



Appeal Decision

Site visit made on 21 July 2020

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 November 2020

Appeal Ref: APP/W4223/W/20/3249428

**Vamasaki Restaurant/Bull's Head/Grains Bar, Ripponden Road,
Oldham OL4 2JY**

- 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 Yasir Beg of Eltonwell Property Limited against the decision of Oldham Metropolitan Borough Council.
 - The application Ref PA/344343/20, dated 23 December 2019, was refused by notice dated 5 March 2020.
 - The development proposed is a residential development including change of use from A3 to C3.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Yasir Beg of Eltonwell Property Limited against Oldham Metropolitan Borough Council. This application is the subject of a separate Decision.

Main issues

3. The main issues are:
 - Whether the proposal would be inappropriate development within the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies, and its effects on the openness of the Green Belt;
 - The effect of the development on the character and appearance of the area;
 - The effect of the development on highway safety, having particular regard to parking arrangements and any impact on traffic flow; and
 - If the proposal would be inappropriate development, 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 necessary to justify the proposal.

Reasons

4. The appeal site is in two parts, both entirely within the Green Belt. In line with the terms used in the planning application I refer to them here as 'Site A' and 'Site B'. Site A is the vacant former Vamasaki restaurant and public house, previously known as the Bull's Head, and the area of land to its side which is primarily hardstanding and which formed the premises' car park. Site B is a roughly square plot covered in grass and other rough vegetation lying to the west behind the houses at 14-18 Grains Bar. The two parts are separated by a narrow strip forming a public footpath, although at the time of my site visit this was not always distinct on the ground.
5. The proposal is to demolish the building on Site A and erect in its place a terrace of three three-storey houses. Three further detached houses, each having two storeys plus loft rooms with dormers, would be erected on Site B. All six would be served by one of the two existing vehicular accesses onto Site A from Ripponden Road.

Inappropriate development in the Green Belt, and effect on openness

6. Paragraph 133 of the Framework advises that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, with the essential characteristics of Green Belts being their openness and their permanence. Paragraph 143 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very specific circumstances. Paragraph 145 of the Framework states that, other than for listed exceptions, the construction of new buildings in the Green Belt should be regarded as inappropriate. Policy 22 of the 2011 Oldham Joint Core Strategy and Development Management Policies DPD (the JCS) seeks to protect open land, including the Green Belt. Although the policy pre-dates the introduction of the Framework, it indicates that development proposals will be assessed against national policies for the Green Belt and so to this extent it is consistent with the Framework's requirements.
7. Paragraph 145(g) of the Framework provides for limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use, in two circumstances. The first is where it would not have a greater impact on the openness of the Green Belt than the existing development. The second is where it would not cause substantial harm to the openness of the Green Belt, where the proposal would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.
8. The baseline for considering the effect on openness, which is the absence of development and which has both a spatial and visual aspect, must be what currently exists at the site. Site A is previously developed land, in a prominent position next to the Grains Bar junction of the A672 (Ripponden Road/Oldham Road) and B6197 (Buckstones Road/Grains Road), and across Ripponden Road from a public green space. The existing building occupies the corner of the site next to the road junction, and is two storeys high with a shallow double-pitched roof. Its replacement would extend further along the Ripponden Road frontage, and at three storeys high with prominent full height gable bays on its front and rear elevations it would be taller than the existing building. The development would increase the amount of built form on Site A, and so would reduce the spatial openness of the Green Belt. The proposed building would partially close

