



Appeal Decision

Site visit made on 5 November 2018

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 December 2018

Appeal Ref: APP/Z4718/W/18/3207394

Land adj. Plough Barn, Birdsedge Lane, Birdsedge, Huddersfield HD8 8XR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Wright against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2017/60/94093/E, dated 28 November 2017, was refused by notice dated 24 January 2018.
 - The development proposed is an outline application for two detached dwellings.
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Decision

1. The appeal is allowed and outline planning permission is granted for two detached dwellings at Land adj. Plough Barn, Birdsedge Lane, Birdsedge, Huddersfield HD8 8XR in accordance with the terms of the application, Ref 2017/60/94093/E, dated 28 November 2017, subject to the following conditions:
 - 1) Details of the landscaping, (hereinafter called "the reserved matter") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
 - 2) Applications for approval of the reserved matter shall be made to the local planning authority not later than 3 years from the date of this permission.
 - 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the reserved matter.
 - 4) The development hereby permitted shall be carried out in accordance with the following approved plans: (16461)1_Site Plan Rev A, (16461)2_Ground Floor Plan, (16461)3_First Floor Plan, and (16461)4_Elevations Rev A, and with the Design and Access Statement.
 - 5) Prior to the development hereby approved commencing, a scheme for the permeable surfacing of the vehicle parking areas and driveways specified on approved plan (16461)1_Site Plan Rev A, shall be submitted to and approved in writing by the Local Planning Authority. Such a scheme shall be implemented prior to the development first being occupied, and thereafter retained.
 - 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no

buildings or extensions apart from those expressly authorised by this permission shall be erected within the site edged red, shown on approved plan (16461)1_Site Plan Rev A.

- 7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no doors, windows or any other openings apart from those expressly authorised by this permission shall be inserted in the north-eastern elevation of the easternmost dwelling.

Preliminary Matters

2. The Government published the revised National Planning Policy Framework (the Framework) on 24 July 2018. The appellant was notified of the publication and invited to make comments. Representations received in relation to the Framework have been taken into account in determining this appeal.
3. The address on the application form and on the decision notice refers to the settlement of 'Birds Edge'. However, on the appeal form, the settlement is referred to as 'Birdsedge'. Both main parties also refer to 'Birds Edge Lane' as the road the appeal site is located on.
4. Royal Mail refers to the settlement as 'Birdsedge' and the road as 'Birdsedge Lane' and I have used these in my decision. From the postcode and the submitted plans it is clear where the appeal site is located and I am content that no party would be prejudiced by my actions in this regard.

Main Issues

5. The main issues are:
 - whether the proposal is inappropriate development in the Green Belt having regard to the Framework and development plan policy
 - the effect of the proposal on the living conditions of the occupiers of 2 and 4 Highfield Avenue, with regards to outlook.

Reasons

Inappropriate Development in the Green Belt

6. Policy D13 (infill development in existing settlements) of the Kirklees Unitary Development Plan 2007 (UDP) outlines circumstances in which the construction of new buildings in the Green Belt can be considered acceptable. Policy D13 predates and is inconsistent with the Framework, insofar as it is having regard to a defined scale of infill development and in respect of the character and appearance of the area. Accordingly I have attributed it very limited weight.
7. The Framework states that new buildings are inappropriate within the Green Belt unless they comprise one of the exceptions outlined in paragraph 145. These include limited infilling in villages. I have given significant weight to the Framework as a material consideration in determining this appeal.
8. The appeal site is within a field on the southern side of Birdsedge Lane, between a small housing estate to the east and converted stone barns and other buildings at Highfield Farm to the west and southwest. To the south of

the site is the remainder of the field with the countryside beyond. On the northern side of Birdsedge Lane are fields, with a small stone church directly opposite the appeal site.

9. In terms of the Framework, the Council does not consider that Birdsedge is a village to which limited infilling could apply. The Council has stated that Birdsedge is not considered to be a 'sustainable village' with regards to Paragraph 89¹ of the Framework and infill development, due to limited access to shops and services. Notwithstanding the presumption in favour of sustainable development contained within the Framework, a specific assessment of the sustainability of a village is not needed or required to determine whether a proposal would or would not be inappropriate development in the Green Belt. The issue of sustainable development is a separate matter, one that has not been raised in this case.
10. The Council has previously accepted that Birdsedge is a village in terms of Green Belt policy², and has assessed the proposed development against Policy D13 of the UDP. Notwithstanding the Council's position regarding the Framework, from the information before me and my observations on site, Birdsedge is a village, and I have considered it thus in terms of Green Belt policy.
11. The appeal site is located within Birdsedge, a village to which the principle of infill development in the Green Belt could apply. Having regard to the size and position of the site, the neighbouring buildings and uses, and the number of dwellings proposed, in my view the proposal would be limited infilling and would not, therefore, be inappropriate development in the Green Belt. It would therefore accord with Policy D13 in the UDP and with the Framework, in this regard.

Living conditions of the occupiers of 2 and 4 Highfield Avenue

12. The Council's officer report notes that 'There would be no detrimental impact on residential amenity' as a result of the proposed development, however, this is based on a separation distance of 12 metres between the proposed easternmost dwelling and the rear elevations of Nos 2 and 4 Highfield Avenue.
13. The parties are in dispute regarding this separation distance. The appellant maintains that there is a separation distance of 12 metres, whilst the Council state that it could be either 10.5 metres or 8 metres, depending upon which of the submitted drawings is referred to. The plans before me are not at a measurable scale, and I was unable to gain access to the site when I visited Birdsedge. I note that Denby Dale Parish Council objected to the proposed scheme in part on the grounds of its 'overbearing nature'. However, none of the nearby residents consulted on the proposal objected to it.
14. Nos 2 and 4 Highfield Avenue are at a somewhat lower elevation than the proposed dwelling. However, the heights of the ridgelines of the proposed easternmost dwelling and the bungalows on Highfield Avenue would be similar, notwithstanding the slope of the ground. Furthermore, the eastern part of the roof of the proposed easternmost dwelling would be pitched in relation to the

¹ This is a reference to the 2012 version of the Framework; the equivalent paragraph in the 2018 Framework is paragraph 145.

² The Council refers to a previous planning permission granted in Birdsedge to support this position: Ref 2010/92840

dwellings on Highfield Avenue. These factors would limit the visual impact of the proposed dwelling. In my view, based upon my observations on site and the drawings that the Council based their decision upon, in this instance the separation distance would be satisfactory.

15. The proposed development would not therefore adversely affect the living conditions of the occupiers of Nos 2 and 4 Highfield Avenue with regards to outlook and would therefore accord with Policies BE1 (character and design), BE2 (design) and BE12 (separation distances) in the UDP, and with the Framework, in this regard.

Conditions and Conclusion

16. The Council has provided a set of suggested conditions to be attached to the planning permission granted, should the appeal be allowed, the appellant has made a number of comments in relation to the suggested conditions and has suggested a number of further conditions. I have considered these matters with regard to relevant government guidance.
17. Conditions relating to the reserved matter, the submission of the reserved matter application, the commencement of development and the approved drawings are necessary for reasons of certainty.
18. A condition requiring the production of a permeable surfacing scheme for vehicle parking areas and driveways would be necessary to protect the living conditions of future occupiers.
19. Planning Practice Guidance³ sets out that *conditions restricting the future use of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances*. However, given the small plot sizes, the close proximity of nearby properties and the sloping topography of the land in this area, such conditions would in this case, be necessary to make the proposed development acceptable in planning terms. Therefore, conditions removing permitted development rights for new extensions and buildings within the site edged red, and for new windows, doors or other openings in the north-eastern elevation of the proposed easternmost dwelling, would be necessary, in order to protect the living conditions of future and neighbouring occupiers.
20. Reference is made to a condition requiring the provision of bat / bird boxes and native planting, in the ecology section of the Council's officer report. From the evidence before me this would not be necessary to make the development acceptable in planning terms, or in any event would be addressed by the reserved matter.
21. A condition requiring the provision of a 2-metre wide footway, outside of the site edged red, for the full width of the site would not be necessary to make the development acceptable in planning terms, given the nature of Birdsedge Lane and that there is footpath on the northern side of the road.
22. A condition requiring the provision of an electric vehicle charging point would not be necessary in order to make the development acceptable in planning terms.

