

Development Control Committee 7 September 2022

Planning Application DC/22/0609/HH and Listed Building Consent & DC/22/0610/LB – Smallwood Farm House, Smallwood Green, Bradfield St George

Date Registered: 06.04.2022 **Expiry Date:** 05.08.2022
EOT Agreement: 09.09.2022

Case Officer: Mr Ian Opolot **Recommendation:** Refuse Application

Parish: Bradfield St George **Ward:** Rougham

Proposal: Planning Application and Listed Building Consent - Installation of solar panels to rear roof of central barn

Site: Smallwood Farm House, Smallwood Green, Bradfield St George, IP30 0AJ

Applicant: Mr Tim Moll

Synopsis:

Application under the Town and Country Planning Act 1990 and the (Listed Building and Conservation Areas) Act 1990 and Associated matters.

Recommendation:

It is recommended that the Committee determine the attached application and associated matters.

CONTACT CASE OFFICER:

Ian Opolot
Email: Ian.Opolot@westsuffolk.gov.uk
Telephone: 07904 389982

Section A – Background

This application was considered at West Suffolk Development Committee meeting on the 3 August 2022. As Members voted that they were minded to approve these applications the Decision Making Protocol was invoked requiring a Risk Assessment report on this matter before a decision is made.

The reason why Members resolved that they were minded to approve the application was that they considered it to be a sustainable development, highlighting the contribution of the solar panels to the green agenda, providing renewable energy. Members considered the proposal would not have a detrimental impact on the character, integrity and setting of the Grade II Listed Farm House, and would not contravene policy DM15. It was also stated that the proposal's public benefits would outweigh any harm caused to the heritage asset.

The purpose of this report is to provide a more detailed analysis of the public benefit that can be afforded to the Listed Building Consent proposal, as well as a risk assessment for Members in accordance with the Decision-Making Protocol which sets out the potential risks that might arise should listed building consent and planning permission be approved.

The previous Officer report for 3 August 2022 Development Control Committee is included as Working Paper 1 to this report. Members are directed to this paper for details of the site and development, summaries of consultation responses and neighbour representations, and for the Officer assessment of the proposal.

Proposal

1. Please refer to Working Paper 1 for a description of the proposal.

Site Details:

2. Please refer to Working Paper 1 for site details.

Planning History

3. Please refer to Working Paper 1 for planning history.

Consultations:

4. Please refer to Working Paper 1 for a summary of consultation responses.

Representations:

5. Please refer to Working Paper 1 for representations received.

Policy:

6. On 1 April 2019 Forest Heath District Council and St Edmundsbury Borough Council were replaced by a single Authority, West Suffolk Council. The development plans for the previous local planning authorities were carried forward to the new Council by Regulation. The Development Plans remain in place for the new West Suffolk Council and, with the exception of the Joint Development Management Policies document (which had been adopted by both Councils), set out policies for defined geographical areas within the new authority. It is therefore necessary to determine this application with reference to policies set out in the plans produced by the now dissolved St Edmundsbury Borough Council.
7. Please refer to Working Paper 1 for a list of policies and guidance that have been taken into account in the consideration of the application.

Other Planning Policy:

8. National Planning Policy Framework (2019)
9. The NPPF was revised in February 2019 and is a material consideration in decision making from the day of its publication. Paragraph 213 is clear however, that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the revised NPPF. Due weight should be given to them according to their degree of consistency with the Framework; the closer the policies in the plan to the policies in the Framework; the greater weight that may be given. The policies set out within the Joint Development Management Policies have been assessed in detail and are considered sufficiently aligned with the provision of the 2019 NPPF that full weight can be attached to them in the decision making process.

Officer Comment

10. Please refer to Working Paper 1 for the officer assessment of the proposals.

Section B – Update

11. No further updates since last committee meeting on the 03.08.2022.

Section B – Refusal Reasons

12. The Officer recommendation for both applications remains one of refusal, with the reason previously given and set out below;

The proposed PV panels would present a harsh, shiny appearance that would detract from the character of the barn and the Grade II Listed property. The proposal would also be visible from the garden of the host property and within the context of the Grade II Listed farmhouse. Paragraph 206 of the NPPF requires that development within the setting of heritage assets should enhance or better reveal their significance and that proposals which preserve those elements of the setting which make a positive contribution to the asset, or better reveal its significance, should be supported. The addition of PV panels on the barn roof would not

achieve these requirements. Less than substantial harm to both the barn and the setting of the house would be caused. The power generated by the panels would be for private use and therefore there would be no public benefit from the proposals which would outweigh the harm, as required by paragraph 202 of the NPPF. The proposal is therefore contrary to Joint Development Management Policy DM15, Core Strategy Policy CS3, the National Planning Policy Framework (2021) and is at odds with the duties imposed by Section 66 of the Planning (Listed Buildings and Conservation Act) 1990.

