

APPEALS LODGED AND DECIDED

Appeals Lodged between 15 November 2015 – 15 December 2015

Application Number	Location	Proposal	Com/.Del dec	Appeal Type	Date Lodged
15/00521/OUT	Land South Of Mill Farm Mill Lane Hambleton Lancashire FY6 9DE	Outline application for the erection of one dwelling with associated access off Mill Lane with all other matters reserved	Delegated	Written Representations	02 December 2015
15/00433/FUL	Land To The South Of Beech Close Claughton-on-Brock Preston Lancashire PR3 0QX	Erection of a part three, part two-storey building containing five apartments, garages and associated parking areas	Delegated	Written Representations	04 December 2015

Appeals Decided between 15 November 2015 – 15 December 2015

Application Number	Location	Proposal	Decision	Date Decided	Del/Com
14/00102/FUL	Daisy Bank Nursery Land Adjacent 15 St Davids Avenue Thornton Cleveleys Lancashire FY5 3NL	Change of use from garden centre to residential use with erection of 3 dwellings	Appeal Dismissed	24 November 2015	Delegated
14/00641/FUL	Land Adjacent To Rhyllstone Catterall Lane Catterall Lancashire	Barn conversion to create two residential properties and new access	Appeal Allowed	18 November 2015	Delegated

Appeal Costs Decided between 15 November 2015 - 15 December 2015

14/00942/OUT	Land At Libby Lane Pilling Preston Lancashire PR3 6HG	Outline application for the erection of a single dwelling including layout and access (all other matters reserved)	Partial award of costs Allowed	2 November 2015	Committee
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arm/rg/pla/cr/16/0601hh1

Appeal Decision

Hearing held on 29 September 2015

Site visit made on 29 September 2015

by Alison Partington BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 24 November 2015

Appeal Ref: APP/U2370/W/15/3010721

**Daisy Bank Garden Centre, Land adjacent to 15 St Davids Avenue,
Thornton-Cleveleys, Lancashire FY5 3NL**

- 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 Mrs Jenny Reilly against the decision of Wyre Borough Council.
 - The application Ref 14/00102/FUL, dated 31 January 2014, was refused by notice dated 1 October 2014.
 - The development proposed is the change of use from garden centre to residential use with the erection of 3 dwellings.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The owner of some of the adjoining land to the north has questioned the appellant's right of access over their land, and whether all the land shown is in the ownership or control of the appellant. However, I can see no reason why an approval of planning permission would negate or supersede any private legal rights relating to land ownership or the use of the land. No prejudice has been caused to the adjoining landowner, who is fully aware of the proposal. Accordingly, I have made my decision only on the planning merits of the case.
3. At the appeal stage an amended plan was submitted which showed a revised position of the boundary fence between the site and No 15 St Davids Avenue, which is also owned by the appellant. Both the Council and third parties have had the opportunity to comment on this revised plan as part of the appeal process. I therefore consider that no party would be prejudiced by my determining the appeal on the basis of the amended plan.

Main Issues

4. The main issues in the appeal are;
 - The effect of the proposed development on the living conditions of No 13 and No 15 St Davids Avenue with regard to outlook, light and privacy; and
 - Whether or not the proposal represents an acceptable form of development having regard to its flood zone location.

