
Appeal Decision

Site visit made on 19 November 2020

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 December 2020

Appeal Ref: APP/N2739/W/20/3255945

Violet Hill Farm, Moor Lane, Ryther, Tadcaster LS24 9EJ

- 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 C Smith against the decision of Selby District Council.
 - The application Ref 2019/1217/FUL, dated 12 November 2019, was refused by notice dated 24 February 2020.
 - The development proposed is the erection of a replacement dwelling and demolition of existing dwelling.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is, having regard to development plan policy, the effect of the proposed development on the character and appearance of the open countryside.

Reasons

3. The appeal site comprises an existing detached two-storey farmhouse. It sits in open countryside adjacent to large agricultural buildings of the associated farm. The site has a low post and rail fence which defines the garden of the property. There is a public right of way that runs in front of the site and connects to a footbridge which crosses the adjacent railway line.
4. The existing dwelling would be demolished and replaced with the proposed dwelling that would be sited centrally in the garden. An existing 'log cabin' is also located in the garden of the property, adjacent to the large agricultural buildings. This would be removed as part of the development.
5. Policy SP2 A(c) of the Selby District Core Strategy (2013) outlines, amongst other things, that development in the countryside (outside Development Limits) will be limited to the replacement or extension of existing buildings, and well-designed new buildings of an appropriate scale, which would contribute towards and improve the local economy and where it will enhance or maintain the vitality of rural communities.
6. Saved Policy H13 of the Selby District Local Plan (2005) deals with the replacement of dwellings in the countryside, which will be permitted on a one-for-one basis. There are a number of criteria that are required to be met to

- comply with the policy. Central to the appeal is criterion 4) which states that the size and scale of the proposed replacement would be similar to the original dwelling and be no more obtrusive in the landscape.
7. It is outlined in the evidence that the existing dwelling has a footprint of approximately 127 sqm, a total floor area of approximately 210 sqm and a volume of approximately 650 cubic metres and that the proposed dwelling would have a footprint of approximately 172 sqm, a total floor area of approximately 330 sqm and a volume of approximately 1035 cubic metres. The Council however, for the purposes of considering the 'original dwelling' consider that previous extensions should not be included, giving a volume of approximately 497 cubic metres.
 8. It is not defined in the policy or its supporting text as to what is meant by the term 'original dwelling' or that the size and scale being similar to that of the original dwelling. I am referred to a planning appeal¹ where the Inspector considered that, for the purposes of Saved Policy H13 the term 'original dwelling' were it to be consistent through the other criteria of the policy must mean 'the existing dwelling'.
 9. Criterion 3) of the same policy does, however, explicitly refer to the 'existing dwelling' rather than 'original' suggesting different applications for the different terms. That appeal also predates the National Planning Policy Framework (2019) (the Framework) which defines an 'original building' as a building as it existed on 1 July 1948 or, if constructed after 1 July 1948, as it was originally built.
 10. Even if I were to use the figure provided by the appellant for the increase in volume from the 'existing dwelling' of 59% it could not be held that such an increase would result in a dwelling of a similar size and scale to the one which it replaces. Either way, the proposed dwelling is not similar in size and scale to the 'original' or the 'existing' dwelling.
 11. The other element of criterion 4) is that the replacement dwelling be no more obtrusive in the landscape. The existing dwelling sits close to the existing large agricultural buildings. This results in the built development being formed in a tight cluster and giving the remaining area a pleasant open character. The proposed dwelling would be sited centrally within the site where, when combined with its size and scale, would appear significantly more prominent and cause harm to the open character of the area, particularly when viewed from the public right of way and when travelling in a southward direction on Moor Lane towards the appeal site. As a result, it would appear more obtrusive in the landscape than the dwelling which it would replace.
 12. I note that the appellant proposes landscaping to the northern and eastern boundaries. Such landscaping which could screen the proposed development would have an undesirable effect upon the current open views where its unnatural evolution would appear as a deliberate attempt to conceal the visual impact of the development. It would also take a notable period of time in which to become established.
 13. The appellants argument relies heavily on the fallback position in relation to extensions to the existing dwelling utilising permitted development rights. It is

¹ APP/N2739/A/10/2130590

made clear that in the event the appeal is unsuccessful the appellant would seek to extend the dwelling using these permitted development rights, where it is outlined the resulting volume would be marginally below that of the proposed development. The extensions that may occur using permitted development rights have not been demonstrated. Crucially however, the extended dwelling would be in a different location to the dwelling as currently proposed, that is, closer to the existing agricultural buildings. Furthermore, whilst permitted development rights that exist are capable of representing a fallback position of significant weight, they are not, unlike the appeal against refusal of planning permission, subject to the policies of the statutory development plan, which in this instance makes no allowance for possible extensions to be taken into account. I am therefore unable to conclude that the fallback would have a similar or greater impact on the character and appearance of the area than the appeal proposal for it to be given significant weight to justify making a decision that would not be in accordance with the development plan.

14. It is put to me that the implementation of the permitted development rights would result in a less visually attractive development and be a costly and inconvenient process for the appellant. The design of any such extensions are not before me, and in any event, there are many design approaches that could be taken. Such matters do not however outweigh the harm I have identified that the appeal proposal would have on the character and appearance of the area or overcome the conflict with development plan policy.
15. I therefore conclude that the proposal, due to its size, scale and siting, would have an unacceptable impact on the character and appearance of the open countryside. It would be contrary to Saved Policies H13 and ENV1 of the Selby District Local Plan (2005) and Policies SP2 and SP19 of the Selby District Core Strategy Local Plan (2013). Collectively, these policies require development to consider the effect upon the character of the area including the open countryside and that the size and scale of the replacement dwelling are similar to the original dwelling and be no more obtrusive in the landscape.
16. The proposal would also be contrary to paragraph 170 of the Framework, which requires amongst other things, that planning decision should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside.

Other Matters

17. The appellant considers that Saved Policy H13 is inconsistent with the Framework, citing that the Framework does not contain such a restrictive policy for dwellings in the countryside, with the policy appearing only consistent with those in the Framework relevant to Green Belt.
18. Planning law² requires that applications for planning permission be determined in accordance with the development plan, which in this instance includes Saved Policy H13, unless material considerations, such as the Framework, indicate otherwise. Although the specific criteria set out in Saved Policy H13 is not repeated in the Framework, I find that the fundamental aim of the Policy is not inconsistent with the requirement outlined in the Framework that planning policies and decisions should recognise the intrinsic character and beauty of the

² Section 38(6) of the Planning and Compulsory Purchase Act 2004

countryside. Any similarity with Green Belt policies in the Framework is not determinative.

19. I note the reasons why the appellant seeks a larger house. However, these are personal circumstances for which insufficient evidence has been submitted for me to conclude that they would outweigh the harm that I have identified.

Conclusion

20. For the reasons set out above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

A M Nilsson

INSPECTOR