



Appeal Decision

Site visit made on 9 February 2021

by M Madge DipTP, MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th April 2021

Appeal Ref: APP/C2741/C/20/3260883

Land adjacent to Holme Lea, Elvington Lane, Elvington YO41 4AX

- 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 Shaun Thomas against an enforcement notice issued by City of York Council.
 - The enforcement notice was issued on 3 September 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the formation of an access road and installation of a septic tank.
 - The requirements of the notice are:
 - (a) Remove from the Land the compacted hard-core, road planings and associated materials used to form the access road in the area outlined in blue as shown on the plan.
 - (b) Remove from the Land the septic tank identified in the approximate location of the blue circle on the plan.
 - (c) Restore the Land to how it was prior to the unauthorised development (including in terms of topography).
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act as amended.
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Decision

1. The appeal is allowed insofar as it relates to the Land edged red and the installation of the septic tank. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the installation of the septic tank in the approximate location of the blue circle shown on the plan.
2. The appeal is dismissed, and the enforcement notice is upheld insofar as it relates to the Land edged red and the access road. Planning permission is refused in respect of the access road in the area outlined in blue as shown on the plan.

Background

3. The Land makes up part of the appellant's wider land holding of 5.5 ha, which includes 2 dwellings, a caravan site and a field. The dwellings and caravan site are separated from the field by a substantial hedgerow boundary feature. Part of the hedgerow has been removed to accommodate the access road. The matters alleged lie outside the planning units formed by the 2 dwellings and the caravan site.

Reasons

4. The Land lies within an area of Green Belt. Accordingly, the main issues are:
- Whether the development is inappropriate development in the Green Belt having regard to the revised Framework and relevant development plan policies.
 - Would any harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

Inappropriate development

5. The National Planning Policy Framework (the Framework) identifies that the fundamental aim of Green Belt is to prevent urban sprawl by keeping land permanently open. It goes on to state that inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances. In addition to the exceptions set out in paragraph 145, certain other forms of development are also not inappropriate in the Green Belt, provided they preserve its openness and do not conflict with the purposes of including land within it, as set out in paragraph 146.
6. In the Council's opinion the matters alleged amount to engineering operations, and I have no reason to disagree. Engineering operations are not inappropriate in the Green Belt, provided they preserve its openness and do not conflict with the purposes of including land within it. Openness is an essential characteristic of the Green Belt.
7. I understand that the septic tank replaced 2 antiquated septic tanks that served the dwellings and caravan site, and these were located within the caravan site. The replacement septic tank is located outside the caravan site. However, the only spatial and visual evidence of the septic tank is a number of access covers, which are found at ground level. The septic tank has such a limited above ground presence that the openness of the Green Belt is maintained.
8. The traffic associated with the servicing and emptying of the septic tank could however affect openness. There is no hardstanding around the septic tank and the access road does not extend up to it. Any associated traffic would therefore have to secure access to the septic tank via the access road located within the caravan site. Such traffic movements would not be dissimilar to those that would have occurred in association with the 2 antiquated septic tanks. As such, I find no loss of openness in connection with the septic tank. The installation of the septic tank is not inappropriate development in Green Belt as it falls within the exemption set out in paragraph 146(b) of the Framework.
9. Having regard to Drawing Number: THQ-585-001-002, there is nothing to suggest that the surface of the access road, when complete, would not be level with the surrounding land. The access road would also have a limited above ground presence such that the openness of the Green Belt would be maintained.
10. The traffic associated with the caravan site and the servicing and emptying of the septic tank using the unauthorised access road could however affect openness. Notwithstanding what traffic levels would occur, it would be

travelling across an area of land previously free from such vehicular activity. While vehicular movements may be intermittent, they would nonetheless reduce openness, even if only for limited periods. As such, the access road would not fall within the exception found in paragraph 146(b) of the Framework.

11. The access road's location and scale may not prejudice the Green Belt's purpose relating to urban sprawl, merging of towns, the setting and character of historic towns and urban regeneration. The access road does not however safeguard the countryside from encroachment.
12. The access road does not preserve openness and conflicts with the purposes of including land with Green Belt. The access road is inappropriate development in the Green Belt and in this regard is harmful by definition and conflicts with the Framework.

Other considerations

13. The appellant claims that the removal of caravan site traffic and commercial vehicles associated with the septic tank from the original access road would improve safety for residents of the dwellinghouses. Boundary treatments exist between the gardens of the dwellinghouses and the original access road, and there is nothing before me to demonstrate that safety is an issue. I give this argument limited weight.
14. The appellant also claims that the access track would have been permitted development, had it been constructed for agricultural purposes. I have found that it is the traffic using the access road, rather than the access road itself that harms openness. There would be a significant difference between the type and frequency of vehicular movements associated with agriculture and the operation of the caravan site and septic tank. I give this argument limited weight.
15. Drawing number: THQ-585-001-002 shows the provision of landscaping to the field side of the access road. I accept that, in time, this would screen the traffic using the access road, but that would not outweigh the harm to openness I have identified.

Green Belt Balance

16. I have found that the access road would be harmful to the Green Belt by reason of inappropriateness, loss of openness and encroachment into the countryside. The Framework requires me to give this harm substantial weight. I have attributed limited weight to the other considerations, and they do not amount to the very special circumstances required to outweigh the identified harm.

Conditions

17. The Council requests the imposition of conditions requiring the submission of landscaping and surfacing details for the access road. These would only be necessary in relation to the access road and not the septic tank.

Conclusion

18. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for the septic tank, but otherwise I

will uphold the notice and refuse planning permission in respect of the access road. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of s180 of the Act.

M Madge

INSPECTOR