

Appeal Decision

Site visit made on 27 June 2017

by Andrew McGlone BSc MCD MRTPI

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

Decision date: 6 July 2017

Appeal Ref: APP/Z4718/W/17/3171715

The Old Vicarage, Marsh Hall Lane, Thurstonland, Huddersfield HD4 6XD

- 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 Joseph Martin against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2016/60/93931/E, dated 24 November 2016, was refused by notice dated 16 February 2017.
 - The development proposed is an outline application for erection of two dwellings.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The application was submitted in outline with all matters reserved for future consideration, except for access and layout. Indicative plans have been submitted. These have formed part of my consideration of this appeal.

Main Issues

3. The main issues are:
 - whether the proposed development is inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework);
 - the effect of the proposed development on the openness of the Green Belt and the purposes of including land within it;
 - whether the proposed development would preserve or enhance the character or appearance of the Thurstonland Conservation Area (TCA), including the effect of the proposal on protected trees within and adjacent to the appeal site;
 - the effect of the proposed access and parking arrangements on highway safety; and
 - if the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.
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Reasons

4. The appeal site is next to the Old Vicarage on the edge of Thurstonland. While the appellant suggests the actual Green Belt boundary is not precisely defined, I gather the northwest portion of the site falls within the Green Belt on the Unitary Development Plan (UDP) Proposals Map. Saved policies in the UDP form the development plan for Kirklees and as such, *planning law requires that application for planning permission must be determined in accordance with the development plan, unless material considerations indicative otherwise*¹.
5. While the Council has put their Local Plan out for consultation, this is at an early stage in its preparation and I am not aware of the extent of any unresolved objections or its degree of consistency with the Framework. So, even if the site is next to land which could potentially be brought forward for housing development, the Local Plan has yet to be examined, found to be sound or adopted. I also do not know of any unresolved objections to this potential allocation. I therefore attach the Local Plan very little weight.

Inappropriate development

6. The Framework establishes that new buildings in the Green Belt are inappropriate unless they are one of the exceptions listed in paragraph 89. One of the exception is the *limited infilling in villages*. The appellant contends that the appeal scheme would be an infill development between the Old Vicarage and 11 and 15 Marsh Hall Lane. The proposal would however be set considerably back from the dwellings of Nos 11 and 15 which address the lane. Although the proposed dwellings would be next to the Old Vicarage and the rear garden of No 15 shares the site's northern boundary, they would not address the lane or form part of the street scene, even though the vehicular access would provide a link. Thus, the proposal cannot be said to be filling in a gap between existing buildings.
7. It is suggested that the site has been used as a horse training arena while in recent times it is said to have been used as a side garden to the Old Vicarage. The site was covered in gravel which lay on top of a landscape fabric. A low brick wall bounds the site on three sides. A timber arbour and pergola stand on the site. Collectively the site's appearance does not support its former equine use. As such, based on the evidence before me, I do not consider that appeal site is previously developed land².
8. So, while part of the appeal site lies within the village settlement, the appeal scheme, on the whole, is inappropriate development which is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 88 of the Framework states that substantial weight should be given to any harm to the Green Belt. The proposal would be contrary to paragraph 89 of the Framework. These policies seek to prevent inappropriate development which does not maintain the openness of the land.

Openness and purpose

9. The Framework sets out that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.

¹ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

² National Planning Policy Framework, Annex 2

10. The proposal would result in the introduction of two dwellings. Even so, the site is positioned next to the boundaries of Nos 11 and 15 and immediately adjacent to the Old Vicarage. Hence, I do not consider that the proposal would not result in encroachment into the open countryside which extends to the north-west, west and south-west of the site. While details of the dwellings scale and appearance have been reserved for future consideration and they would be sited near to established trees and shrubs, their volume and footprint would significantly detract from the openness of the land in the Green Belt. This would be in conflict with paragraph 79 of the Framework.
11. The Framework does not seek to make a distinction regarding the level of harm from a reduction in Green Belt openness. It would be a harm to the Green Belt, which is the subject of Framework paragraph 88. In this respect, I conclude that the proposal would be contrary to the fundamental aim of Green Belt policy as described in paragraph 79 of the Framework. For these reasons, this harm also attracts substantial weight against the appeal scheme.

Character or appearance

12. St Thomas Thurstonland and the Old Vicarage bookend either side of a row of development on the western side of Marsh Hall Lane that is set within spacious verdant grounds. The Heritage Photos confirm that the dwellings in this row are large and set back from the lane. On the eastern side of the lane and on Moor Top Avenue are semi-detached dwellings in smaller plots. These are outside of the TCA. This more recent form of development is closer knit and not akin to the western side of the lane. The Conservation Area Survey Reports (CASR) explains that Thurstonland is a *very attractive rural settlement which has been spoilt by modern infill*.
13. So, while there are a variety of styles and house types in the wider area, the layout and density of the appeal scheme would not reflect the pattern of development on the western side of the lane. Thus, notwithstanding the indicative designs and the proposed use of materials, the dwellings would not be in keeping with the development on the western side of the lane, insofar as their density and layout as sought by saved UDP Policy BE2 or assist in retaining a sense of local identity explained in saved UDP Policy BE1.
14. The CASR also remarks that there are important groups of trees around the Church and the Vicarage. These are protected due to the TCA designation. I note the appellant's view that no mature trees would be affected by the appeal scheme. Nevertheless, I am not persuaded by this statement, given the line of mature trees which are either immediately next to the stone wall that extends along the proposed access or a short distance back from it. The canopies of a number of trees extend over the proposed access and they appear to be in good condition.
15. As the proposal includes changes to widen the vehicular access and modify the established stone wall, I consider that the scheme would result in the direct loss of a number of mature trees or potentially harm a greater number. I am also not convinced that the use of specialist paving would necessarily prevent damage to the tree roots, as I do not have such details before me. There is also no evidence to suggest that the access is already hard surfaced.
16. While landscaping proposals could be brought forward at reserved matters stage, the existing mature trees make a significant contribution to the character and appearance of the site and the TCA. As such they should be retained. While some are set back from the lane, collectively they play a significant role in

