
Appeal Decision

Site visit made on 10 August 2020

by Katie McDonald MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 September 2020

Appeal Ref: APP/N2739/W/20/3251897

Peggy Ellerton Farm, Chantry Lane, Hazlewood, Tadcaster LS24 9NH

- 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 and Mrs T Tate against the decision of Selby District Council.
 - The application Ref 2019/0029/FUL, dated 4 January 2019, was refused by notice dated 21 April 2020.
 - The development proposed is the erection of a replacement dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a replacement dwelling at Peggy Ellerton Farm, Chantry Lane, Hazlewood, Tadcaster LS24 9NH in accordance with the terms of the application, Ref 2019/0029/FUL, dated 4 January 2019, subject to the conditions set out in the attached Schedule.

Main Issues

2. The site is in the Green Belt. Accordingly, the main issues are:
 - (a) 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; and,
 - (b) The effect of the proposal on the character and appearance of the area, with particular reference to the setting of Hazlewood Castle, a Grade I listed building.

Reasons

Whether the proposal would be inappropriate development in the Green Belt

3. The Government attaches great importance to Green Belts. The Framework sets out the construction of new buildings should be regarded as inappropriate in Green Belts. Exceptions to this are set out in Paragraphs 145 and 146 of the Framework; one being the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces; and another being limited infilling or the partial or complete redevelopment of previously developed land, 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.
4. Policy SP2A (d) of the Selby District Core Strategy (October 2013) (CS) states that in the Green Belt development must conform to Policy SP3 and national

Green Belt Policies. CS Policy SP3B advises that in accordance with the Framework, within defined Green Belt, planning permission will not be granted for inappropriate development unless the applicant has demonstrated that very special circumstances exist to justify why permission should be granted.

5. The site is a 2 storey farmhouse with 2 substantial single storey additions and a 2 storey outbuilding attached to the single storey rear extension, located in the countryside. There are the remains of 2 buildings attached to the 2 storey outbuilding, but it appears these were demolished due to their structural instability. The proposal is to demolish all the buildings within the site and replace them with a new dwelling. It would be located on a similar footprint to the existing buildings yet orientated to face north with the principal 2 storey part of the building located where the 2 storey outbuilding is situated. A single storey element would be located to the side, with a smaller 2 storey offshoot at the rear. Two proposals for a replacement dwelling at the site have been the subject of appeals¹. Both were dismissed.
6. *Replacement of a building* - The new building would be in the same use and this part of the exception test set out in the Framework is met. As both previous Inspectors found, the Framework does not define materially larger, and I agree with them that the assessment of whether a building is materially larger is a matter of fact and degree considering all the relevant circumstances and may include, amongst other things, the floor area, volume, height and form of the relevant buildings.
7. Based on the appellant's measurements, there would be around a 24% increase in volume (from around 1076m³ to approximately 1330m³). The Council contest this is more, at around 33%, or about 1538m³. The Council assert the reason for this difference in figures is mainly due to the basement volume not being included in the calculations carried out by the appellant. Yet, the appellant's evidence sets out that the volume of the proposed replacement dwelling excluding the basement would be about 1151m³. Given the appellant has calculated the volume based upon electronic methods, I favour this approach as being more accurate for the purposes of this assessment.
8. The floor area would increase by around 42%, but there would only be around a 1% increase in footprint. In terms of height, the overall height of the 2 storey principal section would be around 1.1m taller than the original dwelling at the apex, yet the eaves height would remain the same. The 2 storey rear offshoot and single storey side element would both be moderately taller than the existing lower level development on site. The 2 storey principal section would also be wider than the original main dwelling, but the overall width of the building would remain largely the same and there would be a reduction in depth of around 8m.
9. The proposal would reduce the overall spread of buildings on site, creating a more coherent form, with a very marginal increase in footprint. Whilst the floor area would increase considerably, and even having regard to the canopy proposed at the rear, the overall volume increase would not be substantial. Furthermore, although there would be a noticeable increase in height for the single storey element of the dwelling owing to the pitched roof, and the 2 storey principal element would be slightly wider than the original dwelling, the height increase would also not be considerably larger overall.

¹ APP/N2739/W/15/3138419 and APP/N2739/W/17/3186257

10. The composition of the dwelling, having a single storey section and subservient rear off shoot, along with the overall scale of the principal 2 storey section, in comparison to the existing buildings would be of a reasonably greater size. However, as a matter of fact and degree, it is my judgement that, when assessed as a whole, the proposal would not be materially larger than the buildings it replaces. Thus, the proposal would meet the exception set out in paragraph 145 d) of the Framework, and it would not be inappropriate development.
11. It is therefore not necessary to consider whether the proposal would be partial or complete redevelopment of previously developed land. Accordingly, the replacement dwelling would be compliant with CS Policies SP2 and SP3 and the Framework. Since there is no Green Belt harm, there is no need to identify very special circumstances, assess the effect of the development upon openness or the purposes of including land in the Green Belt.

