

DECISION DATE 26 July 2007	APPLICATION NO. 07/00812/CU A10	PLANNING COMMITTEE: 8 October 2007
DEVELOPMENT PROPOSED CHANGE OF USE OF LAND FOR THE SITING OF THREE LOG CABINS		SITE ADDRESS THE HERMITAGE LOW ROAD HALTON LANCASTER LANCASHIRE LA2 9HU
APPLICANT: Mr P Bellwood The Hermitage Low Road Halton Lancaster Lancashire LA2 9HU		AGENT: Mr A Atkinson

REASON FOR DELAY

Awaiting additional information

PARISH NOTIFICATION

Halton Parish Council are aware of widespread concern expressed by residents in respect of this proposal and its potential impact upon the natural habitat of this attractive area. Considered that there is no pressing commercial benefit to the development. Policy E3 of the Lancaster District Local Plan states *“Development will normally be directed to identified rural settlements. Exceptionally appropriate development may be allowed adjacent to or outside villages if it meets a clear local need”*. It is considered that there is no such need and development of this site in the AONB and that it will set a precedent.

LAND USE ALLOCATION/DEPARTURE

Within the Forest of Bowland Area of Outstanding Natural Beauty

STATUTORY CONSULTATIONS

Tree Protection Officer - Landscape proposals to the north of the site are acceptable. Proposal in relation to the construction of the cabin foundations are acceptable, method statement required for the works around the protected tree and car parking area. Details require for the works to the protected Weeping Willow.

County Highways - Access improvements require a planning condition to ensure that the wall set back is sufficient to remove the current blind spot on emergence onto Low Road. Cycle parking shall be provided for the benefit of the cabin occupiers to a ratio of two per cabin. Developer to fund highway improvements to develop a 'painted footway' between the entrance to the Crook 'O' Lune picnic area and the footpath network to the south side of the bridge (approx 40m). Suggest conditions to ensure that these elements are in place prior to occupation of the development.

Environment Agency - Withdrawal of objection to the scheme subject to the protective measures outlined in the additional information and implementation in line with the flood risk assessment.

Lancashire County Ecologist - The proposed mitigation measures have been discussed with Natural England and the Environment Agency; providing that all the proposed protection measures are the subject of planning conditions, then significant impacts on the otter population seem reasonably unlikely.

Further letter expressing a need to ensure that the mitigation can be provided and maintained via robust planning conditions. It is understood that the mitigation measures and the impact of the development are currently being discussed further with Natural England and the International Otter Survival Fund as concerns have been raised over the otter protection measures.

Natural England - Natural England is not objecting to the application providing that the mitigation measures detailed on the 27/07/07 are made as conditions to the granting of planning permission. These are vital and required as mitigation according to the Habitats Regulations for Protected Species. The measures are as follows;

1. The exclusion of dogs from the Hermitage site and the cabins.
2. The levels of fishing will not exceed 10 rods per day over a 180 day/season using the river at the Hermitage.
3. An exclusion area is created on the western bank around the closest otter holt, with the necessary fencing and signage.
4. 20 metre exclusion on the eastern bank.
5. A code of conduct is implemented.

Lancashire Wildlife Trust - The Wildlife Trust do not wish to object to the application providing that the mitigation measures are incorporated into planning condition of any consent that may be granted.

OTHER OBSERVATIONS RECEIVED

Lune Habitat Group - Is a voluntary environmental group within the Lune catchment area and has partial funding from the Environment Agency and takes advice from Cumbria and Lancashire Wildlife Trusts. Strong concerns raised over the potential of development close to the otter holts at the Crook 'O' Lune. The development is considered to have an adverse effect upon the otters and may even drive them away from the area.

It is considered that the development may undermine many hours of work and large amounts of public funds used to develop and improve habitats for otters and or protected species in the Lune Catchment.

Further letter from The Lune Habitat Group raising strong concerns over the joint decision of Natural England, the County Ecologist and Environment Agency withdrawing their objection to the scheme, subject to the provision of the outlined mitigation measure. It is considered that the mitigation measures are inadequate and will still lead to disturbance of otter at the site.

