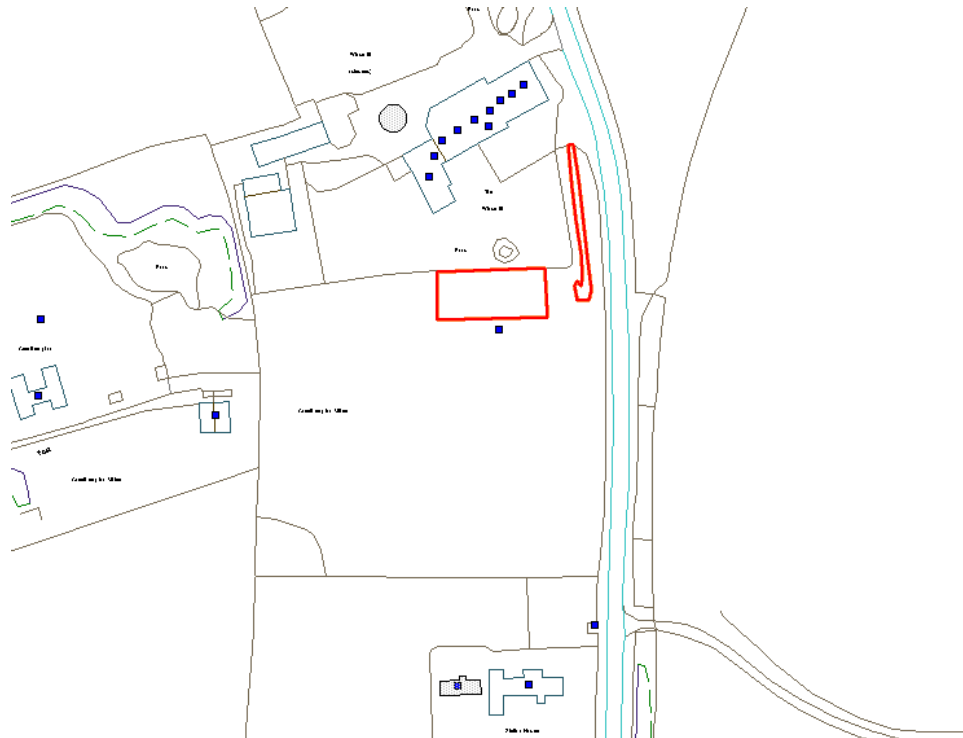


Reference: 12/00704/FUL
Date Submitted: 9th October 2012
Applicant: Mr V Fletcher
Location: Field No 0716 Butt Lane, Wymondham
Proposal: Retrospective realignment of land levels and re-seed



Introduction:-

The application site is located to the south of the Wymondham Windmill which is a Grade II Star listed building to the North of Wymondham. The site is a grassed meadow on a slope, and is bounded with mature hedgerows and trees to the South, West and East. To the North is a mixture of hedges, trees, shrubs and walls providing a boundary between the meadow and the dwelling and shops that make up the Windmill site.

Further to the South is the Grade II listed Navvies Cottage which is within the curtilage of Station House, approximately 110m from the application site. There is a further residential property located approximately 65m to the South West of the site. The site is accessed via a track which constitutes part of the application from Butt Lane which runs North to South adjacent to the application site.

The application is retrospective for the levelling and re-seeding of a piece of land measuring approximately 35 metres x 16 metres, and a new part of stone track leading towards the site.

It is considered that the main issue relating to the application is:

- **Whether the levelling of the land constitutes a change of use to facilitate the holding of events at the site**
- **The impact upon the open countryside of the levelling of the land and the re-seeding**

The application is required to be considered by the Committee due to the level of representations received.

Relevant History:-

There is no relevant history at the site.

Planning Policies:-

Adopted Melton Local Plan (Saved Policies)

Policy OS2 states that planning permission will not be granted for development outside of the town and village envelopes except for (amongst others):-

- Development essential to the operational requirements of agriculture and forestry
- Limited small scale development for employment, recreation and tourism which is not significantly detrimental to the appearance and rural character of the open countryside.

The National Planning Policy Framework was published 27th March 2012 and replaced the previous collection of PPS. It introduces a ‘presumption in favour of sustainable development’ meaning:

- approving development proposals that accord with the development plan without delay; and
 - where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
 - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole;
- or
- specific policies in this Framework indicate development should be restricted.

The NPPF offers direction on the relative weight of the content in comparison to existing Local Plan policy and advises that whilst the NPPF does not automatically render older policies obsolete, where they are in conflict, the NPPF should prevail.

