



Appeal Decision

Site visit made on 28 March 2019

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th April 2019

Appeal Ref: APP/Z4718/W/18/3218816

Llamedos Stables, Fieldhead Lane, Drighlington, Bradford BD11 1JL

- 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 Atkins LGV Training Ltd against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2018/62/92465/E, dated 27 July 2018, was refused by notice dated 19 September 2018.
 - The development proposed is described as 'part demolition and alteration to unauthorised 2 storey LGV Training School to form single storey LGV Training School.'
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development set out in the banner heading above is taken from the planning application form. It is apparent from the appeal submissions that the scheme before the Council also concerned the change of use of land within the planning application site boundary to provide ancillary car parking. Accordingly, I have dealt with the appeal on this basis.
3. Since the Council determined the planning application, the Kirklees Local Plan (2019) (LP) has been adopted. The policies contained within the LP have replaced those in the Kirklees Unitary Development Plan (1999). The appellant and the Council were given the opportunity to comment on this matter. As such, I have considered the policies contained within the LP in my decision.
4. The appellant proposed amendments in the appeal submission in order to try to resolve the Council's reasons for refusal relating to the change of use. I was concerned, however, that interested parties would not have had the opportunity to comment on these revisions and that the scheme would not be essentially what was considered by the Council when it made its decision. The same would apply if a planning condition was utilised to this effect, even if I was minded to allow the appeal. Hence, my deliberations are based on the same scheme that was before the Council, consisting of both the proposed training school and the change of use.

Main Issues

5. The main issues are a) whether the proposal would constitute inappropriate development in the Green Belt for the purposes of the National Planning Policy

Framework (Framework), b) its effect on the openness of the Green Belt, c) the effect on the safety of the users of the Batley Footpath 5 public right of way (PROW), and d) if it 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

6. The appeal site lies in the Green Belt and is used as a lorry driver training school. It is currently occupied by a building which is 2 storeys in height apart from a single flat roofed section with a balcony. It is understood from the appeal submissions that this building is unauthorised. The remainder of the site comprises areas of tarmac and loose stone which are used for the parking of vehicles, and for the manoeuvring of lorries, as was apparent on my site visit.
7. Adjacent to the site are a number of buildings and structures, together with an area used for pallet storage. The remaining boundaries are more open with paddocks and a planted embankment with the M62. The route of the PROW passes through the site from the paddocks to the boundary with the embankment.

LGV Training School - Inappropriate Development

8. Paragraph 145 of the Framework states that the construction of new buildings is inappropriate in the Green Belt, subject to a number of exceptions. The proposed training school would not constitute such an exception. When judged against the Framework, it would therefore be inappropriate development in the Green Belt.

LGV Training School - Openness

9. Openness is an essential characteristic of the Green Belt. The proposed training school would consist of a single storey building with a pitched roof. It would have a relatively large footprint size.
10. In relation to the visual aspect of openness, it would be visible from the A650, the PROW and the paddocks. It would be seen against the backdrop of the buildings, structures and uses that are found on the adjacent site. The planning application submission indicated that a conifer tree screening belt would be provided around the boundaries of the site and this is shown indicatively on the submitted site layout plan. However, even if it were to become established, in my view, it would not benefit openness with the level of enclosure that would result.
11. The existing building is clearly of greater scale and this would be reduced under the proposal by way of the part demolition and alteration. As this building is unauthorised, though, its presence does not alter my views on openness. Nor does that a demountable structure once occupied the area of the site where the proposed training school would be sited, as this is no longer in evidence with the existing building on the site.
12. Taking the spatial and visual elements together, the proposed training school would have a limited adverse effect on openness.

Change of Use – Inappropriate Development

13. Paragraph 146 of the Framework states that certain other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. These include material changes in the use of land.
14. The change of use entails an increase in the size of the area on the site to provide for additional parking. When vehicles are parked on this area, a limited adverse effect on openness occurs. Hence, it does not preserve the openness of the Green Belt. As I have set out above, the planting around the site boundaries would not be of a benefit as regards openness.
15. As a consequence, the change of use also constitutes inappropriate development, when judged against the Framework.