Letter from 'The Ottersite' on behalf of the International Otter Survival Fund - concerns that the development will lead to the demise of the otter population in the area. The nature of otter and behaviour patterns will be seriously affected by the development and the encouragement of additional people/activity at the site.

International Otter Survival Fund - The site has been surveyed by a representative (Mr McMinn of Ottersite), a person of experience in the local area. The development of fencing on the site will encourage otters to take alternative routes across the land, including across the adjacent road. The development will cause additional disturbance on the site in general and close to the natal holt. Queries the evidence which describes the holt as a less important one and not a natal holt. Evidence would appear to contradict this opinion and the site is an important, regularly used holt. The development would appear to contravene the Wildlife and Countryside Act.

12 letters of objection have been received during the initial consideration of the application. The main grounds of concerns are as follows: -

- The site has a number of active otter holts close by, development of the cabins would lead to the disturbance of the otters in contravention of wildlife legislation. The otter have been present on the river for a number of years and have been sighted at regular intervals, particular in the spring/summer months. Habitat Regulations and guidance within PPS9 indicate that development proposal affecting European Protected Species need to pass three tests before being approved:-

- The development is of overriding public interest
- There is no satisfactory alternative
- Populations of the species concerned will be maintained at a favourable conservation status

It is not considered that the development meets any of these criteria.

- The development is sited within the Forest of Bowland Area of Outstanding Natural Beauty and should not be permitted under polices E3, E12, E17, E18, T03, T05 and possibly E11 of the Lancaster District Local Plan.

- The objections question the comprehensiveness and accuracy of the ecological submissions, particularly in relation to the nature of the impact upon the otters and possible bat colonies. It is considered that the areas used by otters is larger than that indicated on the Confidential annex map.

- The site has been habituated by otters for over 40 years and is a strategically important site for allowing a secure, safe natal holt.

- Approval of the development would set a precedent for future similar development within the AONB. Considered that other households within the AONB could seek to develop consent for tourist parks.

- Development of cabins will permanently change the character of the area and the landscape particularly when viewed from the public footpaths which follow the outer path of the river Lune.

- Little benefit to the local community, only a limited amount of employment is generated by the proposal.

- The development will lead to additional traffic movements from the site. The overall site already has six residential units contained within it the development will exacerbate existing highway problems relating to the site.

- Concerns over the drainage system for the development and the potential to overload and cause pollution issues in times of power failure.

- The development is considered to adversely effect the aesthetics of the area, will be harmful to the ecology and will increase traffic to the area.

- The Lune Valley already has tourist facilities and development close to the river will only have a negative impact. The form of the log cabins is not in keeping with the architecture of Caton or the Lune Valley.

- The Crook ' O' Lune is a famous beauty spot painted by Turner and should be left alone.

- The existing site access is poor and has a blind bend on exiting the site and will pose a considerable hazard.

- Development will detract from the setting and use of the recently upgraded Millennium cycle way which enjoys views across the river and the site.

7 further letters have been received in response to the additional information, The main grounds of concern are as follows: -

- The numbers of fishermen currently using the site has been exaggerated
- The fence exclusion area does not fully protect the otter holts
- The otters domain will be restricted by the development
- The otter issue is not the only source of concern over the development, the proposals are still considered to be contrary to landscape protection policies
- The mitigation is inadequate and the development will still lead to the disturbance of otters in the area.
- The fencing off of part of the site could encourage the otters to climb the site and cross over the road - a source of danger and road kill.
- Strong opposition to the development as it will seriously affect the otter population in this part of the River Lune.

Councillor Langhorn (Lower Lune Valley) would wish to object to the planning application on the grounds of its potential impact on the otters at the site. It seems inappropriate to place fishing cabins adjacent to places where otters - which like quiet prefer and to remain undisturbed will be making their breeding site. The tourist potential for the Lune Valley as an AONB with otters in the river far outweighs any commercial advantage gained by the three log cabins. Given that there are already log cabins adjacent to the Scarthwaite Hotel it would seem to be unnecessary to site three more nearer the river.