13. For the above reason the proposal is considered contrary to policy CS3 of the St Edmundsbury Core Strategy (December 2010), policies DM1, DM2, DM15, DM24 of the Forest Heath and St Edmundsbury Local Plan Joint Development Management Policies Document (February 2015) and the National Planning Policy Framework.

14. However, notwithstanding the above, if the Committee remains of the opinion that these applications should be approved, then Officers would recommend the following conditions in relation to each application;

DC/22/0609/HH:

1. The development hereby permitted shall be begun not later than three years from the date of this permission.

Reason: In accordance with Section 91 of the Town and Country Planning Act 1990.

2. The development hereby permitted shall not be carried out except in complete accordance with the details shown on the following approved plans and documents, unless otherwise stated below:

Location plan received 06.04.2022

Proposed Block Plan Drawing no. 1185 01 received 06.04.2022

Reason: To define the scope and extent of this permission.

DC/22/0610/LB:

1. The works to which this consent relates must be begun not later than three years from the date of this notice.

Reason: In accordance with Section 18 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

2. The development hereby permitted shall not be carried out except in complete accordance with the details shown on the following approved plans and documents, unless otherwise stated below:

Location plan received 06.04.2022

Proposed Block Plan Drawing no. 1185 01 received 06.04.2022

Reason: To define the scope and extent of this permission.

3. The relevant works shall not take place until details in respect of the following have been submitted to and approved in writing by the LPA:

- (i) Details of the solar panels to be installed and method of installation
- (ii) Details of the proposed battery storage including its location, size and appearance and method of installation

The works shall be carried out in full accordance with the approved details unless otherwise subsequently approved in writing by the Local Planning Authority.

Reason: To protect the special character, architectural interest and integrity of the building, in accordance with policy DM15 and DM16 of the West Suffolk Joint Development Management Policies Document 2015, Chapter 15 of the National Planning Policy Framework and Section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and all relevant Core Strategy Policies.

Section D – Risk Assessment:

15. Members are again reminded that, notwithstanding these conditions, and for the reasons set out above, Officers remain very firmly of the view that this proposal should not be supported for the reasons given clearly in the specialist opinion of the Conservation Officer. However, if the Committee remains of the opinion that these applications should be approved then they must be aware of any potential risks that may arise.

16. It is acknowledged that the proposed solar PV panels would be positioned on the rear facing roof slope of the barn, and therefore will not be particularly visible from the wider street scene and public realm. However, impact on a listed building's setting is not limited to public views and should be assessed from the surroundings of the listed buildings, including private views.

17. It is acknowledged that the existing barn has a relatively shallow pitch, and the proposed PV panels would be highly visible from within these viewpoints given their harsh, shiny appearance, detracting from the character of the Grade II Listed farmhouse. Whilst it is appreciated that the proposed PV panels are to provide a means of generating energy efficient and environmentally friendly power, paragraphs 199-200 of the NPPF requires great weight to be given to the asset's conservation and any harm or loss to the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting) requires clear and convincing justification. Where the harm will lead to less than substantial harm to the significance of the building, this harm should be weighed against the public benefits of the proposal.

18. The NPPF position is set out clearly at Para. 202 –

'202. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed

against the public benefits of the proposal including, where appropriate, securing its optimum viable use.'

