

SCHEDULE B

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SCHEDULE B: Applications Determined by Other Authorities

Item No: 13

Between 29/09/2018 and 09/11/2018

Appn Ref No:

18/0944

Applicant:

Mr D Mackenzie

Parish:

St Cuthberts Without

Date of Receipt:

16/10/2018

Agent:

Ward:

Dalston

Location:

Land to the North of Glebe House, Wreay, Carlisle

Grid Reference:

343412 548936

Proposal: Retention Of Hardstanding For Parking Of Vehicles On Land Adjacent To Existing Parking Compound (Appeal Decision Against Enforcement Notice EC/16/0139 Which Was Allowed)

Amendment:

REPORT

Case Officer: Karen Greig

City Council Observations on the Proposal:

Decision: Grant Permission

Date: 16/10/2018

Decision of: Planning Inspectorate

Decision Type: Appeal Allowed with Conditions

Date: 16/10/2018

A copy of the Notice of the decision of the Determining Authority is printed following the report.

Appeal Decision

Site visit made on 2 October 2018

by Roy Merrett BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 October 2018

Appeal Ref: APP/E0915/C/18/3201327

Glebe House, Wreay, Carlisle CA4 0RL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Derek McKenzie against an enforcement notice issued by Carlisle City Council.
- The enforcement notice was issued on 28 March 2018.
- The breach of planning control as alleged in the notice is (a) Engineering work that includes the creation of a second compound by extending access from Lawful Compound with hardstanding and fencing for the storage of vehicles; (b) Changed Use of Land from field to vehicle storage compound.
- The requirements of the notice are (a) All vehicles being stored on the land must be removed; (b) Hardstanding and Fence to be lifted and removed from the site and disposed of; (c) Land to be reverted back to the original condition; (d) Land should be re-graded, levelled and seeded within the first planting season.
- The period for compliance with the requirements is 6 months from the date of this notice.
- The appeal is made on the grounds set out in section 174(2)(a) and (c) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

The appeal on ground (c)

1. The appellant does not dispute that the engineering operation consisting of the laying of hardstanding and the change of use of land to form an extended vehicle storage compound comprise development requiring planning permission. The ground (c) appeal is limited to the contention that part of the boundary fence erected does not constitute a breach of planning control, on the basis that its height would not exceed 2 metres. Accordingly the appellant says that this part of the fence would amount to permitted development under the terms of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).
2. Schedule 2, Part 2, Class A of the GPDO allows for the erection of a fence as permitted development, subject to various provisos. One such proviso concerns the height of the structure, such that where the enclosure is not adjacent to a highway, as in this case, it should not exceed 2 metres in height. During the site visit the height of the fence was measured at various locations. As a result and from the written submissions beforehand, it is apparent that most of the unauthorised fence line exceeds 2 metres in height, with the exception of a relatively short section which forms the eastern boundary of the

site, running parallel to Chapel Hill Road. In this location the fence is some 1.8 metres in height.

3. Although this shorter section of the fence technically falls within the aforementioned height tolerance, it adjoins the taller fence forming the northern boundary of the appeal site and is part and parcel of the overall structure which collectively encloses the land in question. It therefore seems to me that the test for permitted development should be applied to the fence line in its entirety as a single enclosing structure. Accordingly planning permission would therefore have been required for the boundary fence as a whole, attacked by the notice. The ground (c) appeal therefore fails.

The appeal on ground (a)

Main Issue

4. The main issue is the effect of the development on the character and appearance of the village, including the setting of the listed building and various structures associated with the nearby Church of St Mary.

Reasons

5. Wreay is a small village characterised by the low density development of informally laid out buildings, predominantly dwellings, centred around the Grade II* listed Church of St Mary, with its spacious and verdant grounds. The village setting is enhanced by the presence of several mature trees and large gaps between buildings which serves to open up long distance views away from the settlement over the surrounding countryside, notably to the north, south and east.
6. The appeal site is on the western side of the village and consists of a rectangular portion of land which slopes to the north and serves to extend an existing vehicle storage compound. Immediately to the north of the site is a new small-scale residential development, with the grounds of the Wreay Church of England Primary School to the east.
7. Despite the location of the site on the edge of the village, it is not in a prominent location in relation to any rights of way to the west. From Chapel Hill Road to the north, the site is substantially screened by the aforementioned residential development. The most prominent view of the site is from Chapel Hill Road immediately to the east, between the school building and the entrance to Glebe House, and opposite the front of the church. From here the extensive northern boundary line of the appeal site is visible. The straight linear orientation of the fence line and regularity of supporting fence posts gives the structure a formality and uniformity, somewhat at odds with the informal character of the village.
8. However the lower part of this fence is substantially hidden by the straight line of an existing timber fence marking the boundary of the school grounds with the aforementioned new residential development. That fence, albeit shorter, is nevertheless very prominent, being situated closer to and running parallel with Chapel Hill Road. It has not been brought to my attention that this school boundary fence is unauthorised. There are also some tall mature trees situated in the foreground, within the grounds of the school, which tend to draw the eye and other mature trees beyond the site, against which the appeal fence is

