



Appeal Decision

Site visit made on 8 January 2020

by M Seaton DipTP MRTPI

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

Decision date: 22 April 2020

Appeal Ref: APP/C2741/W/19/3236411

Elverbredde, Mill Lane, Acaster Malbis, York, YO23 2UL

- 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 Bernard Lax against the decision of City of York Council.
 - The application Ref 19/00018/FUL, dated 29 January 2019, was refused by notice dated 18 March 2019.
 - The development proposed is the demolition of an existing bungalow and erection of replacement 2-storey dwelling.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - whether the proposed development would amount to inappropriate development for the purposes of the National Planning Policy Framework (the Framework);
 - the effect on the openness of the Green Belt; and,
 - if the development is inappropriate, whether the harm to the Green Belt by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

3. The appeal site is comprised of a plot of land located within the village of Acaster Malbis, and immediately abuts the River Ouse. The site accommodates an existing detached bungalow which is set comfortably back from the boundary with Mill Lane, which is defined by a substantial hedgerow.
4. An existing detached garage is located towards the front of the appeal site, and the site is adjoined to the north and south by further residential development in the form of a pair of two-storey cottages and a large detached dormer bungalow respectively.
5. To the east of the site and on the opposite side of the River Ouse, are substantial areas of open land. The appeal site, and indeed the entire village, is located within the Green Belt.

Whether inappropriate development

6. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
7. The development plan relevant to this appeal comprises the retained policies and key diagram relating to the Green Belt within the Yorkshire and Humber Regional Spatial Strategy (RSS). The Council does not have a formally adopted local plan.
8. However, I have also been referred to the policies of the City of York Local Plan – Publication Draft February 2018 (“the emerging Local Plan”), and the City of York (Draft Local Plan Incorporating the 4th set of changes) Development Control Local Plan 2005 (“the Draft Local Plan”), which had been previously approved for Development Control purposes.
9. I am mindful that the Green Belt policies contained within these documents address the Council’s approach to development in such circumstances at two substantially different points in time. However, the Draft Local Plan is only a material consideration and from which the approach to development within the Green Belt has been significantly updated by the Framework, and to which I therefore only apply limited weight. Furthermore, even allowing for its comparatively advanced stage, I am mindful that prior to the completed examination and adoption of the emerging Local Plan, it must carry only very limited weight for the purposes of decision-making. For these reasons I have therefore relied upon the Framework in respect of Green Belt policy in this instance for my decision-making.
10. Paragraphs 143-145 of the Framework state that 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 any harm to the Green Belt and “very special circumstances” will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. Subject to a number of exceptions, the construction of new buildings should be regarded as inappropriate in the Green Belt.
11. Having regard to the listed exceptions in paragraph 145 of the Framework, the Council has assessed the proposed development on the basis of exception (d), which states *the replacement of a building, provided that the new building is in the same use and is not materially larger than the one it replaces*. In this instance, both the Council and appellant have directed me to this exception, and I agree that this exception would be the appropriate basis for assessment for the proposed development.
12. The Council acknowledges that the footprint of the resultant building would remain the same as the existing bungalow to be demolished. However, the Council’s assessment has focussed on the impact of a 1.6 metre increase in height of the resultant building, which as well as an overall floor area approximately double that of the existing due to the addition of the first-floor accommodation, results in an increased volume of development. In this regard, I note that the appellant has calculated that the volumetric increase in size of the replacement dwelling would be 30%.