Reasons

Living Conditions

5. The rear elevations of the proposed dwellings would face the side elevation and rear garden of No 15 St Davids Avenue. This adjacent property, a dormer bungalow, has a number of windows in the side elevation facing the site, including two ground floor windows and a small obscure glazed window at first floor level.
6. In order to ensure adequate living conditions for both existing and future occupiers the Council's *Supplementary Planning Guidance 4 : Spacing Guidance for New Housing Layouts (adopted September 1998)* (SPG) sets out suggested minimum separation distances. The Council have indicated this requires 21m to be provided between facing windows, and 10.5m between the rear elevation and the rear boundary. Paragraph 3.1(v) also indicates that a rear elevation facing a side elevation should be a minimum of 12m apart, and 13m in cases of 2 storey development.
7. The revised position of the boundary, shown on the amended plan submitted at appeal stage, would ensure that the required minimum distance was provided between the rear elevations and their rear boundaries, and would still maintain a distance of 1m from the side elevation of No 15 and the boundary. The position of this fence could be secured by way of condition.
8. The distance between the windows on the rear elevation of the dwelling on Plot 1 and No 15 would be significantly less than the 21m suggested in the SPG. The plans indicate that the fence along this boundary would be approximately 1.8m high. This would be sufficient to prevent any overlooking between the ground floor windows of the proposed dwellings and No 15. Whilst the proposed bedroom window on the first floor would potentially be able to overlook the windows at No 15, the appellant has indicated that all the windows on the side elevation of this property facing the site are either already fitted with obscure glazing, or could be, as they are either secondary windows or serve non-habitable rooms. I am satisfied that such an action, which could also be secured by condition, and would not require planning permission, would ensure that no loss of privacy would be created for the occupiers of No 15.
9. The position of the dwelling on plot 1 is such that all of its side elevation would project beyond the rear elevation of No 13 St Davids Avenue. At its minimum, the proposed dwelling would be approximately 3.5m from the side boundary with this adjacent property. This is a sufficient distance to ensure that the proposed dwelling would not create an unneighbourly sense of enclosure to the rear garden of this property, particularly as No 13 has a garage located in the rear garden adjacent to the site.
10. Moreover, the dwelling closest to No 13 has been designed so that its eaves are lower than the other two houses, and the roof would slope away from this adjacent property, so reducing its bulk. This would help to ensure that the scheme would not have an overbearing impact on No 13. Given this, and the distance between the proposal and the boundary of No 13, I consider that the proposed development would not significantly reduce the amount of daylight to either the rear elevation or the rear garden of this adjacent property. Although the proposal would cause some overshadowing to the garden, its location to

the north east of No 13 means that the loss of sunlight would be limited and would not cause adverse harm to the living conditions of the occupiers of this property.

11. The windows on the rear elevation of No 13 do not directly face the site and consequently views of the development from the rear windows would only be at an angle. In addition, at ground floor any views would be limited by the garage in the garden, and the window at first floor level is located away from the site. As a result of these factors I consider that the proposal would not dominate the outlook from any of these windows.
12. All in all, I consider that the proposed development would not unacceptably harm the living conditions of No 13 and No 15 St Davids Avenue with regard to outlook, light and privacy. Therefore there would be no conflict with Policy Sp14 of the *Wyre Borough Local Plan (adopted July 1999)* (WBLP) which seeks to ensure a good standard of amenity is maintained in new development.

Flooding

13. The appeal site lies within Flood Zone 3 which has a high probability of flooding, and the scheme is classified as a 'more vulnerable' development. The National Planning Policy Framework (the Framework) and the *Planning Practice Guidance* (PPG) set out strict tests to protect people and property from flooding. The aim of these being to avoid inappropriate development in areas at risk of flooding by directing development away from areas of highest risk.
14. Paragraph 103 of the Framework states that development should only be considered appropriate in areas at risk of flooding where, informed by a site-specific flood risk assessment following the Sequential Test, and if required the Exception Test, a number of matters can be demonstrated. These include that the development is appropriately flood resilient and resistant, with safe access and egress routes, and that any residual risk can be safely managed
15. Paragraph 101 of the Framework states that the aim of Sequential Test is to steer new development to areas with the lowest probability of flooding, and that development should not be allowed if there are reasonably available sites, appropriate for the proposed development, in areas with a lower probability of flooding.
16. The appellant has produced a Sequential Test which has been revised on a number of occasions to reflect updated advice and data from the Council and the change in the site's Flood Zone category. Whilst I note the appellant's comments on the changes in information that came out during the application and appeal process, I consider that it is appropriate that the case is determined on the most up to date data. As the Council have indicated that there was no sequential testing of the allocations within the development plan, the PPG indicates that the area to apply the sequential test will be defined by local circumstances. In this case, it has been produced on a borough wide basis which accords with the advice contained in the recently produced *Wyre Council Flood Risk Sequential Test: Advice for Applicants (May 2015)* (STAA) that this should normally be the area of search for applications. I am satisfied that this represents a reasonable approach as defined by local circumstances. Nevertheless, it is disputed between the parties whether the sequential test demonstrates that there are no reasonably available, sequentially preferable sites.