PROW

16. The route of the PROW crosses the area that is subject of the change of use. With the usage of the site for lorry training and the associated manoeuvring of vehicles, this represents a conflict with public users of the PROW which has the potential to jeopardise their safety. It was evident that at the time of my visit the PROW did not appear to be readily accessible through the site. These arrangements detract from its beneficial use.
17. The appellant has suggested a diversion route that would run to the east of the site boundary. There is not information before me which indicates that the appellant has control over this land in order to implement the diversion. Even though the Council appeared to have accepted the diversion previously, this does not provide me with sufficient reassurance with the time that has passed since. As a result, the proposed diversion would not adequately address the harm that arises.
18. I conclude the effect on the safety of the users of the PROW to be unacceptable. Accordingly, the change of use does not comply with Policy PLP21 of the LP and the Framework where they concern safe access for all users.

Other Considerations

19. It is apparent that the business has operated for a number of years from the site. An indoor facility is reasonably needed for a use of this nature and, as a business, it results in economic benefits, and this includes the training services that are provided. However, the evidence before me does not lead me to believe that it needs to be located in its current more countryside surroundings. Whilst businesses also operate from the adjacent site, this is not an industrial area. It does not need to be in such a location, as a matter of necessity, and so these matters carry limited weight in its favour.
20. The appellant has stated that the application sought to address a previously dismissed appeal¹ on the site concerning the existing building. As I have set out, though, what is before me would be inappropriate development and would not preserve the openness of the Green Belt. That the previous Inspector was concerned with the scale of the existing building and the level of

¹ Appeal ref: APP/Z4718/C/17/3191898

accommodation provided does not cause a building of a reduced scale to be acceptable. I also share the concerns of the Inspector in relation to why the building needs to be in this location. The change of use was also not the subject of this previous decision.

21. There would not be unacceptable harm as regards the effect on the character and appearance of the area. This carries neutral weight. Matters in relation to the appellant's dealings with the Council and interested parties, and the operation of the adjacent site are not for my consideration.

Conclusion

22. Both the proposed training school and the change of use would be inappropriate development in the Green Belt. The proposed training school would have a limited adverse effect on openness. Paragraph 144 of the Framework establishes that substantial weight should be given to any harm to the Green Belt. In addition, it is unacceptable concerning the effect on the safety of the users of the PROW. The other considerations which arise do not clearly outweigh the totality of the harm. Consequently, very special circumstances do not exist. The proposal would not, thus, comply with the Framework. I conclude, therefore, that the appeal should be dismissed.

Darren Hendley

INSPECTOR



Appeal Decision

Site visit made on 16 April 2019

by W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 May 2019

Appeal Ref: APP/Z4718/W/19/3221624

Fox Cottage, Whitley Road, Whitley, Dewsbury WF12 0LU

- 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 Mark Brotherton against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2018/62/91105/E, dated 4 April 2018, was refused by notice dated 2 November 2018.
 - The development proposed is described as 'Detailed application for 1no. dwelling following demolition of existing stable building'.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The Government published the revised National Planning Policy Framework (the Framework) on 19 February 2019, which forms a material consideration in the determination of the appeal. The principle changes to the Framework relate to the Housing Delivery Test. However, the changes have no material bearing to the main issues before this appeal.
3. Since the Council made its decision on the planning application which is subject of this appeal, on 2 November 2018, the Kirklees Local Plan (LP) was adopted on 27 February 2019. Consequently, the policies contained within the Kirklees Unitary Development Plan have been superseded. I am required to determine this appeal on the basis of the development plan which is in force at the time of my decision. The appellant has had an opportunity at the final comments stage to provide their views on the relevance of these new policies. This appeal has therefore been determined in relation to the policies contained within the LP.
4. The Council have supplied finalised versions of LP Policies and the front page of the LP. However, apart from how they are referenced and minor changes to the policy title in some instances there are no material alterations when compared to the wording of the LP policies that were supplied with the modifications during the appeal process. I have dealt with the appeal on this basis.
5. For clarity, I have taken the appellants name from the appeal form as it is more precise than that given on the application form.