Can I also draw your attention to the Caton-with-Littledale Parish Plan which highlights protection of the natural environment as being a priority for the area. It would not fit with this plan to allow the tourist development at this site.

In response, a letter of explanation from the Applicant was received and they commented on some of the observations raised.

The otter population is known have been present for a long period of time around the Crook 'O' Lune certainly during the 16 years of the applicant's occupation of the dwelling. The North Lancashire Bat Group has worked extensively with the applicant in developing and maintaining a thriving colony in the area. The development is considered by Dr. S Bradley (Bat Group) to have little effect upon the colony. The local parish council has been invited to examine the site but have so far declined the offer to examine the site.

REPORT

Site and its Surroundings

The application site is located within the Forest of Bowland Area of Outstanding Natural Beauty (AONB) on a promontory of the River Lune immediately north of the bend in the river known as The Crook 'O' Lune. The overall site comprises of a large dwelling known as The Hermitage and a number of smaller units, with six residential properties in total. The higher ground on the site is made over to formal gardens with a number of large specimen trees located within it. The land around the edge of the site falls to the river. The eastern frontage has steep banking falling from the higher level gardens down to the river bank. The western frontage comprises of falling land deeper into the site with a shallower area of open grass between the river bank and the riding land. The edge of the river bank and the lower land around the banking contains a large number of mature trees. The lower area of land and the river bank is subject to flooding throughout the year.

Vehicular access to the main site and the application site is gained via an existing access arrangement off Low Road and is located approx 50m to the south of the Crook 'O' Lune car parking area. This access serves all the development within the Hermitage curtilage and a neighbouring residential property known as The Hermitage Lodge.

The application site is located within the grounds of The Hermitage and is located on the banking between the higher formal garden and the lower land level alongside the river.

The applicant enjoys fishing rights along the full frontage to the River Lune and this is enjoyed, without planning restriction, by a number of fishermen (maximum of 12 at any one time) who are part of a club with rights to fish this stretch of the river. The river in this area and immediately downstream is actively used by otters. Both river banks contain holts with two known holts contained within the river frontage of The Hermitage. One holt is sited close to the southern end of the promontory on its eastern side and the other is on the western side of the promontory and is approximately 30m, horizontally from the siting of the cabins with the cabins approximately 6m higher than the level of the river bank.

Immediately north of the site is the Crook 'O' Lune picnic area and car parking area. The Millennium cycle route runs close to the car parking area, north of the application site. The river fronting the site and the grass parkland to the southern bank of the river is identified as part of the Lune Riverside and is one of six parking and picnic sites along the Millennium cycle route.

The proposal

The application seeks consent to site three log cabins within the grounds of The Hermitage. The log cabins are of a timber external cladding with a tiled roof and are to be set onto the banking between the level formal grounds and the lower ground leading to the river bank.

Each log cabin measures 9.5m long and 6.1m wide. Internally, the cabins contain two bedrooms and could accommodate up to a maximum of six persons if the lounge is occupied as an additional bedroom. A small veranda is located to the front of the cabin. The orientation of the cabins is angled to face the river on an east-west axis.

As indicated earlier in the report, the site has a number of large specimen trees around the site including those immediately surrounding the proposed development. The cabins have been located and positioned to minimise the trees on the site most of which have preservation orders placed upon them. The cabins are sited with the rear at ground level and the front elevation raised above the banking. In addition, the support for the cabins is limited to six small concrete pads which further reduces disturbance to the ground and possible root systems. Installation of the cabins will require the removal of a single limb to a weeping beech tree.

Vehicular access to the site is gained via an existing entrance onto Low Road. The access currently has limited sight lines and it is proposed to realign the existing stone wall to the south of the entrance to improve visibility. On entering the main site, access to the cabins has been limited to pedestrian only as the development of a vehicular access to the cabins could be detrimental to the trees in the area. A small car parking area is to be developed close to the entrance of the site within a small clearing and behind a screen of evergreen shrubs and smaller immature trees.

