
Appeal Decision

Site visit made on 23 August 2016

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

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

Decision date: 26 September 2016

Appeal Ref: APP/N2739/W/16/3151887

Westfield Farm, Westfield Lane, South Milford, Leeds LS25 5AL

- 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 Thomas Lunt against the decision of Selby District Council.
 - The application Ref 2015/1356/FUL, dated 4 December 2015, was refused by notice dated 19 April 2016.
 - The development proposed is demolition of barn and construction of new 3 bedroom property.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The Council's third reason for refusal relates to a failure to make a contribution towards affordable housing. However, since the application was refused the Court of Appeal's judgement of 11 May 2016¹ was issued and the Planning Practice Guidance (PPG) was subsequently revised relating to the circumstances where affordable housing and tariff-style planning obligations can be sought.
3. The Council's appeal statement considers that the absence of an affordable housing contribution is now acceptable in light of the PPG guidance being a material consideration which outweighs the development plan policy requirement in that regard. I therefore do not address this matter in the reasoning below.

Main Issues

4. As such, the main issues raised by this appeal are:
 - i) whether the proposal constitutes inappropriate development in the Green Belt;
 - ii) its effect on the openness of the Green Belt;
 - iii) its effect on the character and appearance of the area;
 - iv) its effect on protected species which may be present on the site;
 - v) whether the proposal would be an acceptable location for development with respect to any contamination which may be present on the site, and ;

¹ Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council C1/2015/2559; [2016] EWCA Civ 441.

- vi) 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

- 5. The site is currently occupied by a long, rendered building which is single storey for most of its length although with a taller element at the south end to which a metal clad lean-to is attached. The existing building occupies a position to the west of the majority of other buildings at Westfield Farm and is adjacent to an area to the north which is marked on the location plan as a 'coal yard'. Beyond the access track which runs immediately adjacent to the building to the west lies open countryside.

Whether inappropriate development

- 6. The site is situated within Green Belt, a location where the National Planning Policy Framework (the Framework) indicates that the construction of new buildings is inappropriate with the exception of certain types of development². These exceptions include the complete redevelopment of previously developed sites, subject to caveats relating to the development's effect on Green Belt openness and purpose. However, the appellant states that the property has been used for agricultural purposes for some considerable time and the Framework defines³ previously developed land as excluding land that is or has been occupied by agricultural buildings.
- 7. As such the proposal would not constitute development of a previously developed site in light of the Framework's approach and would not satisfy any of the other circumstances where new buildings are considered not to be inappropriate. Therefore, the proposed development would be inappropriate development. The assessment of whether or not the proposed development would have a greater impact on openness or the purpose of including land within the Green Belt than the existing development is not pertinent to considering whether the development would be inappropriate.
- 8. Selby District Core Strategy, 2013 (SDCS) Policy SP2 requires development on non-allocated sites in Green Belt to conform to SDCS Policy SP3 which states that permission will not be granted for inappropriate development unless very special circumstances exist, which I consider below.

Effect on openness of the Green Belt

- 9. The building would be replaced by a dwelling of the same length albeit one which is slightly wider and with a two storey element at the south end which would be longer than that which exists and have a higher ridge and eaves level. Two parking spaces, enclosed on three sides, would replace the lean-to and an enclosed garden would be created at the north end of the proposed building. The drawings show the ridge and eaves of the proposed building being very slightly lower than those of the existing one although the drawings do not reflect the slight difference in height of the ridge which currently exists.

² Paragraph 89.

³ Annex 2: Glossary.

10. Notwithstanding the increase in width and a porch on the east elevation, the footprint of the proposed building would appear to be smaller than that of the existing building including the offshoot. However, the increase in height of the two storey element over a longer extent when compared with the existing building would make this element more conspicuous.
11. This effect would be compounded by the proposed building being clearly a two storey building at this point and the absence of windows above ground floor level in that elevation. These effects would be particularly apparent given the building's location on the outside of the existing group of buildings at Westfield Farm facing the open fields beyond.
12. Although to a modest extent, the building would also be situated slightly to the west of the existing building encroaching into an open area currently occupied by a grass verge adjacent to an access track. The garden area adjacent to the north gable would introduce an enclosed area into one which is currently part of an open yard area. Any enclosure of the car parking spaces, although partially occupying the footprint of the lean-to, would add to this enclosing effect albeit that it would be less marked being adjacent to an existing building outside the appeal site which would remain.
13. All this would contribute to the modest but nevertheless material reduction in the openness of the Green Belt which would have a moderately harmful effect on that openness.
14. The appellant states that the proposed building would be 65m³ less than the existing building however this reduction in volume would not be apparent from the west elevation where it would have an effect which would reduce the openness of the area. Notwithstanding that no comparative dimensions have been provided, I have not been provided with any details of the examples the appellant alludes to where extensions have been allowed by the Council or on appeal and can therefore attribute this very little weight.

