



Appeal Decision

Site visit made on 16 August 2017

by S J Lee BA(Hons) MA MRTPI

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

Decision date: 5th September 2017

Appeal Ref: APP/C2741/W/17/3176560

Holly Tree Farm, Murton Way, York YO19 5UN

- 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 Peter Mandy against the decision of City of York Council.
 - The application Ref 16/00617/FUL, dated 9 March 2016, was refused by notice dated 5 December 2016.
 - The development proposed was originally described as the conversion of stable block to 2 bed holiday let (retrospective application following completion of conversion after original approval had expired).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description above is taken from the application form. However, it is clear from the evidence before me that this is not an accurate description of the development. While I could see that the development has been carried out in accordance with the submitted plans, it includes a significant degree of demolition, alteration and extension over and above the building which was originally in place. It is not therefore simply a conversion of the original stable block. The Council has used a different description in its decision notice, which describes the development as the erection of a new two storey dwelling following partial demolition, rather than an extension or alteration to the existing building. Where necessary I shall address the implications of this at appropriate points in my decision, but as I am minded to dismiss the appeal, I do not need to address this point further here. Nevertheless, for the avoidance of any doubt, I have assessed the appeal on the basis that development has already taken place.

Main Issues

3. The main issues in this case are:
 - (a) Whether the development is considered inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
 - (b) The effect on the openness of the Green Belt;
 - (c) The effect of the development on flood risk;

- (d) The effect of the development on the character and appearance of the area;
- (e) 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

Policy Context

4. The appeal site is within the general extent of the York Green Belt as set out in policies YH9(C) and Y1(C1 and C2) of the saved Yorkshire and Humberside Regional Spatial Strategy (RSS). The site is also identified in the Green Belt in the City of York Draft Local Plan Incorporating the 4th Set of Changes (DLP) (2005). While the Council has approved the DLP for development control purposes, it does not carry the full weight of an adopted development plan. The Council has also indicated that the site lies in the Green Belt in its emerging Local Plan, but I have not been provided with any policies or extracts from this document.
5. The Council's officer report states that it is not appropriate to assume that every piece of land within the general extent of the Green Belt in the RSS should necessarily be considered as Green Belt for the determination of applications. With this in mind, they have still argued that owing to the open and agricultural character of the area, it serves the purposes of the Green Belt and has been identified as being part of the area 'preventing coalescence' in evidence base documents drawn to my attention¹. I could see from my site visit that while there is a relatively large area of industrial development in the vicinity of the site, there is a clear and distinct change in the character of the area to that of more sporadically located buildings and a more open agricultural appearance immediately to the east of the two industrial estates. While the site may be on the edge of this more open agricultural character area, it is nonetheless within it and I see no reason why built development in the proximity of the site should render it being considered outside the Green Belt.
6. While they have not specifically argued the site should not be considered Green Belt, the appellant has drawn my attention to extant permission for 8 holiday cabins in the field immediately adjacent to the appeal site. This was granted in 2014, but has not yet been implemented. The appellant has argued that once these have been built, the appeal site would not be within the openness of the Green Belt. Nonetheless, these are yet to be built and while my attention has been drawn to the discharge of some conditions there appears to be matters still to be resolved prior to commencement, particularly relating to drainage. There is also an extant permission to the west of the site for a caravan park. However, this would be unlikely to alter the relationship of the appeal site to the more open countryside to the east should it be fully implemented and thus has little bearing on this case. Irrespective of these permissions, based on my observations of the area and the written evidence before me I see no reason to conclude that for the purposes of determining this appeal the site should not be considered Green Belt.

¹ The Approach to Green Belt Appraisal – February 2003 & Historic Character and Setting Technical Paper Update – June 2013

7. While Policy GB1 of the DLP shares some elements of Green Belt policy within the Framework, the criteria within it are not entirely consistent with national policy as set out in paragraphs 79 to 92. As a result of the non-statutory status of the DLP and this inconsistency, little weight can be given to this policy. Accordingly, I have assessed the appeal primarily against the policies in the Framework, which are material considerations of considerable importance.

Whether inappropriate development in the Green Belt?

