



Application Decision

Unaccompanied site visit made on 11 August 2020

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 8 October 2020

Application Ref: COM/3228925

Cranberry Moor and Grimehills

Register Unit: CL 158

Registration Authority: Lancashire County Council

- The application, dated 14 May 2019, is made under Section 38 of the Commons Act 2006 ("the 2006 Act") for consent to carry out restricted works on common land.
 - The application is made by Mr Duncan Bell of Acorn Plant Hire Ltd.
 - The application is for an agricultural building.
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Decision

1. Consent is refused.

Main Issues

2. I am required by Section 39 of the 2006 Act to have regard to the following in determining this application:
 - (a) the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);
 - (b) the interests of the neighbourhood;
 - (c) the public interest¹; and
 - (d) any other matter considered to be relevant.
3. In considering these tests, regard should be given to the Department for Environment, Food and Rural Affairs Common Land Consents Policy of November 2015 ("the consents policy").

The application

4. The applicant is seeking consent to undertake restricted works on common land, specifically the erection of an agricultural building for the storage of agricultural machinery and feed stuffs. The building would be sited to the rear

¹ Section 39(2) of the 2006 Act provides that the public interest includes the public interest in: nature conservation; the conservation of the landscape; the protection of public rights of access to any area of land; and the protection of archaeological remains and features of historic interest.

of the residential development known as Cranberry Fold Court. The local planning authority, Blackburn with Darwen Borough Council, has confirmed in a formal decision dated 13 November 2018 that Prior Approval is not required for the building. Provided that the conditions imposed upon that permission are met, the agricultural building would have the benefit of deemed planning permission.

5. The applicant's intended use of the agricultural building has been questioned in objections made to the application, both in terms of the actual use intended and the suitability of the building proposed for that intended use. However, I must consider this application on the basis of the proposal as described on the application form.

Reasons

The interests of those occupying or having rights over the land

6. The land on which the agricultural building would be sited is owned by Acorn Plant Hire Ltd. There are grazing rights registered to the owners of Haddocks Farm, who also have rights to cut and take peat from the land comprised by Cranberry Moor². These rights include the land on which the agricultural building would be sited.
7. The holders of the above rights have objected to the application indicating, amongst other things, that their rights would be unduly interfered with. I recognise that the proposed agricultural building would occupy only a small percentage of Cranberry Moor. Nevertheless, I conclude that the interests of those having rights over the land in question would to that extent be adversely affected by the proposed building.

The interests of the neighbourhood

8. There would be no positive benefit arising to the neighbourhood. Indeed, the proposed building would be a dis-benefit insofar as it would, albeit to a limited extent, reduce the amount of the common available to the neighbourhood for recreation. This adverse effect on the neighbourhood is clearly expressed in the objection made by the residents of Cranberry Fold Court.

The public interest

9. The primary benefit to public interest advanced by the applicant would be one of safety, this in terms of preventing or minimising fire risk as a result of the intended agricultural use of the common that would be facilitated by the building. That would, at best, be an indirect benefit and not one that directly arises from the erection of the building itself.
10. The applicant has not, however, substantiated that perceived benefit in terms of the actual risk of fire on Cranberry Moor. The applicant has not, for example, provided any evidence as to the number of occasions on which fires have broken out on the common. It is relevant in this context that a number of objectors, some of whom have known Cranberry Moor for many years, have suggested that fires on the common are very infrequent and not a significant risk. Indeed, I have seen reference in the evidence before me to only one fire in the previous fifty years or so. I am therefore not persuaded that the indirect public benefit suggested by the applicant is a meaningful one.

² Apart from the land owned by Network Rail.

