
Appeal Decision

Site visit made on 1 July 2020

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 July 2020

Appeal Ref: APP/C2741/C/20/3248406

Land known as The Old Barn, Holly Tree Farm, Murton Way, York YO19 5UN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Peter Mandy against an enforcement notice issued by York City Council.
- The enforcement notice was issued on 9 January 2020.
- The breach of planning control as alleged in the notice is without planning permission, the partial demolition and erection of a larger building to a height of 5.1 metres with a footprint of approximately 120m² and the unauthorised material change of use from former domestic stable building to use as a dwelling.
- The requirements of the notice are:
 - A. Demolish the unauthorised building.
 - B. Remove from the Land all materials and debris resulting from compliance with (A) above.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed, and the enforcement notice is upheld with a correction in the terms set out below in the Formal Decision.

The Notice

1. In section six of the enforcement notice an (i) has been included after Step 5 however, this appears to be a minor typographical error that I can correct without causing injustice to either of the appeal parties.

Background

2. Planning permission was conditionally granted on appeal for the change of use of a former domestic stable building to a self-contained two-bedroom holiday let, reference 11/00497/FUL. This permission was not implemented and subsequently lapsed.
3. A further retrospective planning application was submitted, for the building subject of the enforcement notice and this appeal, with the development described on the application form as the conversion of stable block to two bed holiday let (retrospective application following completion of conversion after original approval had expired). That application was refused by the Council and subsequently dismissed on appeal¹. It appears there has been no material

¹ APP/C2741/W/17/3176560

change in circumstances since the previous appeal decision and it is therefore against this background that I have considered this appeal.

The appeal on ground (a) and the deemed planning application

Main issues

4. The main issues are:

- whether the development is inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policy;
- whether the site is a suitable location for the development having regard to the risk of flooding.
- if the development is inappropriate, whether the harm by reason of 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

Policy context

5. Policies YH9 and Y1 of the saved Yorkshire and Humberside Regional Spatial Strategy (RSS) establish the principle of the York Green Belt. The RSS key diagram illustrates the general extent of the Green Belt, but it does not determine what the detailed boundaries should be. The general extent of the York Green Belt has therefore been established in principle for some time.
6. There is no dispute between the main parties that for the purpose of this appeal, the site should be treated as being within the Green Belt. Moreover, I note that the Inspector in the previous appeal considered this matter and concluded that there was no reason that the site should not be considered to be Green Belt. Nothing in the evidence provided has led me to a different conclusion from the previous Inspector in this regard and so I am satisfied the appeal site is within the Green Belt. Accordingly, national and local, where relevant, Green Belt policy applies to this appeal.
7. The Council referred to a number of policies from both the City of York Draft Local Plan Incorporating the 4th Set of Changes Development Control Local Plan (2005) (DLP) and the City of York Local Plan – Publication Draft February 2018 (Regulation 19 Consultation) (emerging Local Plan) in their reasons for issuing the notice.
8. Whilst the Council have approved the DLP for development control purposes, it does not carry the full weight of an adopted development plan.
9. Policy GB1 of the DLP shares some elements of Green Belt policy with the Framework however, the criteria within it are not entirely consistent with national policy as set out in paragraphs 145 to 146 of the Framework.
10. Given the inconsistency of Policy GB1 with national policy, and the non-statutory status of the DLP, little weight can be given to this policy in decision making terms. Accordingly, in respect of the Green Belt I have assessed the

appeal against the policies in the Framework which is a material consideration of great weight.

11. Policy SP2 simply sets out the purpose of the Green Belt. Policy SP6 states that outside defined settlement limits planning permission will only be given for development appropriate to the Green Belt or open countryside. Policy GB6 outlines the exceptional circumstances in which housing development outside defined settlement limits in the Green Belt and open countryside will be permitted, none of which apply in this case. Policy GP15a relates to flood risk.
12. Policy SP3 relates to safeguarding the historic character and setting of York, given the reasons for issuing the notice relate to Green Belt harm and flood risk and in the absence of explanation, I consider this policy is not directly relevant and weighs neither for nor against the proposal. Similarly, Policy GB3 relates to the reuse of buildings, as I have found the development to constitute a new building this policy is not relevant.
13. In respect of those policies from the emerging Local Plan including Policies GB1, SS2 and ENV4, I have no information about what stage the emerging Local Plan has reached and as it does not form part of the adopted development plan, I have determined the appeal on the basis of the Framework and DLP.

