

Appeal Decision

Hearing held on 5 December 2017

Site visit made on 5 December 2017

by Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC

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

Decision date: 10th January 2018

Appeal Ref: APP/Z4718/W/17/3180123

Land adjacent to Greenfield House, Green Lane, High Flatts, Huddersfield HD8 8XU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Mrs Maureen Pickford against Kirklees Metropolitan Borough Council.
 - The application Ref 2017/90500, is dated 21 October 2016.
 - The development proposed is removal of agricultural building and erection of two rural exception affordable dwellings.
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Decision

1. The appeal is dismissed and planning permission for removal of agricultural building and erection of two rural exception affordable dwellings is refused.

Procedural Matters

2. The planning application was made in outline with all matters reserved. I have considered the illustrative block plan and illustrative north elevation street scene drawing, but have regarded them as indicative only.

Main Issues

3. The main issues are:
 - (a) Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (NPPF) and any relevant development plan policies;
 - (b) The effect of the proposal on the openness of the Green Belt and the purposes of including land within it; and
 - (c) If the proposal would be inappropriate development, whether the harm by reason of its inappropriateness and any other harm is clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

Whether the proposal would be inappropriate development in the Green Belt

4. The appeal site is within the Green Belt as shown on the Proposals Map for the Kirklees Unitary Development Plan 1999 ('the UDP'). Paragraph 89 of the NPPF

regards the construction of new buildings as inappropriate in the Green Belt unless it relates to a number of exceptions listed in bullet points. It was agreed at the hearing that the most relevant bullet point is the fifth one, which contains two separate limbs: "limited infilling in villages, and limited affordable housing for local community needs under policies set out in the Local Plan". It is common ground between the main parties that the appeal site does not constitute previously development land given its agricultural use, and so the sixth bullet point of paragraph 89 does not apply.

5. There was some discussion as to whether the proposal could represent limited infilling in villages in terms of the first limb of the fifth bullet point of paragraph 89. However, the original application was described as the erection of two rural exception affordable dwellings and this is what has been consulted on at both the application and appeal stages. Any material deviation from what has been applied for could prejudice interested parties and/or require fresh assessment under different development plan policies. Therefore, I have proceeded on the basis that the second limb of the fifth bullet point of paragraph 89 is the most relevant exception to consider.
6. Policy H11 of the UDP deals with the provision of affordable housing to satisfy a clear local requirement where housing development would not otherwise be permitted provided that environmental and highway considerations can be satisfied. In the Green Belt, the policy requires sites to be small-scale and within or adjoining existing villages where it is demonstrated that there is no suitable alternative site outside of the Green Belt.
7. Policy PLP11 of the Kirklees Publication Draft Local Plan (PDLP) sets out the emerging approach to affordable housing. In the final paragraph, it states that "exceptionally, planning permission may be granted for affordable homes in small freestanding settlements on land which would not normally be permitted for housing development, where there is otherwise little prospect of meeting robustly evidenced local needs particularly for housing to rent by people who work locally. Such schemes must include arrangements for the homes to remain affordable in perpetuity." The PDLP is currently at examination and proposed modifications to the final paragraph of Policy PLP11 include the removal of the need for affordable homes to be 'in small freestanding settlements'. The Council confirmed that Policy PLP11 is subject to objections at the examination and so can only be afforded limited weight.
8. The age of Policy H11 and its adoption prior to the publication of the NPPF does not automatically render it out of date. Paragraph 215 of the NPPF states that due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF. At the hearing, the Council accepted that the fifth bullet point of paragraph 89 of the NPPF, as well as the proposed modifications to Policy PLP11, does not refer to the location of affordable housing in the Green Belt. The NPPF also does not require demonstration that no suitable alternative sites outside the Green Belt exist.
9. Given these inconsistencies with the NPPF, I agree that Policy H11 carries limited weight insofar as it requires affordable housing in the Green Belt to be within or adjoining existing villages where it is demonstrated that there is no suitable alternative sites outside of the Green Belt. However, Policy H11 requires such development to be small-scale, which is consistent with the NPPF's reference to limited. The policy also requires such development to meet

a clear local requirement, which is consistent with the NPPF's reference to local community needs. Therefore, I can afford these elements of Policy H11 considerable weight in my decision.