³ Paragraph 17 – Use of Planning Conditions

23. For the reasons set out above, and taking into account all other matters raised, I conclude that the appeal should be allowed.

Andrew Parkin

INSPECTOR



Appeal Decision

Site visit made on 5 November 2018

by **A Parkin BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20 December 2018

Appeal Ref: APP/Z4718/W/18/3204427

Wilson House Farm, Bristfield Road, Bristfield, Dewsbury WF12 0PA

- 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 D Lawrie against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2017/62/92595/E, dated 9 June 2017, was refused by notice dated 22 February 2018.
 - The development proposed is described as 'demolition of existing agricultural building and erection of replacement agricultural building'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Government published the revised National Planning Policy Framework (the Framework) on 24 July 2018. The appellant was notified of the publication and invited to make comments. No representations were received in relation to this matter within the specified timescales.

Main Issues

3. The main issues are:
 - whether the proposal is inappropriate development in the Green Belt having regard to the Framework and development plan policy
 - the effect of the proposal on land stability.

Reasons

Inappropriate Development in the Green Belt

4. The Council has referred to Chapter 9 - *Protecting Green Belt Land* of the National Planning Policy Framework. Given the date of the decision notice, this would be the superseded 2012 version of this document. The equivalent chapter in the 2018 Framework is Chapter 13 and in terms of inappropriate development in the Green Belt in relation to this appeal the text is unchanged.
5. The Framework states that new buildings are inappropriate within the Green Belt unless they comprise one of the exceptions outlined in paragraph 145. These include buildings for agriculture or forestry. I have given significant

- weight to the Framework as a material consideration in determining this appeal.
6. The Council has also referred to Policy PLP54 (buildings for agriculture and forestry) of the Kirklees Publication Draft Local Plan 2016 (PDLP), which contains criteria for determining whether new buildings for agriculture or forestry would be acceptable, including in the Green Belt. However, notwithstanding that the PDLP is a significant way through its preparation process, as a draft policy I have given it only limited weight in my decision.
 7. Wilson House Farm is on the southern side of Bristfield Road, with the appeal site itself located by the western boundary of the farm, a short distance from the road and the other farm buildings. To the south of the appeal site and the farm buildings close to Bristfield Road, the land is divided into two small fields.
 8. The appeal site includes a single storey building that is largely overgrown with vegetation. The proposal would see this building demolished and replaced with a materially larger building extending southward, with a significantly larger floor area and a dual-pitched roof with a higher ridgeline.
 9. The replacement building is described as an agricultural building and the submitted design and proposed materials are consistent with this type of use. The Council states that the appellant has not demonstrated that the building is required for a genuine agricultural purpose and would therefore conflict with Policy PLP54 of the PDLP. As mentioned above, I have given only limited weight to Policy PLP54.
 10. Paragraph 145 of the Framework simply requires a building to be used for agriculture, in order for it to be not inappropriate development. The appellant has provided a brief description of the intended agricultural use in their appeal statement. The proposed building would have an agricultural appearance, such as of a small barn. From the submitted information and from my observations on site I have no reason to doubt that the building would be used for agricultural purposes, as the appellant states.
 11. For the reasons set out above, the proposal would not be inappropriate development in the Green Belt because it would be a building for agriculture. It would therefore accord with the Framework in this regard.

Land Stability

12. Planning Practice Guidance (PPG) sets out the role of the planning system in respect of land stability, including minimising the risk and effects of land stability on property, infrastructure and the public.
13. The appellant's statement in support of their planning application provided a limited amount of information in relation to issues with historic coal mining. The appellant stated that the proposed building would be a lightweight structure with minimal loading onto the ground, and that the footings would not be at a depth that historic coal mining would be an issue.
14. The appeal site falls within a *Development High Risk Area* according to the Coal Authority (CA). The CA expressed *Substantive Concern* in respect of the proposed development. It objected to the application on the grounds that the submitted information did not adequately address the impacts of historic coal

mining. A thick coal seam is conjectured to outcrop across the appeal site, which could have been worked from the surface. The proposed development has the potential to trigger ground movement and destabilise former shallow coal mine workings. Therefore, the CA requested that a Coal Mining Risk Assessment or an equivalent document be provided, which would consider geological / mining information.

15. The Council, it seems, did not communicate this request to the applicant and no such document was provided as part of the application process. However, the Council's officer report makes reference to the CA's concerns and request for further information. Notwithstanding this, no such information has been provided as part of the appeal process, and the appellant has not addressed this issue in their appeal statement or final comments.
16. I note what the appellant says in respect of the existing building on the site not suffering as a result of ground instability, in the statement supporting their planning application. While I have no evidence to contradict this claim, nor have I any that substantiates it, such as an engineer's survey. There is also no information before me regarding the construction of the existing building, including the depth and design of any associated footings. Moreover, the proposed building would be significantly larger than the existing building, including in terms of its footprint.
17. Given the comments of the CA, and bearing in mind the circumstances set out above, in my view it is essential to establish whether the proposed development, and the nearby farm buildings, would be put at an unacceptable risk from land instability. In the absence of any substantive evidence to the contrary, I consider that a precautionary approach is necessary.
18. For the reasons above, in the absence of a Coal Mining Risk Assessment or equivalent document, I conclude that the proposed development would be likely to pose an unacceptable risk to land stability and would therefore conflict with paragraphs 170, 178 and 179 of the Framework¹. These paragraphs seek to ensure that new and existing development is not put at unacceptable risk or adversely affected by land instability.

Other Matters

19. The appellant notes that a previous application on the site did not attract any issues with regard to coal mining. The CA states that this application was a householder application and therefore exempt from the requirement to produce a Coal Mining Risk Assessment.
20. With regard to whether the proposed development represents 'any other (Green Belt) harm' in terms of the openness of the Green Belt, where development is found to be 'not inappropriate', it should not be regarded as harmful either to the openness of the Green Belt or to the purposes of including land in the Green Belt.

¹ The Council's decision notice does not refer to any development plan policies in this regard, and refers to paragraphs 120 and 121 of the Framework 2012; the paragraphs I have listed are broadly equivalent ones contained in the Framework 2018.

Conclusion

21. The proposal would not be inappropriate development in the Green Belt. However, there is insufficient information about the effect of the proposal on land stability for me to be confident that it could be carried out without an unacceptable risk to local property. I therefore conclude that the appeal should be dismissed.

Andrew Parkin

INSPECTOR



Appeal Decision

Site visit made on 5 November 2018

by **A Parkin BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 24 December 2018

Appeal Ref: APP/Z4718/W/18/3207598

Land at :- Holly View Farm, Field Head Lane, Birstall, West Yorkshire WF17 9BW

- 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 Ian Ghiloni against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2018/62/91226/E, dated 12 April 2018, was refused by notice dated 8 June 2018.
 - The development proposed is demolition of dilapidated building, former equine use, and erection of part 2-storey workshop and offices building (use class B1) and detached garage.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Government published the revised National Planning Policy Framework (the Framework) on 24 July 2018. The appellant was notified of the publication and invited to make comments. No representations were received in relation to this matter within the specified timescales.

Main Issues

3. The main issues are:
 - whether the proposal is inappropriate development in the Green Belt having regard to the Framework and development plan policy
 - if the proposal is 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 the development.

Reasons

Inappropriate development in the Green Belt

4. The Framework states that new buildings are inappropriate within the Green Belt unless they comprise one of the exceptions outlined in paragraph 145.

These include:

g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:

– not have a greater impact on the openness of the Green Belt than the existing development;

I have given significant weight to the Framework as a material consideration in determining this appeal.