- viewed. In combination these factors serve to mitigate the visual impact of the development in this case.
9. In addition it is important to bear in mind that if the unauthorised development were removed and the compound reinstated in its previous position, it would still be possible to view the straight fence line of the original northern site boundary. In these circumstances, although the fence would be set further back away from the road, it would also be at a higher ground level when taking into account the sloping aspect of the site. It therefore seems to me that there is little material difference in the visual impact of the boundary fencing, in the most prominent views of it from Chapel Hill Road to the east, in that when taking into account the above mitigating factors the fence does not appear significantly more incongruous than it would in its authorised position. I consider that this constitutes a strong fallback position, which weighs in favour of the grant of planning permission in this case.
 10. Furthermore, for the above reasons, when also considering the relative narrowness of the site in question, I am not persuaded that the development has resulted in any undue sense of enclosure or material harm to the sense of openness of views into and away from the village.
 11. In terms of the use of the compound, there is no dispute that the height of the fence would serve to substantially screen the parking of vehicles within this area, which could be further assisted by the application of a planning condition to restrict the size of vehicles being parked there. These factors would therefore assist in protecting the character and appearance of the area.
 12. I have a duty under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to consider the effect of the development on the setting of the Church of St Mary, which is a Grade II* listed building, and also on the setting of the various Grade II listed structures within its grounds, which comprise a mausoleum, cross, sundial and font. It seems to me that the special interest of this building and the other structures derives from their age, form and appearance. Whilst there is some inter-visibility between the church and its grounds and the appeal site, they are also substantially separated. I consider that the elements of setting that contribute to the significance of the listed building and structures include their relationship with the adjacent roads and the limited amount of built development and presence of mature trees within their immediate surroundings. In this context, I consider that the appeal site contributes little to the significance of the listed building and other listed structures or to their setting and that there would be no harm in this regard.
 13. The Council has indicated that although Glebe House is not a designated heritage asset, it nevertheless has heritage interest because of its historic connections with the village. However it was evident from my visit that this building is separated from the appeal site by a tall hedgerow and I am therefore satisfied that the development does not result in harm to its setting.
 14. Drawing the above considerations together I conclude that the development does not result in harm to the character and appearance of the surrounding area and wider village, including the setting of the listed building and various listed structures associated with the nearby Church of St Mary. Accordingly there is no conflict with Policies SP 1, SP 6, SP 7, EC 11, HE 3 and HE 6 of the Carlisle District Local Plan 2015 – 2030, insofar as they seek to promote

sustainable development which responds to local context in terms of character and distinctiveness and preserves and enhances heritage assets. I do not consider Policies EC 1 (Employment Land Allocations) and EC 2 (Primary Employment Areas) to be relevant to the development in this case.

Conditions

15. The appellant has suggested that conditions be applied to allow for a small landscaping scheme and to control the height of vehicles being stored on this site. I agree that conditions allowing for additional landscaping and control over the size of vehicles stored on the appeal site would be beneficial to the visual amenity of the area.

Overall Conclusion

16. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted.

Formal Decision

17. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely Engineering work that includes the creation of a second compound by extending access from Lawful Compound with hardstanding and fencing for the storage of vehicles and the Changed Use of Land from field to vehicle storage compound on land at Glebe House, Wreay, Carlisle CA4 0RL referred to in the notice, subject to the conditions in the schedule below.

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Landscaping/planting shall be fully implemented during the first available planting season from the date of this permission, in accordance with details to be previously submitted to and approved in writing by the Local Planning Authority. Any trees which are removed, die, become severely damaged or diseased within five years of their planting shall be replaced in the next planting season with trees of an equivalent size and species unless the Local Planning Authority gives written consent to any variation.
- 2) No vehicles other than cars, car derived vans or light goods vehicles (vehicles with a gross vehicle weight of no more than 3.5 tonnes) shall be permitted to access the application site for the purposes of the development hereby permitted.

END OF SCHEDULE OF CONDITIONS

Item No: 14

Between 29/09/2018 and 09/11/2018

Appn Ref No:
EC/17/0021/EC

Applicant:
Mr A Jackson

Parish:
Scaleby

Date of Receipt:

Agent:

Ward:
Stanwix Rural

Location:
The Glade, Burnhill Cottage, Burnhill, Scaleby,
Carlisle, CA6 4LU

Grid Reference:
343526 563168

Proposal: Change of use of part of the domestic garden from ancillary residential use to commercial use, namely the operation of the business "Eco Green Energy Centre Ltd" from the office and sheds

REPORT

Case Officer: Sue Stashkiw

Decision: The appeal is dismissed and the enforcement notice is upheld with corrections **Date:** 16/10/2018

Decision of: Planning Inspectorate

Decision Type: Appeal Dismissed

Date: 16/10/2018

A copy of the Notice of the decision of the Determining Authority is printed following the report.