the TCA, especially on the western side of Marsh Hall Lane. Thus, the removal of a number of these trees would be visible from the lane and result in harm to the character and appearance of the TCA. This would alter the secluded back drop and privacy that they afford to the Old Vicarage and the site. The use of planning conditions to secure the preservation of the trees would not, in this instance, be appropriate given the conflict between the proposal and the trees.

17. Thus, I consider the proposed development would lead to a significant harm to the character and appearance of the TCA which would be magnified by the loss of a number of protected trees. The result of this would be a development that would be out of kilter with the form of development in the village. It would fail to preserve or enhance the character or appearance of the TCA. Yet, with regard to paragraph 134 of the Framework the harm to the TCA would be less than substantial. Even so this still amounts to a harmful impact which adversely affects the significance of the TCA as a heritage asset. Public benefit would arise from two new dwellings in an area with no five-year supply of deliverable housing sites and in an established village community. But, the harm to the TCA and the site would, to which I attach considerable importance and weight, in my view, clearly outweigh these modest public benefits.
18. I conclude, on this issue, that the proposed development would harm the character and appearance of the TCA, including through the loss of a number of protected trees within and adjacent to the appeal site which would not preserve or enhance the character or appearance of the TCA. The proposal would not accord with saved UDP Policies BE1, BE2, BE5 and NE9, the CASR and paragraph 134 of the Framework. Jointly they, among other things, seek to secure development that is in keeping in terms of its density and layout so as to assist in retaining a sense of local identity by retaining mature trees so that it preserves or enhances the character and appearance of the conservation area.

Highway safety

19. Access to the proposed dwellings would re-use an existing access that has become overgrown. The access joins Marsh Hall Lane on a slight bend, which is quite wide. Opposite is Moor Top Avenue. The CASR explains that traffic is quite low through the village. This confirms my observations on site.
20. Notably, the plans show a visibility splay of at least 75 metres would be formed in either direction with a 2 metre set back. This splay far exceeds the standard sought by the Council. In this regard, the proposal would not therefore adversely affect highway safety.
21. Each dwelling would have a garage and off-street parking provision in front. This potentially would amount to a provision of three parking spaces. Yet, the garages shown would be shy of the recommended length of 6 metres which would be ideal over the lifetime of the development, given the size of vehicles. This would mean that not every vehicle could use the proposed garages, which is likely to result in vehicles parking on the private access, which would inhibit the ability for vehicles and emergency service vehicles to turn, meaning that they couldn't access the site in forward gear. Even though the access would be widened and the majority of manoeuvres would take place off the highway, saved UDP Policy T10 does explain that development is expected to incorporate appropriate highway infrastructure designed to meet relevant safety standards.
22. Accordingly, I conclude, on this issue that the proposed parking arrangements would fail to ensure highway safety. This would be contrary to saved UDP Policies T10 and T19; which seek to ensure development incorporate

appropriate highway infrastructure designed to meet relevant safety standards and provide off-street parking provision.

Other considerations

23. The Council recognise that they are currently unable to demonstrate a five year supply of deliverable housing sites³. This means that UDP policies relating to the supply of housing should not be considered up-to-date. Bullet point 4 of paragraph 14 sets out *where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless: any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or specific policies in this Framework indicate development should be restricted.*
24. However, footnote 9 of the second indent of bullet point 4 in paragraph 14, identifies that Green Belt can be such a policy. Thus, even if the UDP is out-of-date, it would not alter my approach in the event of a conclusion that Green Belt policies indicate that the development should be restricted. In any case, the proposal's contribution to the shortfall of housing in the area would be very modest. Thus, I only give this factor limited weight in favour of the appeal.
25. I also note that the proposed dwellings would not result in harm to the living conditions of neighbouring or future occupants and there are no ecological concerns associated with the proposal. However these attract very limited weight in favour of the proposal.

Other matter

26. I understand the appellant's frustration that the Council could have sought clarification or requested the necessary information rather than just refusing the application, nevertheless it is open to the appellant to produce the necessary information with a view to finding a solution.

Conclusion

27. The appeal scheme would be inappropriate development in the Green Belt and result in a loss of openness. By definition these are harmful and I attach them substantial weight as required by paragraph 88 of the Framework. As such there is a clear conflict with the environmental role of sustainable development. I have also concluded that the proposal would significantly harm the character and appearance of the TCA and that the parking arrangement would fail to meet relevant safety standards. I afford both matters significant weight. They conflict with the social and environmental roles of sustainable development.
28. I have considered matters put before me in favour of the scheme by the appellant, however I conclude that these other considerations taken together do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist and the proposal does not represent sustainable development.
29. For the reasons set out above, I conclude that the appeal should be dismissed.

Andrew McGlone

INSPECTOR

³ Paragraph 47, the National Planning Policy Framework