5. The Council has referred to Policy PLP59 (infilling and redevelopment of previously developed land) of the Kirklees Publication Draft Local Plan 2016 (PDLP), which outlines circumstances in which the construction of new buildings on previously developed land (PDL), or limited infilling, can be considered acceptable. However, notwithstanding that the PDLP is a significant way through its preparation process, as a draft policy I have given it only limited weight in my decision.
6. PDL is defined in the Framework Glossary as *land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure*. However, this would exclude: *land that is or was last occupied by agricultural or forestry buildings*.
7. It is not disputed that the appeal site was once part of Holly View Farm. The appellant states that the previous use of the currently dilapidated building was for an 'equine use' and the building does have the appearance of a former stable.
8. I note that the Council has sought to clarify with the appellant whether the 'equine use' was separate to the farm use, and what the 'equine use' entailed, but was not able to do so. Whilst it does not necessarily follow that a stable on a farm is a building for agricultural purposes and therefore not PDL, it could conceivably be so.
9. However, even if the land was classed as PDL, or if the proposed development was considered to be limited infilling, it can only be regarded as 'not inappropriate' under paragraph 145(g) if it would not have a greater impact on the openness of the Green Belt than the existing development.
10. The Framework states that openness is an essential characteristic of the Green Belt¹. The appeal site currently contains a dilapidated building which abuts a tall stone wall by Field Head Lane. Most of the roof is missing, but it appears that it was a mono-pitched roof, sloping down from the top of the tall stone boundary wall. The southern part of the building is set back a short distance from the main front elevation.
11. There is a yard area that has been partly covered with a concrete hardstanding, and there are two metal storage containers in the southeast of the appeal site, by existing buildings at Holly View Farm. A blockwork wall topped with timber panelling is situated along the eastern boundary of the site. The northern boundary is formed by a wire fence with a small field beyond.

¹ Paragraph 133

12. The proposed development would comprise two buildings and an associated yard. A 2-storey, rectangular-shaped workshop/office building, with a dual-pitched roof and with a first floor terrace would be located where the dilapidated building currently stands. A new free-standing garage, also with a dual-pitched roof would be located in the northeastern corner of the appeal site on currently vacant land. The two metal storage containers would be removed as part of the proposed development.
13. The appeal site is reasonably well screened from surrounding land, including by the existing buildings at Holly View Farm. The removal of the storage containers would have a positive effect on the openness of the Green Belt. However, due to their position within the site and their height, which is lower than the adjacent farm buildings and eastern boundary wall, this effect would be limited.
14. The proposed workshop / office building would have a slightly larger footprint than the building it would replace, but would have a significantly greater massing as a result of its design, its greater height and its dual-pitched roof. The ridgeline of the roof would extend some 1.3 metres above the retained stone boundary wall by Field Head Lane according to the submitted drawings. The roof of the proposed workshop / office building would therefore be visible above the retained stone wall, whilst the building itself would be visible in views from the north and the east. The larger size, height and massing of the proposed workshop / office building would significantly reduce the openness of the Green Belt in comparison to the existing situation.
15. The proposed garage due to its design, height and massing would have a significantly negative effect on the openness of the Green Belt in comparison to the existing situation, where no building exists.
16. The appellant states that the proposal would be located within an existing cluster of farm buildings on the edge of the Green Belt rather than on open land. Whilst this is true, the proposal would still be harmful to the openness of the Green Belt, as set out above.
17. For the reasons given above, irrespective of whether the land is PDL or the proposal is limited infilling, it would be harmful to the openness of the Green Belt. It would therefore be inappropriate development in the Green Belt and would conflict with the Framework, in this regard, and I give this harm substantial weight.

Other Considerations

18. There is no dispute between the main parties in terms of non-Green Belt harm from the appeal development, and no representations from neighbouring properties are listed by the Council. These are therefore neutral factors which do not weigh for or against the proposal.
19. The appellant wishes to consolidate various business activities onto the appeal site, however, it is not evident that this consolidation is needed for the business to continue to function. I have therefore given this only limited weight.
20. The appellant states that the proposed development would return the largely derelict site to a meaningful use and would improve its appearance. I agree

that the derelict appearance of the site would be improved and give weight to this statement.

21. The appellant refers to previous planning permissions for a residential development at the appeal site². These planning permissions have now lapsed, and since these approvals were granted, the planning policy framework has changed considerably. I therefore give this very limited weight.

Conclusion

22. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. I find that the other considerations in this case, as set out above, do not clearly outweigh the totality of the harm to the Green Belt that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist. The proposed development would therefore conflict with the Framework, in this regard.
23. For the reasons given above, the appeal should be dismissed.

Andrew Parkin

INSPECTOR

² Council Ref. App.2008/62/93963/E1.
This permission was extended in 2012 - Council Ref. App.2012/62/90065/E but has now expired.



Appeal Decision

Site visit made on 17 December 2018

by **P Eggleton BSc(Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 8th January 2019

Appeal Ref: APP/Z4718/D/18/3214636

11 Hollybank Avenue, Upper Batley, Batley WF17 0AQ

- 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 A Laher against the decision of Kirklees Council.
 - The application Ref 2018/62/90390/E, dated 5 February 2018, was refused by notice dated 3 September 2018.
 - The development proposed is double and single storey extensions; and increase in ridge height, with associated material alterations.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect on the living conditions of the residents of 9 and 14 Hollybank Avenue with regard to privacy and outlook; and the effect on the character and appearance of the area.

Reasons

3. In addition to the Council's concern that the proposal would be overbearing, other concerns have been raised with regard to privacy and design. I have included these within the main issues.

Impact on 14 Hollybank Avenue

4. The existing property has large forward facing windows that provide a view towards the side elevation and front garden of 14 Hollybank Avenue. A view towards the rear conservatory of that property is also possible from a more constrained angle. The property formally had a front balcony, central to the frontage of the house, which would have offered a wider range of views.
 5. The proposed two storey gable would extend towards the boundary with number 14. Bedroom 3 would have a small balcony under the projecting gable roof. The set-back of the bedroom, within the extension, would restrict the angles of views from its windows but it would bring residents closer to the boundary and the side facing bedroom and dining room windows of number 14. Although secondary windows, which already have a relatively intimate relationship with the existing neighbouring bedroom window, the distance between them would be reduced.
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6. Whilst the reduction in window to window distances would be unacceptable, of greater concern would be the proposed balcony. This would allow a wide range of views and activity even closer to the windows of the neighbouring property and its rear conservatory. This impact would be significantly greater than the original front balcony due to its revised position. It would unacceptably reduce existing privacy levels within the neighbouring property.
7. The outlook from the side facing windows and conservatory of number 14 would be dominated by the new gable. In addition to the loss of privacy, the proposal would also be unacceptably overbearing for the neighbouring residents. There would be conflict with Policy D2(v) of the Kirklees Unitary Development Plan 1999 (UDP) as the proposal would prejudice residential amenity. Policy PLP 24(b & c) of the Kirklees Publication Draft Local Plan (DLP) includes similar requirements. As these policies generally accord with the amenity requirements of the *National Planning Policy Framework 2018*, I afford them considerable weight.
8. The proposal includes a large single storey side extension that would extend close to the dividing hedge and have large windows that would face directly towards the neighbouring conservatory. Given its proximity and relative height, although the hedge would provide some screening, it would be an imposing new feature and the large windows would be an unneighbourly addition. A fence is proposed adjacent to the hedge which, if of sufficient height, would limit the impact of the side extension. However, a high fence immediately adjacent to a mature hedge would be a regrettable intervention. Whilst the fence and the side extension may be erected as permitted development, they represent negative design features.