- off the view across the site from the end of Grains Road, and would be more prominent than the current building in longer vistas from further west on Ripponden Road and from the footpath and fields to the north west of the site. Accordingly, the visual openness of the Green Belt would also be reduced.
9. The appellant describes Site B as previously developed land, which has most recently been used as informal car parking space by the occupiers of the houses at 14-18 Grains Bar. This is disputed by the Council, which has provided Google Earth satellite images dating from between the years 2000 and 2019 showing Site B as being rough grassland and vegetation with no evidence of car parking on the site, as well as by neighbouring residents. It is not suggested that any part of Site B has been occupied by a permanent structure in the past, nor did I see any evidence of this on my site visit. Based on the information before me and my observations at the time of my site visit, I do not consider that Site B is previously developed land as described in the Framework¹.
 10. The appellant also proposes that Site B is an '*obvious and natural infill site*'. While neither the Framework nor the relevant development plan policy define infill, I consider that this would relate to the filling of gaps in an otherwise built-up frontage. Site B sits behind the built-up residential frontage, and borders open fields on two sides. Having regard to its layout and relationship with other nearby development, I consider that Site B would be better described as projecting into the countryside rather than as an infill site. The erection of three dwellings on Site B where there are currently no buildings would result in an incursion of built form into the countryside, and would cause a significant loss of the spatial openness of the Green Belt. The fall of the land to the west and the height of the proposed three-storey dwellings would mean that the development on Site B would be highly visible and prominent when seen from the open countryside beyond the site. There would also therefore be a substantial loss of the Green Belt's visual openness.
 11. Whether Site A and B are considered individually or together, and even if I were to accept the appellant's arguments in respect of their status as previously developed land or infill, the proposal would have a substantial adverse spatial and visual effect on the openness of the Green Belt. However it is assessed, the impact on openness would be greater than that of the existing development. The proposal therefore does not fall within the first exception set out in Paragraph 145(g) of the Framework.
 12. In reaching my conclusion I have had regard to the judgment of the Supreme Court in *Samuel Smith Old Brewery (Tadcaster)*² to which the appellant has drawn my attention. This confirmed that a number of factors including visual impact may be relevant in assessing effects on openness, but how to take account of the effects is a matter of planning judgement for the decision maker. The appellant's assertion that the appeal site as a whole '*serves no beneficial purpose in respect of the wider Green Belt beyond*' disregards the fundamental aim and purposes of the Green Belt set out in Paragraphs 133 and 134 of the Framework. Furthermore, the appellant also suggests that the appeal site '*lacks the distinctive green quality that serves to be protected through Green Belt status*' and contrasts it with '*genuinely "green", undeveloped land*' elsewhere in the Green Belt. While in this case I have found

¹ National Planning Policy Framework (2019) Annex 2: Glossary

² R (Samuel Smith Old Brewery (Tadcaster) and others) v North Yorkshire County Council [2020] UKSC 3

a loss of openness in both visual and spatial terms, in making this observation the appellant ignores the Supreme Court's view in *Samuel Smith* that '*the visual quality of the landscape is not in itself an essential part of the "openness" for which the Green Belt is protected*'.

13. In respect of the second exception within Paragraph 145(g), the appellant has suggested that the housing on the appeal site would be '*arguably affordable in its context*'. However, I have found that the proposal would cause substantial harm to the openness of the Green Belt, and therefore this exception cannot be applied. Had I come to a different view in respect of the effects on openness, there is nothing before me to indicate that the proposal would provide affordable housing in line with any of the definitions in the Framework¹, nor is there any planning obligation or other mechanism which would secure such a provision. It therefore follows that the second exception set out in Paragraph 145(g) of the Framework also does not apply.
14. I conclude that, in line with the requirements of Paragraph 145 of the Framework, the proposal would be inappropriate development in the Green Belt. By definition, it would be harmful to the Green Belt, and this is a matter to which I afford substantial weight in the planning balance. The development would cause substantial harm to the openness of the Green Belt in both spatial and visual terms, and would conflict with Policy 22 of the JCS which seeks to protect open land and prevent inappropriate development in the Green Belt.