Character and appearance

15. The site is a prominent one being located adjacent to the attractive open countryside which is part of a Locally Important Landscape Area (LILA). The site is therefore particularly sensitive to the effects that any new building may have on this character. With the exception of the metal clad lean-to the existing building is of a traditional scale, configuration and character whose simple, utilitarian appearance reflects its rural location and, notwithstanding its condition and external materials, makes a positive contribution to the area's character and appearance, particularly its west elevation which faces out onto the surrounding countryside.
16. The proposed replacement design, although broadly following its massing, would appear as a much more prominent, formal and domestic structure, particularly by way of the considerably more extensive and regular fenestration arrangements. The effect of this would be of an intrusive building, particularly when viewed from the west over open fields, and one which would consequently materially harm the character and appearance of the sensitive landscape of the area.
17. I cannot, therefore, agree with the appellant that the existing building's appearance and condition is so detrimental to the area's character that any

replacement would be acceptable or that the design of the proposed building would improve the landscape. There is little evidence to suggest that the proposed design would harmonise with local and neighbouring buildings or reflect the area's character.

18. Taking account of the effect of its design upon the character of the area, and as the proposal would not minimise its impact or enhance the traditional character of buildings and landscape in the LILA, it would not comply with Selby District Local Plan, 2005 (SDLP) Policies ENV1 or ENV15. As the proposal would not positively contribute to the area's identity and not safeguard or avoid compromising local landscape character it would be contrary to SDCS Policies SP18 and SP19. For the same reasons the proposal would not accord with the Framework's policies⁴ which require development establish a strong sense of place, respond to local character and take opportunities for improving that character and the quality of an area.

Protected species

19. The existing buildings are old and the appellant states they are in a poor condition, circumstances which may mean that parts of the building could provide a habitat for certain protected species. Coupled with their countryside location, this indicates that there is a reasonable likelihood that bats or owls could be present within parts of the building. As the proposal includes the demolition of the building, should roosts or nesting sites exist within the building they would clearly be affected as a result.
20. Circular 6/2005⁵ considers that it is essential that the presence or otherwise of protected species is established before planning permission is granted in such circumstances. Whilst the appellant considers that a survey and any mitigation could be required by way of a condition, the Circular advises that surveys should only be required by condition in exceptional circumstances. I have been presented with no reasons to suggest there are any exceptional circumstances in this regard.
21. As such it cannot be certain that protected species would not be adversely affected as a result of the proposal. Notwithstanding that the appellant advises that he was never asked to carry out a survey, in light of this unacceptable level of uncertainty that significant harm resulting from development could be avoided or adequately mitigated, the Framework⁶ directs that planning permission should be refused.

Contamination

22. The Framework requires that responsibility for securing safe development rests with the developer and/or landowner where a site is affected by contamination issues and that adequate investigation information is presented⁷. However, the Council's contaminated land consultants recommended that Contaminated Land Conditions be put in place prior to development commencing. Whilst they identified the need for a Phase 1 Desktop Study their recommendation did not suggest that consent should be withheld pending its outcome.

⁴ In particular paragraphs 58 and 64.

⁵ ODPM Circular 06/2005 - Biodiversity and geological conservation – statutory obligations and their impact within the planning system, 16 August 2005, paragraph 99.

⁶ Paragraph 118.

⁷ Paragraphs 120 and 121.

23. This reflects the approach of SDLP Policy ENV2 which sets out that where there is a suspicion that a site might be contaminated, permission may be granted subject to conditions to prevent the commencement of development until a site investigation and assessment has been carried out and the development incorporates all necessary measures shown in that assessment.
24. The Council's caution is understandable in light to the circumstances their consultants have highlighted relating to historic uses and activities on or near the site. However, notwithstanding their 'holding objection' in this respect, I have been presented with no reason why the assessment of any risks, their appropriate mitigation and remediation, and subsequent monitoring or maintenance could not be secured by way of appropriate planning conditions. It has not been suggested that the level of potential risk is such that there is a likelihood that any permission would be incapable of being implemented as a result of such conditions.
25. Therefore the proposal would not be unacceptable in this respect and for this reason the appeal does not fail on this matter.

Other considerations

26. A consideration in favour of the proposed development is that of increasing the supply of housing, albeit this would be limited. There would be some limited economic benefits from the construction phase and support for services in South Milford, the nearest settlement. Although the appellant considers that the proposal would constitute sustainable development, the environmental harm identified above would mean that the development would not perform all the mutually dependent roles the Framework considers sustainable development should consist of⁸. The proposal would consequently fail to meet the requirements of SDCS SP1 which reflects the Framework's presumption in favour of sustainable development.
27. The existing building does not have such a harmful effect on the area's character or appearance that would outweigh the harm the proposed replacement building would give rise to in that respect.
28. I find that the other considerations in this case do not clearly outweigh the harm that I have identified by way of inappropriateness and harm to the Green Belt's openness and the substantial weight that carries, as well as harm to the area's character and appearance and by way of failing to demonstrate that harm to Protected Species would not arise. Consequently, the very special circumstances necessary to justify the development do not exist. As such the proposal would not comply with SDCS Policy SP3.

Conclusion

29. For the above reasons, and having had regard to all other matters raised, the proposal would be inappropriate development and give rise to other harm; circumstances where the Framework and the development plan indicate that development should not be approved. The appeal is therefore dismissed.

Geoff Underwood

INSPECTOR

⁸ Paragraphs 7 and 8.