17. The sequential test analysed sites found in the WBLP, the most recent Strategic Housing Land Availability Assessment (SHLAA), and most recently the Housing Land Monitoring Report (HLMR). On the basis of using the size of the site to determine comparator sites (in this case a range of 0.05 to 0.07ha), the Council have accepted that the SHLAA does not provide any comparator sites. However, on the basis of the housing monitoring data available as of 12 May 2015, it was agreed at the Hearing, that from the "long list" of 22 potentially available sites within this size range produced by the Council, for a variety of reasons, only 5 represent possible sequentially preferable sites.
18. The appellant has subsequently produced detailed information as to why, in each case, it is considered that these do not represent reasonably available, sequentially preferable sites for the proposed development. It has been agreed by both parties that one of these sites is being brought forward for development and is now longer available, but the other four sites remain disputed.
19. The STAA gives further advice on the definition of "reasonably available" and the evidence that can be used to demonstrate this. This indicates that the site should be able to accommodate the general objectives of the development (for example housing) within agreed thresholds but not necessarily the form or layout. It is disputed by the parties whether this means the site should be able to accommodate three dwellings or only two. In my opinion, and bearing in mind that the basis for deciding comparator sites was area not capacity, in this case it is reasonable to consider sites that can only accommodate two houses for the purposes of the sequential test. In addition, I note that the appellant considers that to be "reasonably available" that site should be available to someone other than the owner. However, I consider the site should be "reasonably available" for development by either the owner or a third party.
20. The evidence produced by the appellant shows that for one of the sites, the owners wish to develop the plot themselves for a single house for extended family members, and that for another the owner only wishes to see the site, which is adjacent to his house, developed for a single dwelling. In my opinion, it is therefore clear that the landowners would be unwilling to make the site available for the development of a similar type and scale. Whilst I note that Council considers that in the future the owners may change their mind, at the present time, I consider that these sites cannot be considered to be reasonably available.
21. I note the concerns of the appellant that one of the other sites cannot be developed for two or three houses whilst meeting the separation distances set out in the SPG. However, as the site has an extant permission for a block of four apartments, this site can accommodate the general requirements of the development. Moreover, I agree with the Council that although the site may not be available to the appellant by virtue of its price, that does not mean it should not be considered as reasonably available.
22. The final site is understood to be under offer at present. Whilst I note that the owner is confident the sale will go through and the development will be implemented, until such time as the sale is at least completed, I consider that the site has to be considered as reasonably available.
23. There are therefore two sites, 40 Thornton Gate and Land adjacent to 85 Hazelhurst Drive, which are reasonably available. In the light of this I am not

satisfied that sufficient evidence has been produced to conclude that currently there are no alternative, reasonably available sites, appropriate for the proposed residential development in areas with a lower probability of flooding.

24. Where the Sequential Test has not been satisfied there is no need to progress to the Exception Test nor to assess the other criteria set out in paragraph 103 of the Framework
25. I note the appellant's comments on: the difference between the risk and probability of flooding; the non-planning and the planning maps produced by the EA; that the EA modelling is likely to be issued to take account of the reconstruction of the sea defences; and the different approaches taken by different local authorities. Nevertheless, I am satisfied that the case has been determined in accordance with national and local guidance, and the data that is available at the present time.
26. Overall, I consider that the proposal does not meet the specific tests within the Framework relating to flooding, and as such it is not an acceptable form of development.

Other matters

27. The development would utilise the existing access from Victoria Road West, which also provides access to the rear of the commercial properties along this road, and to a row of garages. Whilst concern has been raised about any increase in the use of the access, I note that the Highways Authority had no objection to the scheme. In the light of this, and from what I observed on site, I am satisfied that the proposal would not have an unacceptable impact on highway and pedestrian safety.

Conclusion

28. Although I have concluded that the scheme would be acceptable in terms of its impact on the living conditions of neighbouring residents, this is not sufficient to outweigh the fact that it is unacceptable in terms of flood risk. Thus for the reasons set out above, I conclude the appeal should be dismissed.