11. Consequently, although the proposed agricultural building would clearly be of benefit to the applicant, it would not benefit the public interest in any meaningful way. Rather, the erection of the building would harm the public interest to the extent that public access to that part of the common would be permanently prevented. I recognise that the area of the common to be lost to public access would be relatively small in percentage terms but, in the absence of any exchange land, it would nevertheless constitute a loss of common land available to the public. In this context, I am mindful that the consents policy indicates at paragraph 5.13 that consent will not normally be granted for permanent buildings on common land, because such development is normally incompatible with the future use of the land as common land. I see no reason to depart from that policy in this case.
12. The proposed agricultural building would be sited to the rear of Cranberry Fold Court. This group of houses exhibits a distinctly residential character and appearance, but is largely contained by boundary fencing. This boundary treatment provides a clear separation between the residential character of Cranberry Fold Court and the open, natural character of Cranberry Moor.
13. The agricultural building would be sited on slightly raised ground just beyond the boundary fencing of Cranberry Fold Court. With a footprint of some 223m² and a ridge height of 5.25m, the building would have a significant visual presence in this location. Although the proposed building would have an overtly agricultural appearance, it would nonetheless be viewed as an incongruous structure on a part of Cranberry Moor which is otherwise largely devoid of built structures. For these reasons, due to a combination of its size, height, design and position, the agricultural building would fail to conserve the landscape of Cranberry Moor.
14. Natural England, The Wildlife Trust for Lancashire, Manchester and North Merseyside, and others with qualifications in ecology have all confirmed that Cranberry Moor is blanket bog and therefore of biodiversity value. Although this is disputed by the applicant, he has produced no technical evidence of his own to counter the evidence of Natural England and others. For that reason, the evidence of the latter in relation to biodiversity value of Cranberry Moor is to be preferred.
15. The land is not within a Site of Special Scientific Interest (SSSI) but it is a Biological Heritage Site of at least County significance and does share many of biodiversity characteristics of adjoining land that is within the SSSI. This has led some objectors to express concerns that the proposed agricultural use of Cranberry Moor proposed by the appellant would be harmful to the biodiversity value of this land.
16. This application is concerned with the erection of an agricultural building on a small part of Cranberry Moor. The applicant considers that the raised land on which the building would be sited is made ground and therefore of no ecological value. This view is not, however, supported with evidence. I must therefore adopt the precautionary approach and accept the evidence of Natural England and others that the land does have at least some biodiversity value. The erection of the agricultural building on that land could, in the absence of any mitigation measures, be harmful to any biodiversity value that the land does have.
17. The consents policy indicates at paragraph 4.5 that, in relation to nature conservation, it may be appropriate to consider indirect benefits arising from

the proposal. One such indirect benefit advanced by the applicant is that the agricultural building would facilitate, amongst other things, the flailing of existing vegetation on the common and reseeded of the land with a composition of grass/wildflower mix. This, the applicant maintains, would be beneficial to the common and to grazing by livestock.

18. The applicant's proposals in this respect are briefly stated and lack detail in terms of the specification of the wildflower mix or how it would be managed. Similarly, whilst the extent of the common that would be subject to flailing is shown indicatively on a plan, there is no supporting detail or Management Plan. In the absence of that information, I am not persuaded that there would be any indirect benefit arising from the applicant's proposals.
19. Furthermore, Natural England, The Wildlife Trust for Lancashire, Manchester and North Merseyside, and others have commented that the applicant's proposals could harm the biodiversity value of the common. In their collective view, this harm could include damage to the underlying peat by the use of heavy machinery, as well as harm to the existing fauna and flora through the seeding of an inappropriate wildflower mix. Having regard to the specialist knowledge in this subject area held by these respondents, and in the absence of any detailed proposals or Management Plan from the applicant, I am persuaded by this evidence that the biodiversity value of Cranberry Moor would be harmed by the applicant's proposals. The corollary is that rather than being an indirect benefit in the context of the consents policy, the applicant's proposals would have an indirect dis-benefit.
20. There is no evidence before me to suggest that the proposed agricultural building would damage archaeological remains or features of historic interest. There are no other relevant matters.

Conclusions

21. I have found that those having rights over the Cranberry Moor would be adversely affected by the proposed works. I have found that there would be a dis-benefit to the neighbourhood and to the public interest as a result of the loss of access to a part of Cranberry Moor. I have found that the agricultural building would harm both the landscape and biodiversity value of Cranberry Moor.
22. Against that harm, the only benefit arising from the proposed development would be to the applicant. There would be no meaningful benefit to the public interest arising from the siting of the agricultural building. In weighing the overall balance, I find that there are no public benefits to outweigh the harm that I have identified above.
23. For these reasons I conclude that consent should not be granted for the agricultural building.

Paul Freer
INSPECTOR