Any other harm – character and appearance

15. The appeal site is part of a small and loose cluster of mainly residential properties set around or close to the junction of the A672 and B6197. The hilltop location and surrounding fields mean that there are long vistas in many directions. As a result the site has a particular prominence in the area, and its immediate surroundings have an open and spacious feel. There are different ages and styles of dwellings nearby, but the appeal site's closest neighbours are small two-storey stone built terraced cottages on the same side of Ripponden Road. Together with other stone buildings close by including the Kings Arms pub on Grains Road, and Toll House and the Grains Bar hotel across Oldham Road to the north east of the site, the immediate area has a traditional rural appearance. There are some more modern dwellings nearby, including bungalows on Buckstones Road, although the local topography and the boundary planting on many plots means that these are not such a defining part of the area's character in the context of the appeal site.
16. The terrace of three houses on Site A would have a ridge height of around 8.4m and an eaves height on its principle elevation of around 5.7m. The appellant suggests that it would be comparable in scale to Toll House opposite, which has respective dimensions of around 8.4m and 6.4m. However, this is to ignore the effect of the longer frontage on Ripponden Road, the three gable bays running the full height of the building, and the more elevated position of Site A. All of these would give the proposed building a far greater presence in the surrounding area, as a result of which it would dominate the area around the Grains Bar junction. Furthermore, the side elevations would have higher eaves heights because of the gabled bays, and this would result in there being a relatively large expanse of wall at each end of the building. These end walls would be particularly intrusive features when seen approaching the appeal site on the A672 from either direction. The suggestion that the building's height

would reflect the site's role as a gateway to the surrounding area seems to me to attempt to give what in different circumstances might be an adequate if unremarkable residential block a status and significance which goes beyond what it would be capable of bearing.

17. The three detached houses on Site B would be higher at eaves and ridge than the building proposed for site A. Because of their height and their position on an elevated site they would rise above the existing modest cottages at 14–18 Grains Bar, and they would dominate views from Grains Road opposite the site. They would also be prominent in long views across the open fields to the rear of the site, including from Buckstones Road to the north west. The full height bays, dormer gables rising to the main roof ridges and high windows would be unusual features given the traditional design prevalent in most housing in the area. These would draw attention to the dominant position and incongruous appearance of the development from a considerable distance.
18. The development plan does not set out limitations on the height of buildings in absolute terms, nor does it specify requirements for the arrangement or scale of fenestration, plot ratios or other design details. However, it does require development proposals to reflect the character of the surrounding area and reinforce local identity and, for the reasons I have described, the scheme before me fails to do these things. I conclude that, because of the scale, siting, massing and design of the proposed development, it would be significantly harmful to the character and appearance of the area. It would therefore conflict with Policy 20 of the JCS, which seeks to ensure that development is of a high quality which reflects the character and distinctiveness of local areas. I give this conflict significant weight in the overall balance.

Any other harm – highway safety

19. The submitted layout drawings show four car parking bays in a communal parking area serving the three dwellings on Site A. The three detached dwellings on Site B would each have their own driveway capable of accommodating a single car, as well as an integral single garage. The Council has indicated that some of the parking bays on Site A would be restricted, and as a consequence drivers would need to reverse vehicles out of the site onto Ripponden Road to the detriment of highway safety. The submitted plans do not show swept paths for cars, and it is not therefore apparent that there would be space for vehicles to turn within the site in its proposed configuration so as to be able to leave in a forward gear. However, the evidence before me indicates that the appeal site as a whole is sufficiently large for safe turning space to be provided, so that vehicles would be able to be driven out of the site without having to manoeuvre in a way which would harmfully obstruct traffic flow. As the Council's officer report indicated, this is a matter which could have been addressed by a condition if the proposal had been acceptable in all other regards.
20. The area is not well-served by public transport, and it is likely that future occupiers of the development would to a large extent be dependent on private motor vehicles for transport. Any vehicles above the limited capacity of the appeal site would have to be parked elsewhere. The Council is therefore concerned that this would lead to on-street parking and subsequent congestion of the Grains Bar junction which would be detrimental to highway safety. I agree that the on-site parking provision would be lower than might be expected

for four and five bedroom houses in a rural location, but I note that the development plan does not set a minimum parking standard. Both the A672 and B6197 have double yellow line parking restrictions extending in all directions from their junction at Grains Bar. In the event of the parking bays within the development being full residents or their visitors would have to park either in permitted on-street locations or public car parks further afield. While this would be inconvenient to them, the existing restrictions would serve to prevent on-street parking obstructing the flow of traffic or otherwise causing a danger to highway safety in the vicinity of the Grains Bar junction.

