

Name of meeting: **PLANNING SUB-COMMITTEE (HUDDERSFIELD AREA)**
 Date: 16 JANUARY 2015

Title of report: **LOCAL PLANNING AUTHORITY APPEALS**

Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	No
Is it in the Council's Forward Plan ?	No
Is it eligible for "call in" by Scrutiny ?	No
Date signed off by <u>Director</u> & name	7 January 2015 Jacqui Gedman
Is it signed off by the Director of Resources?	No financial implications
Is it signed off by the Acting Assistant Director - Legal & Governance?	No legal implications
Cabinet member portfolio	Cllr. P. McBride

Electoral [wards](#) affected: Newsome; Colne Valley; Lindley; Holme Valley South; Dalton; Holme Valley North; Greenhead
 Ward councillors consulted: No

Public or private: Public

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1. **Purpose of report**
For information
 2. **Key points**
 - 2.1 2014/62/91904/W - Erection of raised patio at 37, Bankfield Park Avenue, Taylor Hill, Huddersfield, HD4 7RD. (Officer) (Dismissed)
 - 2.2 2012/62/91598/W - Erection of one endurance 50Kw wind turbine 34.2M in overall height at Old Recreation Ground, 13, Halifax Road, Scapegoat Hill, Huddersfield, HD7 4MS. (Officer) (Allowed)
 - 2.3 2014/62/91432/W - Erection of single storey dwelling at Middle Burn Farm, Burn Road, Birchcliffe, Huddersfield, HD2 2EG. (Officer) (Dismissed)

- 2.4 2013/62/91465/W - Installation of 1 medium scale 50kW Endurance wind turbine on a 24m monopole mast at Moorfield Farm, Cartworth Moor Road, Cartworth Moor, Holmfirth, HD9 2QS. (Officer) (Dismissed)
- 2.5 2014/62/90347/W - Erection of 2 detached dwellings at The White House, Chain Road, Slaithwaite, Huddersfield HD7 5TY. (Officer) (Dismissed)
- 2.6 2014/62/91887/W - Erection of single storey link extension between existing dwelling and garage at Cote, Cote Lane, Holmfirth, HD9 2RP. (Officer) (Allowed)
- 2.7 2014/62/92252/W - Erection of one dwelling at Heaton Lodge, Bog Green Lane, Colne Bridge, Huddersfield, HD5 0RF. (Officer) (Dismissed)
- 2.8 2014/62/90277/W - Change of use of land to domestic curtilage and formation of new drive and access (within a Conservation Area) at 55, Oldfield, Honley, Holmfirth, HD9 6RL. (Officer) (Dismissed)
- 2.9 COMP/12/0354 - Appeal against the issue of an enforcement notice alleging unauthorised material change of use from office (B1) to retail (A1) at Birkby Bargain & Home Improvement Centre, Bay Hall, Miln Road, Birkby, Huddersfield, HD1 5EJ. (Appeal allowed and enforcement notice quashed)

**3. Implications for the Council
Not applicable**

**4. Consultees and their opinions
Not applicable**

**5. Next steps
Not applicable**

**6. Officer recommendations and reasons
To note**

**7. Cabinet portfolio holder recommendation
Not applicable**

**8. Contact officer and relevant papers
Simon Taylor – Head of Development Management**

**9. Director responsible
Jacqui Gedman**



Appeal Decision

Site visit made on 18 November 2014

by F Rafiq BSc (Hons), MCD, MRTPI

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

Decision date: 25 November 2014

Appeal Ref: APP/Z4718/D/14/2225510

37 Bankfield Park Ave, Taylor Hill, Huddersfield , HD4 7RD

- 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 G Lumb against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2014/62/91904/W was refused by notice dated 5 August 2014.
 - The development proposed is extending the outside patio area to the rear.
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Decision

1. The appeal is dismissed.

Main issue

2. The main issue is the effect of the proposal on the living conditions of the occupiers of the adjoining property with regard to outlook.

Reasons

3. The appeal site is a semi-detached dormer bungalow that is set down from the road with the rear garden at a further lower level due to a difference in levels between the front and rear of the site. The appeal property has previously been extended with a single storey rear extension and a raised patio area with stairs leading to the rear garden. The planning permission relating to these additions required a 1.7m high privacy screen although this has not been erected. This proposal seeks to extend the raised patio area further from the single storey extension, such that that the overall projection of the patio would be around 3m from the rear of the extension.
4. At my site visit, I was able to see clearly into the neighbouring property's garden from the existing raised patio area. This proposal would provide an extended raised patio area which would further exacerbate the overlooking impact. However, a privacy screen is also proposed, 1.8m above the height of the raised patio, which would adequately screen against the loss of privacy for the occupiers of the adjoining property.
5. The projection of a screen however, for 3m close to the boundary with No. 35 Bankfield Park Avenue and with a height of 1.8m which would be elevated around 1.3m above ground level, would in itself have an overbearing impact on the outlook of the occupiers of this adjacent house. This proposal would have a particularly dominating impact upon the adjoining occupants given that the appeal property has been previously extended. The extended patio and screen subject of this appeal, together with the previous additions, would produce a

combined structure around 6m in length which would be visually oppressive and dominate the outlook from the adjoining property.

6. For the reasons given, I find that the proposal would have a harmful impact on the living conditions of the occupiers of the adjoining property with regard to outlook. It would thus conflict with Policy D2 of the Kirklees Unitary Development Plan which requires, amongst other matters, proposals not to prejudice residential amenity. It would also conflict with the core planning principle of the National Planning Policy Framework that seeks to secure a good standard of amenity for all existing and future occupiers.
7. I appreciate the appellant's intentions to provide an outdoor seating area in order to make better use of the garden and to create a space with more light and that the existing raised patio is of an insufficient size for its intended use. These matters do not however justify the appeal proposal which would harm the living conditions of the adjoining occupiers. The appellant also states that they are willing to erect a glass partition, responding to a neighbour's previous comments. The cost of purchasing a 1.5m length screen in relation to a 3m length screen is also cited. These factors are not however determinative matters in this appeal.
8. Reference is made to a nearby property which has a rear conservatory that is said to comprise of similar wall materials to the proposed screen. I have not however been made aware of the considerations that were taken into account when (and if) this conservatory was permitted. Moreover, each application and appeal falls to be considered on its own merits.

