



Appeal Decision

Site visit made on 18 February 2020

by Jillian Rann BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 May 2020

Appeal Ref: APP/J3015/W/19/3239118

Southfields Farm, Common Lane, Bramcote NG9 3DT

- 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 Frank Taylor against the decision of Broxtowe Borough Council.
 - The application Ref 19/00333/FUL, dated 29 May 2019, was refused by notice dated 30 July 2019.
 - The development proposed is residential development of 5 dwellings to replace several large modern agricultural barns at Southfields Farm.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the application was refused, the Part 2 Local Plan 2018-2028 (the Part 2 Local Plan) has been adopted. The policies referred to in the Council's reason for refusal as being from the Draft Part 2 Local Plan are therefore now adopted. The Council has confirmed that the Broxtowe Local Plan 2004 has been superseded and that its policies are no longer relevant. I have considered the appeal accordingly. The adoption of the Part 2 Local Plan is confirmed in the Council's statement, and the appellant has thus had the opportunity to respond at final comments stage.
3. The Government published the 2019 Housing Delivery Test (HDT) results on 13 February 2020. I have given the main parties the opportunity to comment on the HDT results, and on the recent *Samuel Smith* Supreme Court judgment¹.

Main Issues

4. The main issues are:
 - whether the proposal would be inappropriate development in the Green Belt, having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
 - the effect of the proposed development on the openness and purposes of the Green Belt; and

¹ R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council (Appellant) [2020] UKSC 3.

- whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

Background

5. The appeal relates to an area of land in the Green Belt, currently occupied by two agricultural storage buildings and a group of metal silos. The smaller of the two buildings is a single storey grain store, constructed of metal with an arched roof. The other is a larger barn, with a tall central section and lower sections to the sides and rear. There is some variety in the roof designs of those various components, and in the use of materials across the building as a whole.
6. Parts of the land around the buildings are roughly surfaced, whilst other parts of the site are covered with grass or slightly taller vegetation. At the time of my visit, in addition to the buildings and silos, there were metal containers, various items of equipment and machinery, and areas of materials storage in the external areas within the site. The majority of the site's boundary is enclosed by a relatively tall, dense hedge, which separates it from the open fields to the north, west and east.
7. The site is adjacent to a small cluster of brick-built Victorian farm buildings laid out in a courtyard arrangement and including several former barns which have been converted to dwellings. With the exception of those converted farm buildings, and the dwelling at The Curragh slightly further along the access track beyond, the site is in open countryside, surrounded by fields and with areas of woodland nearby, which separate and distinguish this small cluster of buildings from the edges of the built-up areas nearby.
8. The proposed development would comprise the demolition of the existing structures, and the redevelopment of the site with 5 new houses with garages, laid out around a central courtyard providing vehicular access, and with garden areas around them. The existing boundary hedge would be retained.

Whether the proposal would be inappropriate development

9. Policy 8 of the Part 2 Local Plan states that applications for development in the Green Belt will be determined in accordance with the Framework. Paragraph 145 of the Framework regards the construction of new buildings as inappropriate in the Green Belt.
10. The appeal site is in agricultural use and, as such, does not fall within the definition of previously developed land set out in the Framework. The development therefore would not fall into any of the exceptions set out in paragraph 145. Therefore, having regard to the Framework and relevant development plan policy, the proposal for 5 new dwellings would be inappropriate development which is, by definition, harmful to the Green Belt, and should not be approved except in very special circumstances.

Effect on openness and purposes of the Green Belt

11. There are some differences between the respective figures presented by the main parties comparing the relative sizes of the existing and proposed buildings and structures on the appeal site, and some disagreement as to whether

containers on the land should be included as existing structures for the purposes of those calculations. Nonetheless, those differences do not result in significant variation in the figures presented, which indicate that there would be a reduction in the volume of buildings on the site of between around 1.1% and 5.1% as a result of the proposed development. The figures indicate that the footprint of buildings would reduce by a greater proportion. However, I have based my consideration on the volumes cited, as a more representative measure of the physical massing of the buildings and thus their effect on openness.