10. The appellant cited Policies H10 and H12 of the UDP as relevant policies. Policy H10 refers to the provision of affordable housing having regard to a number of matters including evidence of local need. Policy H12 refers to arrangements to ensure that affordable housing remains available for all time for local residents in proven housing need. Therefore, I have had regard to these policies.
11. The Kirklees Interim Affordable Housing Policy 2016 identifies a net imbalance of affordable housing in the district of 1,049 dwellings per annum. The Council noted at the hearing that this imbalance would be reduced if addressed over a five year period and that the PDLP seeks to address the provision of affordable housing sites. The Council also argued that a local requirement for affordable housing is smaller than a district-wide requirement. Given the wording of both Policy H11 and the fifth bullet point of paragraph 89 of the NPPF, I see no reason to disagree.
12. The appellant referred to the Denby Dale Parish Council Business Plan from 2011 which includes the aim to develop a housing strategy to cope with future demand, make best use of available land and protect the Green Belt. Reference was made at the hearing to local people in the vicinity of the appeal site confirming a local need for housing. The appellant mentioned her desire to provide affordable housing for her family to live within the local area close to where they work. However, the evidence presented by the appellant is not sufficiently clear, detailed or robust to demonstrate a local requirement for affordable housing.
13. A draft planning obligation was submitted by the appellant before the hearing seeking to secure two intermediate dwellings on the appeal site. The Council raised a number of concerns regarding the obligation. This included the trigger point for the sale of the dwellings on the open market and the robustness of key definitions within the obligation. Despite efforts to resolve the Council's concerns within the two week deadline set after the close of the hearing, it has not been possible for the main parties to reach agreement on the wording of the obligation. As the obligation requires the signatures of both the Council and the owners of the appeal site, it has not been completed and so cannot take effect. Therefore, in addition to the lack of evidence regarding local need, the development also fails to secure affordable housing on the site.
14. The appellant has suggested that a planning condition could be imposed requiring a completed planning obligation to be submitted prior to the construction or occupation of the dwellings. However, Paragraph 010¹ of the Planning Practice Guidance (PPG) section on conditions states that a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. Such a condition may be appropriate in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk. Paragraph 010 of the PPG also advises that ensuring that any planning obligation or other agreement is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties

¹ Planning Practice Guidance ID 21a-010-20140306

about what is being agreed. It encourages the parties to finalise the planning obligation or other agreement in a timely manner and is important in the interests of maintaining transparency.

15. It has not been demonstrated that the appeal site development is complex or strategically important and I have little evidence that the deliverability of the development would be at risk. Therefore, it would not be reasonable to secure the affordable housing provision via a planning condition. It would also not be appropriate for me to provide guidance on the content of any planning obligation as this is a matter for the Council and appellant to address in the first instance.
16. While the proposal would be limited, there is insufficient evidence that it would provide for local community needs or satisfy a clear local requirement. I also consider that there are insufficient mechanisms in place to secure the affordable housing based on the lack of a completed and effective planning obligation. Therefore, the proposal would represent inappropriate development in the Green Belt contrary to paragraph 89 of the NPPF and Policy H11 of the UDP. The lack of evidence regarding local need is also contrary to Policy H10 of the UDP, while the inability to secure the affordable housing is contrary to Policy H12.

