

Appeal Decision

Site visit made on 14 June 2017

by Alison Roland BSc DipTP MRTPI

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

Decision date:

Appeal Ref: APP/A4710/D/17/3174204

Beestonley Farm, Beestonley Lane, Stainland, Elland, HX4 9PS.

- 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 Nick Walker against the decision of Calderdale Metropolitan Borough Council.
 - The application Ref: 16/00875/HSE, dated 30 June 2016, was refused by notice dated 27 January 2017.
 - The development proposed is remove derelict garden structures on the site and replace with a residential annex, tied to Beestonley Farm as ancillary accommodation.
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this appeal is whether the proposal amounts to inappropriate development in the Green Belt (GB) and if so, 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

3. Paragraph 89 of the Framework states that the construction of new buildings is inappropriate development in the GB unless it is for one of the exceptions specified. This includes the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces. The proposed building would replace an existing garage building and attached larger prefabricated building which the appellant says has been used for family amenity. Both buildings are in a dilapidated condition. The replacement is described as a self contained annex with 2 en-suite beds, sitting room, kitchen and utility, over two storeys.
 4. The Council maintain that the proposal would not be in the same use, as the existing buildings are incidental to the enjoyment of the dwelling, whereas the proposal would be ancillary accommodation. They further maintain that the proposed building would be materially larger than the existing structures on site. Dealing with the former issue first, the appellant maintains that the word
-

use in paragraph 89 of the Framework pertains to Use Classes. However, had that been the intention, then it is my view that the Framework would have defined the word *use* in those terms. I also do not consider the distinction drawn by the Council between *incidental* and *ancillary* is particularly relevant, as the former relates to the erection of outbuildings under the Town and Country Planning (General Permitted Development) (England) Order 2015, which is not the case here. The Courts¹ have also leaned away from an overly legalistic interpretation of planning policy in favour of a purposive approach. The key issue here is whether the proposed use could reasonably be regarded as the same as the subsisting use and on the available evidence, I consider it cannot.

5. The existing buildings are in a semi derelict condition. The Design and Access Statement refers to the prefabricated construction (of the larger building), the fact it has reached the end of its life and cannot currently be used by the appellant. I have limited evidence pertaining to the specific activities that have taken place therein (the appellant refers to use as a garden room including family functions and entertainment purposes). Nonetheless, the available evidence suggests that the buildings have been used for purposes subsidiary to the use of the main dwelling, including possibly at some time, the use of the garage for parking a car. However, I have no evidence to suggest that they have been used for primary living accommodation.
6. I appreciate the appellant's intention that the proposed building would remain in the same family occupation. However, its considerable distance from the host dwelling and the fact that it would afford its occupants all the facilities requisite for independent living, mean that the proposed use would in effect be very similar to a self contained dwelling. For these reasons, I do not consider that the use of the building as proposed would be the same as that of the existing buildings.
7. Secondly, it is evident from the scale and massing of the proposed building that it would be materially larger than the existing single storey buildings on site. Merely because it would have a similar footprint would not address this issue, because size carries with it a connotation of the three dimensional and the proposed building would have a considerably greater massing across two storeys.
8. For these reasons, I consider that the proposed building would not be in the same use as the existing buildings and it would also be materially larger relative thereto. The proposal would thus constitute inappropriate development in the GB and would conflict with Policy GNE1 of the Replacement Calderdale Unitary Development Plan (2006) and the advice in the Framework. These seek to restrain development outside the urban areas through the general extent of the GB and resist inappropriate development therein. Paragraph 87 of the Framework states that inappropriate development is by definition, harmful to the GB and should not be approved except in very special circumstances. Paragraph 88 states that the decision maker should ensure that substantial weight is given to any harm thereto.
9. Added to this harm would be a loss of openness arising from the substantial increase in size of the replacement building compared to the existing buildings.

¹ *Cranage Parish Council v First Secretary of State* [2004] EWHC

This would be localized, but would add to the harm by reason of inappropriateness.

10. The appellant suggests that the building could be considered as an extension of the existing dwelling and is not disproportionate relative thereto. However, as it would be physically detached and would lie a substantial distance away, I cannot accept that it could reasonably be regarded as an extension to the main dwelling. The Framework is clear that the correct assessment for replacement buildings is whether they are materially larger than the building they replace.
11. The appellant in the alternative maintains that the appeal proposal could be considered as limited infilling or the partial redevelopment of a previously developed site. In relation to infilling, as the proposed building would occupy an isolated siting relative to existing built form and could not reasonably be said to infill a gap between existing buildings, I cannot accept it could be conceived as infill.
12. In relation to the redevelopment of previously developed land (pdl), the definition of pdl in the Framework excludes land in built up areas such as private residential gardens. However, as a relatively remote rural location and with the siting of the building in isolation from others nearby, I consider it could not be considered a built up area. Because of this, together with the existing buildings, which have subsisted on site for many years, I accept that the land could be considered to be previously developed.
13. However, the acceptability of development in this regard is contingent on their being no greater impact on the openness of the GB and the purposes of including land within it than the existing development. I have found the proposal would lead to a loss of openness compared with the existing buildings.
14. One of the purposes of including land in the GB is to assist in safeguarding the countryside from encroachment. There is disagreement between the parties as to whether the appeal site and surrounding land comprise part of the residential curtilage of the main dwelling. I can understand the Council's point on this issue, as the land around the proposed site appears naturalised and is distinct in character from the more formal cultivated area closer to the house.
15. Either way, whatever its lawful status, I consider that the proposal would be likely to involve some use of the area around the building for domestic paraphernalia, such as washing lines, garden furniture and the like, which would be less likely to be associated with the use of the existing buildings, which the appellant concedes have reached the end of their life. I consider this would be the case despite the appellants assertion that the building would remain as ancillary accommodation to Beestonley Farm, due to its distance from the house and the fact it would offer all the facilities requisite for day to day occupation. It would thus be likely to result in a greater degree of encroachment into the countryside than the existing development.
16. Therefore, whether one considers the proposal as a replacement building or redevelopment of previously developed land, the outcome is that it would amount to inappropriate development in the GB and there would be added harm in either case.

17. The appellant contends that the scheme is of good contemporary design and would not offend the design policies of the UDP. I have no reason to disagree and it is clear that considerable thought has gone into the design and external finishes proposed which would amount to a contemporary interpretation of a traditional stone barn. I give this some albeit limited weight, as it is a factor that could be repeated all too often.
18. The Design and Access Statement refers to the site being well screened by mature vegetation and I do not disagree with that description. Nonetheless, I attach limited weight to this point as the same could be said of many rural sites.
19. I have found on the main issue that the proposal would if considered as a replacement building, amount to inappropriate development in the GB and that there would be added harm in terms of a loss of openness thereto. If considered in the alternative as redevelopment of a previously developed site, it would amount to inappropriate development in the GB, would give rise to a loss of openness thereto and would also conflict with one of the purposes of including land in it. I attach substantial weight to these findings.
20. For the appeal to succeed, the combined weight of the other considerations raised by the appellant must be sufficient to clearly outweigh the totality of harm identified. Overall, I conclude that the other considerations raised by the appellant, would not clearly outweigh the harm identified. It follows that the very special circumstances necessary to justify the development do not exist. The appeal therefore fails.

ALISON ROLAND

INSPECTOR