



Appeal Decision

Site visit made on 17 October 2023

by Zoë Franks, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 21st FEBRUARY 2024

Appeal Ref: APP/U2370/C/22/3296817

The Crossing Cottage Lambs Lane, Pilling, PRESTON, PR3 6SB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Leon Redfern against an enforcement notice issued by Wyre Borough Council.
 - The notice, numbered MG/PLG/6, was issued on 21 March 2022.
 - The breach of planning control as alleged in the notice is without planning permission the erection on the Land of a building used as workshop/garage and MOT station in the approximate position shown edged and hatched blue on the attached plan ("Building").
 - The requirements of the notice are to: 1. Demolish the Building to ground level; and 2. Remove all materials and debris resulting from the works.
 - The period for compliance with the requirements is: 4 months.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Ground (a) and the deemed planning application

2. The main issues are: i) whether the building constitutes inappropriate development in an area at risk of flooding; ii) the effect of the building on the character and appearance of the surrounding countryside; iii) the effect of the building on nearby watercourses; and iv) the effect of the development on highway safety.
3. The alleged development is the erection of a building used as workshop/garage and MOT station. Indeed that accords with the general use of it on the day that I undertook the site visit although it cannot be licensed to undertake MOTs on the site unless and until it has the necessary planning permission. The ground (a) appeal is brought on the basis that the building would be used for domestic purposes only (ancillary to the host dwelling). It is therefore necessary in line with caselaw¹ to consider whether this alternative scheme would constitute part of the matters alleged as the breach in the notice. However, the domestic use of the building would be wholly different from the commercial use to which it has been put so far and cannot therefore, as a matter of fact and degree, be considered to be part of the matters alleged. I have therefore considered the

¹ Ahmed v SSCLG & Hackney LBC [2014] EWCA Civ 566

ground(a) appeal, and the deemed planning application, on the development as alleged in the notice i.e. use as a workshop/garage.

4. In any event, the building itself is also much larger than the host dwelling. An associated domestic use of it ancillary to the residential use is hard to imagine, and no such particular use has been identified by the appellant. As the Council has accepted that the car repair use is lawful to some extent on the site it would be difficult to impose a condition limiting the use of the building to that of domestic purposes only, and would be overly onerous in terms of the burden of enforcement put on the Council and therefore fail the policy tests.

Flood risk

5. The National Planning Policy Framework ("the Framework") advises that "Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk". The site is located in Flood Zone 3 and there is not a site specific flood risk assessment before me for consideration as required by footnote 59 of the Framework.
6. The commercial development, which is classed as "Less Vulnerable" in Annex 3, is subject to the sequential and exception tests but I have not been provided with information from the appellant to show that these tests have been met.
7. The site is located within Flood Zone 3 which is an area at risk of flooding and the lack of a Flood Risk Assessment means that it has not been possible to apply the sequential and exception tests and to manage and mitigate risk if appropriate.
8. It has not been shown that the development will not be at an unacceptable risk of flooding or that there are no reasonable available sites at lower risk, and is therefore in conflict with Policy CDMP2 Flood Risk and Surface Water Management from the Wyre Local Plan (2011 – 2031) adopted in 2019 ("the WLP"), as well as the national policy set out in the Framework and Planning Policy Guidance.

9. Character and appearance

10. The development is a large single storey building which has an agricultural appearance although it is used as a commercial garage and includes an MOT bay. It is taller than the other buildings on the site and whilst it is screened by trees and other vegetation when viewed from certain external points, it is not screened along the northern boundary. When approaching from the north along Lambs Lane the building is prominent and can be seen from some distance due to the flat character of the surrounding countryside. It appears incongruous and overly large due to its mass and height in that location and causes harm to the character and appearance of the countryside area.
11. The development is in conflict with Policy SP4 of the WLP which provides that the open and agricultural character of the countryside will be recognised for its intrinsic character and beauty and that development which adversely impacts on this will not be permitted unless it is demonstrated that it is necessary to achieve substantial public benefits. Whilst there is clearly private benefit to the appellant arising from the development, there is nothing before me to indicate that there would be substantial public benefits in this case. The development is also in conflict with Policies SP2 and CDMP3 of the WLP which, amongst other

things, seek to ensure that all development should contribute positively to the overall physical and environmental character of the area.

Watercourses

12. The appellant has also failed to show that the development is adequately and appropriately drained including means of disposing of pollutants arising from the use of the building as a commercial garage. Whilst I accept that the notice does not seek to restrict the use of the land, the size of the building with associated storage, MOT bay and work-space mean that the site overall is likely to be used on a larger scale commercially with potentially more vehicles stored and repaired than if it were not there.
13. Further details, and an appropriate scheme if required, are necessary to ensure that there is not pollution or contamination of nearby land and watercourses and in turn the adjacent River Wyre (which is a designated Site of Special Scientific Interest). As there is nothing before me to address these concerns, the development is in conflict with policies in the WLP including CDMP2- Flood Risk and Surface Water Management and CDMP1 – Environmental Protection, which partly seeks to ensure there would not be significant adverse effects on health caused by pollution.

Highway safety

14. The Council's case is that the existing site access with hedgerows to the road edge and solid gates does not provide adequate visibility splays which causes harm in terms of highways safety.
15. The access into the site is fairly narrow but the appellant argues that no customers come to the site as he purchases the vehicles himself then repairs them to sell on to local dealers. Whilst I do accept that individual customers may not visit the site, as set out above the provision of the large building is likely to lead to a larger enterprise involving more vehicles to be repaired and stored, as well as lead to increased associated deliveries (for example of parts and materials).
16. The appellant does not dispute that the visibility splays fall below those required and the development is therefore in conflict with policies CDMP3 and CDMP6 of the WLP as there is not an adequate and safe access to and from the site.

Conditions

17. The only suggested condition is that if permission were granted that the building should not be used for business purposes. However, I have set out above that it is not possible to grant permission for a use associated with the residential use of the site as not forming part of the matters constituted by the development alleged in the notice, and that such a condition would be extremely difficult to enforce in any event.
18. Neither the appellant nor the Council have suggested that further conditions could overcome the harms identified above, and I agree that those harms could not be adequately overcome by the imposition of conditions.

Conclusion

19. The development causes harm as set out above and is in conflict with the WLP and the NPPF. As there are no material considerations to outweigh this harm the appeal on ground (a) does not succeed and the deemed planning application is refused.

Zoë Franks

INSPECTOR