Conclusion

9. For the reasons given above, and having regard to all other matters raised, including representations from neighbouring residents, I conclude that the appeal should be dismissed.

F Rafiq

INSPECTOR

Appeal Decision

Site visit made on 5 November 2014

by David C Pinner BSc (Hons) DipTP MRTPI

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

Decision date: 3 December 2014

Appeal Ref: APP/Z4718/A/14/2213368

Old Recreation Ground, near 13 Halifax Road, Scapegoat Hill, Huddersfield, HD7 4NS

- 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 Matthew Tidmarsh, DC21 Ltd. against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref: 2012/62/91598/W, dated 14 May 2012, was refused by notice dated 9 January 2014.
 - The development proposed is the installation of one Endurance 50Kw wind turbine 34.2m in overall height (i.e. to blade tip).
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Decision

1. The appeal is allowed and planning permission is granted with conditions as set out in the Formal Decision below.

Main Issues

2. The appeal site lies within the Kirklees Green Belt where national and development plan policies establish a presumption against inappropriate development. The Green Belt policies in the Kirklees Unitary Development Plan are consistent with those in the National Planning Policy Framework (NPPF).
3. The proposed development is a building as defined in s336 of the Act and therefore falls within the ambit of paragraph 89 of the NPPF, which deals with the construction of new buildings in the Green Belt. The scheme represents inappropriate development in the Green Belt since it does not fall within any of the exceptions set out in that paragraph. The first main issue is whether the harm by reason of inappropriateness and any other harm to the Green Belt are clearly outweighed by other considerations, such that very special circumstances exist to justify this proposed development in the Green Belt. Should I find that to be the case, it would then be necessary for me to consider the effects of the scheme on the character and appearance of the area and on the settings of local heritage assets.

Reasons

Green Belt

4. Paragraph 79 of the NPPF establishes that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Paragraph 80 sets out five purposes of the Green Belt. Of these, I think that

the proposed development is only capable of conflicting with the purpose of safeguarding the countryside from encroachment.

5. "Open" in Green Belt terms means "not built upon", so any built development would have some effect on openness. However, the significance of this effect would depend on the nature of the proposed development and the extent to which its location could be described as open.
6. The appeal site is within an area of the Green Belt where there are already several large vertical structures. The proposed development would take place on Scapegoat Hill, a prominent local topographical feature, where there is already a plethora of communications masts or towers with associated equipment. There are also two twin-bladed wind turbines and another wind turbine of similar type to the appeal proposal. Within this context (and bearing in mind that the wind turbine is a machine with a small footprint and is likely to have a limited useful life, after which it would be removed) the proposed development would have negligible effect on the openness of the Green Belt. I do not consider that it would encroach into the countryside to any significant extent. I therefore conclude that the only harm that the scheme would cause to the Green Belt would be its harm by reason of inappropriateness.
7. Paragraph 91 of the NPPF says that very special circumstances that would justify renewable energy projects in the Green Belt may include the wider environmental benefits associated with increased production of energy from renewable sources. Paragraph 93 stresses the importance of securing the delivery of renewable and low carbon energy and the associated infrastructure, placing it central to the economic, social and environmental dimensions of sustainable development. From this, it is clear to me that the proposed development is inherently sustainable.
8. Although substantial weight is attached to the harm caused by reason of inappropriateness, in the absence of any other Green Belt harm, I consider that the benefits of the proposed development, which would provide an equivalent amount of electricity per year as would be used by over 50 homes, would clearly outweigh the harm to the Green Belt. I conclude that very special circumstances exist to justify this development in the Green Belt.

Character and appearance

9. The local landscape is typical of the mid-Pennines with rugged hills and deep valleys giving way to bleak moorland. It is a heavily populated area with large towns which expanded quickly with the growth of the textile industries during the 18th and 19th centuries. There is an abundance of smaller settlements and individual farmsteads throughout the area. I would describe the appeal site as being part of the rural fringe.
10. Technological progress has had a significant effect on the landscape. Overhead power lines abound, on pylons, double pole and single pole routes. The M62 motorway with high lighting columns and noisy traffic is much in evidence. There are several wind turbine generators in addition to those on Scapegoat Hill itself. Scapegoat Hill bristles with communications towers and there are others within close proximity. The high ground provides long-distance views in many directions and several wind turbines can clearly be seen, including a long distance view of a wind farm (probably Ovenden Moor) which I could see from where I stopped on Quebec Road. As is nearly always the case, as one passes

through the area, views of these various pylons, poles, masts, lighting columns and turbines come and go as the topography, buildings, trees and other features block or filter views of them. Nevertheless, these items of modern essential infrastructure have become part of the established character and appearance of the area, albeit that they could not be said to have changed it for the better. In this context, I disagree with the Council's assertion that the proposed turbine would be a strident feature. It would represent more of the same and, as such, I think that its impact on the character and appearance of the area would be minimal. The fact that walkers on nearby footpaths would see it does not alter my opinion on this. Such items of infrastructure will inevitably be visible from numerous viewpoints and people's reactions to them will differ. I am not aware of any evidence that suggests that the presence of wind turbines and other infrastructure such as communications masts has so affected people's enjoyment of the countryside that visitor numbers or use of public footpaths have been significantly diminished. I conclude on this issue that the proposed development would not significantly affect the character or appearance of the area. Certainly not to the extent that the presumption in favour of sustainable development is overridden.

Effect on heritage assets

11. The proposed turbine would be over 300m from the nearest heritage assets, which are numbers 7 and 9 Hart's Hole and an adjacent barn. They form part of a cluster of listed cottages and agricultural buildings at Hart's Hole. The interest of these buildings lies in their architecture and function. Their architecture is typical of early 19th century Pennine buildings. The multiple-light mullioned windows at first floor level suggest use for handloom weaving, which was an important stage in the establishment of the West Riding woollen industry. The setting of these buildings is somewhat incidental to their historic and architectural importance but does not in any case extend to over 300 metres from the buildings themselves.
12. The other identified heritage assets are even further from the appeal scheme and comprise 5 more weavers'/ agricultural workers' cottages, to which the same considerations as set out above apply, a Baptist chapel and an 18th century milestone. The setting of the milestone has been severely compromised by the Council in its rôle as Highway Authority by almost completely surrounding it with direction signs and warning chevrons. The proposed development could not possibly do any further damage to the setting of this asset. The setting of the Baptist chapel does not extend to the 620m necessary to include the appeal site and would be unaffected by the proposed development. I conclude on this issue that no heritage assets would be affected by the proposed development.