It also establishes 12 planning principles against which proposals should be judged. Relevant to this application are those to:

- Conserve and enhance the historic environment
- Conserve and enhance the natural environment

On Specific issues relevant to this application it advises:

Conserving and enhancing the natural environment:

- that the planning system should contribute to and enhance the natural and local environment by:
 - protecting and enhancing valued landscapes, geological conservation interests and soils
 - recognising the wider benefits of ecosystem services
 - minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government’s commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.
 - preventing both new and existing development from contributing to or being put an unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability; and
 - remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.

Conserving and enhancing the historic environment

- Local Planning Authorities should take into account:
 - the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with the conservation;
 - the wider social, cultural, economic and environmental benefits that conservation of the historic environment can bring;
 - the desirability of new development making a positive contribution to local character and distinctiveness; and
 - opportunities to draw on the contribution made by the historic environment to the character of the place.

As stated above, s38(6) requires determination to be in accordance with the Development Plan unless other material considerations indicate otherwise. This is reinforced by paragraph 11 of NPPF. These form the relevant Development plan policies and they remain extant.

Consultations:-

Consultation reply	Assessment of Head of Regulatory Services
<p>Highway Authority: No observations</p>	<p>Noted. The proposal to level the land and re-seed with a track to it is not considered in itself to have an impact upon highways safety.</p> <p>The proposal is not considered to have an impact on highway safety.</p>
<p>Wymondham Parish Council: The Parish Council was consulted; to date no response has been received.</p>	<p>Noted.</p>
<p>Conservation Officer: This work has already been undertaken and applies to part of the field immediately south of, and fronting, the principal house. It relates to a parcel of land 35m x 16 m and involves removing the undulations and hence levelling the site and subsequently re-seeding.</p> <p>The windmill is located approximately 50 metres to the north of (behind) the principal house, which sits between it and the development site, whilst Navvies Cottage is approximately 100 metres to the south.</p> <p>Given those separation distances and the relatively minor nature of the works the Conservation Officer does not consider there to be any adverse effects on either heritage asset as things currently stand.</p>	<p>Noted.</p> <p>The levelling of the land and the creation of a track is not considered to have a negative impact upon either of the heritage assets to the North and South of the site.</p> <p>It is considered in this case that the levelling of the land and re-seeding meets the objectives of the National Planning Policy Framework chapter ‘Conserving and enhancing the historic environment’ paragraphs 126 – 141.</p>
<p>Ramblers Concerns as to whether the site interferes with the public footpath E43 which runs North to South to the West of the meadow.</p> <p>Upon viewing the plans they confirmed that they had no objections to the proposal.</p>	<p>Noted.</p> <p>The footpath has been walked and it is considered that the proposal will have no detrimental impact upon the footpath.</p>

Representations:

A site notice was posted at the site and ten neighbours were informed. As a result objections were received from 6 households, with a number of representations from two of the households over a period of months. The representations are summarised below.

Representation	Assessment of Head of Regulatory Services
<p>Procedural Issues</p> <p>The track and hard standing was not included in the description of the application or the site location plan</p> <p>The area modified is larger than that stated in the application and the extent of the levelling is more significant than that stated. The area levelled is in excess of 50 metres x 30 metres and the excavation to make the land level is at least 1 metre to 1.5 metres. The application is inaccurate and needs to be corrected.</p> <p>A water / sewerage tank has since been installed at the site and is not included on the application.</p> <p>A caravan site (certified location) is now operating from the site along with vintage car rallies and weddings.</p>	<p>Noted.</p> <p>A revised site location plan was requested and received on 26th October 2012 detailing the track and hard standing in addition to the levelled area. Neighbours were re-consulted on the amendment.</p> <p>Officers have measured the area which has been levelled, and can confirm that it is a maximum of 18m x 32m. This however may include land which has not been levelled, but has been reseeded after being disturbed by machinery. The size of the area stated on the application (16m x 35m) is considered to be acceptable following the site visit. Also measured on site was the changes in level, and as a maximum it is considered that approximately 0.5m of soil has been removed. It is considered that the levelled area is not greater than that which has been applied for.</p> <p>This is not subject of this application and is not for determination at this stage.</p> <p>The caravan site is considered to be permitted development under the General Permitted Development Order 1995. Under both Part 5 and Part 27 of the Order the use of the site as a caravan / camping site is permitted development and does not require planning permission. Under Part 27 land can be used for the purposes of recreation or instruction, and the erection of or placing tents on the land for the purposes of the use. In addition to these permitted development purposes the land can also be used for a period of 14 or 28 days for purposes such as a vintage car rally (Part 4, Class B). Therefore, the Certified Location caravan site, and the vintage car rallies are considered to be permitted development and are duly authorised.</p>
<p>Policy</p> <p>The site is outside of the village envelope and therefore contradicts with the Melton Local Plan.</p>	<p>Certain types of development are permitted outside of the village envelope and compliance, or otherwise, with this policy forms part of the decision making process.</p>
<p>Legal Issues</p> <p>As the fence has been removed between the house and the site this would indicate that the applicant is seeking to extend the garden, which would amount to a change of use which express planning permission is required.</p>	<p>It is considered that this is the main issue regarding the determination of this application; essentially whether the levelling of the land, and the construction of an access track and hard standing has constituted a material change of use of the land to facilitate events at the site.</p>