12. In considering the effects on openness, I have had regard to the recent *Samuel Smith* Supreme Court judgment², and a further judgment referred to by the appellant³.
13. Based solely on the structures on the site, the evidence before me indicates that the development would result in a reduction in built volume, and thus some improvement in openness. However, even taking the highest of the various percentage reductions presented, which includes the existing storage containers as part of the existing volume, at 5.1% the reduction in the volume of 'buildings', and thus any benefits in that regard, would be limited.
14. At the time of my visit, external storage and parking was taking place on parts of the land around the buildings. Vehicular parking within the site would continue as part of the proposed development, with access via a hard-surfaced courtyard. Most of the remaining external area would become domestic gardens, and thus could be occupied by various external domestic features such as washing lines, outdoor seating and play equipment, which would not be subject to planning control even if permitted development (PD) rights were removed. Those external areas would therefore not become free from associated paraphernalia as a result of the development. Furthermore, although enclosed by a boundary hedge, the site itself is currently free of subdivision. The proposed development, in contrast, would result in the introduction of boundary treatments between individual gardens, thus subdividing the site and creating a sense of enclosure within it which does not exist presently.
15. Views of the buildings and land within the site are relatively localised and limited as a result of the existing boundary hedges. Nonetheless, I observed that views into the site are possible from the public right of way which runs past its entrance. Whilst somewhat fleeting in nature, views of parts of the proposed dwellings and along the access drive would also be possible from that point. The existing buildings can also be glimpsed from parts of the public rights of way which run across the fields to the north. Although the proposed houses would be lower than the tallest parts of the existing buildings, on the basis of my own observations I consider it likely that glimpses of those buildings, and a sense of their massing, would nonetheless remain from parts of those nearby rights of way, notwithstanding proposals to supplement the existing hedge planting.

² R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council (Appellant) [2020] UKSC 3.

³ Timmins and Lymn Family Funeral Service v Gedling Borough Council and Westerleigh Group Limited [2015] EWCA Civ 10

16. Drawing those threads together, the reduction in the volume of buildings on the site would be relatively limited, and any benefits to openness arising in that regard would be reduced by the introduction of boundary treatments and the greater sense of enclosure those would create compared to the existing layout. Public views of the development would also remain, albeit to a somewhat limited degree. Taking the proposed development as a whole therefore, I conclude that any benefits to openness which may arise compared to the existing development would be limited, and I afford such benefits limited weight accordingly.
17. Whilst the dwellings have been designed to appear as converted farm buildings, the development overall, including residential parking and garden areas with associated paraphernalia and boundary treatments, would be unquestionably domestic in character. Therefore, whilst it may have marginally less impact on openness, and the boundary hedge may separate the site from surrounding open land, the development would nonetheless have an urbanising effect on the site itself compared with its existing agricultural use. Overall therefore, the development would represent an encroachment into the countryside which, whilst relatively localised, would nonetheless result in harm to the Green Belt by reason of conflict with one of the purposes of including land within it.

Other considerations

Existing appearance of the site and buildings

18. The existing buildings are of a functional appearance, with some variety in their design and materials, and show signs of weathering consistent with their age. However, their appearance is not inconsistent with their intended agricultural use, and such characteristics are not uncommon in farm buildings in rural areas. I have been advised that the buildings are not suitable for modern agriculture, and note that they appear to have been built some time ago. Be that as it may, it does not alter my finding that they nonetheless have the appearance of agricultural buildings, consistent with their intended and existing lawful use and that, as such, they are not incongruous within their rural surroundings at present.
19. Furthermore, the parking of farm vehicles and informal storage of materials and equipment around those existing buildings is not uncharacteristic of an agricultural yard and, despite their somewhat informal appearance, I do not find that the buildings and land could be described as derelict or incongruous in the context of their rural, agricultural surroundings. Nor, as buildings whose appearance and external areas are consistent with an agricultural use, do they detract from the setting of the former farm buildings to the south or from wider views across the rural landscape, including from those nearby and more distant vantage points identified in the appellant's Landscape and Visual Impact Appraisal, from which I observed the site during my visit.
20. I recognise the efforts taken to reflect the layout and appearance of the nearby historic farm buildings and the site's rural context in the design, materials and layout of the proposed buildings. However, I do not find the appearance of the existing buildings or the site incongruous or harmful in their current form as I observed it, having regard to their lawful agricultural use and the rural character of their surroundings. Therefore, and given its limited scale and relatively localised effects, I afford limited weight to any visual benefits that

would arise as a result of the proposed development, including enhancements to the boundary hedge.