Alison Partington

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Keith Allen
David Hadwin
Jenny Reilly

Keystone Design Associates
Keystone Design Associates

FOR THE LOCAL PLANNING AUTHORITY:

Len Harris
Andrea Stewart
Lyndsey Hayes

Planning Policy Officer, Wyre Borough Council
Planning Assistant, Wyre Borough Council
Senior Planning Officer, Wyre Borough Council

DOCUMENTS SUBMITTED AT THE HEARING

1. Exception Test Information submitted by the appellant.
2. Sites with residential planning permission and outstanding housing allocations as of 12 May 2015 in Wyre Borough submitted by the Local Planning Authority.
3. E-mail correspondence with the owner and agent for Primrose Cottage, Barton submitted by the appellant.
4. Extract of the Environment Agency's Flood Map for Planning (Rivers and Sea) for the area submitted by the appellant.
5. Extract of the Environment Agency's Risk of Flooding from Rivers and Sea Map for the area submitted by the appellant.
6. Council's Letter of Notification of the Hearing and list of those to whom the letter was sent submitted by the Local Planning Authority.

Appeal Decision

Site visit made on 2 November 2015

by Alison Partington BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 18 November 2015

Appeal Ref: APP/U2370/W/15/3078128

Rylstone House, Catterall Lane, Catterall, Preston PR3 0PA

- 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 B Howard against the decision of Wyre Borough Council.
 - The application Ref 14/00641/FUL, dated 28 July 2014, was refused by notice dated 10 December 2014.
 - The development proposed is the conversion of redundant barn to create two residential properties.
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Decision

1. The appeal is allowed and planning permission is granted for the conversion of redundant barn to create two residential properties at Rylstone House, Catterall Lane, Catterall, Preston PR3 0PA in accordance with the terms of the application, Ref 14/00641/FUL, dated 28 July 2014, subject to the conditions set out in Annex A.

Main Issues

2. The main issues in the appeal are:
 - whether or not the proposal represents a suitable site for new housing, having regard to national and local policies for new housing within the countryside; and
 - the effect of the proposed development on the character and appearance of the area.

Reasons

3. The appeal site consists of a large agricultural building that has been used in connection with the equine business that has been run from the site for a number of years. The business has now closed and the building is empty. Adjacent to this building lies a single storey office/utility building that was also used as part of the business, which was granted permission for a change of use to a dwelling in 2013. The site is surrounded by open countryside, but along Catterall Lane there are a number of other dwellings and farm buildings.
4. In order to protect the character and appearance of the countryside Policy Sp13 of the *Wyre Borough Local Plan 1991 – 2006* (WBLP) seeks to restrain new development within the open countryside unless it meets specific criteria. Criterion D allows the conversion of rural buildings and, if the proposed use is residential, it must be in accordance with Policy H6 of the WBLP. This policy

- requires that proposals for conversion of buildings to residential uses either show that no potential/demand exists for a commercial, industrial or tourist use, or that the site is unsuitable for such uses on environmental or highway grounds, or that it is not required for an agricultural worker. It then sets out a number of other criteria that the proposal would be required to meet.
5. These policies, although more detailed than paragraphs 28 and 55 of the *National Planning Policy Framework* (the Framework), are generally consistent with national policy in allowing the conversion of rural buildings. The Framework indicates that one of the few special circumstances for permitting isolated homes within the countryside is where the development would re-use redundant or disused buildings and lead to an enhancement of the immediate setting.
 6. The appellant has indicated that having successfully run an equine business for a number of years, business has fallen away to the extent that the business has now closed. The building is therefore redundant. It is indicated that the building has been marketed for rental but has attracted no interest, which is considered to be due to the strong competition in the area from a number of other facilities with superior facilities. Although there is no indication of how long the building has been marketed, on the basis of the information before me, I am satisfied that the re-use of the building for its current purpose, either with or without the potential adjacent dwelling, is unlikely.
 7. In order to address the requirements of Policy H6 a commercial viability statement has been produced. Whilst there is no evidence to show that the site has been marketed for any commercial use other than for equine purposes, the statement considers that the re-use of the building for any other commercial or industrial use is highly unlikely, given the ready availability of commercial premises in Catterall and Garstang. As the main service centre in the area, Garstang is seen as a far more attractive location for businesses seeking premises. The report also sets out why the appeal site would be unattractive and unsuitable for tourist related uses, or for an agricultural worker.
 8. The Council have accepted that no additional tourist accommodation is needed in the vicinity. Furthermore, they have not provided any evidence to counter that within the commercial viability statement regarding the potential re-use of the building. I accept that the level of information provided is limited but it is sufficient to show that there is very little potential for a commercial, industrial or tourist use of the site. In addition its location away from a farm would make it unsuitable for an agricultural worker.
 9. In terms of the other criteria set out in Policy H6, there is no evidence to suggest that the conversion of the building would require substantial building works, and the plans indicate that the accommodation would be provided within the fabric of the structure, would be able to utilise the existing curtilage to provide gardens and the existing services that are provided to the building. There is also no indication that any public expenditure would be necessary to enable the conversion to take place. The proposed use would compliment the adjacent residential uses, and the density would be appropriate for its location.
 10. Overall, I consider that the proposed conversion of this redundant building to a new dwelling would, subject to my conclusions on character and appearance, accord with the criteria set out in paragraph 55 the Framework. It would also