Impact on 9 Hollybank Avenue

9. The proposal would increase the height of the property and add a large dormer to the rear roof slope and to the front, over the garage. There would be a replacement flat roofed side extension close to the boundary with 9 Hollybank Avenue and a deep rear single storey extension. Although the extended building would be more imposing when in the neighbouring house and its gardens, I am not satisfied that it would be unacceptably overbearing.
10. The deep flat roofed rear extension would incorporate a raised terrace. This would allow views back towards the rear garden of number 9. Although not of the most private area of garden, these views and any significant level of activity, at this raised level, would unacceptably harm the living conditions of the neighbouring residents when in their garden. A screen is depicted on the 3D images but it is not shown on the submitted plans. This could be required by condition. Such a screen, if of permanent construction and sufficient height, would address my concerns with regard to the impact on the neighbouring residents. If located as shown on the 3D images, it would be far enough from the boundary to ensure that it would not be unacceptably overbearing.

Character and appearance

11. The proposal would significantly alter the appearance of the front of the dwelling resulting in it having a more contemporary appearance. Although it is clear from the representations that it would not be to everyone's taste, the re-

modelling would be a positive design intervention with regard to the appearance of the property when viewed from Hollybank Avenue.

12. To the rear of the property, there would be a very large box dormer that would extend close to the height of the raised ridge. Although a similar dormer, set within the lower existing roof, may benefit from permitted development rights, this element would not be a positive feature of the overall design. Similarly, the high solid first floor screen would not be an attractive addition to the rear of the property. These elements would represent poor design. Although to the rear, they would be clearly visible from the adjacent footpath which appears to fall within, or is adjacent to, the boundary of the conservation area. Although they would not result in harm to the setting of the conservation area, they would detract from the character and appearance of this group of houses.
13. The benefits of the improved overall appearance of the front of the property would not be sufficient to outweigh or justify the shortcomings with regard to the necessity for the large rear raised screen. Despite the potential for other works to be carried out without the need for formal planning permission, the large high dormer and the introduction of boundary fencing adjacent to mature hedging, would detract from the design quality of the development overall. I find conflict with the design requirements of UDP Policy BE1(ii) and the similar requirements of DLP Policy PLP 24. The proposal would also fall short of the aspirations of paragraph 127b of the *Framework* which requires that developments are visually attractive as a result of good architecture, layout and appropriate and effective landscaping. Given the design shortcomings, the proposal would not represent sustainable development as defined by the *Framework*.

Other matters and conclusions

14. I have had regard to the positive comments made by some residents and the support offered by the Council's officers. It is also apparent that the appellant has taken a positive approach in seeking to overcome the concerns raised. Although I must consider the proposal as submitted, I have limited the weight that I have afforded to elements that could be undertaken without consent.
15. The proposal would result in substantial additions to this property and whilst some elements would improve its appearance, others would detract from it. A more considered design could address these concerns. The proposal would not meet the highest of design standards, particularly the rear raised terrace. My main concern relates to the impact on the living conditions of the residents of 14 Hollybank Avenue with regard to loss of privacy and the increase in dominance of the works to the frontage. The matters put forward by the appellant and the support offered, are not sufficient to outweigh these concerns. I therefore dismiss the appeal.

Peter Eggleton

INSPECTOR



Appeal Decision

Site visits made on 4 and 5 December 2018

by Geoff Underwood BA(Hons) PGDip(Urb Cons) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 9 January 2019

Appeal Ref: APP/Z4718/W/18/3206042

Land off Bath Street, Low Town, Kirkburton, Huddersfield HD8 0SD

- 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 H Ayres against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2016/62/90773/E, dated 4 March 2016, was refused by notice dated 31 January 2018.
 - The development proposed is the erection of one dwelling.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mrs H Ayres against Kirklees Metropolitan Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The first part of the site address in the heading above is taken from the Council's decision notice as it provides a more comprehensive description of the development's location.
4. The Council's decision notice refers to the development's effect on 'heritage aspects'. I have taken this as a typographical error although, other than the Conservation Area, the reason for refusal does not specify which designated heritage assets the Council consider would be affected. However, both the Council and the appellant have referred to nearby listed buildings; the Church of All Hallows (the Church) and Yew Tree Farm, 29 and 31, Lowtown (Yew Tree Farm), listed at grade I and II respectively, and I have determined the appeal on that basis.
5. Since the Council took its decision and the appeal was made the National Planning Policy Framework (the Framework) has been revised and I have therefore determined the appeal in light of the new version of the Framework. The main parties are aware of the changes and I have taken any comments made in response to the revised Framework into account.

Main Issues

6. The main issues raised by this appeal are the effect the development would have on the character and appearance of the area and on the significance of

designated heritage assets, in particular Kirkburton Conservation Area, the Church and Yew Tree Farm.

Reasons

Character and appearance

7. The appeal site is an undeveloped area of land, largely enclosed by a low dry stone wall. To one side is a large detached house of a recently constructed appearance, 48 Low Town. To the other side is a cemetery and the rear of the site adjoins open countryside. On the opposite side of the lane from the site is a domestic garden beyond which is the older churchyard rising up the hill towards the Church.
8. The open, undeveloped character of the site has much in common with the countryside it adjoins and it marks a change in character to the more built up area of Low Town to the west. Along with the garden and churchyard opposite, and the cemetery to the side, it forms part of a largely undeveloped area extending south from the Church. These spaces are relatively green and open. They merge with open countryside to the south, separating the more built up areas of Low Town and development to the east of Huddersfield Road. The locally distinctive combinations of townscape and open spaces create a positive and attractive character and appearance to which the appeal site contributes.
9. The pastoral character and appearance of the site itself would be lost as a result of the sizeable detached house and its situation within the site. This would markedly erode the green, open space at the edge of the built up part of the village. Whilst it would not be so extensive as to entirely sever those spaces to the north of the lane from those to the south, it would nevertheless have a significant intrusive and enclosing effect which would harm the character and appearance of the area.
10. The design and appearance of the dwelling itself would relate reasonably well to existing buildings, and particularly No 48. Its plan form and mass would create a firm visual end to the group of largely traditional buildings on either side of the lane to the west. I note that the appellant has taken note the Council's design advice in this respect. Whilst the design of the building would not be visually incongruous considered just in its built context, this attribute would nonetheless have little influence on the harmful effect of the building eating into a presently open area which is important to local character.
11. Although fields and the adjacent cemetery to the south are in Green Belt the development would be outside it and not affect that designation which has little bearing on the consideration of the scheme. The development would not be harmful by way of its extension of the built form of the village adjacent to this open rural aspect but through the incursion into the open wedge of largely undeveloped space which forms part of the character of the village. The site's location outwith the Green Belt does not indicate that development of the site would be acceptable in principle.
12. Although the development would be on a site without notation on the saved Unitary Development Plan¹ (UDP) proposals map, the scheme would prejudice visual amenity and the character of its surroundings, contrary to saved UDP Policy D2. The development would not retain that sense of local identity which

¹ Kirklees Unitary Development Plan, Written Statement, 2007.

is derived from the open, undeveloped character of the site and consequently the development would also be contrary to saved UDP Policy BE1. It would not meet the Framework objective that developments should, amongst other criteria, be sympathetic to local character and surrounding landscape setting.

13. However, as the design of the building itself would be in keeping with some attributes of surrounding development it would not conflict with saved UDP Policy BE2 in that respect.

Conservation Area

14. As the appellant points out that no character appraisal or similar has been presented and the Council have provided limited evaluation as to the contribution the site makes to the Conservation Area. Nevertheless, on the basis of the evidence before me and from my observations, the Conservation Area derives considerable significance from the varied and historic townscape of largely stone buildings interspersed with mature trees where the topography adds character and drama to streets and key buildings. Open areas make an important contribution to its character and appearance both by way of their historic associations and the spaces they create between built up areas.
15. For the reasons set out in the section above, the site makes a contribution to such an open area. It therefore also contributes to the significance of the Conservation Area as part of the green gap of largely undeveloped land which leads up from the village fringe through the churchyard to the Church's commanding position as a landmark building in the Conservation Area.
16. Whilst the design and materials of the building itself would complement its neighbours, its intrusive effect of effectively losing the open and undeveloped space which exists on the site would considerably undermine the character and appearance, and consequently significance, of the Conservation Area. Whilst the development may accord with the first part of saved UDP Policy BE5 which requires respect for architectural qualities of surrounding buildings and materials, it would conflict with the latter part as it would not contribute to the preservation or enhancement of the Area.
17. I have noted that the Council's Conservation and Design Group Leader supported the scheme in light of revised drawings. However, in paying special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area, this does not lead me to a different conclusion on this issue.