Whether inappropriate development

14. I note that the Inspector in the previous appeal identified that a significant degree of demolition, alteration and extension over and above the building which was originally in place had taken place and considered that the development was not therefore simply a conversion of the original stable block.
15. I acknowledge that 50% of the original walls remain however, the development included the rebuilding of the entire south and east elevations and approximately one third of the west elevation, in order to increase the footprint of the building. Additionally, the overall height has been increased by 0.6m. I consider these works exceed what could reasonably be described as conversion and are so extensive as to amount to a new building.
16. Under this ground of appeal the appellant proposed an alternative development which would include carrying out works to the building so that it would reflect the originally approved development in terms of scale and appearance.
17. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Paragraph 145 of the Framework indicates that the construction of new buildings should be regarded as inappropriate in the Green Belt except in a number of clearly defined circumstances.
18. The appellant has not suggested which of the exceptions apply to either the as built or proposed developments. However, I consider it reasonable to assess both against those exceptions considered by the previous Inspector, having regard to my findings above.
19. In respect of either development as the original building has been substantially demolished, both constitute the erection of a new building consequently, they do not accord with the exception at paragraph 145 (c) namely the extension or

- alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building.
20. The appellant also previously suggested that the development is a re-use of a building however, the development constitutes the erection of a new building and therefore it does not accord with the criteria at paragraph 146 (d) of the Framework.
 21. There appears to be no dispute between the main parties that the exception at sub paragraph (g) is relevant, which relates to the partial or complete redevelopment of previously developed land (PDL), whether redundant or in continuing use (excluding temporary buildings) which would not have a greater impact on the openness of the Green Belt than the existing development.
 22. The Framework at paragraph 133, advises that openness is an essential characteristic of Green Belts. The consideration of openness in the Green Belt has been found by the courts to have a spatial as well as a visual aspect.
 23. The site is set back from the road to the rear of a relatively large detached dwelling, Holly Tree Farm, with the surrounding area notwithstanding the nearby employment area, having a rural character. The details of the previous stable building on the site are limited to plans and elevation drawings. However, stables are rural buildings and would not appear out of place within the site and rural setting.
 24. The development subject of the appeal is a single storey building which the appellant stated has increased the footprint by around 44% and which the Council stated is around 0.6m taller than the previous stable building. By all metrics therefore the development has a greater impact on the openness of the Green Belt in spatial terms than the former stable building.
 25. Whilst the building is not prominent in wider public views the increase in height, compared to the former circumstances, results in the building being more prominent in any views albeit to a limited extent. I therefore consider that in both spatial and visual terms the development has a greater impact on the openness of the Green Belt than the former stable building.
 26. The proposed scheme would be of a similar scale to the former stable building. However, in the case of both the as built and proposed developments notwithstanding the limited public views, the permanent impact of a dwelling, albeit used for holiday accommodation, with the associated domestic paraphernalia and parking areas, combined with comings and goings, would undoubtedly have a greater impact on openness when compared to the former circumstances.
 27. Additionally, the nature of the use represents encroachment into the countryside in conflict with one of the purposes of the Green Belt as set out in the Framework.
 28. Consequently, both the as built and proposed development would not accord with the exception in paragraph 146(g) of the Framework and constitute inappropriate development in the Green Belt which is, by definition, harmful to the Green Belt.

Flood risk

29. Paragraph 155 of the National Planning Policy Framework (the Framework) states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.
30. Paragraph 158 of the Framework states that development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.
31. There is no dispute between the main parties that the appeal site is located within Flood Zone 3a. The Framework requires a site-specific flood risk assessment (FRA) for all development in such areas.
32. I note the appellant's comments regarding the use as a holiday let and that the development does not increase flood risk elsewhere as there are comparative amounts of hardstanding, that it would be incumbent on the holiday let management to make occupants aware of any flood risk alerts and that the flood risk to the property is no greater than to the approved eight cabins and fishing lake development. However, this does not constitute a comprehensive FRA, notably it does not take the impact of climate change into account.
33. Furthermore, the Framework and the Planning Practice Guidance (PPG) are clear that flood mitigation measures should only be considered having first followed a sequential approach and test followed, if necessary, by an exceptions test.
34. The Planning Practice Guidance (PPG) advises that the aim of the sequential test is to steer new development to Flood Zone 1 (areas with a low probability of river or sea flooding). This general approach is designed to ensure that areas at little or no risk of flooding from any source are developed in preference to areas at higher risk. The aim should be to keep development out of medium and high flood risk areas (Flood Zones 2 and 3) and other areas affected by other sources of flooding where possible.
35. The sequential test must be passed before the exception test can be applied. As the sequential test is not passed there is no need to apply the exception test. Furthermore, on the basis of the evidence before me, I cannot be certain that the development would be safe from flooding or that it would not increase the risk of flooding elsewhere.
36. I acknowledge that permission has already been granted for a 'more vulnerable' use on the site in the past. However, that permission has lapsed and as it was for a change of use, it would not have required the demonstration of a sequential test. Consequently, it is a matter of limited weight in my assessment.
37. The development is therefore contrary to Policy GP15a of the DLP and the Framework.