Fallback position

21. Prior approval was granted in 2018 for the change of use of 465m² of the large barn to residential development comprising 5 dwellings under Schedule 2, Part 3, Class Q.(a) of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO)⁴. Prior approval was also granted in 2018 for the change of use of the grain store and the remainder of the large barn to flexible commercial use⁵ under Schedule 2, Part 3, Class R of the GPDO.
22. The appellant states that the existing buildings are no longer suitable for modern agricultural techniques, although I have little before me by way of further detail in that regard. Nonetheless, as well as prior approval having been granted for the commercial and residential use of the two buildings, a more recent application has been made, and refused, for their replacement with 7 dwellings⁶. It is therefore evident from the recent planning history that the appellant has a desire to redevelop the site. On that basis, I consider there to be a reasonable likelihood of those prior approvals being implemented were I to dismiss this appeal. Accordingly, and having regard to the court judgment cited in the submissions before me⁷, I consider it appropriate to take those alternative permitted uses into account as a 'fallback' position in this case.
23. For the reasons set out above, in their current form the existing buildings and site do not appear incongruous within, or detract from their rural surroundings. However, the implementation of the prior approvals would result not only in a change to the use of those existing buildings, but also to their appearance and that of their immediate surroundings.
24. Whilst I do not have detailed proposals before me, the conversion of part of the large barn to residential use would necessarily involve external changes, including the insertion of windows and doors. Such features, to the extent required to serve 5 dwellings, would not be typical of the appearance of an agricultural building. Nor would such alterations give the large, functional barn an appearance typical of residential dwellings or other housing in the locality, including the converted former farm buildings on the adjacent site. Rather, the resultant building would have a somewhat contrived appearance, neither agricultural nor entirely consistent with its residential use.
25. The total area of the two prior approval buildings and their respective curtilages, as permitted under the terms of the GPDO⁸, would be smaller than the appeal site area. Some of the land forming part of the current appeal site could thus continue to be used for agricultural purposes if the fallback position were to be implemented. In that event, the ongoing agricultural use of that remaining land, including any features, parking or external storage associated with that use, would not be inconsistent or incongruous with the site's wider rural surroundings. However, the use of the areas of land immediately beside

⁴ Application ref: 18/00270/PMBPA

⁵ Application ref: 18/00279/P3MPA

⁶ Application ref: 18/00628/FUL

⁷ Mansell v Tonbridge and Malling BC & others [2017] EWCA Civ 1314

⁸ The Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 3, Paragraph X. Interpretation of "curtilage" for the purposes of Part 3, Class Q and R.

or around the two prior approval buildings as their curtilages to the extent permitted by the GPDO, and the potential for parking, boundary treatments and other external paraphernalia in those areas in association with those permitted residential and commercial uses, would further erode the sense of connection between the existing structures and their original agricultural purpose and wider rural setting.

26. In contrast, as well as the proposed buildings being designed and laid out in a manner consistent with their intended residential use, and with the appearance and layout of the converted historic farm buildings to the south, the use of the external areas within the site as parking and garden areas in association with the proposed dwellings would provide the development with a consistency and coherence between the buildings and their associated external areas which would not be retained if the fallback were implemented.
27. Taking those factors together, I consider overall that the proposed development would result in a scheme more cohesive and sympathetic, and of greater benefit to the character and appearance of its surroundings than the potentially somewhat contrived and piecemeal development likely to arise in the event that the fallback position were to be implemented. However, the scale of the development is such that the benefits in that regard would be somewhat localised.
28. The proposed development of the whole site for housing would result in residential-only traffic. Consequently, it would have less effect on the living conditions of the occupants of nearby dwellings than the fallback scheme, which would also include commercial development, and thus the potential for larger commercial vehicles and potentially greater disturbance from commercial activity on the site, in addition to residential traffic. However, the scale of the scheme is such that any benefits in that regard would be relatively modest.
29. The proposed development would result in the removal of all of the agricultural buildings and structures from the site. Since the area covered by the prior approval buildings and their curtilages would be smaller than the current appeal site, and since there is no requirement under those approvals for other buildings or structures to be demolished, the same would not necessarily be the case if the prior approvals were implemented. Therefore, the proposed development could result in an overall reduction in the volume of buildings and structures on the site compared with the fallback position. However, on the basis of the figures before me as set out above, any such reduction, and resultant benefit to openness, would be relatively limited in scale.
30. Furthermore, the remaining areas of the site not occupied by buildings could still be occupied by parking, boundary treatments and other external paraphernalia in association with the respective uses whether the fallback position or the current appeal proposal were to be built. The fallback position would involve the same number of dwellings and a greater range of uses. However, the total residential floorspace now proposed would be larger than that to which the Class Q approval relates, and the proposed development, including the parking and access areas and gardens associated with those larger dwellings, could still give rise to the proliferation of external features, parking and paraphernalia across the extent of the site. Therefore, whilst the specific nature and extent of the various uses and features across the external areas of the site would differ in each scenario, I consider that any benefits to