Application for costs

6. An application for costs was made by Mr & Mrs Mark Brotherton against Kirklees Metropolitan Borough Council. This application is the subject of a separate Decision.

Main Issues

7. The main issues are:

- whether the proposed development would be inappropriate development in the Green Belt;
- the effect of the development on the openness of the Green Belt;
- the effect of the development on the character and appearance of the appeal site and surrounding area;
- the effect of the development on the living conditions of future occupiers of the dwelling;
- 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 or not the proposal is inappropriate development in the Green Belt

8. The appeal site comprises a modest stable block situated in the corner of a field within the Green Belt. The site forms part of a notable parcel of land that is currently accessed off Whitley Road, with open fields located further to the north of the site. The proposal would involve the creation of a new access that could also be used by Fox Cottage and East Barn. The land levels fall appreciably towards Fox Cottage from the appeal site and as a result the proposed parking area would be located at a lower level than the proposed dwelling.
9. The appellants have referred to LP Policy LP59 in their submission that is for infilling and redevelopment of brownfield sites, and requires in the case of partial or complete redevelopment the extent of the existing footprint is not exceeded, and in all cases regard should be had to relevant design policies to ensure that the resultant development does not materially detract from its Green Belt setting. Although not cited on the Council's decision notice, I find this policy to be relevant to the case before me.
10. The Framework identifies inappropriate development as harmful to the Green Belt and should not be approved except in very special circumstances. In addition, the construction of new buildings should be regarded as inappropriate in the Green Belt subject to a number of exceptions as set out in paragraph 145 of the Framework.
11. The proposal is to replace the existing timber stables with a new dwelling, which would be constructed out of brick with a slate roof. The appeal proposal would have similar proportions to the existing stables, although it is acknowledged that part of this is created through the overhanging roof. Overall, I find the dimensions of the existing and proposed building to be similar.
12. Paragraph 145 g) of the Framework also advises that an exception could be 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. Under paragraph 145 g) of the Framework, I consider that the new dwelling would be comparable to the existing stables, and that the site could be classified as previously developed land (PDL). The definition of PDL includes '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)'.

13. The appellant has referred to various judgments to support their case in this respect. The first judgement¹ concluded that the keeping of horses for recreational use does not fall within the definition of agriculture. In the second judgment² it was held that an inspector had been correct in deciding that curtilages did not have precise limits and that each situation must be considered according to the facts of each particular case. In the third judgment³, the Court of Appeal accepted that three factors had to be taken into account in determining what constituted a curtilage: a) the physical layout of the building and structure, b) ownership past and present, and c) use and function past and present. The fourth judgment⁴ stated "the ground which is used for the comfortable enjoyment of a house or other building may be regarded in law as being within the curtilage of that house or building and thereby an integral part of the same although it has not been marked off and enclosed in any way. It is enough that it serves the purpose of the house or building in some necessary and reasonably useful way". A fifth judgment⁵ found that providing the new buildings fall within the use and other restrictions of the applicable indent of paragraph 89 under the 2012 Framework (now paragraph 145 of the Framework), the mere fact that permission for a new building may also involve a material change of use does not mean that it ceases to be appropriate development.
14. However, notwithstanding the classification of the land as PDL, paragraph 145 g) of the Framework states that development in this respect should not have a greater impact on the openness of the Green Belt than the existing development, amongst other things. This is a matter which I now deal with below.

Openness and Green Belt purposes

15. 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.
16. The development not only involves the replacement of the stables with a dwelling, but also proposes to form the garden/outside amenity area, the proposed parking area and the access to it from the proposed dwelling. Currently the area of land forming the appeal site is open, with timber post and rail fencing serving as majority of its enclosure towards the field and a dry-stone wall between the site and the structures at Bunkers Hill. The submitted drawings suggest that native hedging would be planted to form majority of the

¹ Sykes v. Secretary of State for the Environment [1981]

² James v SoS & Another 9/10/90

³ Attorney-General ex.rel. Sutcliffe, Rouse & Hughes v Calderdale BC 1983

⁴ Sinclair-Lockhart's Trustees v Central Land Board 1950

⁵ LB Bromley v. Secretary of State for Local Government [2016] EWHC 595 (Admin).

boundary treatment at the property and that the dry-stone wall would be retained.

