible from within the churchyard. The topography of the site means that the proposed dwellings would sit quite high in the landscape. This would increase their visual prominence and the perception of their proximity and would act as an intrusive feature when in the graveyard in particular. The proposed development would also therefore affect the immediate setting of the Church.
21. The proposed development would visually compete with the Church, would diminish the ability to understand its architectural and historical context and would erode the open, rural landscape that contributes to its setting.
22. Kirkhouse is a Grade II listed building (list entry no. 1071876). It is a late-18th century farmhouse with 17th century remains. Its significance as it relates to the proposed development is derived from its historical associations with the area's farming industry and the evidence it provides of the architectural style and building techniques of the time. The setting of the listed building, including the open land and nearby stone barn, reflects this farming legacy and contributes positively to its significance.
23. The proposed development would be located on open land which contributes to the setting and significance of the listed building. Kirkhouse is viewed in conjunction with the site from several locations at the southern end of the village and for stretches of Nether Kellet Road when travelling south. The proposed dwellings would sit higher than Kirkhouse and would dominate the listed building which is nestled into the landscape at a lower level. In addition, they would curtail views of Kirkhouse in association with the nearby stone barn from certain vantage points in the north, breaking their visual relationship and how they are experienced.
24. The proposed development would represent an encroachment of built development within the open rural setting of Kirkhouse, increasing the built-up nature of the area around the listed building. As such, it would detract from its setting.
25. The more modern agricultural/commercial buildings associated with the agricultural equipment business to the south of Kirkhouse detract somewhat from its setting. However, given their location and the nature of the topography, visually they appear to be at a lower level. As such, they draw the eye away from Kirkhouse less than the proposed dwellings, which would be set at a higher level, would do. Furthermore, their presence does not justify permitting a development that would further erode and more harmfully effect the setting of the listed building.
26. Given the raised topography of the site, the proposed woodland planting would take many years to mature to a height that would provide effective screening. In addition, it would further hinder the open views of the Church within its wider landscape setting and also outward views from the churchyard. The proposed open space would not provide a sufficient buffer to adequately mitigate the harm I have identified, nor would the design of the proposed dwellings.

27. The proposed development would therefore cause harm to the significance of the two listed buildings. In terms of the Framework, I assess the harm as less than substantial. Although I have found that the harm to the listed buildings would be less than substantial, even so, this harm is of considerable importance and weight. Under such circumstances, paragraph 202 of the Framework advises that the harm should be weighed against the public benefits of the proposal.
28. The appeal scheme would increase the supply of housing, address a stated shortfall and would be consistent with the Government's objective to significantly boost the supply of homes. In this regard, Over Kellet is identified as being a sustainable rural settlement outside of Areas of Outstanding Natural Beauty in Policy SP2 of the Local Plan for Lancaster District 2011-2031, Part One: Strategic Policies and Land Allocations DPD, adopted 2020 (the SPLA DPD). Consequently, although the proposed development would contribute a relatively small number of dwellings to the supply of housing, I give this moderate weight as a public benefit.
29. There would also be employment during construction and additional residents that would support local shops, businesses and community facilities. However, given that the proposed development is for nine dwellings, these benefits would be fairly limited. The proposed development would also generate a new homes bonus payment, however, this is a generic benefit that would apply to other housing schemes in less harmful locations. Overall, I ascribe these public benefits limited weight.
30. The proposed development would include a pedestrian link with access to the Church which would avoid the need to walk adjacent to the road. However, although it is quite narrow, there is already a pavement on the eastern side of Nether Kellet Road from the village to the Church. I therefore give this limited weight.
31. The appellant argues that the proposed woodland planting would improve the visual appearance of the area especially on the entrance to the village from the south. However, the current entrance is not unattractive and is typical of the landscape character of the area. I therefore give this very limited weight. The ecological benefits of the woodland and its ability to provide cleaner air and contribute to flood mitigation would be limited given the size of the area and would attract commensurate weight.
32. The Council's officer report confirms that the appeal scheme proposes significantly more open space than would be required under the current suite of planning policies. This would therefore represent a public benefit, although I note the Council's concern about the lack of clarity over how much of this land would be publicly accessible. The appellant also highlights the offsite contributions identified by the Council's Public Realm team, which amounts to around £21,359 based on calculations using the Council's Open Space Provision within New Residential Development Planning Advisory Note. However, from the information presented, not all of this contribution would be compliant with the Community Infrastructure Levy requirements. The Council identifies that a contribution of £2,165.44 towards the play area would be likely to be what could be realised. No mechanism to secure this contribution has been submitted. I therefore give these factors very limited weight.

33. Paragraph 199 of the Framework states that great weight should be given to the asset's conservation, and the more important the asset, the greater the weight should be. Paragraph 200 requires clear and convincing justification for any harm to or loss of significance of a designated heritage asset. Consequently, the harm I have identified to the Church attracts very considerable weight against the proposed development. Considerable weight is given to the harm that would be caused to the setting of the Grade II listed Kirkhouse. Given the weight that I attach to the public benefits, these would not outweigh the harm that would be caused.
34. Accordingly, the proposed development would conflict with Policy SP7 of the SPLA DPD, which seeks to maintain the District's unique heritage. It would also conflict with Policy DM37 of the DM DPD which states that any harm (substantial or less than substantial) to the significance of a listed building including through development within its setting, will only be permitted where this is clearly justified and outweighed by the public benefits of the proposal. It would also conflict with the advice in chapter 16 of the Framework, the most relevant aims of which are summarised above.

Conclusion

35. The evidence indicates that the Council cannot demonstrate a five year supply of deliverable housing sites. Footnote 8 of the Framework means that the 'presumption in favour of sustainable development' at paragraph 11. d) of the Framework is relevant. As such, the most important policies should be deemed out of date and planning permission should 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.
36. Designated heritage assets are a particular policy of protection referred to in associated footnote 7. Given my conclusion on the harm to the listed buildings, there is a clear reason to refuse the proposed development in line with Framework paragraph 11. d) i.
37. With the above in mind, although the Council cannot demonstrate a five year supply of deliverable housing sites, the presumption in favour of sustainable development set out at paragraph 11 of the Framework does not apply.
38. The proposed development would conflict with the development plan taken as a whole, as well as the Framework. There are no material considerations, including the approach of the Framework in regard to housing supply, worthy of sufficient weight that indicate the decision should be made other than in accordance with it. Therefore, for the reasons given, I conclude that the appeal should not succeed.

F Wilkinson

INSPECTOR