8. The appeal relates to a former stable that has been substantially altered and enlarged to create a dwelling which is ostensibly to be used as a holiday let. The site sits to the rear of Holly Tree Farm which is a large detached dwelling fronting Murton Way. The dwelling is accessed from a separate driveway, which would also serve the holiday cabin development in the adjacent field. Permission was previously granted to convert the stable block to a holiday let on appeal². The appellant has confirmed, however, that this permission had expired prior to the conversion taking place.
9. Paragraph 79 of the Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, with their openness and permanence being identified as the essential characteristics of the Green Belt. Paragraph 87 of the Framework states that inappropriate development in the Green Belt is by definition harmful and should not be approved except in very special circumstances. Paragraph 89 of the Framework states that new buildings are inappropriate development unless they meet one of the exceptions listed within that paragraph or paragraph 90.
10. The appellant has argued that the development meets two of the exceptions in paragraph 89. The first relates to the third bullet point which allows for an extension or alteration of a building provided that it does not result in disproportionate additions over and above the site of the original building. The Council does not consider the development to be an extension or alteration as the vast majority of the original building has been demolished. However, even if treated as an extension or alteration, the Council indicates that the development has led to a 54% increase in the footprint of the building. The appellant has not disputed this.
11. I have not been provided with any Council policies or guidance which identifies a point at which an extension/alteration would become disproportionate in size. Moreover, the Framework does not define what is meant by disproportionate. As such, an element of judgement is required. In my view, something which results in a building half as large again as it was originally would be disproportionate in the context of the Framework. The Council's calculation also does not take into account the additional volume that has been created as a result of the increase in height compared to the original building. This only adds to my view that what has been developed represents a disproportionate addition over and above the size of the original building. The appellant has argued the visual relationship with the Green Belt has not changed significantly. However, whether or not the increase in size is disproportionate is largely a quantitative assessment of the relative size of any additions over and above the original building. The visual effect of the development carries little weight in this regard.

² Appeal reference: APP/C2741/A/12/2169412

12. The appellant also considers that the development falls into the exception listed in the sixth bullet point of paragraph 89. This states that the partial or complete redevelopment of previously developed sites, which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it, than the existing building would not be inappropriate. There is no definition of openness in the Framework but it is generally held to be freedom from, or the absence of, development. This is different to the effect of development on the character and appearance of the area. It is accepted by both parties that the development has resulted in an increase in both the height and footprint of the building. By virtue of the increase in the scale and mass of the property, and the encroachment of the built form into an area where none previously existed, the development has clearly had some effect on the openness of the Green Belt.
13. The drawings and photographs provided also illustrate that the building appears larger than what was previously in place. The visual changes are not significant, particularly when viewed from some distance away. Nevertheless, there has still been some negative effect on the visual dimension of openness which is likely to be discernible from those publically accessible vantage points from which the building can be seen.
14. It cannot be said therefore that the development has preserved the openness of the Green Belt. Moreover, one of the purposes of Green Belt set out in paragraph 79 is to safeguard the countryside from encroachment. The increase in size of the building has also had a negative effect in this regard. While I consider the overall effect on these factors has not been substantial, it has nonetheless resulted in a something with a greater impact than what was previously on the site. By definition, the development cannot therefore meet the exception set out in the sixth bullet point of paragraph 89.
15. I note that in their original application material the appellant also made reference to meeting the requirements of the fourth bullet point of paragraph 90 of the Framework. While not referred to in their appeal statement, I shall still address this for completeness. This exception allows for the re-use of buildings provided that they are of permanent and substantial construction and, as above, the development preserves the openness of the Green Belt and does not conflict with the purpose of including land within it. Notwithstanding the extent to which it could be argued the development has re-used the existing building, the effect on the openness and purpose of the Green Belt discussed above still ensures that the development falls outside this exception.
16. Accordingly, the development would not meet any of the exceptions set out in paragraphs 89 or 90 of the Framework. As such, what has been carried out constitutes inappropriate development in the Green Belt. Inappropriate development is by definition harmful to the Green Belt and in line with the Framework's requirements, I have given substantial weight to this harm³. Notwithstanding the weight given to the policy, there would also be conflict with DLP Policy GB1.

Openness of the Green Belt and purpose of including land within the Green Belt

17. I have addressed this issue above. While I have concluded that the effect on openness and the purpose of including land within the Green Belt is not

³ See paragraph 88

substantial, there is nevertheless a degree of harm arising from this, in addition to that resulting from the inappropriate nature of the development.

Flood Risk

18. It is accepted by the main parties that the site lies within Flood Zone 3a. This was established at the previous appeal. The Framework requires a site specific flood risk assessment (FRA) for all development in such areas. The information submitted by the appellant has not satisfied the Council's, or Environment Agency's (EA) requirements for a FRA and from what I have seen, I would agree that it does not constitute a robust approach.
19. The appellant has argued that the finished floor levels are above the peak flood level, that the access onto Murton Way is outside the flood zone and that a warning and evacuation plan would be provided to any future occupants of the holiday let. However, the data which this is based on is from 2011 and relates to the appeal proposal. This does not necessarily reflect the most up-to-date position, particularly when consideration is given to other permissions granted in the vicinity of the site. The nature of the development has also altered significantly since the previous appeal took place. As such, even though the appellant has suggested that they have complied with the EA's standing advice on minor extensions, they have not complied with national planning policy requirements and I cannot be certain that the information either presents a robust assessment of the current situation or that the increased size of the building would not lead to additional flood risk elsewhere.
20. In addition, the Framework requires a sequential test to be carried out for all development in Flood Zone 3a, other than for changes of use and minor development. In the context of flooding, the national Planning Practice Guidance (PPG) defines minor development as minor non-residential extensions with a footprint of less than 250 square metres, development that does not increase the size of the building and householder development within the curtilage of an existing dwelling. Even if treated as an extension and not a new build, the development does not fall into this category and thus a sequential test is required to demonstrate that the development could not have taken place in an area with a lower probability of flooding. It would be premature to comment on whether the development would be capable of meeting such a test, but without this exercise having been carried out there is a clear conflict with the requirements of the Framework.
21. The Framework and PPG require an exception test to be carried out only after it has been demonstrated that it is not possible for the development to be located in zones with a lower probability of flooding. For the exception test to be passed, paragraph 102 of the Framework requires it to be demonstrated that the development provides wider sustainability benefits to the community that outweigh the flood risk and that a site specific FRA demonstrates that it will be safe for its lifetime, taking account of the vulnerability of its users, without increasing flood risk elsewhere. Both elements of the test must be satisfied to be permitted. As already noted, there is no up-to-date or robust FRA with this appeal and I am not satisfied that the information provided is sufficient to meet the exception test.
22. The evidence provided by the appellant does not, in my view, provide adequate comfort that the development is capable of meeting national policy in relation to flooding and flood risk. In coming to this conclusion, I have had regard to

