
Appeal Decision

Site visit made on 23 October 2017

by G J Fort BA PGDip LLM MCD MRTPI

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

Decision date: 20 November 2017

Appeal Ref: APP/C2741/W/17/3179382

Dutton Farm, Boroughbridge Road, York YO26 8JU

- 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 and Mrs D Pinkney against the decision of City of York Council.
 - The application Ref 17/00501/FUL, dated 2 March 2017, was refused by notice dated 28 April 2017.
 - The development proposed is the demolition of the existing barn and replacement with 1 No. dwelling with associated landscaping and access arrangements.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of the existing barn and replacement with 1 No. dwelling with associated landscaping and access arrangements at Dutton Farm, Boroughbridge Road, York YO26 8JU in accordance with the terms of the application, Ref 17/00501/FUL, dated 2 March 2017, subject to the conditions in the schedule to this decision below.

Main Issue

2. The appeal site is within the York Green Belt. Consequently, I consider the main issue in this appeal to be whether the proposed development would comprise inappropriate development in the Green Belt.

Reasons

Site, Surroundings and Proposed Development

3. The appeal site is broadly level, roughly rectangular and comprises a long field abutting the A59, a large barn faced in timber and corrugated sheeting, related gravelled parking areas, and an area to the side of the barn annotated as a 'menage' on the submitted layout plan. Bounded for the most part by mature trees and hedgerows, the appeal site is part of a wider holding associated with Dutton Farm, and is accessed via a long existing track that spurs from the A59. Dutton Farm is a large complex of brick-faced buildings, predominantly of two-storeys that is situated across the existing access track. The wider surroundings of the appeal site comprise gently undulating predominantly open land of a deeply rural character, punctuated by telegraph poles, pylons and sporadically located buildings.

4. The proposed development seeks to demolish the existing barn and locate a building of a very similar footprint, scale and overall character to it, but employing more structural openings to facilitate its use as a dwelling. This building would be located not on the footprint of the existing barn but somewhat to the west of this on land currently occupied by the menage and gravelled parking area. Paving would be installed around the proposed dwelling with parking and a turning head sited to its front and tarmacked. The majority of the footprint of the existing barn would be landscaped, as would the bulk of the existing menage area, and the gravelled surface to the rear of the barn. A hedgerow would be introduced on the boundary of the site with Dutton Farm splitting the access to the two dwellings.

Whether Inappropriate Development

5. The National Planning Policy Framework (the Framework) establishes that the Government attaches great importance to Green Belts, that their essential characteristics are their openness and their permanence, and that their fundamental aim is to prevent urban sprawl by keeping land permanently open. In Green Belt terms the concept of openness comprises both visual and spatial aspects and means that, on the whole, land so designated should remain free from development. The Framework sets out that, with some exceptions, the construction of new buildings in the Green Belt should be regarded as inappropriate.
6. Policy GB1 of York's *Draft Local Plan Incorporating the 4th set of changes; Development Control Local Plan* (Approved April 2005) (the Draft Local Plan), establishes that planning permission would only be granted where the scale, location and design of development would not detract from the Green Belt's open character and would not conflict with the purpose of including land within the Green Belt, or prejudice the setting and special character of the City of York.
7. The Framework sets out exceptional types of development that would not be inappropriate in the Green Belt in paragraphs 89 and 90. Of these, my attention has been drawn to paragraph 89, bullet 6 relating to "the limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), 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 development".
8. The appellants referred to a Certificate of Lawfulness¹ in relation to the appeal site which relates to its residential use. Moreover, at my site visit I saw that the existing barn was in use for limited domestic storage, and I note the comments of the appellants to the effect that the residential use of the site has been ongoing for more than 10 years. Consequently, I consider that the appeal site does not constitute agricultural land and thus would meet the definition of previously developed land given in the glossary of the Framework. In arriving at this view, I am cognisant that the Council supplied no substantive evidence sufficient to undermine the appellants' assertions regarding the Certificate of Lawfulness, or the established use of the appeal site.