Appeal Decision

Site visit made on 2 October 2018

by Roy Merrett BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 October 2018

Appeal Ref: APP/E0915/C/18/3198177

Eco Green Energy Centre Ltd, The Glade, Burnhill Cottage, Scaleby, Carlisle CA6 4LU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Adam Jackson against an enforcement notice issued by Carlisle City Council.
- The enforcement notice was issued on 19 February 2018.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of part of the domestic garden from ancillary residential use to commercial use, namely the operation of the business "Eco Green Energy Centre Ltd" from the office and sheds.
- The requirements of the notice are Cease commercial use of the land within 6 months from the date of this Enforcement Notice.
- The period for compliance with the requirements is 6 months from the date of this Enforcement Notice.
- The appeal is made on the ground set out in section 174(2) (c) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections.

Preliminary Matters

1. The appeal was lodged on ground (c), that is that the matter alleged does not constitute a breach of planning control. However during the course of the appeal the appellant confirmed that they wished to change the ground of appeal to (a), that planning permission should be granted. The Council confirmed that the requisite fee was paid and I have therefore dealt with the appeal on this basis.
2. The notice refers to a 'commercial use', which is vague as it does not describe a specific use. The Council considers the notice should have specified that the commercial use in question related to office and storage and distribution uses. Therefore it considers that the description of the alleged breach should be corrected accordingly. Furthermore, whilst referring to sheds in the alleged breach and although there are sheds present within the appeal site, the Council acknowledges that the enforcement notice plan failed to include, within the site boundary, those sheds that are actually associated with the alleged unauthorised storage and distribution use. For this reason, it says that the enforcement notice plan should also be corrected.

3. From the submissions made and my visit, I am in no doubt that the appellant understands the identity of the office that the notice is concerned with. I am satisfied that the notice can be corrected, so that the alleged breach and requirement specifically refer to the office use, without resulting in injustice.
4. I recognise that the Council had intended to include sheds situated outside the red line edge of the site. However to increase the size of the site at this stage, so as to include the sheds in question, and to refer to the storage and distribution use, would widen the scope of the notice. This has the potential to result in injustice, and it is not therefore within my powers to correct the notice in this regard.
5. I note that the appellant has stated that the sheds are no longer used for business purposes and that no business related storage and distribution takes place on the site. However because I have found that I am unable to correct the notice, to encompass the sheds referred to by the Council, the question of their relevance, if any, to the business, including any storage and distribution impact, is outside the remit of this appeal and therefore not addressed in my decision. However this would not prevent the Council from taking enforcement action in the future, should it consider it expedient to do so.

The appeal on ground (a)

Main Issue

6. The main issue is whether the appeal site is an acceptable location for the office use currently being operated there.

Reasons

7. Policy SP 2 of the Carlisle District Local Plan 2015 – 2030 sets out the Council's locational strategy for new development. It seeks to focus new development within the Council's larger settlements and states that within the open countryside, development proposals will be assessed against their need to be in that location, so as to ensure sustainable patterns of development.
8. The appeal site is part of one of a small number of properties that are loosely grouped together. The Council regards the site as being within the open countryside, which is not disputed by the appellant. In keeping with the requirements of the development plan policy it is therefore necessary to demonstrate the need for the office to be operated in this location.
9. The appellant has confirmed that the business has operated historically from this location, as it was also the home of the business owner. It would appear that that person continues to live in the house adjacent to the office, however is no longer actively involved in the business. The business use at the appeal site, according to the appellant, is limited to office administration which is undertaken by a single member of staff. That person commutes to and from the site on a daily basis.
10. It seems to me that despite an historic practical connection between the business operated on the site and the person resident there, that connection no longer exists. The appellant has made a number of points in support of their case to continue the business use on the site. These include that there are no visiting members of the public and no deliveries and collections to and from

this location in connection with the business; also that the office cannot be seen from beyond the site boundaries.

11. Despite the office not being prominently located, in keeping with the requirements of the Council's development plan, I have not been presented with a compelling reason as to why the continued business use of the site, as an office, needs (my emphasis) to be within this open countryside location, and why it should not be in a more sustainable place where the need to commute by private transport may be significantly reduced. The appellant has also referred to other businesses operating within the rural area. Whilst this may be so, the circumstances of any such developments have not been made clear to me so as to enable any meaningful comparison.
12. I therefore conclude, on the basis of the information before me, that the appeal site is not in an acceptable location for the office use, which is undisputed to be currently operating there. Accordingly there is conflict with Policy SP 2 of the Carlisle District Local Plan 2015 - 2030 insofar as it seeks development within the open countryside to be justified on the basis of its need to be in that location. The Council has also referred in the enforcement notice to conflict with Policy DP1 of the Carlisle District Local Plan 2001 - 2016. However this policy would appear to have been superseded by the more recently adopted development plan.

Conclusion

13. For the reasons given above I conclude that the appeal on ground (a) should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the deemed application.

Formal Decision

14. It is directed that the enforcement notice be corrected by:

- 1) Deleting paragraph 3 and substituting the following wording instead:

"3. The Matters which appear to constitute the Breach of Planning Control

Without planning permission, the change of use of part of the domestic garden from ancillary residential use to an office use, namely the operation of the business "Eco Green Energy Centre Ltd" from the office and sheds."

- 2) Deleting the word "commercial" in paragraph 5, and substituting the word "office".

15. Subject to these corrections the appeal is dismissed and 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.

INSPECTOR