Conditions

13. The Council has suggested a number of conditions in addition to the standard conditions relating to commencement of the development and compliance with the approved plans. The proposed development is a machine which could be expected to wear out eventually and a temporary permission for 25 years is therefore appropriate. An additional condition is needed to ensure that the development is removed if it ceases to be operational within that 25 year period. Other conditions are needed to address the consultation responses from the Defence Infrastructure Organisation and the Highway Authority. I

have worded the conditions as I have thought necessary in the interests of precision and enforceability.

Overall conclusions

14. I conclude that the harm which the proposed development would cause to the Green Belt by reason of inappropriateness is justified by the existence of very special circumstances, namely the benefits of the scheme in contributing to the delivery of renewable energy and the reduction of greenhouse gas emissions. The scheme would not significantly affect either the character or appearance of the surrounding area and it would not affect the setting of any heritage assets. The scheme does not conflict with relevant development plan policies and the appeal should therefore succeed.

Formal Decision

15. The appeal is allowed and planning permission is granted for the installation of one Endurance 50Kw wind turbine 34.2m in overall height (i.e. to blade tip) at Old Recreation Ground, near 13 Halifax Road, Scapegoat Hill, Huddersfield, HD7 4NS in accordance with the terms of the application, Ref: 2012/62/91598/W, dated 14 May 2012 and the plans submitted with it, subject to the following 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 approved plans Job 11142 numbers 02, 04 and 05 dated March 2012;
- 3) prior to the commencement of development, for the purposes of informing the Defence Infrastructure Organisation of the Ministry of Defence, the developer shall notify the Local Planning Authority (LPA) of the dates for commencement and completion of construction works; the maximum height of construction equipment and the precise longitude and latitude of the turbine;
- 4) no development shall commence until a construction management plan has been submitted to and approved in writing by the LPA providing the following details:
 - i) measures for the protection of public safety on definitive footpath no. Col/41/10 during the construction period;
 - ii) the access route to transport materials and equipment to the site;
 - iii) temporary warning and direction signs on approaches to the site;
 - iv) the location of equipment storage and car parking areas for construction workers during the construction period.

The approved construction management plan shall be implemented and maintained throughout the construction period;

- 5) no development shall commence until details of the colour(s) and finish of the development have been submitted to and approved in writing by the LPA. Development shall be carried out in accordance with the approved details;
- 6) the planning permission hereby granted shall be for a period of 25 years from the date on which the development is brought into use for the

generation of electricity. That date shall be notified to the LPA within 28 days of the event;

- 7) no later than 3 months after the end of the 25 year period mentioned in the previous condition, the wind turbine generator and all associated equipment shall have been removed from the land and the land reinstated to its condition and appearance prior to the development having taken place, or otherwise in accordance with a scheme that shall have been previously submitted to and approved in writing by the LPA;
- 8) if, within the 25 year duration of this permission, the development hereby permitted ceases to be used for the generation of electricity for a continuous period of 6 months, within 3 months after the end of that 6 month period, the wind turbine generator and all associated equipment shall have been removed from the land and the land reinstated to its condition and appearance prior to the development having taken place, or otherwise in accordance with a scheme that shall have been previously submitted to and approved in writing by the LPA.

David C Pinner
Inspector

Appeal Decision

Site visit made on 17 November 2014

by Louise Crosby MA MRTPI

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

Decision date: 16 December 2014

Appeal Ref: APP/Z4718/A/14/2224453

Middleburn Farm, Burn Road, Birchencliffe, Huddersfield, West Yorkshire, HD2 2EG

- 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 A Clegg against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref: 2014/62/91432/W, dated 1 May 2014, was refused by notice dated 27 June 2014.
 - The development proposed is a single storey dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - i) the effect of the proposal on the character and appearance of the surrounding area;
 - ii) whether the proposal would preserve the setting of Middleburn Farm, which is listed grade II; and
 - iii) whether any identified harm is outweighed by other considerations, including the lack of a 5 year housing land supply.

Reasons

Policy background and housing land supply

3. The Council concede in this case that they do not have a 5 year supply of housing land, as required by paragraph 47 of the National Planning Policy Framework (the Framework). Consequently paragraphs 14 and 49 of the Framework are engaged and the relevant policies for the supply of housing cannot be considered up-to-date.
4. Planning permission should therefore be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or specific policies in the Framework indicate development should be restricted. In this case that would include policies relating to the protection of heritage assets.

5. The appeal site is part of a much larger area of land allocated as Provisional Open Land (POL) on the Kirklees Unitary Development Plan (UDP) Proposals Map. This is land that was reserved in the UDP for future housing development and a review showed it to be necessary. No such review has taken place and UDP policy D5 does not include new dwellings in its examples of acceptable development in a POL. In any event, this is a housing land supply policy which cannot be considered to be up-to-date for the reason set out above.
6. The appellant has submitted an indicative layout plan showing around 200 proposed houses in part of this POL. According to the promotional information a planning application is due to be submitted in autumn this year for this scheme. It does not include the appeal site, but the indicative layout shows estate type housing on the fields opposite; closer to Huddersfield.
7. While the large scale development of the POL, as shown on the indicative layout, would significantly alter the character and appearance of the land near to the appeal site, there is no certainty that it will be granted planning permission. Consequently I shall deal with this case on the basis of the existing character and appearance of the site and the surrounding area.

Character and appearance

8. Middleburn Farm is situated in a rural location characterised by sporadic detached dwellings set within generous sized plots. The nearby properties are all set well back from the private access track that serves them and the appeal site. While the site and the surrounding area is visible from the built-up urban edge of Huddersfield and vice versa, it has an open, rural character and appearance because of the space around the dwellings, their sporadic siting, the design of the buildings and the proximity to open fields. Indeed the appeal site is bounded on 2 sides by open fields and on the opposite side of Burn Road there are open fields before the built-up area of Huddersfield.
9. Middleburn Farm comprises a single dwelling which was formerly a row of cottages and a barn. On the western side of the dwelling is a leisure annex which has been built on the footprint of a former outbuilding. This is separated from the house, but connected via a glazed link. A conservatory, a double garage and store rooms have also been added to the dwelling. The proposed bungalow would be sited in part of the front garden area of the dwelling.
10. The proposal would introduce a modern form of development that would appear prominent in both public and private views. Additionally the bungalow would have its own domestic curtilage which would be likely to contain domestic paraphernalia. Given its siting and detailed design, despite being modest in size, the proposal would appear at odds with the character and grain of this rural area and the traditional dwellings nearby.
11. The proposed bungalow would appear incongruous and have a significant adverse effect on the character and appearance of the surrounding area and would conflict with UDP policy BE2 which seeks to ensure that new development is designed in keeping with the existing.