The Church

18. The Church is a designated heritage asset of the highest national significance which it derives in part from its great age, architecture and built form, materials and many fine features of architectural and historic distinction inside and out. As mentioned above, its situation relative to the village and churchyard also makes an important contribution to the character and appearance of the area. This wider setting, including the surrounding churchyard contributes to revealing and understanding its significance.
19. The insertion of a sizeable building and loss of an open area would change an aspect of this setting. However, the new house would be a considerable distance away from the Church. Although it would be seen from the Church looking down the slope through the churchyard, the combination of the

distance and intervening trees would limit intervisibility even when not in leaf. There is no suggestion that there are any historic links between the site and the Church that would contribute to its significance.

20. The building would appear as a relatively minor incursion into views of the countryside beyond the village from the elevated vantage point of the Church. The building would only have a very limited effect on how the Church would be experienced from that surrounding countryside. Overall the development would have a neutral effect on the significance that the Church derives from its wider setting.

Yew Tree Farm

21. The significance of Yew Tree Farm depends to a considerable extent on its age, history, architecture, materials and architectural and other features of interest. It also gains some significance from its setting by way of its juxtaposition within a tightly arranged but irregular grouping of older buildings to one side and its spacious gardens to the other.
22. The proposed development would affect this setting however there is no information to suggest that there is any historic or functional link between the listed building and the appeal site. Yew Tree Farm's significance does not depend on the open nature of the appeal site and the proposed dwelling, although large, would, by extending the built up context of the listed building, not prevent Yew Tree Farm from being experienced from within its setting. Consequently, the scheme would not harm the significance Yew Tree Farm obtains from its setting but rather would have a neutral effect and thereby preserve that significance.

Balance

23. I have found harm in terms of the development's effect on the significance of one designated heritage asset but not the other two. Given the scale of the site and development in the context of the Conservation Area as a whole, that harm would be less than substantial in the Framework's terms. These are circumstances where the Framework requires such harm to be weighed against the public benefits of the proposal.
24. The proposal would have the public benefits of delivering an additional home in a location accessible to services and facilities, which would be enhanced given housing land supply shortfall reported by the Council but be limited in terms of its scale. The proposed junction improvements could also be of benefit to all vehicular users of the lane. These benefits carry moderate weight in support of the proposal. Avoidance of harm in other respects does not amount to public benefits weighing in support of the appeal. Nevertheless the designated heritage asset's conservation carries great weight and less than substantial harm does not equate to the harm that would be caused not carrying considerable importance and weight. In this case public benefits would not outweigh the harm.
25. I am conscious that planning permission was granted for a house on the site in 1976 although I have only been presented with limited information. It would have preceded the current development plan and it is not certain that heritage designations were the same. In any event a subsequent proposal, albeit also including a larger site opposite, was dismissed at appeal and the earlier

permission only carries very limited weight. As the appellant points out, there have been changes in national Green Belt and heritage policy since that appeal, the UDP was only draft at that time and it was for a materially different scheme before No 48 was built which reduces the weight it carries. Nevertheless, I note that the Inspector made a similar assessment of the character of that part of the village and reached similar conclusions in respect that development's effect on the rural character and attractive appearance of this part of the Conservation Area.

26. There would also be harm to the character and appearance of the area considered in more general terms. Although it would not conflict with all Policies cited or parts of them, considered overall the development would be contrary to the development plan. The Council have also pointed towards an emerging plan and the proposal would not accord with criterion a. of Local Plan² Policy PLP 24 albeit that there may not be conflict with other criteria. That Policy, whilst a consideration, cannot be afforded the weight of the adopted development plan given its stage of preparation.
27. As the Council cannot demonstrate a five year supply of deliverable housing sites the Framework considers that the policies which are most important for determining the application are out-of-date. Nevertheless, as the application of policies in the Framework that protect assets of particular importance, in particular designated heritage assets, provides a clear reason for refusing the development proposed, this does not mean that planning permission should be granted in light of the approach in paragraph 11 of the Framework.
28. The harm to the character and appearance of the area and Conservation Area, and conflict with development plan policies, would outweigh the benefits of the scheme and material considerations do not indicate otherwise.

Other Matter

29. I can appreciate that the appellant will have taken comfort from the lack of objections at pre-application stage and design advice received whilst the application was being considered. However, such advice would have been given without prejudice and in any event I have determined the appeal on its merits so this does not provide a convincing reason to alter my conclusion.

Conclusion

30. For the above reasons, the development would harm the character and appearance of the area and the significance of a designated heritage asset, contrary to the development plan and the Framework. The appeal is therefore dismissed.

Geoff Underwood

INSPECTOR

² Kirklees Publication Draft Local Plan.



Appeal Decision

Site visit made on 26 September 2018

by W Johnson BA (Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 January 2019

Appeal Ref: APP/Z4718/W/18/3205394

Land on south east side of Timothy Lane, Batley, West Yorkshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr C Blakeley against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2018/60/90560/E, dated 16 February 2018, was refused by notice dated 11 April 2018.
 - The development proposed is the construction of one detached bungalow with all matters reserved, except for access to the site (access within the site is reserved).
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The Revised National Planning Policy Framework (the Framework) was published in July 2018, after the appeal was lodged. I have had regard to the Revised Framework in reaching my decision.
3. Outline planning permission is sought, but with all matters reserved, except for access. I have determined the appeal on this basis.
4. The Council has referred to policies contained within the emerging Kirklees Local Plan which, although in the process of examination it has yet to be adopted by the Council. Consequently, the weight that I can attach to the policies contained within the emerging plan is limited and the statutory development plan for the purposes of the determination of this appeal remains as the Kirklees Unitary Development Plan (2007) (UDP). However, I consider the policies relevant to this appeal to be broadly consistent with the Framework.

Main Issues

5. The main issues are:
 - Whether the proposed development would be inappropriate development in the Green Belt for the purposes of the development plan and the Framework;
 - the effect of the proposal on the openness of the Green Belt;
 - whether the harm by reason of inappropriateness, and any other harm would be clearly outweighed by other considerations. If so, would this

amount to the very special circumstances necessary to justify the proposal.

Reasons

Whether the proposal would be inappropriate development

6. Paragraph 143 of the Framework makes it clear that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 145 provides that the construction of new buildings should be regarded as inappropriate subject to exceptions.
7. Policy D13 of the UDP requires infill development within existing settlements in the Green Belt to be permitted where : i) the site is small, for no more than 2 dwellings and within an otherwise continuously built up frontage, or ii) the site is small and largely surrounded by development, and iii) no detriment will be caused to adjoining occupiers of land or to the character of the surrounding area.
8. Paragraph 145 of the Framework, amongst other things, lists the exceptions for new buildings in the Green Belt. In particular Paragraph 145 g) specifies that limited infilling or the partial or complete redevelopment of a previously developed site, whether redundant or in continuing use as an exception providing it would not have a greater impact on the openness of the Green Belt than the existing development. The appellant argues that the proposal would be a limited infill development. As a result, the appellant states that based on the context of the site, including its proximity to surrounding properties, the proposal should be considered as being within the settlement of Upper Batley.
9. On the evidence before me the appeal site does not appear to be located with any defined settlement boundary, and I note the dispute between the parties on whether the appeal site is located within Upper Batley. I noted the presence of the 'Welcome to Batley/Upper Batley' road sign on my site visit, which is sited a moderate distance along the road, to the left of the appeal site when viewed from the front. I do agree that this sign indicates to road users and pedestrians that they are entering Batley/Upper Batley. However, I consider that the sign is located in this location primarily due to the siting of the existing dwellings that are on the opposite side of the road to the appeal site, and first encountered by users of the road, from this direction. This does not alter the fact that the site is not located within a defined settlement boundary, and that the appeal site is located within the open countryside.
10. The question is whether the development would constitute limited infilling. There is no detailed definition of 'limited infilling' in the UDP. The character of the site is very much of open countryside rather than a limited gap between other development or of being within an otherwise built up frontage. Whilst the appeal site is located adjacent to a dwelling, and faces further dwellings across the road, it has large agricultural fields to the left side of the appeal site when viewed from the front. The site significantly contributes to the open rural setting of Batley/Upper Batley. For these reasons I do not consider that the development would constitute 'infill', but would be regarded as an extension of the existing built environment.