17. In general terms garden use is associated with a range of domestic paraphernalia, as well as measures to increase privacy and security which together would reduce the current openness. Whilst it is not entirely clear from the planning application, the extent of such features as hard surfacing that would be required as part of the appeal proposal, it would be very likely to be greater than the existing situation. This would constitute a suburbanising feature that would contrast unfavourably with the openness of the surrounding land that generally fringes the appeal site. This would cause moderate harm to openness.
18. The appellant has referred to various judgments in this respect. The sixth judgment⁶ considered the concept of openness and found that it is not narrowly limited to a volumetric approach and that a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. The seventh judgment⁷ found that openness is not a defined term, but in this instance, it was found that it is openness of the Green Belt that must be considered not the site as such. Additionally, it was found that as there is some existing development, the openness of the Green Belt had not been wholly preserved and there would have been some impact on the openness of the Green Belt already, amongst other things.
19. I have given consideration to the removal of certain permitted development rights which allow for additional structures to the dwelling and to the erection of boundary treatments, but there would still be associated domestic paraphernalia in the garden areas which could not reasonably be controlled by condition. Whilst the appeal site forms a small part of the Green Belt, even small incursions into the Green Belt can erode it. I conclude that the proposal would have a harmful effect on the openness of the Green Belt and would, therefore, represent inappropriate development.
20. Overall, and for the reasons outlined above, I conclude that the appeal proposal would fail to preserve the openness of the Green Belt. Therefore, I afford such Green Belt harm substantial weight in my assessment and determination of this appeal. Therefore, the appeal proposal would constitute inappropriate development in the Green Belt and, in this regard, it would conflict with LP Policy LP59 and the Framework.
21. LP Policy LP57 and paragraph 146 e) of the Framework has been cited by the Council on its decision notice. However, LP Policy LP57 identifies that in the case of replacement buildings, the new building must be in the same use as and not be materially larger than the building it is replacing, amongst other criteria, and paragraph 146 e) of the Framework relates to material changes of use of land. Therefore, in respect of my findings above, I find LP Policy LP57 and paragraph 146 e) of the Framework are not directly applicable to the case before me.

Character and appearance

22. The appeal site is located in a semi-rural area given the existing development in the locality. The proposed dwelling would be set back from the road behind

⁶ Turner [2016] EWCA Civ 466

⁷ Euro Garages Limited v. Secretary of State for Local Government [2018] EWHC 1753 (Admin)

the existing dwellings. There are a variety of differing building positions and styles forming the residential properties in the surrounding area. I find that the proposed dwelling would suitably complement the other development in the locality, in terms of its design, scale, siting and materials proposed.

23. The proposed dwelling would not be clearly visible from public vantage points, in particular the road. However, in the context of the surrounding residential development, the dwelling would not appear materially out of place. I accept that the proposal would result in an increase in the development at the appeal site, including the new pedestrian access from the parking area to the dwelling, but taking into account the position of the appeal site, land levels and the relatively close relationship with nearby properties, I do not consider that the proposal would cause significant harm to the character and appearance of the area. I note the Council considered that further details of boundary treatment and surfacing materials could have been secured through a suitably worded condition if the application was approved and that no concerns were raised with the creation of a new access. I have little reason to disagree.
24. For the reasons outlined above, I conclude that the development would not have a significantly detrimental impact on the character and appearance of the area and hence that it would accord with the design, character and appearance aims of LP Policy LP24 and the Framework.

