The Planning Inspectorate

Appeal Decision

Site visit made on 15 July 2019

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 15 August 2019

Appeal Ref: APP/Z4718/W/19/3224617
Land at Hillcrest, Whitegate Road, Honley, Huddersfield HD9 6RB

- 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 J Taylor against the decision of Kirklees Metropolitan Borough Council.
- The application Ref 2018/62/94154/W, dated 13 December 2018, was refused by notice dated 19 February 2019.
- The development proposed is the erection of a detached dwelling (within a Conservation Area).

Decision

1. The appeal is dismissed.

Preliminary Matter

2. Since the Council's report on the application was written, the Kirklees Local Plan ('the LP') was adopted on 27 February 2019. This pre-dated the submission of the appellant's appeal documents and the notification to interested parties of the appeal, and so I am satisfied that there has been an adequate opportunity for those interested in the appeal to address the updated policy position.

3. The adoption of the LP has superseded the policy position as it prevailed when the Council determined the application, and in particular the reference to Policy BE5 of the former Unitary Development Plan ('the UDP') found in the Council's second reason for refusing permission. Although addressed in some of the appeal documents, I have not had regard to the policies of the UDP, given the updated position.

Main Issues

4. The appeal proposal is a resubmission of a proposal previously dismissed on appeal under reference APP/Z4718/W/15/3132624 ('the First Decision'). As in the First Decision, the main issues arising in the appeal are:

   - Whether or not the proposed development is inappropriate development within the Green Belt for the purposes of the National Planning Policy Framework ('the Framework') and the policies in the development plan;

   - The effect of the proposed development on the openness of the Green Belt;

- The effect on the character and appearance of the area with particular regard to whether the development would preserve or enhance the character or appearance of the Honley Conservation Area; and

- If the development is inappropriate development in the Green Belt, whether the harm arising from 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

Whether inappropriate development in the Green Belt

5. As noted by the Inspector in the First Decision ('the First Inspector') the site lies on the valley side on the outskirts of Honley and not within the village itself. For the purposes of the Framework's definition of 'previously developed land', the site is a residential garden but not in a built-up area. Paragraph 145(g) of the Framework excepts the construction of new buildings as being inappropriate development in the Green Belt where the development involves the redevelopment of previously developed land, subject to the effects on the openness of the Green Belt.

6. However, having viewed the site and considered the *Calderdale* factors[1] I respectfully disagree with each of the main parties that the appeal site amounts to previously developed land capable of attracting the 'brownfield' exception of paragraph 145(g) of the Framework. It follows that LP Policy LP59, dealing with brownfield sites in the Green Belt, has no application to the proposal.

7. Neither party has suggested what 'permanent structure' the land is claimed to lie within the curtilage of. The site itself has 2 buildings sited upon it, a dilapidated garage and a garden shed. Neither party contends that either building attracts a curtilage in its own right, and they do not appear to me to do so.

8. The layout of the appeal site is that it can be accessed in two ways. From the adjoining road to the north there is a chain link fence in a gap in the boundary wall, leading to the garage. Boundary walls line the site on its two sides, and a retaining wall binds the site to its southern end. A small gap in the western boundary wall links to the principal garden area of 'Hillcrest'.

9. Although no 'blue line' plan was submitted with the application, which would normally indicate other land within the ownership or control of the applicant, the appeal site presently appears to lie within the ownership of the property at 'Hillcrest', which lies to its western side beyond a detached garage and large lawn. I have therefore considered whether the appeal site lies within the curtilage of that dwelling. The appeal site carries its own Land Registry Title Number, YY4266, used as the 'red line' plan for the planning application, and the supporting letter from the occupants of the neighbouring Whitegate House states that the title was transferred by their own predecessors in around 1980.

10. The site is well-wooded and the First Inspector then described the site, in early 2016, as an area of garden, although 'somewhat overgrown' and having a

[1] *Attorney-General ex rel Sutcliffe v Calderdale BC* (1982) 46 P. & C.R. 399 as recently explained in *Challenge Fencing Ltd v SSHCLG and Elmbridge BC* [2019] EWHC 553 (Admin)

'semi-natural appearance'. More recently it appears that steps have been taken to cultivate the site, although it has not obtained a particularly manicured appearance. At the time of my visit there were a number of produce and flower beds, a polytunnel, a bathtub, a rope swing and a compost heap. Whilst I have no reason to depart from the First Inspector's observation that the appeal site is a domestic garden area for the adjoining property at 'Hillcrest', it does not appear to me to form part of the curtilage of that dwelling. Rather it is a separate enclosure presently forming a secondary garden area to the property at 'Hillcrest'.