21. I therefore conclude that the proposal would not be significantly harmful to highway safety, and that it would comply with Policy 9 of the JCS which seeks to ensure that development does not harm the safety of road users. A lack of harm in this respect does not weigh in favour of the proposal, and carries neutral weight in the overall planning balance.

Other considerations

22. The local planning authority cannot demonstrate a five year supply of deliverable housing sites, and the submitted evidence indicates that for the 10 years to 2018 the Borough had fallen short of its 3,418 total housing requirement by 915 homes³. The proposed development would provide six additional dwellings which, while a benefit would nonetheless make only a limited contribution towards tackling the housing undersupply in the Borough. I therefore give this consideration only moderate weight in favour of the proposal.
23. I accept the appellant's observations that in its current condition the former restaurant building does not enhance the site or wider area. I note also that a structural survey has found damage due to vandalism and water ingress, and other problems with building's fabric. I also observed that there had been some fly tipping, albeit limited, behind the vacant building. A scheme which either brought the buildings back into use or replaced them would be likely to resolve these problems, and in this regard the proposal would represent a visual enhancement of Site A. However, there are no buildings on Site B, and although I saw some litter at the time of my site visit there was no indication that it had been used for substantial illegal tipping. I therefore consider that the 'solution' in the form of a group of buildings of the size and scale proposed would be a disproportionate response given the extent of the problems identified. Accordingly, this consideration also carries only moderate weight in favour of the proposal.
24. The Council indicates that it considers the principle of residential development on the site to be acceptable, subject to compliance with relevant policies. This would include complying with national policy set out in the Framework in respect of protecting Green Belt land. The re-use of existing buildings is provided for by Paragraph 146(d) of the Framework, and in 2018 the Council granted planning permission for the change of use of the former restaurant to a dwellinghouse, and associated works⁴. However, this only affects Site A and there is no suggestion that there is permission for any development of Site B. While the appellant considers that the 2018 permission represents a fallback position, it is clear that it would be a much less substantial scheme than the

³ Oldham Housing Delivery Test Action Plan 2019

⁴ LPA reference PA/342152/18

proposal now before me, with considerably less impact on the openness of the Green Belt. I therefore consider that the existence of this alternative permission carries minimal weight in favour of the current proposal.

25. In correspondence with the Council, the appellant cited an allowed appeal elsewhere in Oldham where the Inspector granted planning permission for a development of 23 dwellings on undeveloped greenfield land⁵. However, that case related to a site which was not within the Green Belt, and therefore it was not necessary for that Inspector to address the same issues as in this appeal. Consequently that decision is not directly analogous, and I afford its existence very limited weight in favour of allowing this appeal.

Planning balance and conclusion

26. The proposal would be inappropriate development in the Green Belt, and would cause significant harm to the openness of the Green Belt. These are matters to which I attach substantial weight, as required by Paragraph 144 of the Framework. In addition, while it would be neutral in terms of its effect on highway safety, it would nonetheless be significantly harmful to the character and appearance of the area. I have also considered and weighed the matters in the scheme's favour which have been put to me by the appellant.
27. There is no dispute that the local planning authority cannot demonstrate a 5 year supply of deliverable housing sites. However, Paragraph 11 and Footnote 6 of the Framework are clear that the 'tilted balance' in favour of 'sustainable development' is not engaged if the application of policies in the Framework to protect areas of particular importance provides a clear reason for refusing the development proposed. These areas include land designated as Green Belt, and in this case, the harm to the Green Belt which I have identified provides a clear reason for refusing the proposal. The 'tilted balance' is therefore not engaged.
28. I conclude that the substantial weight to be given to the Green Belt harm, and the other identified harm above, arising from the development is not clearly outweighed by other considerations sufficient to demonstrate very special circumstances. I therefore conclude that the appeal should be dismissed.

M Cryan

Inspector

⁵ Reference APP/W4223/W/17/3175644