The nearest cabin will be sited approximately 60m from Hermitage Lodge, a separately owned residence and a similar distance from The Hermitage. The remaining dwellings within the curtilage of The Hermitage are sited further from the cabins.

An open area of grassland currently exists between the site of the cabins and the lower garden area to Hermitage Lodge. The land falls between the upper part of the garden and the tree lined river bank. It is proposed to landscape this area with a large number of trees species to supplement those already around the perimeter of the site and reduce any visibility of the cabins. A pedestrian route is to be kept alongside the boundary wall for maintenance and a diagonal footpath route is to be provided linking the pedestrian route to the cabins to the river bank at its northern most point.

Planning History

The application site has a long planning history dating back to when the site was owned by Lancashire County Council and was used as a residential home. 1992 saw consent for the site to be converted to housing with approval under 1/92/0253 for the change of use of the coach house and stable to two dwellings. Application 1/92/0254 gained consent for a change of use of the home to two maisonettes, three self-contained flats and a house. It is understood that there are currently six separate residential units on the site.

There have been three more recent applications relating to the development of log cabins. Planning application 06/00437/CU was submitted in April 2006 and subsequently withdrawn in order to address issues raised via the consultation process. A subsequent application 06/01456/CU, submitted in November 2006 was again withdrawn following the applicant's concern over issues arising from the consultation process.

The latest and current application (07/00812/CU) relating to the development of three log cabins on the site was submitted in May 2007.

Planning Policy

It is considered that there are a number of planning policies which relate to this development - E3, E11, E12, E17, E18 and T03 of the Lancaster District Local Plan.

E3 - Areas of Outstanding Natural Beauty - Identifies that development within the AONB that directly or indirectly has significant adverse effect upon the landscape quality, nature conservation and or interests or features of geological importance will not be permitted. Development which is permitted must be of an appropriate scale and form.

E11 - Development in Flood Plains - Development within areas at risk of flooding are only to be permitted where protection is in place or any mitigation will not have an adverse environmental impact.

E12 - Nature Conservation in the Wider Environment - Development should take account of any impacts upon wildlife, protected species and important geological features. Any approved development will be required to minimise any adverse impacts and/or provide compensatory habitats.

E17 - Sites of County Conservation Importance - Development which is likely to damage or destroy a County Biological or Geological Heritage Site will not be permitted unless the need for the development demonstrably outweighs the need to protect the site. Any development permitted will be required to minimise adverse impacts and to compensate for these by appropriate habitat creation or enhancement measures.

E18 - Development Affecting Protected Species - Development likely to destroy protect species or habitat will not be permitted unless the need for the development demonstrably outweighs the need to protect the site. Any development permitted will be required to minimise adverse impacts and to compensate for these by appropriate habitat creation measures to sustain the current levels of population.

TO3 - Rural Tourism - Proposal for small-scale tourism related development within rural settlement, farm building groups and existing buildings in the countryside will be permitted where: -

- The development is appropriate in terms of design, scale landscaping and its surroundings,
- Would not result in adverse impact upon amenities of adjoining residents,
- Would not cause traffic likely to have an adverse effect upon the character of the area,
- Makes arrangement for adequate access, parking and servicing,
- Is easily accessible to pedestrians and cyclist.

R9 - Informal Recreation - The Lune Riverside Park is identified as one of the informal recreation areas and the local authority will seek to concentrate opportunities within the recreation areas. The local authority will seek to improve safety and foot, cycle and public transport access to these areas.

The Joint Lancashire Structure Plan provides guidance at a more strategic level and considers tourism at a strategic and national level. Policies 20 and 21 seek to protect Lancashire's landscapes and natural/man-made heritage. Policy wording is similar to those detailed above and reflects Government guidance within the related PPG/PPS's.

Regional Guidance/Spatial Strategy - Policy ER5 requires planning authorities to afford the strongest protection to protected species and their habitat.