¹ Council reference: 05/00578/CLD

9. I note that the appeal site benefits from an extant planning permission² for residential conversion of the barn, and that whilst this would retain the proximity of the buildings, it would nevertheless subdivide the site, and this would affect their existing visual and functional relationships. As this extant planning permission would deliver a similar level of accommodation to the appeal scheme, and I have no evidence before me to suggest that its development would not be feasible, I consider that it constitutes a fall-back position to which I attach considerable weight in the overall planning balance.
10. The proposed dwelling subject to this appeal would be sited further from the Dutton Farm building than the existing barn. Whilst this would result in marginally more visual separation between the structures, it would not lead to a degree of urbanisation or functional separation over and above that of the fall-back scheme. As a result, the siting of the proposed dwelling would not lead to a greater effect on the openness of the appeal site or its surroundings than that of the extant planning permission.
11. The proposed dwelling would be of a broadly similar scale, massing and footprint to the existing barn. Whilst hardstanding would be installed around, and in front of the proposed dwelling, the appeal scheme would nevertheless introduce a substantial amount of landscaping to replace the bulk of the menage, most of the footprint of the existing barn, and the gravelled surfaces to the side and rear. As a consequence, and taken together with my findings on the siting of the proposed dwelling, I consider that the appeal scheme would not lead to a reduction of the overall openness of the appeal site.
12. Due to the appeal site's established domestic use and the presence there of a building and related surfacing, I consider that its development would not result in encroachment into the countryside. The appeal site's separation from settlements and the City of York mean that the proposed development would neither lead to unrestricted sprawl of large built-up areas, nor result in neighbouring towns merging into one another, nor harm the setting of historic towns. Moreover, I have no evidence before me to suggest that the proposed development would discourage the recycling of derelict or other urban land. Consequently, I find that the proposed development would not conflict with the purposes of including land within the Green Belt. Therefore, taking these considerations together with my conclusions regarding the proposed development's effect on openness, I conclude that it would not constitute inappropriate development for the purposes of the Framework.
13. Whilst I note the extant permission in respect of the appeal site, I have been provided with no evidence to establish that the permission has been implemented, and as a consequence, I consider that the proposed development would not comprise replacement of an existing dwelling. Neither would it meet any of the other classes of development given in Policy GB1 of the Draft Local Plan that meet its in-principle support. However, given the draft policy's inconsistency with the Framework in these regards, and its stage of plan preparation, the proposed development's conflict with this policy is a consideration to which I attach only moderate weight in the overall planning balance. Consequently, in this respect the proposed development's compliance with the Framework justifies a departure from Policy GB1 in this instance.

² Council reference: 16/02381/FUL

14. Accordingly, I conclude that the proposed development would not comprise inappropriate development in the Green Belt, and would as a result meet the expectations of the Framework and Policy YH9 of the Yorkshire and Humber Regional Strategy (adopted May 2008), insofar as they, taken together, and amongst other things, seek to ensure that the Green Belt around York establishes long term development limits that safeguard the special character and setting of the historic city, and that urban sprawl is prevented by keeping land permanently open.

Conditions

15. Paragraph 206 of the Framework states that conditions should only be imposed where they are necessary; relevant to planning and the development to be permitted; enforceable; precise; and reasonable in all other respects. Where I have attached conditions suggested by the Council I have amended their wording in some instances in the interests of clarity.
16. In the interests of certainty I have attached a condition which specifies the approved plans. In the interest of the character and appearance of the site and its surroundings I have attached a condition requiring samples of the materials to be employed in the proposed dwelling's external construction to be made available for the Council's inspection and approval prior to their inclusion within the building's facing. However, as the appeal scheme includes elements such as demolition that could precede the construction of the new dwelling I consider it unnecessary to require compliance with this condition prior to commencement of the development.
17. I am mindful that former agricultural uses of the appeal site could have had contaminative affects. Consequently, as residential uses are sensitive to contaminated land, I have attached a condition requiring a risk assessment of the site in these regards, and requiring remediation if contamination is present. I have, however, due to the scale of the proposal scaled-back and simplified the suite of suggested conditions supplied to me in these regards. Elements of this condition necessarily require compliance with them prior to commencement of the development to ensure that the health and safety of site operatives and the dwelling's future occupants would be safeguarded and that the environmental quality of the area would not be adversely affected.
18. I have attached a condition requiring the submission of details of surface water drainage to the Council for its approval in order that the proposed development makes acceptable arrangements in these regards, and to ensure that it does not increase flood risk. It is unnecessary given the extent of the development proposal to require compliance with this condition prior to its commencement, and I have made modifications to the wording to reflect this and to include details of the informative notes submitted by the Council.
19. As the grounds included in the red edge boundary to which the planning application relates are extensive, I consider that the implementation of permitted development rights³ within them could have the potential to lead to a cumulative erosion of the openness of the Green Belt. Consequently, I consider that these constitute the exceptional circumstances that justify attachment of a condition restricting permitted development rights. However,