be consistent with the criteria in Policies Sp13 and H6 of the WBLP, for the development of new homes in the open countryside.

Character and Appearance

11. At present the building has a functional agricultural appearance. External alterations would use similar materials and so would be sympathetic to the appearance of the building. A number of new window openings would need to be created but, as these have been designed to resemble stable doors, they would reflect the agricultural character of the building. Moreover, the current and proposed vegetation around the boundary of the site would restrict the visibility of the proposed changes from the public realm. As such the proposal would lead to the enhancement of the current building and its immediate setting.
12. As a result, I consider that the proposed development would not have a detrimental impact on the character and appearance of the area. Therefore it would not conflict with Policies Sp13 and Sp14 of the WBLP which seek to ensure that new development has a high standard of design that respects the characteristics of the local area.

Other Matters

13. The Council have highlighted that the appeal site is not in an accessible location, and that as a result future occupiers would be heavily reliant on the car to access the majority of services. The site is located close to a number of other dwellings along Catterall Lane, and approximately 1 km from Catterall, which I understand has a shop and post office. Whilst Catterall Lane does not have any pavements, and only has street lights close to the A6, the road is not unduly narrow, is relatively straight allowing good visibility of pedestrians, and/or cars, and is lightly trafficked. As such, I do not consider the lack of pavements would be a deterrent to walking or cycling along this road.
14. A greater range of services and facilities are available in Garstang which is approximately 4km away. There are regular bus services to Garstang, Preston and Lancaster available from bus stops within walking distance of the site. This means that these facilities can be accessed by means other than the private car.
15. Consequently, I am satisfied that the site can be considered to be accessible. I note that the Council came to a similar conclusion when considering the application for the conversion of the adjacent office building to a dwelling.

Conclusion and Conditions

16. For the reasons set out above, I conclude that the appeal should be allowed.
17. In addition to the standard implementation condition, it is necessary for the avoidance of doubt, to define the plans with which the scheme should accord. In the interests of the character and appearance of the area conditions are required to control the external appearance of the dwellings, and the provision of the hedging on the site, although in terms of the latter I consider it appropriate that the future maintenance be set at the standard five year period.

18. To ensure the adequate drainage of the site a condition is necessary to control the foul and surface water drainage from the site. I have not been given any detailed evidence regarding potential contamination of the site, and as the proposal is for the change of use rather than a new building, I consider that a condition to assess the potential for contamination and to outline measures of how any contamination would be dealt with is not necessary.
19. In order to protect the privacy of future occupiers of the adjacent property a condition is necessary to ensure the windows in the elevation facing this proposed dwelling are obscured glazed to a height of 2 metres. In the interest of wildlife and biodiversity, a condition restricting certain works during the nesting season is necessary. For reasons of highway safety, and to ensure adequate parking, a condition is required to ensure the provision of the parking area before either dwelling is occupied.