Character and appearance

12. The property was originally a keeper's lodge associated with Hazlewood Castle, a Grade I listed building to the north west of the appeal site. The significance of the listed building is derived from its historic 13th century origins and its architectural and historic evolution during the 15th, 18th and 20th centuries including its changing uses from a Castle, a brief period as a maternity hospital in the wars, to a Monastery and latterly a Hotel. Today Hazlewood Castle is set in large, mature landscaped grounds with a formal courtyard to the rear of the imposing south facing frontage. The approach to the hotel is taken from the north west, off the A64, passing what appeared to be former workers' cottages and buildings associated with the estate. Directly to the north east of the Castle sits St Leonard's Chapel, a Grade I listed building.
13. Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special regard should be had to the desirability of preserving the setting of listed buildings. This means that considerable weight and importance must be given to any harm caused to designated assets in the planning balance. This includes any harm to the setting of a listed building. The appeal property is some distance away from the Castle with limited inter-visibility and now is in separate ownership. Therefore, the contribution of the site to the setting of Hazlewood Castle today is historical as a late 19th century ancillary building which formed part of the functioning of the historic estate.
14. The existing site comprises 2 dilapidated original buildings with very poor quality single storey additions that have been added ad hoc and of a piecemeal fashion, sprawling over the site. Whilst the original house remains legible, the overall appearance at the time of my visit was that of a dilapidated and derelict property with limited historic value.
15. The demolition of the existing buildings has been accepted by the Council. Whilst it would remove some historic fabric and association with the wider estate, there would be no harm to the overall setting of the listed building from its demolition due to its diminished historic value. The building could also be subject to a condition for historic building recording which would provide a detailed written record of its remaining fabric and historic relationship.
16. The proposed dwelling would comprise a traditional farmhouse frontage with materials including coursed natural stone walls, stone headers and cills, timber

windows, natural Welsh slate roof and bookend chimneys. The single storey element to the side would be of a plain form, with red brick walls and a slate roof, emanating a traditional utility and farm office extension, of which would be its intended use. To the rear, the red brick 2 storey off shoot comprises more modern elements, with larger openings and a weathered zinc canopy. However, it would be of a lower height than the principal section and of a reduced width, appearing subservient. The canopy would be of modest proportions, slimline and would not considerably add to the overall bulk given its location to only the south western side of the off shoot. I see no reason why the use of red brick or zinc would be inappropriate or unsympathetic in this location.

17. The proposal would introduce a good quality building with a traditional form and scale. The appearance to the rear would be more contemporary, but this would not be harmful to the landscape setting, and I consider it to be an appropriate and sympathetic contemporary change, and certainly an improvement to the flat roof additions that exist currently. The materials could be the subject of a condition which requires submission of samples to ensure suitability.
18. Additionally, the replacement dwelling would sit at a lower land level than the Castle, and the distance between the sites is considerable. Whilst glimpsed views of the Castle can be seen from the access road, there are large modern agricultural buildings in between both properties that screen the dwelling. Additionally, the Council raises no objection on landscape grounds. There is also tall and well-established landscaping surrounding the north, east and south side of the site that limits views of the site, even from surrounding public rights of way, and a condition could be secured that would ensure retention of existing trees. Given the design has changed considerably from the previous appeal²; and I am satisfied that the design of this proposal is acceptable, I am also satisfied that the proposal would not have a harmful effect upon the setting of Hazlewood Castle.
19. Therefore, the overall design would be sympathetic, having regard to local character and history, and landscape setting, resulting in an acceptable effect upon the character and appearance of the area. It would also cause no harm to the setting of the listed building. This would be compliant with Policy ENV1 of the Selby District Local Plan (February 2005) and CS Policies SP18 and SP19. Together, these seek to provide good, high quality development that sustains the high quality and local distinctiveness of the natural and man-made environment.
20. There would also be compliance with the Framework, which sets out that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve, and that heritage assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations.