As only part of the field has been levelled it is considered that the levelling is not required for the purposes of agriculture and is considered to be a permanent work to facilitate the change of use of this area to a mixed use area for the holding of events. The case of *Ramsay v Secretary of State for the Environment*, makes clear that where land retains physical features relating to a temporary use, it is legitimate for the courts to look at not only the duration of the use, but at its character, including any physical changes to the land, and to conclude that there had been a permanent change in use rather than merely the occasional introduction of a temporary use. Therefore the application should be considered in light of this change of use, rather than just the physical works as described by the applicant.

The driveway is not large enough to meet the criteria set out in part 6 of Schedule 2 relating to agricultural permitted development and there is no agricultural justification provided to state that it is necessary for the purposes of agriculture. If the applicant argues that the track maybe permitted under the GPDO Schedule 2, Part 2 to satisfy that criteria it must be required in connection with development permitted by any class in Schedule 2 (other than Class A). No suggestion has been made, and the only justification given is that the work is required to facilitate the claimed temporary change of use under Part 4, which the courts have considered and concluded to be unlawful.

The applicant may contend that they are operating events under Schedule 2, Part 4 of the GPDO and limited to a maximum of 28 days per year, however the permission for temporary change of use conveyed by part 4 is only applied to land, not land within the curtilage of a dwelling which does not have the benefit of Part 4 rights. If the applicant seeks to suggest that the driveway and track are within the curtilage of their existing dwelling house and therefore permissible pursuant to Part 1 of Schedule 2 then for such development to be permissible, it must follow that the land to be used for events is also within the curtilage of the dwelling house. Therefore the applicant cannot rely on permitted development rights for either of the works or the 'temporary' change of use and therefore this application should be withdrawn and the applicant should submit a revised application to cover the entirety of the proposal, namely the physical works already carried out.

A 5 year business plan was presented by the applicants to the Parish Council detailing proposed events to happen at the site (wedding shows, vintage car rallies, camping, caravanning,

The applicant has confirmed that they plan to reinstate the post and rail fence separating the field from the garden, and will not be treating the land as an extension to the garden. The absence of such a physical division cannot be taken as a change of use (that would be defined by the actual activities taken place).

Whilst the land remains as open countryside (used separately from the garden) the option of holding events (using marquees etc) on the land for 28 days per year remains available. This applies to the whole field, not just the area which has been levelled. Should this application be successful, and the levelling of the land is not considered to be a change of use, any subsequent change of use of the site to residential curtilage, or the erection of marquees in excess of 28 days per year can be monitored by the Council and could trigger the need for a further application and/or enforcement action.

The levelled area of land in this case does not prevent the use of the land reverting back to agricultural (its former use) between events such as weddings, car rallies etc nor is it separated from the remainder of the paddock for exclusive use, both of which were factors in the legal case referred to.

In the legal case cited, although it was considered that sheep may be able to graze on the land as it would remain grassed, the physical features were clearly identifiable with the previous use and parts of the track / circuit could clearly still be seen. It was considered that the various earth banks and depressions constituted permanent physical alterations which **materially changed the character and appearance of the land** which could not be removed between events, and on days when events were not taking place the site would still have the appearance of a site created for vehicular sport and leisure activities.

It is considered that the amount of works to the land in this case (levelling by approximately 0.5m on a piece of land measuring approximately 16mx 35m), and a relatively small track, is not so significant as to constitute a change of use of the land.

The track is of a relatively small nature allowing access to the site by vehicles for either the purposes of agriculture or for the holding of events under the 'temporary use' provisions. The track is not considered to have an adverse impact upon the character of the area or the open countryside by virtue of its size and the materials which have been used in its construction.