Whether the proposal would preserve the setting of Middleburn Farm

12. Middleburn Farm was originally a barn, dating from the 18th century. The 2 storey building is rendered and has a pitched stone slate roof. The significance of the building, amongst other things, is derived from its age, historic

associations and architectural style. The modern extensions to it have been designed in a sympathetic manner. Moreover regardless of the alterations and extensions that have taken place Middleburn Farm is a statutory listed building.

13. English Heritage advice¹ says that 'setting embraces all of the surroundings...from which the heritage asset can be experienced or that can be experienced from or with the asset'. This listed building is experienced from a variety of places. In many views the experience includes the large front garden which is open, with the exception of a few small trees.
14. Views from the front of the asset are over the front garden, to the open land beyond and then to the built-up area of Huddersfield. This large front garden enhances the significance of the listed building which is derived from its origins as a rural barn. Rural buildings are commonly set in open rural landscapes.
15. The proposed bungalow would be situated on garden land in front of Middleburn Farm and so within its setting and appear from the building itself as well as when viewed in conjunction with it as an uncharacteristic and prominent building. Also, despite being only single storey it would interrupt and partially block views of the listed building across the front garden from Burn Road.
16. Very discernable changes would occur to the setting of the listed building. The effect of the proposal on its significance would be less than substantial, but this harm is not outweighed by the public benefit of the creation of a single dwelling. The proposal would fail to preserve the special architectural and historic interest of the listed building, the desirability of which is fully anticipated by section 66(1) of the Act and to which considerable importance and weight must be attached.
17. In addition, paragraph 132 of the Framework anticipates that great weight will be given to the conservation of designated heritage assets. Here there would be a significant degree of harm that must be weighed in the planning balance.

Whether any identified harm is outweighed by other considerations, including the lack of a 5 year housing land supply

18. While I appreciate that the Council do not have a 5 year supply of housing land, this single dwelling would make very little impact on its housing shortfall while at the same time causing significant harm to the character and appearance of this attractive rural garden and to the setting of a listed building. The benefits of this scheme would be very small compared to the identified harm when assessed against local planning policies, Government advice in relation to the provision of housing and the Framework, as a whole. In carrying out this balance I have attached considerable importance and weight to the duty set out in section 66(1) of the Act.

Conclusion

19. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Louise Crosby

INSPECTOR

¹ The Setting of Heritage Assets

Appeal Decision

Site visit made on 12 September 2014

by Alan Novitzky BArch(Hons) MA(RCA) PhD RIBA

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

Decision date: 12 December 2014

Appeal Ref: APP/Z4718/A/14/2220417

Moorfield Farm, Cartworth Moor Road, Holmfirth, HD9 2QS

- 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 Shaun Westerby against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2013/62/91465/W, dated 20 April 2013, was refused by notice dated 20 February 2014.
 - The development proposed is the installation of 1 no. medium scale 50kW Endurance wind turbine on a 24m monopole mast.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Whether the proposal comprises inappropriate development in the Green Belt.
 - Its effect on the character and appearance of the landscape.
 - Its effect on the use of Cartworth Moor Road as a bridleway.
 - Its effect on living conditions.
 - Whether any harm, by reason of inappropriateness, or any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

First Issue – Green Belt

3. The site lies within the Green Belt, some 6 km north of the Peak National Park boundary, but does not itself form part of any national landscape or ecological designation. The National Planning Policy Framework (NPPF) notes at paragraph 91 that, when located in the Green Belt, elements of many renewable energy projects will comprise inappropriate development. In such cases developers will need to demonstrate very special circumstances if projects are to proceed. Such very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources.

4. Paragraph 89 of the NPPF contains the list of new buildings in the Green Belt which are not inappropriate, none of which includes wind turbines. However, paragraph 90 tells us that certain other forms of development, including engineering operations, are also not inappropriate provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in the Green Belt.
5. Although a single, slim structure, the wind turbine assembly, which might be considered an engineering operation, would exercise a presence within the Green Belt inevitably diminishing its openness to an extent. The proposal, therefore, comprises inappropriate development which, the NPPF notes at paragraph 87, is by definition harmful to the Green Belt and should not be approved except in very special circumstances.

Second Issue – Character and Appearance of the Landscape

6. The Landscape Capacity Study for Wind Energy Development in the South Pennines, 2010, commissioned by a number of local planning authorities, is a material consideration. It identifies the character of the landscape as moorland fringes/upland pastures and the local sensitivity to wind energy development as moderate to high. I agree with the Council's description of the site as being located on a high hilltop plateau which generally rises from east to west, the surrounding landscape being made up of a mosaic of agricultural fields used for grazing, bounded by dry stone walls.
7. The landscape in the immediate vicinity of the site has a pragmatic working character, with large agricultural sheds, evidence of quarrying, low voltage transmission lines, and existing small to medium scale wind turbines. Within this zone of proximity, the proposal would not exert a significantly harmful effect on the landscape character, because of the context of similar development into which it would be placed. However, a network of public footpaths runs close to the site, coming to within 40 metres at their closest. Considerable harm to visual amenity would be experienced by users of the footpaths and linking sections of Cartworth Moor Road because of the visual dominance of the turbine assembly.
8. From further distances, no harm to landscape character or appearance would be experienced from the Holme Valley which lies to the north and west outside the Zone of Theoretical Visibility (ZTV), including most of Holmfirth and other settlements along the valley bottom and the Hills and Hamlets recreational route. Whilst the turbine would be seen from higher land across the valley to the north-west, including appearances above the skyline alongside the existing turbine at New Dunsley Farm, the distances involved would substantially mitigate any harmful effects.
9. The turbine would be visible from the south, by users of roads and footpaths including the Holme Valley Country Walk and the Kirklees Way, but the harm would be minimal since it would rarely appear above the horizon, and to the north, the land soon dips into the Holme Valley, cutting off views. However, there would be significant views from the east and south-east, including those from Dunford Road as it rises out of Holmfirth. Here the turbine would be seen clearly in the middle distance above the plateau alongside the identical New Dunsley Farm turbine, distracting attention from the open, continuous profile of the plateau. The proposed turbine would add significantly to harm to the character and appearance of the landscape arising from the existing turbine.