13. The new building would clearly continue in the same residential use. However, whilst I accept that the extent of the footprint would remain the same, the consequence of the increased volume of the building would be of a building which would have increased by 196m³ or approximately 30% from the original dwelling, which I am satisfied would therefore be materially larger.
14. I note that the submitted Design & Access Statement concedes that the replacement dwelling would still be materially larger than a previous design iteration. Nevertheless, I have had regard to the appellant's appeal submissions to the contrary. I have also considered the appellant's reference to the need for the consideration of the characteristics and context of the development both on the site and within the locality. However, whilst an assessment of context and the characteristics of the site and locality must undoubtedly be a constituent part of the overall assessment of the proposed development, it is not a part of the inappropriateness consideration. I am satisfied that in the context of exception (d) of paragraph 145, the extent of the proposed replacement development would, by increasing the volume of development by just under a third, result in a materially larger dwelling than the one it replaces.
15. The appellant has highlighted that consideration of the impact on openness should be a key aspect of the assessment of impact on the Green Belt, and I would agree with this conclusion. However, whilst an assessment of openness must be undertaken as part of a consideration of the impact of the development on the fundamental aims and essential characteristics of Green Belts, it is important that this exercise is not conflated with that of the assessment of exceptions to inappropriate development as set out in paragraph 145. Where an assessment of openness is required at this stage, it is highlighted as a contingent part of the exceptions, as at paragraph 145 (b) and (g). I do not therefore accept that the Council has acted improperly or overly simplistically in basing their assessment on numerical calculations as a means of reaching a conclusion on whether the proposal amounts to inappropriate development or that openness should be used as a specific contextual means for assessment of development against the other listed exceptions.
16. Despite the Council's conclusions and the content of the Framework, the appellant has referred me to Policy GB2 of the emerging Local Plan, which addresses development in settlements "washed over" by the Green Belt. This emerging Policy would appear to represent a broad continuation of the wording included within Policy GB2 of the Draft Local Plan.
17. Although I have not been presented with any definitive information demonstrating that Acaster Malbis should be regarded in the context of this policy, I note that the Council describe the settlement as being located entirely within the Green Belt as defined in the saved policies of the RSS and the emerging Local Plan. The appellant has drawn my attention to the development as according with the emerging policy with regards its location within the built-up area of the settlement; that the scale, form, and character would be appropriate for the settlement and in the context of neighbouring property; and that it would constitute limited infilling which would not prejudice the openness or the purposes of the Green Belt.

18. Despite the above, given that the emerging Local Plan must demonstrate a consistency with the Framework in respect of policy formulation, I do not regard the appellant's interpretation that emerging Policy GB2 should be regarded as presenting an alternative means of assessment of Green Belt impact, with a discounting of the test as to whether development is inappropriate. As I have already set out, the Framework is clear as to when openness should form part of the assessment of whether a development should be regarded as inappropriate within the Green Belt, and the emerging policy would not seem to depart from the Framework in this respect. In any event, as a consequence of the current position of the emerging Local Plan, I have relied upon the Framework in respect of Green Belt policy in this instance for my decision-making.
19. The appellant has also drawn my attention to the potential merits in considering the proposal in the light of paragraph 145(e) of the Framework, with particular reference to the absence of any need for a volumetric assessment of new development. However, this cannot reasonably be used as a convenient means of circumventing criterion (d) of paragraph 145. The proposal the subject of this appeal is quite clearly for a replacement dwelling and my decision-making in this instance has been based on this means of assessment.
20. I have also had regard to various references from interested parties to previous developments approved in the Green Belt, and the appellant's reference to a planning permission dated 20 March 2013 for a previous development at Glenside on Mill Lane in Acaster Malbis (*LPA Ref: 12/03853/FUL*), where the Council concluded that the replacement of a bungalow with a two-storey dwelling was acceptable. However, although the decision in the latter instance was clearly made during the period after the 2012 iteration of the Framework had been published, I do not regard the Council's assessment in this or other referred to instances to be binding in the context of the appeal site and the circumstances surrounding my own reasoning as set out. I do not therefore consider that a precedent for decision-making within the Green Belt has been set.
21. As a consequence, and having regard to all other matters, it is my conclusion that the proposed development would not accord with paragraph 145(d) of the Framework, and therefore the development of the site in the manner proposed would be considered to be inappropriate development within the Green Belt.

Openness of the Green Belt

22. Paragraph 133 of the Framework identifies that openness is one of the two essential characteristics of Green Belts, along with permanence. In this regard, the appellant has referred me to recent caselaw in the form of Court of Appeal judgement for *Sam Smith Old Brewery (Tadcaster) (2) Oxtan Farm v North Yorkshire County Council and (2) Darrington Quarries Ltd [2018]*, which is held to elaborate on the findings of *Turner v Secretary of State for Communities and Local Government & East Dorset Council [2016]*. However, the 2018 Court of Appeal judgement has now been heard in the Supreme Court in *R(on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council (Appellant) [2020] UKSC 3*, which endorsed Turner to the effect that the word openness is open textured

and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case.