the fact that permission has already been granted for a 'more vulnerable' use on the site in the past. However, that permission has since expired and, as it was for a change of use only, it would not have required the demonstration of a sequential test. What has been developed is of a different nature and national policy still requires development of the type carried out here to provide a site specific FRA and carry out a sequential test. Without this evidence, the development clearly conflicts with paragraphs 102 and 103 of the Framework and the information provided about finished floor levels does not outweigh or override this conflict.

Character and Appearance

23. While not specifically referred to in the decision notice, the Council's officer report concludes that the development would conflict with the Framework insofar as it would not respect or enhance the local environment or take the opportunity improve the character of the area.
24. Though it is larger, the building echoes the broad design of the original building and does not look out of place in its context. The materials used are appropriate and sympathetic to the area and relate well to the main dwelling fronting onto Murton Way. Moreover, while the building has increased in height, it is not of an excessive scale and is well screened from the roadside. The development maintains the appearance of an ancillary or complementary outbuilding and is in-keeping with the rural character of the site.
25. Taking all of these factors into account, I see no reason to conclude that the development is harmful to local character. Accordingly, there would be no conflict in this regard with LP Policy GP1 which seeks, amongst other things, for development to respect the local environment. While I have insufficient evidence to conclude as to whether the development has enhanced local character, I still do not consider there to be any overriding conflict with paragraph 64 of the Framework which seeks, amongst other things, development to be of a good design.

Other Considerations

26. The appellant has argued that many of the same considerations that were taken into account with the adjacent holiday cabin development would apply to the development before me. In particular, that the development caters for a use that would support a local business, that it would not harm the Green Belt due to its industrial location, that it would allow diversification of the farm, that paragraph 81 of the Framework expects local authorities to enhance the beneficial use of the Green Belt and that there is a high unmet demand for visitor accommodation in or near York which the development would support.
27. Notwithstanding the Council's earlier decision on the cabin development, the proximity to industrial development does not alter the fact that the site is considered to be within the Green Belt and would constitute inappropriate development. The proximity or perceived effect on the character of the area of industrial development outside the Green Belt does not alter this. While I have concluded that there would be no harm to the character and appearance of the area, this is a neutral factor that does not weigh in favour of the proposal in the Green Belt balance. There is also little to suggest that the development has led to any material improvement in local character such that it constitutes a clear benefit in this regard.

28. The decision on the cabin development was made in 2014. While I have no reason to assume that the tourism industry does not continue to play a strong role in York's economy, there is nothing before me which strongly demonstrates that this particular area is in need of additional visitor accommodation, or that the permission for the cabins has not satisfied local needs. There is also nothing which quantifies the need or demand for holiday accommodation either in this area or York in general. Nonetheless, the Council has not disputed the appellant's comments in relation to this and I recognise that providing some economic activity on the site would provide benefits in the local area and make some beneficial use of the Green Belt. However, the development provides only one additional holiday let and thus I have given the benefits associated with it only moderate weight in my decision.
29. The provision of one additional holiday let is unlikely to carry the same level of weight as the additional accommodation provided by the other development. In addition, I note that the Council listed other benefits and considerations that were taken into account in that development which do not apply to this case. As such, I do not consider the two cases to be entirely comparable.

Other Matters

30. The appellant has raised some concerns over how the Council dealt with the application. This is not something that is before me and has not had a bearing on my consideration of the appeal.

Very Special Circumstances and Conclusion

31. The development constitutes inappropriate development in the Green Belt. By definition, this is harmful to the Green Belt and the Framework indicates such harm should be given substantial weight. I have also given substantial weight to the effect on the openness of the Green Belt and the conflict with national policy in terms of flood risk. This is balanced against the moderate economic benefits associated with the development.
32. Taking all matters into account, I find that the other considerations in this case do not clearly outweigh the substantial weight to be given to the totality of harm to the Green Belt and other harm arising from the development. Consequently, the very special circumstances necessary to justify the development do not exist. For these reasons I conclude that the appeal should be dismissed.

S J Lee

INSPECTOR