openness which may arise as a result of the sole residential use of the site and those external areas compared with the wider range of uses permitted under the fallback position would be limited.

31. In any event, whilst the current appeal scheme may have some limited benefits to openness compared to the fallback position, the total site area of the development now proposed, including the dwellings and their parking and garden areas, would be almost double the total combined area of the two prior approval buildings and the respective curtilages permitted for those uses under Class Q and Class R, as defined in the terms of the GPDO⁹. The development now proposed would therefore represent a materially greater degree of encroachment of an urban form of development into the countryside, and resultant conflict with one of the purposes of including land within the Green Belt, than would arise if those prior approvals were implemented.
32. The appellant states that PD rights were not restricted by a planning condition on the prior approval decision for the 5 dwellings granted under Part 3, Class Q of the GPDO. However, the terms of each of the Classes of PD rights for development within the curtilage of a dwellinghouse in Schedule 2, Part 1 of the GPDO state that the development permitted by that Class is not permitted if permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class Q of Part 3 of Schedule 2. Consequently, the 5 dwellings for which prior approval has been granted under Part 3, Class Q would not benefit from the PD rights in Schedule 2, Part 1. As those PD rights could also be removed from the dwellings now proposed, the matter of potential future development under PD rights is neutral, and weighs neither in favour of the appeal scheme nor the fallback position.
33. Drawing those threads together, the proposed development would have benefits to character and appearance and to the living conditions of neighbouring occupants compared to the fallback position, albeit on a relatively localised scale. However, whilst also having some limited benefits to the openness of the Green Belt, the proposed development would nonetheless represent a materially greater degree of encroachment into the countryside than the fallback position. The greater harm to, and conflict with one of the purposes of, the Green Belt arising from that additional encroachment dilutes the benefits that would arise from the appeal scheme compared to the fallback position in those other respects. Therefore, weighing all of those factors together I afford moderate weight to the fallback position, including those relative benefits of the appeal scheme compared to it, overall.

Housing supply

34. The development would provide 5 new dwellings and thus contribute to housing supply in the district. However, the evidence before me, including with regard to the recently adopted Local Plan and the 2019 HDT results, indicates that the Council is able to demonstrate a five year supply of deliverable housing land. In that context, and as the benefit to housing supply arising from the 5 dwellings proposed would be very modest in any event, I afford that benefit limited weight.

⁹ The Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 3, Paragraph X. Interpretation of "curtilage" for the purposes of Part 3, Class Q and R.

Other matters

35. No specific harm has been identified by the Council with regard to other planning matters including highway safety, living conditions and biodiversity. On the basis of the evidence before me I have no reason to conclude otherwise. Nonetheless, the absence of harm in those other regards referred to is neutral, rather than a factor weighing in favour of the proposal.

Green Belt Balance

36. The Framework requires that substantial weight is given to any harm to the Green Belt. In this case I have found harm to the Green Belt by reason of the proposed development's inappropriateness and harm to one of the purposes of including land within it. The Framework states that very special circumstances will not exist unless harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
37. For the reasons given, I afford moderate weight to the fallback position overall, limited weight to the visual benefits of the proposed development compared to the character and appearance of the existing buildings and appeal site, limited weight to any benefit to openness that would arise as a result of the development compared to the existing use and development on the site, and limited weight to the contribution to housing supply.
38. Drawing those threads together, I conclude that the other considerations advanced by the appellant would not, in their totality, clearly outweigh the harm to the Green Belt that I have identified. The very special circumstances necessary to justify the development therefore do not exist. Consequently, the proposed development would conflict with the Green Belt protection aims of the Framework and Policy 8 of the Part 2 Local Plan.

Conclusion

39. For the reasons given, the appeal is dismissed.

Jillian Rann
INSPECTOR