11. Consequently, I conclude that having carefully considered the surrounding area and character of the site, the proposed dwelling would be contrary to Policy D13 of the UDP. Additionally, the scheme would not constitute a form of development identified in paragraph 145 of the Framework as an exception to inappropriate development in the Green Belt. Accordingly, I conclude that the proposed dwelling would be inappropriate development in the Green Belt and would therefore be at odds with the Framework in this regard.

Effect on openness

12. Paragraph 133 of the Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It identifies openness as an essential characteristic of the Green Belt. There is no definition of 'openness' in the Framework, but it is commonly taken to mean the absence of built or otherwise urbanising development rather than being primarily about visual effects.
13. Having carefully considered the characteristics of the site and its surroundings, I find that the appeal site is relatively open and is adjacent to the area of open land to the east, away from No 57. Whilst the proposal is for outline permission only, the effect of erecting a dwelling on this site, and the associated domestic paraphernalia, that would be associated with a residential development can still be determined. The site's existing connection to surrounding fields, countryside and Green Belt means it would inevitably have an adverse impact on the openness of the Green Belt. It would result in a significant built form where there is presently none. As such, the visual impact of the proposed dwelling on openness would be exacerbated. Furthermore, it would result in the spread of development eastwards into the countryside.
14. The proposed dwelling, albeit a bungalow, would still be a development of significant bulk and massing and would be a dominant feature in the area. As such, it would have a material visual impact on the openness of the area. This impact would be significant as the site presently has no built development. In addition, the proposal would conflict with the fundamental aim of Green Belt policy by resulting in urban sprawl and its purpose to safeguard the countryside from encroachment.
15. I note the appellant's argument that the proposal would be infill development on previously developed land. Notwithstanding this, given my assessment of the appeal proposal as an extension of the built environment, rather than infill, I find this argument to have little weight in this case. Furthermore, and in any event, whether the proposal would be on previously development land is not relevant as I consider that the proposal would fail to meet the relevant test in paragraph 145 and would therefore be clearly harmful to the openness of the Green Belt.
16. Consequently, I conclude that the proposed dwelling would have a significant adverse impact on Green Belt openness and its related purpose of safeguarding the countryside from encroachment. Therefore, it would be contrary to the relevant Green Belt guidance within the Framework. Accordingly, I must give such Green Belt harm substantial weight in my assessment and determination of this appeal.

Other considerations and whether very special circumstances exist

17. Paragraph 144 of the Framework requires decision makers to ensure that substantial weight is given to any harm to the Green Belt. Other considerations in favour of the development must clearly outweigh the harm.
18. The appellant argues that as, in their view, the proposed dwelling would be infill development there is no requirement to demonstrate very special circumstances which would justify the proposal in the Green Belt. However, given my findings on inappropriateness in the Green Belt and the nature of the proposal not being infill development, I find this argument to have little material weight in this case.
19. Notwithstanding this, the appellant states that very special circumstances exist as the Council is not able to demonstrate a 5 year supply of deliverable housing sites, which is not disputed by the Council. This represents a housing shortfall. Despite the deficiency in housing land supply, the presumption in favour of sustainable development, as set out in paragraph 11 of the Framework, does not apply because specific policies relating to the Green Belt indicate development should be restricted in this case.
20. Footnote 6 of paragraph 11 specifically refers to land designated as Green Belt as falling within the categories of the Framework policies indicating development should be restricted. Therefore, while I can give some weight to the benefit of providing an additional dwelling in an area where there is a shortfall in supply, I cannot give any appreciable weight to the guidance to grant planning permission contained in paragraph 11. I note the reference to an appeal decision¹ in regard to the Council's housing supply, but notice that the appeal site in this instance was not located within the Green Belt, which differs from the case before me, I therefore give it limited weight.
21. Whilst I acknowledge there would be some limited economic and social benefits resulting from the development they are not sufficient to outweigh the harm identified above. My finding remains for the reasons indicated that the site does not accord with local or national Green Belt policy. Additionally, concerns have been expressed by neighbouring occupiers. However, I have considered this appeal proposal on its own merits and concluded that such matters would not affect the conclusions I have reached on the main issues.
22. Taking account of the above and all of the evidence, I find there are no other matters before me which demonstrate the very special circumstances required that would outweigh the substantial weight given to the Green Belt harm resulting from the proposed development were it allowed.
23. Consequently, I conclude that very special circumstances, as identified in the Framework, do not exist. Accordingly, the proposed dwelling would be at odds with the relevant sections of the Framework regarding development in the Green Belt in terms of inappropriateness and openness.

Conclusion

24. The proposal would be inappropriate development in the Green Belt which is harmful by definition, and there would be a reduction in openness. According to the Framework substantial weight must be given to any harm to the Green

¹ APP/Z4718/W/16/3147937

Belt. I have balanced these factors against the weight of all the other considerations raised in support of the application. I have reached the view that the considerations in support of the proposal do not outweigh the harm that would be caused.

25. Accordingly, for the reasons given above, and having regard to all matters raised, the appeal is dismissed.

W Johnson

INSPECTOR



Appeal Decision

Site visit made on 4 January 2019

by J D Westbrook BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th January 2019

Appeal Ref: APP/Z4718/D/18/3215787

6 Churchbank Way, Dewsbury, WF12 9DA

- 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 Y Azad against the decision of Kirklees Metropolitan Council.
 - The application Ref 2018/62/92294/E, dated 13 July 2018, was refused by notice dated 8 October 2018.
 - The development proposed is the construction of a rear double-storey extension with a front single-storey extension.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of a rear double-storey extension with a front single-storey extension at 6 Churchbank Way, Dewsbury, WF12 9DA in accordance with the terms of the application, Ref 2018/62/92294/E, dated 13 July 2018, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plan: PL-01
 - 3) The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those used in the existing building.

Main Issue

2. The main issue in this case is the effect of the proposed rear extension on the living conditions of the occupiers of No 4 Churchbank Way and No 57 Ashfield by way of outlook.

Reasons

3. No 6 is a semi-detached house, situated on the south-eastern side of Churchbank Way. It has a two-storey side extension that is attached to the single-storey garage building at the adjacent No 4. It also has a large conservatory to the rear and a small single-storey rear extension to the side of the conservatory. The proposed development would involve the demolition of the existing rear extensions and the construction of a new full-width rear extension, some 5 metres deep at ground floor level and 3 metres deep at first floor level. It would also involve the construction of a small projection to the front of the existing side extension.

4. The property benefits from a recent planning permission for a development proposal that is very similar to that relating to this current appeal, the only exception being that the already approved first-floor rear element would have a more restricted width. The existence of this recent permission represents a significant fall-back position that I must take into account. Since the front projection, the ground-floor rear extension and much of the first-floor rear extension can be constructed using the earlier permission, the only issue with regard to this current proposal is the effect of widening the first-floor element by a little under 2.5 metres to the boundary with No 4.
5. Saved Policy BE14 of the Council's Unitary Development Plan (UDP) indicates that unless a proposal would have a detrimental effect on visual amenity, adjoining dwellings or any occupier of adjacent land, extensions to semi-detached dwellings will normally be permitted where the proposal is to the rear and does not exceed 3.0m in overall projection. In this case, the proposed first-floor extension would not exceed 3.0 metres in overall projection. The earlier permission, in common with this current proposal, would result in the first-floor extension being built up to the boundary with No 8 Churchbank Way. It would also result in the first-floor extension having an overall width of somewhat over 5 metres, whereas in the current scheme, it would be a little less than 8 metres wide and would extend to the boundary with No 4.