10. Turning to other cumulative effects, the Council notes that 13 proposals for wind turbines within a 2 km radius of the site, ranging in mast height up to 25 metres, have been submitted for planning approval. Of these, 10 have been granted planning permission and a number erected. The information needed to assess cumulative effects set out in Planning Policy Guidance for Renewable and low carbon energy, including consistent details of size and location were not provided, nor were the turbines included in photomontages. It is, therefore, not possible to arrive at a reliable assessment of effects. Whilst there might be further harm, it would be difficult to assert on the information provided that the present proposal would result in additional cumulative harm to that identified in the preceding paragraph.
11. In summary, the cumulative harm to the character of the landscape experienced from the east and south-east and the harm identified to visual amenity close to the site would have a significantly adverse effect on the overall character and appearance of the landscape.

Third Issue - Bridleway

12. It is unclear whether Cartworth Moor Road is, or is likely to become, a designated bridleway as it passes the site. However, it is likely to be used by riders, since an existing bridleway links White Gate Road with Cartworth Moor Road. Whilst not a mandatory standard, the British Horse Society (BHS) advises¹ that a minimum separation distance of three times blade tip height should be provided between a turbine and any route used by horses.
13. This separation distance, approximately 100 metres, may have been provided between the existing turbine at New Dunsley Farm and the bridleway to the south. However, in the present proposal, the distance would be less than 40 metres.
14. Animals would not suddenly come across the turbine since it would be seen from some distance away, and Cartworth Moor Road is used very occasionally by motor vehicles, which means that horses using it may have attained a certain degree of habituation to noise and movement. However, the separation is insufficient to give confidence that horses would remain settled, leaving a significant risk.
15. Therefore, the effect of the proposal on the use of Cartworth Moor Road as a bridleway must be regarded as materially harmful.

Fourth Issue – Living Conditions

16. The nearest dwelling to the turbine would be Hill Top, a little under 200 metres to the east. I see no reason to disagree with the Council's conclusion that, from the evidence provided by the appellant, the turbine would be unlikely to cause significant noise nuisance to the occupants.
17. It is generally accepted that shadow flicker only occurs under certain coincident conditions, one being that the receptor is within 10 rotor diameters of the turbine. In this case, the critical distance is 192 metres, and the dwelling would, therefore, be too far away to be at risk.

¹ Advice Note: Wind Turbines and Horses – Guidance for Planners and Developers, leaflet 2014/7

18. Although Hill Top is at a slightly lower level than the site, and its main aspect appears to look away from the site, its visual amenity from habitable rooms and from its curtilage would be affected by the proposal to an extent. However, I agree with the Council that the turbine would not appear overbearing or oppressive when seen from Hill Top or any other dwelling.
19. Overall, the effect of the proposal on living conditions would be acceptable.

Fifth Issue – Very Special Circumstances

20. Besides the harm arising from inappropriate development, the proposal's harm to the Green Belt comprises its effect on openness. The harm would be quite limited since there would be very little visual obstruction to the open landscape, except at very close distances. Moreover, none of the purposes served by the Green Belt, set out in paragraph 80 of the NPPF, would be compromised by the proposal.
21. Harm to the Green Belt arising from inappropriateness and the limited effect on openness, together with harm to the character and appearance of the landscape and harm arising from the effect of the proposal on the use of Cartworth Moor Road as a bridleway must be balanced against the public benefits of the proposal.
22. These comprise the environmental advantages of the generation of an estimated 170,000 kW of renewable energy, reducing carbon emissions, helping meet policy targets and creating employment. The proposal would also help diversify the farm business, reducing its energy costs, protecting employment and placing it on a sounder financial footing.
23. Overall, I find that the benefits of the proposal do not outweigh the harm identified and, therefore, the very special circumstances necessary to justify the development are not present. The proposal conflicts with the first criterion of Kirklees Unitary Development Plan Policy EP8 (Wind turbines – protection of the character, recreational value and visual amenity of the Green Belt or landscape) and with Policy R13 (Public right of way network). These policies are consistent with the aims of the NPPF. It conflicts with the development plan overall and is unacceptable.

Alan Novitzky

Inspector

Appeal Decision

Site visit made on 1 December 2014

by Susan Ashworth BA (Hons) BPI MRTPI

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

Decision date: 29 December 2014

Appeal Ref: APP/Z4718/A/14/2224677

The White House, Chain Road, Slaithwaite, Huddersfield HD7 5TY

- 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 Michael Dann against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2014/62/90347/W, dated 31 January 2014, was refused by notice dated 31 March 2014.
 - The development proposed is erection of 2 detached dwellings.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are
 - Whether or not the proposal would be inappropriate development in the Green Belt;
 - The effect of the proposal on the openness of the Green Belt and on the character and appearance of the area ;
 - If the proposal would be inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify it.

Reasons

3. The appeal site comprises land adjacent to the White House Public House, formerly used as a car park associated with that building. The public house has recently been converted to residential properties and the site, which appears to have more recently been used as a construction compound, is fenced off. The site previously accommodated two outbuildings, one of which has been demolished.

Whether inappropriate development

4. The National Planning Policy Framework (the Framework) indicates at paragraph 89 that the construction of new buildings should be regarded as inappropriate in the Green Belt unless they fall within certain specified exceptions. The exceptions include limited infilling or the partial or complete

redevelopment of previously developed sites (brownfield land) whether redundant or in continuing use (excluding temporary buildings) which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.