³ Arising from the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

as I consider that this condition would ensure that the proposed development could avoid harmful erosion of the openness of the Green Belt, I have found it unnecessary to attach the suggested condition restricting the open land forming the northern part of the appeal site from constituting residential curtilage.

20. I consider that the exceptional circumstances necessary to justify a restriction of the permitted development rights in relation to extension, alteration or improvement of the proposed dwelling have not been demonstrated in this instance. As a result, I have not attached a condition that would restrict the implementation of these rights.
21. To promote the use of sustainable transport modes and to meet the objectives of the Framework in this regard⁴, I consider it reasonable to attach a condition requiring installation of an electric vehicle charging point prior to the first occupation of the dwelling.
22. In the interests of highway safety, and to ensure that the proposed development makes appropriate provision for parking, I consider it necessary to attach a condition requiring the parking arrangements as shown on the submitted plans to be provided prior to the dwelling's first occupation.
23. In the interests of the openness of the Green Belt and the character and appearance of the site and its surroundings, I have attached a condition requiring submission to the Council of a scheme of landscaping for its approval. This is of necessity a pre-commencement condition to ensure that development progresses in line with the approved details. I have also attached a condition to secure the implementation of the landscaping scheme in accordance with the approved details.

Conclusion

24. The appeal scheme would not conflict with the adopted development plan insofar as the aforementioned policy is concerned. Therefore, for the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should succeed.

G J Fort

INSPECTOR

⁴ As expressed in paragraphs 29 and 32

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan as existing; Drawing Number DSPY02/0317/09 'Proposed Site Layout'; Drawing Number DSPY/0317/10 'Proposed Dwelling Plans'; Drawing Number DSPY02/0317/11 'Proposed Elevations'.
- 3) No external construction of the dwelling hereby approved shall take place until samples of all external facing materials have been made available onsite for inspection by the local planning authority and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved sample details.
- 4) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 21 days of the work being completed and approved in writing by the local planning authority.
- 5) Prior to construction above slab level of the dwelling hereby approved details of the surface water drainage arrangements shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and completed prior to first occupation of the development hereby approved. Consideration should be given to surface water discharge via soakaway, infiltration system and watercourse in that priority order. The effectiveness of any soakaways proposed should be established through an appropriate assessment carried out under the recommendations of BRE Digest 365 and witnessed by the local planning authority's flood risk management team.
If sustainable drainage methods are proven to be unsuitable then peak run-off must be attenuated in accordance with the Local Planning Authority's Strategic Flood Risk Assessment.
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

(or any order revoking and re-enacting that Order with or without modification), other than those expressly authorised by this permission:

- no fences, gates, walls or other means of enclosure shall be erected;
- no buildings, enclosures, swimming or other pools required for a purpose incidental to the enjoyment of the dwellinghouse as such shall be developed
- no containers used for domestic heating purposes for the storage of oil or liquid petroleum gas shall be installed;
- no hard surfaces shall be provided.

- 7) Prior to the first occupation of the development hereby approved a three pin 13 amp external electric socket which is suitable for outdoor use and compliant with British Standard BS1363 shall be installed. The socket shall be located in a suitable position to enable the charging of an electric vehicle within the parking spaces using a 3m cable, include a weatherproof cover, and be provided with a power switch within the dwelling hereby approved.
- 8) The dwelling hereby approved shall not be occupied until space has been laid out within the site in accordance with drawing no. DSPY02/0317/09 'Proposed Site Layout' for 3 cars to be parked and for vehicles to turn so that they may enter and leave the site in forward gear and that space shall thereafter be kept available at all times for those purposes.
- 9) No development shall commence until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development.
- 10) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.