<p>log cabins, weddings etc).</p> <p>Impact upon the Heritage Assets The entire crown of the hilltop has been removed adversely affecting the setting of two of the most important listed buildings in the County.</p> <p>To the South the Navvies Cottage which is the last surviving example in the country and the commercialisation of the field will jeopardise the area of tranquillity surrounding it.</p> <p>The Windmill (Grade II* listed) to the North is a very rare example and the whole area is possibly an area of archaeological interest. Thorough archaeological investigation should be carried out before any kind of development is permitted.</p> <p>Impact upon the open countryside The whole paddock could be lost to development by stealth being used as an events venue and car park leading to irretrievable damage to the countryside and the setting of the listed buildings.</p> <p>The loss of agricultural land and the evidence of farming history provided by the ridge and furrow nature of the field. Many tons of earth have been moved to level the land to accommodate marquees which has neither conserved or enhanced the natural landscape.</p> <p>The seed which has been used is garden / lawn seed rather than meadow seed which is highly visible and not appropriate for an agricultural field. Its character is at odds with the surrounding natural landscape and now that the boundary fence has been removed it looks like an extension of the garden.</p> <p>Impact upon Biodiversity Local ecology has been damaged by the levelling and re-seeding of the land and would be further damaged by the uses of the land.</p> <p>Bat boxes and a barn owl box were installed in the</p>	<p>It is not considered that the alteration to the land level in this area is so significant to have had a negative impact upon the setting of either of the heritage assets in the area (Windmill and the Navvies Cottage).</p> <p>The levelling of this land does not constitute the commercialisation of the field; no permanent buildings are proposed.</p> <p>It is considered that the levelling of this area of the field and the addition of an access track does not have a negative impact upon the Grade II Star listed building (Windmill) or the Navvies Cottage. Archaeology have been consulted on the application and no response has been received.</p> <p>It is considered that the development has no impact upon the heritage assets near to the site.</p> <p>The applicants may use the field for a maximum of 28 days as a temporary use. It is not considered that these types of events for a maximum of 28 days per year would cause damage to the open countryside or the setting of listed buildings. In any event, such use is permitted whether or not the works subject of this application are permitted.</p> <p>It is agreed that some of the ridge and furrow nature of the field has been lost where the land has been levelled. However; the applicant would also be able to plough the field, and over a few seasons the ridge and furrow appearance of the field could be easily lost.</p> <p>It is not considered that the levelling of this part of the field has had a negative impact upon the natural landscape and open countryside.</p> <p>Although it has been stated that the area has been seeded with garden / lawn seed rather than meadow seed, it is considered that this is almost unidentifiable when visiting the site. Once the boundary fence has been reinstated this will also help to ensure that the site does not appear as part of a residential garden extension.</p> <p>No evidence has been provided to show that there has been an impact upon the biodiversity / ecology at the site. Ecology were consulted on the application and had no comments to make.</p> <p>It is not considered that the application has</p>
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<p>cutting to the south of the field by LCC ecology to replace the previous habitat of bats and owls when the Butt Lane railway bridge was in-filled. The Windmill field provides a hunting ground for these creatures and more. No ecology surveys have been undertaken of the field itself, and the commercialisation of the field affects the wildlife there.</p> <p>Impact upon the Highway The site is on a narrow country road with limited visibility, the road and verges could be filled with parked cars which causes a danger.</p> <p>The access to the Windmill site is already inadequate for the level of use due to the minor road and blind entrance caused by winding roads in both directions.</p> <p>Impact upon Neighbours The erection of a marquee on the site for weddings, parties, concerts etc will have a negative impact upon the surrounding residential dwellings by virtue of loss of privacy, excessive noise, parking and traffic issues.</p>	<p>had any negative impact upon the local wildlife.</p> <p>Please see above commentary from the Highways Officer. The works themselves generate no traffic and, as explained above, temporary uses can be accommodated as permitted development whether or not they are retained.</p> <p>If a temporary event notice is used to facilitate these events, they would be controlled by environmental health legislation and licensing legislation as to the level of noise, and the times of day that the noise can occur. This is not the subject of this application.</p>
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Conclusion

The application seeks retrospective planning permission for the levelling and re-seeding of a piece of land measuring approximately 35 metres x 16 metres, and a new part of stone track leading towards the site. The site is within the open countryside, outside of the village envelope for Wymondham where policy OS2 of the Melton Local Plan seeks to resist development. The application has raised several legal issues as discussed above, but it is considered that this does not amount to a change of use of the land to facilitate events at the site. Accordingly, the application is limited to the physical works and it is concluded that the levelling of the land is not so significant as to be harmful the appearance of the area or the setting of the adjacent heritage assets. It is noteworthy that further development of the site (including more regular temporary uses and/or a different management of them (for example if the marquee(s) were retained on the site between events) may result in a change of use which would require further planning permission.

Recommendation: - Permit, subject to the following condition:-

1. This permission relates to the approved site location plan showing the area which has been levelled, and the track which has been constructed. The plan was received at these offices on 26th October 2012.

The reason for the condition is:-

1. For the avoidance of doubt.

Officer to contact: **Mrs Sarah Legge**

23rd September 2013