5. The site can be described as previously developed land as defined in Annex 2 of the Framework as it formed part of the curtilage of a site that was occupied by a permanent structure. The test as set out in paragraph 89 is therefore whether the proposed use would have a greater impact on the openness of the Green Belt than the existing development. Openness can be taken to mean the absence of visible development. As the site was a car park it was, and still is, substantially open except for the presence of the outbuildings. The proposed development of two substantial detached dwellings and associated garages would therefore have a greater impact on openness. As such, and as acknowledged in the appellant's planning policy statement, the development is therefore inappropriate development in the Green Belt.

Openness and Character and Appearance

6. Paragraph 79 of the Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Indeed, one of the essential characteristics of Green Belts is their openness. As discussed above, as a result of their size and massing, the proposed buildings would have a significant impact on the openness of the site. In addition to being harmful in its immediate setting, the development would have a limited effect on the openness of the wider area of Green Belt. As a result there would be a degree of harm arising from this, in addition to the inappropriate nature of the development.
7. The site lies within the open countryside, outside of any defined settlement. The character of the area is defined by an open landscape interspersed with sporadic development comprising mainly farmsteads and some large individual buildings including longhouses and the former public house. I have taken into consideration that the dwellings have been designed with a large barn-like openings and mullioned windows to reflect local buildings in the area. External walls would be constructed in natural coursed stone. Nevertheless the dwellings would appear as substantial modern properties rather than former agricultural buildings. Furthermore, their grouping, each with domestic detached garages, would not reflect the traditional grouping of agricultural buildings and moreover would be poorly related to the public house visually in terms of their grouping. As such the buildings would not reflect their rural setting but rather would have a harmful urbanising effect.
8. The dwellings would be set on very limited plots but I accept the appellant's point that there would be enough space between them to avoid them appearing cramped. However, this in itself does not outweigh the harm to the character and appearance of the countryside outlined above.
9. Accordingly I conclude that the proposal would be harmful to the character and appearance of the area contrary to Policies BE1 and BE2 of the Kirklees Unitary Development Plan which seek, amongst other things, to ensure that new development retains local identity and is in keeping with its surroundings. Given that the site lies in a highly prominent position alongside a busy road I attach significant weight to this harm.

Other considerations

10. The appellant has pointed out that the site is currently an eyesore and that the proposed development would improve its appearance. I noted at my site visit that the site has a somewhat unkempt appearance and does not appear to have been tidied since the completion of the public house conversion works. Nevertheless it seems to me that the site could be restored to its former open condition without the need for development and I note the Council's comments that the appearance of the site can be controlled through other legislation. I therefore give this matter very limited weight.
11. I have taken into consideration that the development would be built to meet sustainability credentials and would seek to achieve a code for sustainable homes level 5. However, the site is located outside of any settlement boundary and does not lie within a sustainable location with ready access to local services and facilities. Whilst it would provide two units of accommodation this would make only a limited contribution to the overall supply of housing land and any economic benefit would also be limited. As such the development is not wholly sustainable and I therefore give this consideration limited weight.
12. The appellant refers in his grounds of appeal to paragraph 14 of the Framework which sets out the presumption in favour of sustainable development. For the reasons outlined above the development is not wholly sustainable. Moreover this paragraph states that where policies are out of date, permission should be granted unless, any adverse effects of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole or, unless specific policies in the Framework indicate that seek development should be restricted. There is no convincing evidence before me that current policies are out of date but even if that were the case, the policies referred to in the Framework include the restrictive Green Belt policies outlined above.

Conclusion

13. I have concluded that the scheme would be inappropriate development in the Green Belt as defined by the Framework. Inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances.
14. Paragraph 88 of the Framework requires decision makers to ensure that substantial weight is given to any harm to the Green Belt. Added to that is the significant weight attached to the harm to the character and appearance of the area and limited weight afforded to the harm to the openness of the Green Belt. Other considerations weighing in favour of the development must clearly outweigh this harm. I give only limited weight to the considerations cited in support of the proposal and conclude that the other matters would not be of sufficient weight to clearly outweigh the harm by reason of inappropriateness and the other harm identified. Consequently there are not the very special circumstances necessary to justify inappropriate development in the Green Belt. For the reasons given the overall conclusion is that the appeal should fail.

Susan Ashworth

INSPECTOR

Appeal Decision

Site visit made on 9 December 2014

by Anne Jordan BA (Hons) MRTPI

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

Decision date: 18 December 2014

Appeal Ref: APP/Z4718/D/14/2228554
Cote, Cote Lane, Holmfirth, HD9 2RP

- 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 Stephen Sheard against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2014/62/91887/W, dated 11 June 2014, was refused by notice dated 23 October 2014.
 - The development proposed is a single storey link extension between existing house and garage to form sun room and office.
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Decision

1. The appeal is allowed and planning permission is granted for a single storey link extension between existing house and garage to form sun room and office at Cote, Cote Lane, Holmfirth, HD9 2RP in accordance with application Ref 2014/62/91887/W, dated 11 June 2014 and subject to the following 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 plan AL01 Rev A.
 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.

Main Issues

2. The main issues are:
 - Whether the proposal is inappropriate development for the purposes of the *National Planning Policy Framework* (the Framework) and development plan policy;
 - The effect of the proposal on the character and appearance of the area;

Reasons

Inappropriate Development

3. The Framework sets out that new buildings in the green belt are inappropriate unless, amongst other things they relate to the extension of an existing building and that this does not result in a disproportionate addition to the original building. Saved Policy D11 of the *Kirklees Unitary Development Plan* (UDP) also seeks to ensure that in cases of extensions in the green belt, the original building should remain the dominant element
4. I am advised that the property known at Cote was created in 1994 when a larger dwelling was subdivided to form two properties. A two storey garage was constructed adjacent to the main building under a consent granted in 1987. It therefore forms part of the original property known as Cote, as established in 1994.
5. The application proposes a single storey extension to link Cote with the garage. The Council advise that the extension would have a total length of around 10.8 metres and would measure around 4.0 metres to the apex of the pitched roof. They also advise that the dwelling, excluding the garage, has a volume of around 434 cubic metres. The extension would have a volume of around 151 cubic metres. Although this is a sizable extension, this factor alone would not lead me to the view that the proposal was a disproportionate addition.
6. Cote and Cote Cottage are two halves of a traditionally designed building which sits below road level on the side of the steeply sloping valley. From Cote Lane the upper part of the second storey and the stone slates on the roof comprise the roadside elevation. The double garage sits at the same level and is two storey with accommodation above the parking area. When viewed from the roadside and from a distance, across the valley, it resembles a large agricultural outbuilding. The proposal would link the two separate buildings. The Council consider that the cumulative visual effect of this would result in an overly large addition which would detract from the proportions of the original dwelling, and would also adversely affect openness.
7. The proposed link building would be single storey. The pitched roof would finish below adjoining eaves level and so in scale the linking structure would be clearly subservient to both the adjoining buildings. It would also be positioned around 2 metres in from the roadside elevation and so in views from the road, the visible section of the link including the roof, would not be unduly prominent. The front elevation would include a high proportion of glazing, and this, along with its lower height, would separate the different elements of the building and prevent visual coalescence in long ranging views across the valley.
8. These factors lead me to the view that the resulting development would not appear as a disproportionate addition to the host building. In this regard the original buildings would remain the dominant element, and I find no conflict with policy D11 of the UDP. It also therefore follows that the proposal would not comprise inappropriate development as defined by the Framework.