Living conditions

25. I note the comments made by the Council about the distance of the dwelling from the vehicle parking area. Whilst I do acknowledge that pedestrian access to the dwelling would be taken across the grassed bank, which has an increased gradient, I do not find that this would be so excessive to prevent a safe and accessible means of access for future occupiers. Additionally, I note the comments raised in respect of the carrying/drag distances to the refuse pick-up. Whilst this carrying distance is relatively long, this is an arrangement that exists in terms of existing residents in the locality. Whilst this would be a less than ideal arrangement, had all other issues been acceptable this would not in itself have justified refusal of planning permission taking into account a number of the other identified benefits associated with the development of this site for residential development.
26. Concerns have been raised in relation to the size of the dwelling, which is understood to consist of approximately 41m² of gross internal floor space. I note that the drawings have been amended to indicate that the proposed development would be for a one bedroom, one bed space dwelling and that the internal habitable area has been increased. I note the dimensions listed on the application form only indicate the amount of gross internal existing floorspace and the amount of floorspace to be lost following the development. However, on balance I find that as the floorspace of the proposal would include the covered area to the front of the stables, this is likely to be sufficient to offset such features as the increase in depth of the brick walls of the proposed dwelling.
27. Whilst the Council refer to a proposed floorspace figure of 33m² in their submission, I find that there is little evidence to substantiate on how they arrived at this figure. I recognise that the proposed residential unit is modest in its size, but I find that insufficient details have been provided to confirm that the proposed dwelling would have a shortfall of internal space below the

minimum requirement of 39m² specified in the Technical Housing Standards – nationally described space standard, March 2015 (THS). Additionally, I find that the proposed level of occupancy could be controlled through a suitably worded condition.

28. For the reasons outlined above, I conclude that the proposed scheme would not unacceptably harm the living conditions of future occupiers. Therefore, the proposal would accord with the amenity aims of LP Policy LP24, the Framework and the THS.

Other considerations and whether very special circumstances exist

29. The Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Therefore, substantial weight should be given to the harm to the Green Belt. Very special circumstances to justify inappropriate development will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
30. I have concluded that the proposal would be inappropriate development and would have an adverse effect on openness. It would therefore, by definition, be harmful to the Green Belt. The Appellant has not explicitly put forward other considerations which would amount to very special circumstances to justify why planning permission should be granted.
31. However, I acknowledge that the development would result in some social and economic benefits through the provision of a new dwelling and during the construction phase of the development. The provision of an additional dwelling would positively contribute towards boosting the supply of houses in the area. Nonetheless, the contribution from only one dwelling would be relatively limited in this context.
32. The appellant has referred to various appeal decisions⁸, which I have noted. However, relatively little detail has been provided regarding the particular planning backgrounds to these schemes. Without such information a full and detailed comparison between these developments and the case before me cannot be easily drawn. Accordingly, I find little within these cases that would lead me to alter my conclusions on the main issues.
33. In considering the substantial weight given to the identified harm to Green Belt, the considerations outlined above do not clearly outweigh such harm to the Green Belt. Therefore, the very special circumstances necessary to justify the development do not exist and the development would therefore conflict with the Framework and LP Policy LP59.

Other Matters

34. I have had regard to various other matters in support of the development raised by neighbouring occupiers, including the improvement to the access and its general appearance. However, I have considered this appeal proposal on its own merits and concluded that it would cause harm for the reasons set out above.

⁸ APP/22315/A/14/2212311; APP/B2355/A/13/2194105; APP/J1535/W/15/3007926

35. I note the appellant's comments about the way the Council handled the application. However, this matter is not material to the assessment of the appeal before me.

Planning Balance and Conclusion

36. The proposal would amount to be inappropriate development in the Green Belt and moderate harm would be caused to openness. This is a matter to which I afford substantial weight. Whilst the proposal would not have a detrimental impact on the character and appearance of the area or on the living conditions of future occupiers these are matters of neutral consequence in the overall planning balance. Whilst the proposal would lead to some social and economic, these would be relatively limited in extent, and would not significantly and demonstrably outweigh the clear and substantial harm that would be caused to the Green Belt.

37. For the reasons outlined above, on balance I conclude that the appeal should be dismissed.

W Johnson

INSPECTOR