Impact on No 4 Churchbank Way

6. The Council accepts that the projection is limited to 3m, which is in line with the advice set out in policy BE14 of the UDP, but it contends that the land level difference between Nos 4 and 6 exaggerates the overbearing impact of the proposed extension and that the harm caused to the amenities of the occupiers of the adjoining 4 Churchbank Way would be unacceptable. However, from my inspection of the site, the difference in levels would appear to be very small and the two main dwellings are separated by the width of the garage at No 4, unlike the situation at the boundary between Nos 6 and 8. Moreover, there are no dwellings immediately to the rear of No 4, and the proposal at No 6 would have no impact on the relatively undeveloped and "soft" views to the east and south-east currently available to the occupiers of No 4. Finally, since the proposed extension would be located to the north-east of No 4, it would, therefore, have negligible impact on light reaching the rear elevation of No 4.
7. In the light of the above, I find that the proposed first-floor extension at the appeal property would not result any significant harm to the living conditions of the occupiers of No 4 Churchbank Way by way of outlook.

Impact on No 57 Ashfield

8. The Council contends that the widening of the first-floor element of the proposed extension over that already approved would result in a significantly overbearing and oppressive outlook at No 57. The Council also refers to differences in land levels, although it would appear that any such difference is minimal. No 57 has a large full-width, two-storey rear extension, but the rear boundary between No 57 and No 6 currently includes high and relatively dense conifer trees, such that any inter-visibility is restricted. The increased width of the proposed first-floor extension at No 6 would not result in any projection any further out than the approved first-floor extension. Moreover, the increase in roof height associated with the additional width would be very slight, and the roof ridge would remain well below the level of that of the main roof.

9. In the light of the above, I find that the proposed first-floor extension at No 6, by virtue of its limited additional width and limited increase in overall height when compared with that already approved, would have no significant adverse impact on the outlook of the occupiers of No 57.

Conclusion

10. In determining this appeal, I have had regard to the significant fall-back position that currently exists with regard to the appeal property. I conclude that the very limited increases in width and height over that fall-back position, coupled with the configuration of the appeal property in relation to neighbouring properties, are such that the proposal would have no significant detrimental impacts on the living conditions of the occupiers of those neighbouring properties by way of outlook. On this basis, it would not conflict with Policy PLP24 of the Council's Draft Local Plan, or with Policies D2 and BE14 of the UDP, all of which require development to ensure high standards of residential amenity, and to avoid detrimental effects on that amenity.

Conditions

11. I have attached a condition relating to plans because it is necessary that the development shall be carried out in accordance with the approved plans for the avoidance of doubt and in the interests of proper planning. I have attached a further condition relating to materials in the interests of the visual amenities of the area.

J D Westbrook

INSPECTOR



Appeal Decision

Site visit made on 4 December 2018

by Geoff Underwood BA(Hons) PGDip(Urb Cons) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 21 January 2019

Appeal Ref: APP/Z4718/W/18/3204703

Land at Northgate Retail Park, Albion Street, Heckmondwike WF16 9RL

- 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 London & Cambridge Properties Limited against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2017/62/93674/E, dated 20 October 2017, was refused by notice dated 1 May 2018.
 - The development proposed is the erection of building for use within class A1/A3 coffee shop with external seating area.
-

Decision

1. The appeal is allowed and planning permission is granted for the erection of building for use within class A1/A3 coffee shop with external seating area at Land at Northgate Retail Park, Albion Street, Heckmondwike WF16 9RL in accordance with the terms of the application, Ref 2017/62/93674/E, dated 20 October 2017, subject to the conditions in the schedule attached to this decision letter.

Preliminary Matter

2. Since the Council issued its decision and the appeal was made the National Planning Policy Framework (the Framework) has been revised. The main parties are aware of the change and I have made my decision in light of the revised Framework.

Main Issues

3. The main issues raised by this appeal are the effect the development would have on the character and appearance of the area and on the living conditions of occupiers of 3 Jeremy Lane and 24 and 26 Albion Street.

Reasons

4. The appeal site is presently a grassed area adjacent to a surface car park serving a retail park and has a totem sign advertising businesses in the park on it. The proposed building would be located on the upper part of the site level with the car park with a modest grass verge sloping down adjacent to Jeremy Lane and Albion Street. The building would be in an elevated situation relative to the end of Albion Street and Jeremy Lane which itself is on an incline sloping down to the south west.

Character and appearance

5. The site and its immediate surroundings of the retail park car park are open and presently create very little definition to the streets it adjoins, in contrast to the largely built up and strongly defined frontages of the other side of the roads and surrounding streets largely lined with traditional stone built dwellings. The proposed building would be of a single storey and relatively simple form with a parapet at roof level and curved glazing at the corner with Albion Street and Jeremy Lane. This would create a relatively strong built feature at the junction with the partly curved plan form responding positively to its corner situation. By creating a more coherent built frontage at a corner point the development would make a positive contribution to the townscape of the area.
6. Using stone materials would assist in assimilating the building into its environs including the nearby dwellings and existing retail park buildings. The simple design with extensive glazing at the corner point and a strong parapet line would differ from the traditional two storey houses with pitched roofs. However this contrast would not be a harmful one and the limited height would help to limit the effect on occupiers of houses opposite.
7. Overall the proposed building would enhance the character and appearance of the area. This aspect of the development would accord with saved Kirklees Unitary Development Plan, 2007 (KUDP) Policies D2, BE1 and BE2 which, together and amongst other criteria, require development not to prejudice the character of its surroundings, be visually attractive, create a sense of local identity, and respect surrounding development.

Living conditions

8. Although single storey, the building's height and relative elevation would mean that it would appear as a prominent feature from windows serving habitable rooms in Nos 3, 24 and 26, particularly given the close proximity of the existing and proposed buildings to one another.
9. This would change the relatively open aspect those existing properties currently enjoy at the front, an effect which would be most noticeable from No 26 whose ground floor windows would look directly onto the site although its floor is slightly raised up relative to street level, as is that of No 24. The outlook from the latter would be affected to a more limited degree given the offset situation the coffee shop would have relative to it. No 3 is set at an angle to the site but lower than it. As a result, occupiers of all three properties would experience an enclosing effect from ground floor windows to varying degrees.
10. As substantial areas of the proposed corner window would be treated with obscure glazing, this would largely avoid direct overlooking of windows to habitable rooms in nearby dwellings and thereby a loss of privacy. Those properties will already experience a degree of loss of privacy given their public aspects close to footways adjacent to busy roads near a town centre. Nevertheless, the proximity of the coffee shop window to nearby dwellings and its large size would result in a perception of overlooking from a static location being experienced in ground floor rooms served by windows facing the site.
11. Considered together these intrusive effects would give rise to limited harm to the living conditions of occupiers of Nos 3, 24 and 26. This aspect of the

development would be contrary to criterion v of saved KUDP Policy D2 which requires development to avoid prejudice to residential amenity.

Overall balance

12. The limited harm to neighbours' living conditions carries modest weight against the development. However the development would have benefits in terms of townscape enhancement, economic benefits by way of employment and wider contribution to the economy of the town as well as some benefits in providing retail services which together carry considerable weight. Considered overall these benefits would outweigh the harm to neighbours' living conditions.
13. Whilst the development's effect on living conditions would breach part of a particular policy, considering the development plan as a whole, overall the development would comply with the development plan. Although not afforded full weight given its stage of preparation, the development would similarly overall accord with the good design aspirations of emerging Kirklees Local Plan Policy PLP 24 albeit that it would not fully meet the requirements of criterion b.
14. Overall the development takes the opportunities available for improving the character and quality of the area and the way it functions, contributing to the Framework's aspiration of achieving well-designed places.