Character and Appearance

9. I note the Council's concerns that the form of development detracts from the appearance of the host dwelling. In particular the proposal is considered to lead to an overly linear form of development. For the reasons given above, as I consider that the existing buildings on site would remain visually dominant, I do not consider that the resulting proposal would be prominent in the landscape, and would not consequently detract from the established open character of the area.
10. Furthermore, the Council consider that a high proportion of glazing is not a traditional feature of buildings in the area. However, in this case, taking into account the recessive appearance of the link, I do not consider it would detract from the character of the host property. The proposal would also retain a traditional roof form, which would be the most visible element in views from the roadside. The link would also have limited visual impact in long ranging views across the valley and would sit comfortably in the landscape.
11. I therefore find no conflict with the provisions of policies D11, BE1, BE2 and BE13 of the UDP which together seek development which respects existing design features and local identity and seeks development which is visually attractive. This is consistent with guidance in the Framework which has similar aims.

Conclusions

12. For the reasons given above the proposal would not be inappropriate development within the green belt and would not harm the character or appearance of the host property or the surrounding area. However, to ensure a satisfactory appearance for the development the external materials should match the existing buildings and the approved plans should be listed to enable any future minor material amendments. Subject to these conditions the appeal is allowed.

Anne Jordan

INSPECTOR

Appeal Decision

Site visit made on 9 December 2014

by Anne Jordan BA (Hons) MRTPI

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

Decision date: 18 December 2014

Appeal Ref: APP/Z4718/A/14/2227445

Heaton Lodge, Bog Green Lane, Huddersfield, HD5 0RF

- 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 L Moone against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2014/62/92252/W, dated 1 August 2014, was refused by notice dated 22 September 2014.
 - The development proposed is the erection of single dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues for the appeal are:
 - Whether the proposal is inappropriate development for the purposes of the *National Planning Policy Framework* (the Framework) and development plan policy;
 - The effect of the proposal on the openness of the Green Belt and the character of the area;
 - If the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

Inappropriate Development

3. The *National Planning Policy Framework* (The Framework) outlines in paragraphs 89 the types of new buildings which are considered to be not inappropriate development within the Green Belt. It directs that the construction of new buildings should be regarded as inappropriate development unless they fall within a number of stated exceptions. The parties agree that none of these apply to the appeal proposal and that the proposal should be regarded as inappropriate development.
4. The Framework is clear that inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances. This harm must carry substantial weight.

Character and Openness of the Green Belt

5. The appeal site is a large area of lawn which lies within an extended area of open space adjacent to a property known as the Mansion House. The land sits in an elevated position above Holly Cottage, the access to which runs along the side of the site. The surrounding locality is characterised by large dwellings in established grounds. These sit in an open setting which contributes to the semi-rural character of the area. The proposal comprises a large two storey, four bedroom detached dwelling with a detached single storey garage. It would be partly set into the slope of the site with a paved driveway and turning area, and a large residential curtilage.
6. The introduction of a large building, and the works required to establish an additional curtilage would reduce openness. The provision of an additional dwelling and garden, would also erode the space around existing development which contributes to the rural character of this part of the Green Belt. Although the development would not be visible from the public highway, it would be clearly visible from the adjoining dwellings and from the access to Holly Cottage. From these points the reduction in openness and the harmful effect on the character of the area would be clearly apparent. This harm must also carry significant weight.

Other Considerations

7. The site has two certificates of lawfulness for a large two storey outbuilding of very similar design and similar scale to the appeal proposal. The appellant considers this represents a fallback position, and that this would outweigh the harm to the Green Belt by way of inappropriateness and any other harm.
8. The appeal proposal differs from the fallback in that it would include a detached garage, and the establishment of an additional residential curtilage which would bring with it the likelihood of domestication of the setting of the building. This would not be likely to arise from an ancillary domestic structure, such as the building in either certificate of lawfulness. In this regard, the alleged fallback, if constructed, would not be as harmful to the character and openness of the Green Belt as the proposal before me. Furthermore, I note that the appellant has expressed an intention to abandon the fallback, and that as such, I have no substantive evidence to indicate that there is a significant probability that the appeal proposal would be constructed if the appeal was dismissed. Both these factors limit the weight I can attribute to the matter.

Conclusion

9. The proposal would be inappropriate development and would fail to preserve openness. It would also harm the character of the Green Belt in this location. The Framework establishes that Green Belt harm should be given substantial weight. The potential fallback position put forward by the appellant would not clearly outweigh the totality of harm in this case. Very special circumstances therefore do not exist.
10. Therefore, for the reasons given above, and having regard to all other matters before me, I dismiss the appeal.