11. The *Dartford* case[2] referred to by the parties confirms that residential gardens lying outside built-up areas are not excluded from the Framework's definition of previously developed land, and thus they may attract the paragraph 145(g) exception to when new buildings amount to inappropriate development in the Green Belt. The prior criterion however is that the garden land must lie within the curtilage of an existing or previous permanent structure, and there is insufficient evidence to conclude that such is the case here.

12. Therefore, no other exception applying, as the proposal constitutes the construction of a new building it amounts to inappropriate development in the Green Belt. Inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. Substantial weight should be given to harm to the Green Belt, including harm by reason of inappropriateness.

Effect of the proposal on the openness of the Green Belt

13. The First Inspector noted that the design of the proposed dwelling takes account of the topography of the site and would be largely underground, although with some externally visible features such as the gabion wall. With no volume or massing of the building visible, the First Inspector found there would consequently be no reduction in openness, with an overall neutral effect on this issue having regard to the removal of the small-scale garage and shed.

14. Since the First Decision, the factors to be taken into account when determining the impact of a proposal on the openness of the Green Belt have come before the Court of Appeal for analysis on several occasions[3]. It is clear from those judgments that the openness of the Green Belt has a spatial aspect as well as a visual aspect, and the absence of visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt as a result of the location of a new building. As the First Inspector noted, there would seem to be little visual difference as a result of the proposal, although the section drawings (rh/120/14/7 and rh/120/14/4) do not appear to be drawn to the same scale, with the result that I am uncertain as to the extent of earthworks required. However, there would be a house where presently there is none (and in this respect the proposal differs from those other appeal decisions brought to my attention by the appellant, which relate to replacement, rather than new, buildings with subterranean elements).

15. The essential characteristics of Green Belts are their openness and their permanence, and 'openness' in this context means an absence of development.

[2] *Dartford Borough Council v SSCLG* [2017] EWCA Civ 141
[3] Particularly in *R (oao Lee Valley Regional Park Authority) v Epping Forest DC* [2016] EWCA Civ 404, *Turner v SSCLG* [2016] EWCA Civ 466 and *Samuel Smith Old Brewery (Tadcaster) and anor v North Yorkshire CC and anor* [2018] EWCA Civ 489

The appeal site lies close to open fields, to the north of Honley, within whose Conservation Area it lies, and to the south of Netherton. Green Belt purposes that appear to be served by the designation of the appeal site include checking unrestricted sprawl, safeguarding the countryside from encroachment and preserving the setting and special character of historic towns.

16. Given the very limited visible effects of the built development, I agree with the First Inspector that the visual openness of the Green Belt would not be harmed by the building itself. However, the introduction of a residential dwelling into the appeal site would necessarily harm the spatial openness of the Green Belt in this location, by introducing development where there is presently none (save for the small garage and shed) for a purpose that does not align with the purposes of Green Belts. As to the overall visual effect on openness, as a domestic garden the site could attract an amount of domestic paraphernalia in its present form but, as the First Inspector noted, the site would be likely to be used much more intensively in association with a new dwelling compared with its existing function. Visible manifestations of the use of the proposed building, such as parked cars or waste bins, would evidence the fact of the development and so also reduce the openness of the Green Belt in this location.

17. Therefore, on this issue I depart from the conclusions of the First Inspector and find that there would be harm to the Green Belt by reason of the loss of openness. This harm also carries substantial weight against the proposal.

Effect on the character and appearance of the area

18. The appeal site lies within the designated heritage asset that is Honley Conservation Area, and accordingly special regard is to be had to the desirability of preserving or enhancing the Conservation Area when considering development proposals. The Framework advises that great weight should be given to the conservation of heritage assets, and this advice is reflected in LP Policy LP35 that seeks to ensure that heritage assets are appropriately conserved to the extent warranted by their significance, having regard to wider development benefits.

19. The parties do not demur from the First Inspector's assessment of the significance of the Conservation Area as deriving from the spacious pattern of development in the area which, together with the extent of tree cover, gives the impression of the built-up area 'thinning out' when approaching along Whitegate Road from the south and contributes to the rural character of the area.

20. The appellant's case is that a material change in circumstances has arisen since the First Decision in that the appeal site has been cultivated, with a change in character from the 'semi-natural' character described by the First Inspector to a garden of domestic appearance. Although no doubt more cultivated in appearance than it was 5 years ago, as evidenced by the photographs appearing in the Architect's Statement of December 2014, the changes at the ground level to the site do not alter its contribution to the tree cover. Although the Council considers that the trees do not warrant a tree preservation order, there is no indication of any intention to remove any trees from the site save in order to implement the appeal proposals, if permission is granted. The significant reduction in tree cover required to construct the dwelling would result in harm, albeit limited, to this element of the Conservation Area's significance.