Other Matters

15. I have noted the petition against the development as well as the specific concerns of interested parties about other effects of the development.
16. It is evident from the neighbours' reports and the appellants' traffic surveys that there is existing congestion associated with vehicles visiting the retail park at certain times. Bearing in mind the appellants' estimates, even if additional vehicle visits associated with development are more than expected this would be unlikely to materially worsen present traffic conditions outside the site on Albion Street or elsewhere. Whilst an additional use adjacent to an existing fast food outlet with drive through facilities might lead to more competition for spaces or vehicle conflicts there is no substantive evidence that this would lead to unacceptably adverse effects with the proposed access and circulation improvements.
17. As pedestrians already traverse the car park to visit facilities, either from their cars or elsewhere, it is unlikely that an additional destination would lead to harmful effects on pedestrian safety. There is no substantive evidence that emergency vehicles could not service the development. Overall, with the mitigation proposed, the development would not result in an unacceptable impact on highway safety and the residual cumulative impacts on the road network would not be severe, avoiding the only circumstances the Framework advises development should be refused on highways grounds.
18. Bearing in mind that there is an existing 24 hour drive through fast food outlet adjacent to the site it is unlikely that the additional comings and goings associated with a relatively modest café with more limited hours of operation would give rise to noise and disturbance which would be materially more intrusive than might already exist in the vicinity. These other matters do not, therefore, lead me to consider that the development would be unacceptable.

Conditions

19. It is necessary to specify the approved plans as this provides certainty. Limiting the hours of operation and of deliveries will ensure that unacceptable noise and disturbance to neighbouring occupiers is avoided. An unacceptable loss of neighbours' privacy will be avoided by requiring obscured glazing to be installed and retained in the large window and side door, along with a screen fence around the outdoor seating opposite homes. It is necessary to require levels to be approved as this provides certainty about the heights of elements of the building relative to nearby residential buildings. To be effective this would need to be a pre-commencement condition.
20. Specifying external walling in stone and requiring landscaping alongside the road frontages will preserve and improve the character and appearance of the area. Approval of details of the latter will enable the Council to ensure that it would not be of a type or extent that would adversely affect neighbours' living conditions or interfere with highway visibility. Requiring a scheme of improvements to the layout of the car park will assist in circulation and reduce the likelihood of queuing in Albion Street.

Conclusion

21. For the above reasons, and having had regard to all other matters, the development would enhance the character and appearance of the area which would outweigh harm to neighbours' living conditions. Overall the development would accord with the development plan and the Framework, and the appeal is therefore allowed.

Geoff Underwood

INSPECTOR

Schedule of 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 plans: P001 Rev A; P004 Rev A; P005, P006 Rev D; P007 Rev A; P008 Rev D; P009 Rev D, and; P010.
- 3) The development hereby permitted shall not be open to customers outside the hours of 0700 to 2000 on any day.
- 4) Service deliveries to or dispatches from the development hereby permitted shall not take place outside the hours of 0700 to 2000 on any day and shall be by vehicles not larger than box van type with no more than two such deliveries or dispatches in any one day.
- 5) No development shall take place until full details of the finished levels, above ordnance datum, of the ground floor and top of the parapet of the proposed building, in relation to existing ground levels and ground floor levels of 3 Jeremy Lane and 24 and 26 Albion Street have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.

- 6) Notwithstanding the submitted plans, the external walling materials of the building hereby approved shall be constructed in natural stone, a sample of which shall have been submitted to (or left on site for inspection) and approved in writing beforehand by the local planning authority. The development shall be implemented in accordance with the approved sample and thereafter retained as such.
- 7) The development hereby permitted shall not be first brought into use until the windows and door as shown on elevations drawing No P008 Rev D have been fitted with obscured glazing, and no part of those windows shall be capable of being opened. Details of the type of obscured glazing and their precise locations and heights shall be submitted to and approved in writing by the local planning authority before the windows and door are installed and once installed the obscured glazing shall be retained thereafter.
- 8) The development hereby permitted shall not be first brought into use until the 1.8m high timber screen fence to the boundary of outdoor seating area facing Albion Street as shown on elevations drawing No P008 Rev D has been installed. Details of the type, materials and construction of the fence shall be submitted to and approved in writing by the local planning authority before the fence is installed and once installed the fence shall be retained thereafter.
- 9) The development hereby permitted shall not be first brought into use until a scheme of highway mitigation measures for the existing car park have been implemented in accordance with a scheme which has been submitted to and approved in writing beforehand by the local planning authority. The highways mitigation measures scheme shall include the following:
 - Improvements to the radius entering the site to make turning easier which should reduce the likelihood of blocking other drivers attempting to exit.
 - Removing the one-way entry aisle to the first section of the car park to the south entrance from Albion Street making this section of the car park two-way.
 - A give-way line to provide a clear indication to drivers heading towards the fast food unit that they consider oncoming drivers and give priority rather than pulling across the path of existing traffic.The approved scheme shall be retained thereafter.
- 10) Details of landscaping and a maintenance scheme for the area adjacent to Albion Street and Jeremy Lane shall be submitted to and approved in writing by the local planning authority before works to construct the superstructure of the building commences. The scheme shall include details of numbers, position and types of species to be used together with their size at planting. The scheme shall include details of the pre-planting ground preparation and a post planting maintenance regime for a period of 5 years.

All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the development first being brought into use or the completion of the development, whichever is the sooner; and any trees or plants

which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species and the landscaping shall be maintained in accordance with the approved scheme.

*** End of Schedule of Conditions ***

Appeal Decision

Site visit made on 3 January 2019

by F Rafiq BSc (Hons), MCD, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 January 2019

Appeal Ref: APP/Z4718/D/18/3216541

14-16 Coppin Hall Lane, Mirfield, West Yorkshire, WF14 0EL

- 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 & Mrs C Walker against the decision of Kirklees Council.
 - The application Ref 2018/62/92184/E dated 30 June 2018 was refused by notice dated 30 August 2018.
 - The development proposed is a proposed conservatory to front.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue raised by the appeal proposal is the effect of the development on the character and appearance of the host dwelling and the area.

Reasons

3. The appeal property is a two storey end terrace dwelling, which is set back from Coppin Hall Lane. The area contains a range of dwellings, situated at varying distances from the highway. Due to a change in levels in the area, the surrounding properties are also at differing elevations from the road level. Despite this variety and variation, the majority of the properties use traditional materials, such as stone and generally have modest projections off the front main elevations, which contributes to a cohesive residential character.
 4. The proposal would consist of a conservatory structure, which would span the width of most of the appeal property's front elevation. It would have a mono pitch roof and its projection from the front elevation would be 3m. I recognise that the site has a long garden and is set back from the highway, as well as further back than the two storey element of No. 18 Coppin Hall Lane. Nevertheless, the proposal would have, by virtue of its forward positioning, a considerable prominence in views from the front. It would be further forward and of a greater width than the porch at No. 12. Although I was able to see the presence of some vegetation and a tree that would partially obscure views, it was clear from my site visit that it would still, however, be seen from various vantage points along Coppin Hall Lane. I also note the presence of a wall to the front of the site, but the proposal would still be seen by pedestrians in more distant views, due to the curvature of the highway and rising land levels to the
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north-west. Its largely glazed design to its front and roof would also not reflect the use of stone and other traditional materials on the host dwelling.

5. I therefore conclude that the proposal would cause unacceptable adverse harm to the character and appearance of the host dwelling and the area. It would conflict with Policies D2, BE1, BE2, BE13 and BE14 of the Kirklees Unitary Development Plan, which seek, amongst other matters, development that is of a good quality design and which is in keeping with the design, materials, scale and layout of surrounding development. It would also conflict with Section 12 of the National Planning Policy Framework.
6. My attention has been drawn to a modern conservatory at No. 24 Coppin Hall Lane. I have not however been provided with any further details on its circumstances. I also note that the Council have stated that there is no planning history for this structure. In any event, I am required to determine this appeal on its own merits.

Conclusion

7. For the reasons given above and having considered all other matters raised, including the proposal would not encroach on the garden, I conclude that the appeal should be dismissed.

F Rafiq

INSPECTOR