23. I have carefully considered the implications of the Supreme Court judgement, but it is clear that how to take account of the visual effects is a matter of planning judgement rather than one of legal principle. The Supreme Court also highlighted that openness is the counterpart of urban sprawl and that it does not imply freedom from any form of development. So whilst visual impact can be relevant to openness it is not necessarily relevant in every case. Furthermore, this means that it is possible that a development which would harm openness could be acceptable visually and vice versa.
24. The appeal site sits within an existing linear form of residential development along Mill Lane and adjacent to the River Ouse. In this visual context, I have been mindful of the variety and scale of development on immediately adjacent plots and beyond. For this reason, I am satisfied that the replacement of the existing unremarkable single storey dwelling with a two-storey dwelling of greater massing would not have a significant visual impact in this context when viewed either from Mill Lane or from any public vantage points on the opposite side of the river.
25. Nevertheless, although the footprint of the proposed development would essentially remain the same, the introduction of a much greater and more significant scale and massing of development on the appeal site would result in an undoubted adverse spatial impact on the Green Belt. Whilst I conclude that this would overall represent only a limited adverse effect on the Green Belt, it would result in a permanent impact on the spatial openness of the site within the Green Belt. As a consequence, the development would be contrary to the two essential characteristics of the Green Belt.

Whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations

26. I have identified that the scheme would amount to inappropriate development in the Green Belt, and the presumption against inappropriate development means that this harm alone attracts substantial weight. The development would also have a limited adverse effect on the openness of the Green Belt. The development would therefore be contrary to the purposes of the Green Belt as set out in the Framework.
27. Notwithstanding the harm identified above, paragraph 144 of the Framework requires decision-makers to have regard to whether there are any other considerations which would clearly outweigh the harm to the Green Belt by reason of inappropriateness and any other harm resulting from the proposal, thus amounting to very special circumstances.
28. The appeal site occupies a position within Flood Zones (FZ) 2 & 3. The appellant contends that the proposed development would ultimately be a safer refuge for future occupiers than the existing dwelling due a higher finished floor level and the availability of first floor accommodation, as well as occupying a safer position on the appeal site in respect of its increased elevation over that of the existing dwelling.
29. With the submission of a revised Flood Risk Assessment (FRA), the Council accepts the above but has indicated that it remains unclear as to whether safe

access and egress could be achieved with stretches of Mill Lane shown to be located in FZ2 in each direction on Flood Zone mapping. However, whilst this may be the case, this would also be the situation for the present dwelling and as such the position regarding access and egress would remain unchanged. Having regard to the contended other improvements, I see no reason to disagree with the appellant's contentions in this regard and I would recognise these measures as being improvements to and for the benefit of future occupiers.

30. Whilst the resultant development would maintain the number of houses available within the local housing market, I accept that the local economy would have the potential to have some limited benefit during the construction period, which would attract some limited weight in support of the proposals. I also note that the proposed dwelling would incorporate an orientation and architectural modelling to manage passive solar gain and would incorporate overhanging eaves to allow shade and through-ventilation. These measures would all add further limited weight in support of the proposed development.
31. I have also had regard to the number of letters of support for the proposed development which were received during the course of the planning application. Nevertheless, the quantum of opposition or support for a proposed development is not a matter which would in itself weigh either in support or against a proposal.

Overall Balance and Conclusion

32. I have identified that the proposed development would result in some limited benefits for future occupiers with regards to the management of the flood risk of the site. I have also found there to be some limited economic benefits to the local market during the construction period as well as through the incorporation of sustainability measures. Nevertheless, even when taken together, the considerations being put forward in favour of the development would not be sufficient to clearly outweigh the harm to the Green Belt. Consequently, the very special circumstances necessary to justify inappropriate development in the Green Belt do not exist.
33. For the reasons above, and having regard to all matters before me, the appeal must be dismissed.

M Seaton

INSPECTOR