Other considerations

38. I acknowledge that the development uses previously developed land and that there would be some modest economic benefits to the local economy associated with the development. Furthermore, that it is located within walking distance of local shops, nearby bus stops and a park and ride as well as being on a local cycle route to the centre of York. However, there is no evidence to demonstrate a need for the development in this location or the wider area, as found by the previous Inspector, consequently, these benefits are of limited weight in my assessment.
39. The appellant also contended that the use would complement the planned use of the adjacent land for which planning permission has been granted for eight cabins and a fishing lake. However, whilst that permission may have been implemented, it has not yet been built out and as such this is a matter of little weight.
40. Notwithstanding comments made by the committee in respect of the application for the aforementioned development, specifically that '*the application would not harm the Green Belt due to the industrial location*', I have determined this appeal on the basis of my own observations and understanding of Green Belt policy. Consequently, this has little bearing on my assessment.
41. The appellant referred to a number of permissions for extensions to properties in the Green Belt however, few details have been provided. In any event, as extensions these are not directly comparable to the appeal development and are of limited weight.
42. Whilst I have noted the appellant's concerns regarding the Council's approach to the investigation, that does not alter my assessment of the planning merits of the development.

Green Belt Balance

43. Paragraph 143 of the Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The Framework goes on at paragraph 144 to indicate that 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 resulting from the proposal, is clearly outweighed by other considerations.
44. I have found harm to the Green Belt by way of inappropriateness and conflict with local and national policy in respect of flood risk. Having considered matters raised in support of the proposal, I conclude that they do not clearly outweigh the harm that I have identified in relation to the Green Belt and flood risk. Consequently, the very special circumstances necessary to justify the development do not exist. Therefore, the proposed development conflicts with the Green Belt protection aims of the Framework and Policies GB1, SP2, SP6 and GB6 of the DLP.
45. For the above reasons and with regard to all other matters raised, I conclude that the appeal on ground (a) should not succeed.

The appeal on ground (f)

46. An appeal on ground (f) is a claim that the requirements of the notice exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any injury to amenity resulting from the breach.
47. The purposes of an enforcement notice are set out in Section 173 of the Act and are to remedy the breach of planning control (s173(4)(a) or to remedy injury to amenity (s173(4)(b)). As the enforcement notice requires the building to be demolished and all resulting materials to be removed from the land, I find the purpose is to remedy the breach of planning control.
48. Under this ground of appeal the appellant proposed that the building be returned to its built form (plan, elevations and massing) to be used in its former capacity as storage space.
49. Section 177(5) of the Act sets out that the deemed planning application derives its terms directly from the words of the allegation, that is the matters stated as constituting a breach of planning control. I can only grant planning permission for the whole or part of that development. Notwithstanding the retention of some of the original walls, qualitatively the proposed development does not form the whole or part of the development enforced against – that being the erection of a building and use as a dwelling. Consequently, it is not possible to consider this proposal under ground (a). Accordingly, my decision is based on the matters set out in the notice, and I have not considered the planning merits of the appellant's alternative.
50. However, I note that the six-month compliance period would be adequate time in which the appellant could apply to the Council for and if approved implement such a development.
51. In order to remedy the breach of planning control, it is not excessive to require the demolition of the building and the removal of all resulting materials from the land. I conclude that no lesser steps would remedy the breach of planning control that has occurred. The appeal on ground (f) therefore fails.

FORMAL DECISION

52. It is directed that the enforcement notice is corrected by:
- (1) The deletion from section 6 of the enforcement notice, the time for compliance, of (i) after Step 5, so that it reads: *Step 5 to be completed within 6 months after the date on which this notice takes effect.*
53. Subject to this correction the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Felicity Thompson

INSPECTOR