Anne Jordan

INSPECTOR

Appeal Decision

Site visit made on 1 December 2014

by Susan Ashworth BA (Hons) BPI MRTPI

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

Decision date: 5 January 2015

Appeal Ref: APP/Z4718/A/14/2226232
55, Oldfield, Honley, Holmfirth HD9 6RL

- 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 Marcus Wood against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2014/62/90277/W, dated 29 January 2014, was refused by notice dated 19 May 2014.
 - The development proposed is change of use of land to domestic curtilage and formation of new drive and access (within a Conservation Area).
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are as follows:
 - Whether the proposal would constitute inappropriate development in the Green Belt;
 - The effect of the proposal on the openness of the Green Belt and the character and appearance of the area;
 - Whether the proposal would preserve or enhance the character or appearance of the Oldfield Conservation Area;
 - If the proposal is deemed inappropriate development in the Green Belt whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Whether inappropriate development

3. The proposal seeks to create a new vehicular access onto Oldfield Road and a driveway to 55 Oldfield, a residential property that lies some 40m to the south of the proposed access point. The access would be formed by creating an opening in an existing stone boundary wall, set back 5m from the edge of the highway. Curved boundary walls would mark the entrance and electric, inward opening gates would be installed. The driveway itself would be constructed with a reinforced open grid system which allows grass to grow through. The driveway, which would follow the alignment of the stone boundary wall, would

be constructed on open land outside of the domestic curtilage of the dwelling. The proposal would thus consist of an engineering operation to construct an access, and also a material change of use of the land to domestic curtilage.

4. The National Planning Policy Framework (the Framework) identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The Framework identifies five purposes of the Green Belt, the most relevant to this case being to assist in safeguarding the countryside from encroachment. Paragraph 87 of the Framework states that inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances. All proposals for development in the Green Belt should be treated as inappropriate unless they fall within one of the categories set out in paragraph 89 or 90 of the Framework. Proposals comprising material changes of use (other than the re-use of buildings of permanent and substantial construction) do not fall within either paragraph 89 or 90, and thus constitute inappropriate development.
5. I have noted that both the appellant and the Council consider that the formation of the access is an engineering operation. Paragraph 90 of the Framework, identifies engineering operations as a form of development that is not inappropriate in the Green Belt provided it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it. However, the proposal also involves a change of use, which as outlined above is inappropriate development.

Openness and character and appearance

6. The Framework indicates that openness is an essential characteristic of the Green Belt. Openness can be taken to mean the absence of visible development or the manifestation of a use of land. Built development in this case is minimal. The proposed surface material, which would allow grass to grow through, would allow the track to blend into the surrounding landscape to a certain extent. The new walls to the access would replace the existing and the area of hardsurfacing in front would cover a small area only. The domestic use of the site would be limited to the use of the track by vehicles associated with the dwelling and would not therefore be apparent at all times. Consequently the impact on the openness of the Green Belt and the rural character and appearance of the area would be limited.

Whether the development would preserve or enhance the character or appearance of the Conservation Area

7. The site lies within the Oldfield Conservation Area, which is characterised by groups of buildings of historic significance in a rural setting. The Council considers that the proposed development would not harm the special character and appearance of this section of the Conservation Area and the Conservation Officer supported the proposal. I have no reason to disagree with this view and consider the proposal would have a neutral effect that would thus preserve the character and appearance of the Conservation Area.
8. As such the proposal, in this respect, is in accordance with Policy BE5 of the Kirklees Unitary Development Plan which requires that proposals for new development within Conservation Areas should contribute to the preservation or enhancement of the character or appearance of the area.

Other Considerations

9. The proposal would in effect replace the existing vehicular access to the property, which, it is proposed, would be closed off with a new section of wall. The appellant considers the existing access to be substandard in terms of the visibility it offers and therefore presents a risk to highway safety. I noted at my site visit that the access is located very close to a sharp bend in the road and that visibility is particularly restricted to the south side along Miry Lane. However, there is no evidence before me that the use of this access has resulted in a danger to highway safety. Miry Lane appears to be very lightly trafficked and I have not been made aware of any accidents in relation to the use of the access in the past. Furthermore it is likely that local residents are aware of the particular highway circumstances and approach the corner with care. Vehicle speeds are likely to be low as a result.
10. The proposed access would be constructed with inward opening gates and a 5m wide waiting zone and satisfactory parking and turning facilities would be provided within the site. Nevertheless the highways officer states that the new access would also be sub-standard in terms of visibility. Furthermore it would exit onto a road that the Council and neighbouring residents note is busier than Miry Lane and which has no pavement in the vicinity of the appeal site.
11. I accept that the proposed access would provide better visibility than the existing. However, without specific evidence to demonstrate the harm of the existing access and the fact that visibility from the proposed access would also be substandard, I can only attach limited weight to this matter in support of the proposal.

Conclusion

12. The proposed change of use would be inappropriate development in the Green Belt as defined by the Framework. Inappropriate development is by definition harmful and the Framework establishes that substantial weight should be given to any harm. In addition there would be a minimal loss of openness and limited harm to the character and appearance of the area.
13. On the other hand the proposal would provide an access with better visibility than the current access. However, in this instance, based on the evidence provided, this consideration does not clearly outweigh the totality of harm. Consequently there are not the very special circumstances necessary to justify inappropriate development in the Green Belt. For the reasons given, the overall conclusion is that the appeal should fail.

Susan Ashworth

INSPECTOR

Appeal Decision

Site visit made on 8 December 2014

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Decision date: 16 December 2014

Appeal Ref: APP/Z4718/C/14/2215772

Lower Ground Floor (Birkby Bargain & Home Improvement Centre), Bay Hall, Miln Road, Birkby, Huddersfield HD1 5EJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Javid Akhtar against an enforcement notice issued by Kirklees Metropolitan Borough Council.
 - The notice was issued on 12 February 2014.
 - The breach of planning control as alleged in the notice is the material change of use from office (B1) to retail (A1).
 - The requirements of the notice are cease the retail use and remove from the building all articles displayed and stored for sale.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (d) of the Town and Country Planning Act 1990 as amended. The prescribed fees have not been paid within the specified period so the application for planning permission deemed to have been made under section 177(5) of the Act as amended cannot be considered.
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Decision

1. The appeal is allowed and the enforcement notice is quashed.

Reasons

2. For a material change of use from office (B1) to have occurred, the lawful use of the building must be office (B1). But the Council has stated that "There is no evidence that the lawful use of the whole building is anything other than B2 general industry". They do not, in fact, anywhere in their statement, suggest that the lower ground floor of the appeal building is in office (B1) use. Irrespective of the current use of the building and on the Council's own evidence there has been no material change of use from office (B1) to retail (A1).
3. The alleged breach of planning control cannot be varied to be 'the material change of use from general industry (B2) to retail (A1)' because this would cause injustice to the Appellant. The alleged breach of planning control has not occurred, the ground (b) appeal thus succeeds, and the ground (c) and (d) appeals do not therefore need to be considered.

John Braithwaite

Inspector