Comments

The current proposal has been the subject of much debate and has raised a number of issues which are addresses below: -

Highways - Access to the site already exists and serves the current residential properties and to a lesser degree the fishermen who currently fish the river bank on The Hermitage frontage, although it is understood that most fishermen park at the neighbouring Crook 'O' Lune car parking area. It is acknowledged that the application will increase the level of traffic to the site and in order to improve the current restricted arrangement the boundary wall is to be realigned to meet the requirements of the County Highways. In addition, the applicant has indicated his willingness to fund a 'painted footway'. The footway will link the site up to the Crook 'o Lune Picnic site and the public footpath network. The development is considered to be acceptable in terms of its impact upon the local highway network and highway safety and the related policies.

Flood Risk - The application site is defined as falling within a Zone 2 and 3 Flood Risk Area. As a consequence the application has been submitted with a Flood Risk Assessment. The Environment Agency are satisfied with the Flood Risk assessment and raise no objection subject to the development being undertaken in line with the assessment (i.e. the siting of the cabins should be well above worst known flooding levels). The development is considered to satisfy policy E11.

Location of a Small Scale Tourism Development- The location of this development has raised strong objection from many local residents and the Parish Council. Much of the argument relate to policy TO5 which seeks to resist the development of caravan site within the AONB. The development is not a caravan or mobile home. It is permanently constructed on formal foundations and needs to be considered as building rather than a caravan. In considering the development against policy TO3 it is considered that the development lies close to the settlement of Caton and within a developed site. The development is small scale, relates closely with other tourism site in the area (cycle way and informal recreation areas). The scale of the development is low key with a small unobtrusive car parking area. The implementation of additional planting with help to minimise impact from visitors at the site from the neighbouring property.

The issue of visibility outside the site is one which concerns both the local planning authority and many of the consultees. Of particular concern was the impact of the proposal upon the historic landscape defined by artist and enjoyed by many. As indicated earlier in the report the site has numerous trees over the whole of the site which enjoy protection under TPO 205. The tree cover throughout the site is extensive with a strong belt of trees along the full river frontage of the site including the western side. It is considered that the development will be screened in both the summer and winter months. The main public aspect of the development is from the extensive footpath network around the river banks and the neighbouring bridge crossing on the Millennium cycle way. The additional tree planting to the north of the cabins will further aid screening both from a public aspect and from the neighbouring garden. The development is not considered to be detrimental to the character of the immediate area or the wider landscape within the AONB.

Impact upon Protected Species - The application submissions sought to address a number of protected species, including bats, badgers and otters. No evidence was found of badger presence at the site. The Lune is identified as a valuable feeding area for bats with known roosts in the wider area. The site has been the subject of long-term monitoring by local bat groups in addition to the survey undertaken as a part of the Ecological report. Some objection have been received over the potential impact of the development upon bat population in the area but no concerns have been raise by the statutory consultees (Lancashire Wildlife Trust, County Ecologist, Natural England and the Environment Agency) or informally via The North Lancs. Bat Group. The application site was not found to be used for roosting or breeding and is considered to be of low foraging value. It is considered that the development will not impact upon bats in the area.

Otters - Strong concerns have been raised via the consultation process over the potential of the development to disturb and impact upon the national protected otter population which is known to reside on both banks of the River Lune in this location.

The presence of otters is not debated by the applicant, although some issue has been raised as to whether the holt closest to the development is a natal one or not. The impact of the development upon the protected species is the key to the consideration of the application. The initial submission provided an assessment of the development and its potential to impact upon the otter population in the area. The consultation process raised a number of issues and concerns which required additional information and clarification. Following a meeting of the applicant, his agent and the ecology based consultees, a statement was provided which outlined the current situation in respect of fishing from the site and put forward a series of mitigating proposals.

As outlined earlier in the report there is already a substantial level of activity at the site relating to the residential occupation and fishermen using the river banks and river. The fishing is restricted to no more than 12 fishermen at anyone time. During the main fishing salmon and trout season (1st Feb 31 Oct) this averages out at 5 per day on the river. The river is fished outside these period for other fish and can result in up to 10 fishermen a day depending upon whether and river conditions. In addition night fishing also takes place in the sea trout season (June-Aug) and can result in up to 4 fishermen on the river.