21. The appellant's Statement of Significance refers to the landscaping proposals to change the character of the land from essentially garden land to a more natural state through ecological/landscape planting. Although the landscaping proposals show the seeding of wildflower and grassed areas of meadow, and the retention of a large number of trees, I do not consider that it would be reasonable to require the occupiers of a residential dwelling to maintain permanently their garden area in the ways put forward in the appellant's Ecological Report, particularly the aspects concerning when the grass may be mown and the requirement to remove cuttings. Despite the changes over the past few years, like the First Inspector I consider that overall the appeal site would acquire a more manicured and developed appearance than it has at present, and the increased density of residential development in the area would also harm the spacious pattern of development in this part of the Conservation Area.

22. Therefore, there would be conflict with LP Policy LP35, requiring proposals within Conservation Areas to conserve those elements that contribute to their significance, as well as with Policy LP33 which seeks to avoid the loss of trees or woodlands of significant amenity value. Where 'less than substantial harm' arises to a heritage asset, as it would do here, the Framework requires that the harm should be weighed against any public benefits of the proposal. This will be addressed below in my conclusions.

Other considerations

23. Although not adverted to by the appellant, the Council's officer report states that there is (or was, at the time of writing) a shortage of deliverable housing land in the local area, although the quantum of this shortfall was not specified. The published Housing Delivery Test 2018 measurement states that over the relevant 3 year period prior to publication, 3,399 houses had been delivered in the area against a requirement of 4,516, suggesting that the shortfall is reasonably acute. The Government's policy objective of significantly boosting the supply of housing would be assisted by the proposed development, but by only 1 house and so the matter attracts limited weight.

24. Some of the ecological enhancements proposed by the development are rather uncertain as a long-term prospect for the reasons explained above. The Ecological Report proposes a number of measures to improve the biodiversity of the appeal site. The absence of a garage from the appeal proposals however negates the proposed planting and bat roost elements. The Report does not explain what ecological benefits the meadow seeding would bring. I do not find any conflict with LP Policy LP30, requiring biodiversity harms to be minimised and gains to be provided, or with Policy LP24 requiring development to contribute to the enhancement of the natural environment, but give limited weight to the benefits of this element of the proposal.

25. The appellant also seeks support from Paragraph 79 of the Framework in asserting that the design of the proposed dwelling, to meet Passivhaus standards, is of 'exceptional quality'. The First Inspector found that the dwelling would meet the first of the two relevant tests (in what was then Paragraph 55) but not the second. The first test relates to the architectural standard, and the second to the context.

26. Although the Council does not consider that there is anything particularly exceptional about a dwelling designed to Passivhaus standards, I see no reason

to depart from the First Inspector's conclusions on these tests for the reasons she gave. The reference to Passivhaus in the supporting text to the newly-adopted Policy LP24 concerning good design, at paragraph 11.7, reads rather as an aspiration than as an expectation.

27. Therefore, with the First Inspector, I consider that the dwelling would be of an innovative design and would reflect the highest standards in architecture, so meeting the first test, but that it would not be sensitive to the local area or enhance its immediate setting, so failing the second test.

28. In any event, Paragraph 79 applies to the development of 'isolated homes' in the countryside, and thus[4] does not apply to the present proposal at the appeal site, which is surrounded by dwellings on three sides and lies on the outer edges of the settlement of Honley, around half a mile from the centre. Therefore, although its design and sustainability credentials attract support from LP Policy LP24, the proposal draws no specific support from Paragraph 79 of the Framework.

Conclusion

29. The appeal proposal does not amount to the redevelopment of previously developed land, and is inappropriate development in the Green Belt. I give substantial weight to the harm by reason of inappropriateness as well as to the harm to openness that would arise. The character and appearance of the Conservation Area would also be harmed by the proposal as a result of the increased residential density and the unavoidable tree loss. The benefits of the development include a high standard of design, some biodiversity gains and a small contribution to the housing supply. These benefits do not outweigh the harm to the Conservation Area, the conservation of which I accord great weight. Nor do they outweigh the overall harm caused by the proposal including that to the Green Belt.

30. Even without the additional harm to the openness of the Green Belt that I have found would arise, the inappropriateness of the development in the Green Belt produces such substantial harm, together with the harm to the Conservation Area, that it is not outweighed by the benefits of the proposal. Very special circumstances to justify the proposed development do not exist and the appeal is dismissed.

Laura Renaudon

INSPECTOR

[4] *Braintree DC v SSCLG* [2018] EWCA Civ 610, also decided since the First Decision