² APP/N2739/W/17/3186257

Other Matters

21. The Ecology Report³ (ER) sets out that there is previous evidence of bats present on site, from surveys carried out in 2012, 2014 and 2017. The most recent walkover (2019) found conditions on site to be less favourable for bats, due to continuing dilapidation of the buildings. Nevertheless, bats are a species protected by law and their presence is a material consideration.
22. Demolition of the house would involve loss of day roosts and disturbance of bats, and as such a European Protected Species Licence (EPSL) would be required to avoid an offence under the Conservation of Species and Habitats Regulations 2010. There is no requirement for a EPSL to be provided prior to grant of planning permission, but as the competent authority, I must be assured that there would be a reasonable prospect of the licence being granted by Natural England.
23. The provision of this replacement dwelling is in the public interest, given its compliance with the development plan and the Framework. There is no alternative to this development because of its location in the Green Belt. Mitigation measures, such as a detailed method statement and an integral bat box should maintain the species at a favourable conservation status. Based on these considerations, there is a reasonable prospect of a EPSL being granted.
24. Additionally, signs of little owl roosting were found in 2017, within one section of the attached barns since demolished. As part of the mitigation proposals, a little owl nesting box would be installed on site in a suitable location to mitigate for the loss of little owl roosting habitat. Furthermore, to enhance the biodiversity of the site, 2 integral swift bricks would be installed in the new building. Consequently, the development would not have an unacceptable effect on protected species or biodiversity.

Conditions

25. Aside from those I have already detailed above, the approved plans, along with a condition for finished site levels, are imposed for certainty. Details regarding the disposal of foul sewerage is necessary to ensure the means are suitable. Ecological mitigation is necessary to ensure protection of biodiversity and protected species. A condition relating to contaminated land investigations would be necessary to ensure the dwelling is safe for the intended occupants. The several conditions proposed by the Council for contamination are covered in the one condition I have imposed.
26. Tree retention and protection conditions are required to ensure the continued wellbeing of trees on site and to help preserve the setting of the listed building. However, a condition requiring a scheme of proposed hard and soft landscaping would be unreasonable given the proposal is for a replacement dwelling with an existing garden.
27. With agreement from the appellant, a condition requiring demolition of all the existing structures is necessary and reasonable as this is an essential part of the proposal.
28. I have removed permitted development rights for extensions, including roof alterations and outbuildings as I find that exceptional circumstances exist, and

³ Prepared by MAB Environment & Ecology Ltd (March 2019 update)

it is necessary. The replacement dwelling is acceptable as it is not materially larger than the existing buildings in its current form, but any extensions, alterations or outbuildings erected under permitted development could lead to the size increasing considerably. Therefore, by imposing the condition, the Council will have control over any future domestic extensions, which will enable an assessment as to the effect upon the Green Belt and listed building setting. I have however removed the Council's reference to window and door insertions as this would not be an exceptional circumstance.

29. Conditions 3-8 are required to be pre-commencement conditions as it is fundamental to have these details agreed before any work commences. The imposition of these pre-commencement conditions has been agreed with the appellant.

Conclusion

30. For the reasons set out above, I conclude that the appeal should be allowed.

Katie McDonald

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: LOC01 Rev A, D418007/01, D418007/02 Rev D, D418007/03 Rev D, D418007/04 Rev D, D418007/05 Rev B, D418007/06 Rev B and D418007/07.
- 3) No demolition shall commence until a Written Scheme of Investigation shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions - and:
 - i) the programme and methodology of site investigation and recording;
 - ii) the programme for post investigation assessment;
 - iii) the provision to be made for analysis of the site investigation and recording;
 - iv) the provision to be made for publication and dissemination of the analysis and records of the site investigation;
 - v) the provision to be made for archive deposition of the analysis and records of the site investigation;
 - vi) the nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation.
- 4) No demolition/development shall take place other than in accordance with the Written Scheme of Investigation approved under condition 3.
- 5) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved.

[In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.]
- 6) No development shall commence until full details of the finished levels, above ordnance datum, of the ground floor of the proposed building, in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.
- 7) No development shall commence until details demonstrating the existing foul drainage system is capable of coping with the expected discharges has been submitted to and approved in writing by the local planning authority. If it cannot be demonstrated that the existing system is capable, details of foul drainage shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

- 8) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 28 days of the report being completed and approved in writing by the local planning authority.
- 9) No development above foundation level shall take place until samples of all external facing materials have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved sample details.
- 10) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under condition 3 and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.
- 11) Prior to the occupation of the proposed dwelling, all existing buildings on the site shall be demolished in their entirety.
- 12) The development shall be carried out in strict accordance with the mitigation measures set out section 9 of the Ecology Report (Prepared by MAB Environment & Ecology Ltd March 2019 update (Ref 2019 – 238)).
- 13) No retained tree shall be cut down, uprooted, destroyed, pruned, cut or damaged in any manner within 5 years from the date of the occupation of the building for its permitted use, other than in accordance with the approved plans and details, without the prior written approval of the local planning authority.

[In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.]
- 14) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development (as defined by Section 55 of the Town and Country Planning Act 1990) as may otherwise be permitted by Article 3, Schedule 2, Part 1, Classes A, B and E shall be carried out.

*****End of Conditions*****