19. The degree of harm is 'less than substantial'. Reference to any harm being 'less than substantial' is not intended to downplay the extent of such harm, it merely seeks to differentiate it from 'substantial' harm, but the fact remains that it is still harm, which must otherwise be offset against any public benefit.
20. The central government Planning Practice Guidance (PPG) states: 'The National Planning Policy Framework requires any harm to designated heritage assets to be weighed against the public benefits of the proposal. Public benefits may follow from many developments and could be anything that delivers economic, social or environmental objectives as described in the National Planning Policy Framework (paragraph 8). Public benefits should flow from the proposed development. They should be of a nature or scale to be of benefit to the public at large and not just be a private benefit. However, benefits do not always have to be visible or accessible to the public in order to be genuine public benefits, for example, works to a listed private dwelling which secure its future as a designated heritage asset could be a public benefit.'
21. As previously advised, it is acknowledged that the PV panels may result in some modest public benefits, through the production of solar energy to help reduce carbon emissions produced through other energy forms. Whilst these measures would help reduce some carbon emissions, this is not considered to sufficiently justify the harm caused to the significance of the designated heritage asset.
22. Officers are of the opinion that there is no significant benefit to the wider public at large as required by Para. 202 of the NPPF. It is the case, as advised by the Conservation Officer, that the installation of the solar panels will lead to harm, at the 'less than substantial' end of the spectrum, but harm nonetheless. It is also the case that the NPPF requires any such harm to be offset by public benefits if it is to be approved. In the view of Officers therefore this balance is a very clear one, and one that falls robustly in favour of refusal.
23. The proposal is considered contrary to local and national policies which look to protect the preservation and integrity of statutory listed buildings and their setting from visual intrusion and harm. The reasons set out above have examined the developments compliance with policies DM1, DM2, DM15 and DM24, and illustrate it does not comply with our adopted policies.
24. Officers consider the development proposed in this case to be contrary to policies DM1, DM2, DM15 and DM24. Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 require decisions to be made in accordance with the development plan unless there are material considerations that indicate otherwise. It is not considered that in this case there are any material planning considerations which would outweigh the conflict with policy and a risk is that the Authority would make a decision that could be challengeable if adequate reasons are not provided to depart from the statutory presumption of the primacy of the development plan.

25. The further obvious risk here therefore is that approval could undermine well established policies of restraint, particularly in relation to the protection and preservation of heritage assets with reference specifically to Paragraph 202 of the NPPF, Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and policy DM15 of the Forest Heath and St Edmundsbury Local Plan Joint Development Management Policies Document (February 2015), all of which have been very successfully defended through multiple appeals on many occasions.
26. A further risk to the Authority from an approval is a reputational one as it may show a lack of regard for the interpretation of historic buildings protection policies. In coming to their decision Members must clearly identify whether they consider the proposal complies with the development plan and their reasons for reaching their decision. If it is decided that the proposal does not comply with the policies of the development plan and they wish to approve the applications, the material considerations which justify the departure must be identified. Failure to adequately identify the reasons for a decision could adversely impact on the reputation of the Council.
27. Whilst every application must be considered on its own merits, it is also important for the Council to be consistent in its application of policy when determining applications of a similar nature. Failure to provide clear reasons for the decision could expose the Council to the risk and cost of Judicial Review in the High Court and would impact on the ability for the Council to be consistent for other applications of a similar nature. This could also adversely impact upon the reputation of the Council.
28. Officers consider that if the Local Planning Authority were to accept the development being put forward by allowing the solar panels, then it would, however incrementally, become increasingly challenging to continue to defend the Council's position in similar circumstances, particularly in relation to policy DM15, potentially resulting in further future harm to heritage assets within West Suffolk, and undermining the principles behind policy DM15.

Section E – Conclusion

29. For the reasons outlined above and also set out within the original report to Development Control Committee, Officers consider that the development would result in less than substantial harm caused to both the barn and the setting of the farm house. There is no significant benefit to the wider public at large as required by Para. 202 of the NPPF. The proposal fails to comply with policies which aim to protect heritage assets and there are no material considerations which outweigh that conflict.
30. In coming to their decision, Members must clearly identify how they consider the proposal complies with the development plan and their reasons for reaching their decision in circumstances such as this where the proposal does not otherwise comply with the Development Plan.

31. It is recommended that planning permission and Listed Building Consent be **REFUSED** for the following reason:

The proposed PV panels would present a harsh, shiny appearance that would detract from the character of the barn and the Grade II Listed property. The proposal would also be visible from the garden of the host property and within the context of the Grade II Listed farmhouse. Paragraph 206 of the NPPF requires that development within the setting of heritage assets should enhance or better reveal their significance and that proposals which preserve those elements of the setting which make a positive contribution to the asset, or better reveal its significance, should be supported. The addition of PV panels on the barn roof would not achieve these requirements. Less than substantial harm to both the barn and the setting of the house would be caused. The power generated by the panels would be for private use and therefore there would be no public benefit from the proposals which would outweigh the harm, as required by paragraph 202 of the NPPF. The proposal is therefore contrary to Joint Development Management Policy DM15, Core Strategy Policy CS3, the National Planning Policy Framework (2021) and is at odds with the duties imposed by Section 66 of the Planning (Listed Buildings and Conservation Act) 1990.

Documents:

- All background documents including application forms, drawings and other supporting documentation relating to this application can be viewed online DC/22/0609/HH & DC/22/0610/LB
- Working Paper 1: Committee Report – 3 August 2022