The number of salmon fishing days varies from year to year and the applicant has estimated that through weather and river conditions together with availability approximately 80 days of the 280 days are good fishing days.

The mitigation proposed put forward by the applicant include the following: -

- Level of fishing along the unrestricted 600m section of river bank will not exceed 10 rods at a given time over a maximum of 180 fishing days per year.
- A formal fishing exclusion zone developed around each of the two otter holts. The eastern holt would be demarcated by posts whilst the more sensitive western holt will be formally fenced off with a post and netting fence along the length of the exclusion zone and post/rail square to the river. The exclusion around the western holt is to be greater than the 20m around the eastern holt. The gradient of the river bank and the vegetation provide an exclusion area to within 30m of the northern boundary of the site. This area is considered suitable for fishing and at a sufficient distance away from the otter holt.
- No dogs are allowed at the site i.e. in the log cabins or at the river bank.
- Construction to be subject to seasonal timing but this is not considered a significant issue.
- A formal Code of Conduct is established for anyone visiting the site either as a fishermen or occupant of the cabins.

The additional information has resulted in further consultation responses from both local residents, the international otter organisation and the statutory consultees. The main consultees have studied the proposal and not raised objection to the development subject to the provision and maintenance of the mitigation measure. The other consultation responses have all been objections to the development due its potential impact upon the protected otters.

In terms of policy, European legislation, National legislation/guidance and Regional, County and Local Planning guidance all carry a similar direction over protection of habitat and species to ensure that development does not have an undue impact.

The key issue is the impact of the development over and above current unrestricted situation and whether that is considered to have an additional impact upon the protected species. As outlined earlier the site has a residential use and a more open access arrangement for the fishermen. The view of the main statutory consultees (Lancashire Wildlife Trust, County Ecologist, Natural England and the Environment Agency) is not to raise objection to the development subject to the provision and maintenance of the mitigation measures.

The legislation and planning policies relating to European Protected Species seeks to resist development which is considered to affect the species or its habitat, only allowing development which is of overriding public interest. . Given the view of the consultees that the development will not affect the species or habitat it is considered that the development does not conflict with planning policy.

Conclusion

Overall, the proposal has been a contentious one which has raised strong comments from local residents and internationally recognised organisations alike. The statutory consultees have been aware of the representations received by individuals both through consultation process and by direct representation. It is considered that full consideration has been given to the many policy issues arising from the application. The development is considered not to have an unacceptable impact upon the highway network, flood risk areas, the landscape and character of the AONB or affect the habitat of protective species and should be supported subject to appropriate conditions.

HUMAN RIGHTS IMPLICATIONS

This application has to be considered in relation to the provisions of the Human Rights Act, in particular Article 8 (privacy/family life) and Article 1 of the First Protocol (protection of property). Having regard to the principles of proportionality, it has been concluded that there are no issues arising from the proposal which appear to override the responsibility of the City Council to regulate land use for the benefit of the community as a whole, in accordance with national law.

RECOMMENDATIONS

That **PERMISSION BE GRANTED** subject to the following conditions: -

1. Standard time limit
2. Development to be completed in accordance with the approved plans
3. Holiday accommodation only
4. Not to become a permanent residence.
5. Development not to be occupied until the 'painted footpath' is provided - precise details to be agreed.
6. Mitigation measures to be implemented prior to occupation and maintained.
7. Register of fishing number and days to be provided and maintained
8. Hours of construction
9. Details of wall realignment to be agreed.
10. Visibility splays to be provided and maintained
11. External material/colours of the cabins
12. Detail of the car parking access/surfacing
13. Secure Cycle storage to be provided
14. Method statement required for the foundation works in proximity to protect trees.
15. Landscaping to be implemented.
16. As may be required by the consultees (if any)

Advice

1. Legal agreement will be required for the off site highway works.