Alison Partington

INSPECTOR

Annex A

Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan Drawing No GA1923-LP-01; Existing Site Plan Drawing No GA1923-SP-01; Proposed Site Plan Drawing No GA1923-SP-02 Rev C; Existing Plans and Elevations Drawing No GA1923-001 Rev A; Proposed Plans and Elevations Drawing No GA1923-002 Rev C; and Section Plan Drawing no GA1923-SC-01 .
- 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) The site should be drained on a separate system, with only foul drainage connected to the foul sewer. Surface water should discharge to the soakaway/watercourse/surface water sewer.
- 5) Prior to the first use of either of the dwellings hereby approved, obscure glazing shall be installed to a height of 2 metres from floor level in the windows shown as being on the west elevation on Drawing No GA1923-002 Rev C at a scale of 10 (where 1 is hardly obscured and 10 is the totally obscured) and retained thereafter. Any subsequent replacement glazing shall be fitted to the same level of obscurity.
- 6) Any demolition work, vegetation clearance works, tree felling or other works that may affect nesting birds shall not take place between March and August inclusive, unless a report confirming the absence of nesting birds, undertaken by a suitably qualified person, has been submitted in writing to the local planning authority.
- 7) The boundary treatment as shown on the submitted plan as a native hedgerow shall be planted in the first available planting season following the first occupation of the development hereby approved, and shall thereafter be maintained for a period of five years from the date of first planting. Any part of the hedgerow removed, dying, being severely damaged or becoming seriously diseased within 5 years of planting shall be replaced by hedging, of similar size and species, to those originally required to be planted.
- 8) Neither dwelling hereby approved shall be occupied until the parking space shown on Drawing No GA1923-SP-02 Rev C has been laid out, surfaced and drained and thereafter this area shall not be used for any other purpose than the parking of vehicles.

Costs Decision

Site visit made on 25 August 2015

by Matthew Birkinshaw BA(Hons) Msc MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 2nd November 2015

Costs application in relation to Appeal Ref: APP/U2370/W/15/3128987 Land at Libby Lane, Smallwood Hey, Pilling, Lancashire, PR3 6HG

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Trustees of J.B. Clarkson for a partial award of costs against Wyre Borough Council.
 - The appeal was against the refusal of planning permission for the erection of a single dwelling, with siting and access.
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Decision

1. The application for a partial award of costs is allowed in the terms set out below.

Reasons

2. The National Planning Practice Guidance states that where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs. The guidance specifically advises that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. Examples of this include vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by objective analysis.
3. In this case the application is made on the grounds that the Phase 1 Ecological Survey of the appeal site could have been prepared at the planning application stage, and that the Council's second reason for refusal was unsubstantiated as evidenced by their decision not to pursue it at appeal.
4. I appreciate the Council's initial concerns regarding the removal of a section of hedgerow in a rural area, and recognise that the potential impact on ecology was a relevant planning consideration. However, based on the information provided there was no evidence to indicate that the area was used by foraging bats, or that the hedgerow would be suitable for nesting birds. The Planning Officer's report also confirmed that the site does not form part of a Site of Special Scientific Interest, a Biological Heritage Site, or contain anything other than 'minimal habitat features'. Moreover, no objections had been received from the Ecology Unit, and no information presented to indicate the precise location or relevance of nearby watercourses.

5. As a result, there was no objective evidence to indicate that the site had a reasonable likelihood for use by bats or birds. Refusing planning permission on grounds that an Ecological Assessment had not been completed was therefore based on generalised and unsubstantiated assertions about the potential impact of the scheme.
6. In addition, even in the event that the Council did have evidenced concerns regarding the potential impact on bats or birds, the applicant's ecologist identifies that the requisite investigations could have been carried out at the planning application stage. For example, inspecting trees and hedges for signs of nests or roosts could have been undertaken quickly and efficiently without the need for additional delays. The Council's assumptions regarding the ability to survey the site were therefore also without substance. As a result, the applicant has incurred unnecessary and wasted expense having to address this matter at appeal and liaise with the Council in order to agree that the issue was no longer relevant.
7. I therefore conclude that in the absence of any objective evidence to indicate that the proposal would cause harm to ecological interests, unreasonable behaviour resulting in unnecessary expense, as described in the National Planning Practice Guidance has been demonstrated. However, this is only in relation to the Council's second reason for refusal, and not the first reason regarding the location of the site within Flood Zone 3a. Only a partial award of costs is therefore justified as relates to the applicant having to address the ecological impacts of the proposal at appeal.

Costs Order

8. In exercise of the powers under Section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act as amended, and all other powers in that behalf, IT IS HEREBY ORDERED that Wyre Borough Council shall pay to the Trustees of J.B. Clarkson the costs of the appeal proceedings in so far as they relate to the Council's second reason for refusal, such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
9. The applicant is now invited to submit to Wyre Borough Council to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Matthew Birkinshaw

INSPECTOR