Effect on the openness and purposes of the Green Belt

17. Paragraph 79 of the NPPF states 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.
18. The appeal site is situated between housing on the north side of Green Lane, with fields and agricultural buildings to the north and south. The site contains an existing agricultural barn that has been used for storing hay and other items, although the appellant states this is now largely redundant. The barn has a large footprint relative to the size of the site. Although not previously developed land due to its agricultural use, the existing barn has an effect on the openness of the Green Belt due to its overall size and appearance. The barn is fairly rudimentary in materials and construction, but it is not particularly out of keeping with its rural surroundings and is not a temporary structure. It takes up a degree of space along Green Lane but is seen within the context of existing buildings both domestic and agricultural.
19. The illustrative block plan and street scene drawings indicate what could be developed on the appeal site in terms of two dwellings. The final details relating to scale, layout and appearance would not be fixed until the reserved matters stage and I do not have sufficient information on the dimensions of the existing and proposed buildings to assess the precise effects. Nevertheless, two dwellings are likely to take on a different form to the existing barn as either detached or semi-detached properties. Given the effect of the existing barn on the openness of the Green Belt, the harm to openness that would arise from the proposed development is likely to be limited to a minor level depending on the final details. The dwellings would alter the character and appearance of the site from agricultural to residential, but this would be offset by the existing residential properties either side. In terms of Green Belt purposes, there would likely be no more than a minor adverse effect in terms of safeguarding the countryside from encroachment.

Other considerations

20. The proposed development would provide a boost to local housing supply. However, the amount of development is limited to two houses, and the affordable housing element has not been secured, so I can only afford modest weight to this other consideration.
21. The development would replace a somewhat dilapidated and seemingly redundant structure and, depending on the final details, could complement the character and appearance of the area. However, the existing barn is not particularly out of keeping with its rural surroundings and so I only give modest weight to this other consideration.
22. The development would be close to a bus stop on Penistone Road with hourly bus services from early morning to evening on Mondays to Saturdays. The bus service connects to the nearby settlements of Ingbirchworth, Birds Edge, Upper Denby and Denby Dale which have a range of services and facilities including a train station in Denby Dale. The school in Birds Edge is within walking distance along a pavement that runs along one side of Penistone Road. Occupants of the development would not have to travel far to access local services and facilities and would not be wholly reliant on the private motor car. This other consideration thus carries moderate weight in favour of development.
23. While I acknowledge the appellant's family requirements, this appeal scheme does not relate to the provision of a rural worker's dwelling. Moreover, I have insufficient evidence on the personal circumstances affecting members of the appellant's family. Thus, I can give this consideration little weight.
24. The appellant referred to the recent grant of planning permission for a dwelling to the rear of 1-2 Barton Cottages in High Flatts. However, from the officer's report provided by the Council, it would appear that the site was considered to be previously developed land where there would be no material impact on the openness of the Green Belt. Therefore, I can give very little weight to this other consideration.
25. The appellant highlighted the existence of permitted development rights for the conversion of agricultural buildings to residential under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). However, the proposal before me is to replace the agricultural building with two dwellings, which requires planning permission. Therefore, I give very little weight to the existence of Class Q as an other consideration.
26. I note the appellant's reference to the lack of communication from the Council in response to the seeking of pre-application advice and during the application process itself. I also note that the appellant appealed against the failure to determine the application. However, these other considerations are largely procedural matters and carry no weight in favour of the development.

If the proposal would be inappropriate development, whether the harm by reason of its inappropriateness and any other harm is clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal

27. Paragraph 87 of the NPPF indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very

special circumstances. The proposed development would likely result in no more than minor harm to the openness of the Green Belt and the purposes of including land within it. However, paragraph 88 of the NPPF makes clear that substantial weight should be given to any harm to the Green Belt. Very special circumstances will not exist unless the potential harm to the Green Belt, and any other harm, is clearly outweighed by other considerations.

28. Cumulatively, moderate weight can be attached to the benefits of development that make up the other considerations. The other considerations do not clearly outweigh the harm to the Green Belt that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist. Thus, the development would not accord with Policy H11 of the UDP or the aims of the NPPF which seek to protect Green Belt land from inappropriate development.

Conclusion

29. For the reasons give above, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

Tom Gilbert-Wooldridge

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Stephen Locke	Stephen Locke Associates
Maureen Pickford	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Rebecca Drake	Kirklees Council
Emma Thompson	Kirklees Council

DOCUMENTS SUBMITTED AT THE HEARING

1. Comments from Kirklees Council's legal officer regarding the draft planning obligation, submitted by the local planning authority.
2. Officer's report regarding housing development to the rear of 1-2 Barton Cottages in High Flatts, submitted by the local planning authority.