



Appeal Decision

Site visit made on 18 May 2021

by Jillian Rann BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 June 2021

Appeal Ref: APP/A4710/W/21/3267457

**Land east of Woodend Farm, Branch Road, Barkisland, Sowerby Bridge
HX4 0AA**

- 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 Richard Turner against the decision of Calderdale Metropolitan Borough Council.
 - The application Ref 20/00039/FUL, dated 9 January 2020, was refused by notice dated 6 November 2020.
 - The development proposed is described as: "2no new detached dwellings".
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - 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;
 - the effect of the proposed development on the character and appearance of the appeal site and its surroundings;
 - the effect of the proposed development on biodiversity, with regard to a protected species (bats); and
 - 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 required to justify the proposal.

Reasons

Background

3. The appeal relates to an area of land alongside a small row of houses, some of which have been converted from a former barn and cottages. The site and those existing houses share an access drive from Branch Road and are located in the Green Belt, surrounded by open land to all sides, with trees and areas of woodland nearby. Two detached dwellings are proposed on the site. A new retaining wall is proposed between the rear of the houses and the higher land outside the site beyond.

Whether the proposal would be inappropriate development in the Green Belt

4. Paragraph 145 of the Framework regards the construction of new buildings as inappropriate development in the Green Belt, with exceptions which include:
 - limited infilling in villages (point e)
 - limited infilling or the partial or complete redevelopment of previously developed land which would:
 - not have a greater impact on the openness of the Green Belt than the existing development; or
 - not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority (point g).
5. Policy GNE1 of the Replacement Calderdale Unitary Development Plan as Amended (the RUDP) states that the Plan will seek to restrain development outside the urban areas through the general extent of the Green Belt. Its aim is thus consistent with that of the Framework which states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. However, Policy GNE1 does not identify specific exceptions to that presumption as the Framework does. Therefore, whilst I afford substantial weight to the strategic aim of Policy GNE1 I have considered the appeal against the exceptions in the Framework.
6. The site is quite close to a number of settlements including Greetland and Barkisland. Nonetheless, it is in the countryside and separated from those nearby settlements by open land, such that it does not appear or form part of them. Although the site is adjacent to a handful of other houses, that very small cluster of residential buildings in open countryside does not, in itself, constitute a village. Therefore, the site is not in a village and the exception in paragraph 145e) of the Framework does not apply to the development.
7. At the time of my visit, part of the site was occupied by a storage building and a greenhouse. However, the Council has expressed reservations as to whether those structures are lawful. I have not been presented with any substantive evidence to indicate that they are lawful. In the absence of certainty in that regard, I am not satisfied that the site comprises previously developed land as defined in the Framework.
8. However, even if I had compelling evidence to indicate that those structures were lawful and if I were to conclude that the site comprised previously developed land, the Framework requires that the proposed development would not have a greater impact on the openness of the Green Belt than the existing development.
9. The appellant has referred to the second bullet point of paragraph 145g) of the Framework, and the test therein which requires that a development would not cause substantial harm to the openness of the Green Belt. However, that test relates to proposals that would meet an identified affordable housing need. In this case no such need has been demonstrated with reference to substantive evidence, nor have I been presented with any mechanism by which the proposed dwellings would be secured as affordable housing. The second bullet

point of paragraph 145g) therefore does not apply in this case. I have considered the proposal against the test in the first bullet point in paragraph 145g), which requires that the proposed development would not have a greater impact on the openness of the Green Belt than the existing development. In considering the effect of the proposal in that regard, I have taken into account the effects on the spatial and visual openness of the Green Belt.

10. The proposed houses would be tall structures with large, wide footprints. They would therefore occupy a larger proportion of the site and would have a significantly greater volume and massing than the two modest single storey structures that are currently present on the site. Therefore, even if I were to take the presence of those existing structures into account, the proposed development would have a significantly greater effect on the spatial openness of the Green Belt than the existing development on the site.
11. As the site is lower than the land immediately behind it, views of the development from that direction would be limited. There are trees within and around the site. However, it was evident from my visit that the proposed houses would be visible in public views from Branch Road along the site access drive and from other points on the site frontage through gaps between those trees, even when they are in leaf as most of them were at the time of my visit. The site is adjacent to other houses and, from Branch Road, it is seen against the backdrop of the embankment to the rear. Nonetheless, in its current form, largely absent of built form, the site has an open, spacious appearance. The wide, tall frontages and the substantial volume and massing of the proposed houses would erode the sense of openness and space that currently characterises the site. The development would thus also have a greater effect on the visual openness of the Green Belt than the existing development.
12. Therefore, even if I were to conclude that the site comprised previously developed land and take the existing structures on the land into account, the proposed development would have a greater impact on openness than the existing development. Consequently, it would not meet the exception criteria in paragraph 145g) of the Framework.
13. The site is surrounded on only one side by buildings and has open land around it in all other directions. As such, it does not represent a gap in a built-up frontage and the development would not comprise infill. The Framework does not make provision for the 'rounding off' of a settlement or built form in the Green Belt as has been suggested. Nor have I been directed to any development plan policy which makes such provision. The proposal would extend an existing ribbon of housing, introducing residential built form onto land in the countryside which is currently free from development. It would thus fail to safeguard the countryside from encroachment, in conflict with one of the purposes of including land within the Green Belt as set out in the Framework.
14. Given the above, the development would not meet any of the exceptions in paragraph 145 of the Framework. It would therefore be inappropriate development which is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

Character and appearance

15. The existing neighbouring houses are 2 storeys high, with eaves generally just above their first floor windows. Those closest to the site were converted from a

former barn and cottages and are simple in their appearance and detailing, with window openings which are generally relatively small. As such, whilst they have a degree of domesticity to their elevations, they have maintained the appearance of traditional rural buildings and sit comfortably in their countryside surroundings. The houses at the western end of the row, furthest from the site, are slightly higher but are still 2 storeys in appearance with tall but relatively narrow window openings which do not dominate their elevations.

16. In contrast, the proposed houses would have tall eaves, well above their first floor windows. Although their upper floors would largely be concealed within their roofs, the houses would also have very tall, 3 storey gables to the front and rear. They would fail to reflect the modest scale and proportions that characterise the dwellings immediately alongside them and would appear unduly tall, large and dominant in the context of those existing buildings.
17. The proposed dwellings would also have fully glazed front gables and full height glazing to their front window openings, including very wide glazed openings at ground floor level. Those large glazed openings would afford their occupants views out across the valley. However, they would appear in stark contrast to, and out of scale and character with, the modest openings and high solid to void ratios which characterise the former agricultural building and cottages which would be seen alongside them in public views from Branch Road. The large areas of glazing would also give the proposed houses an unduly urban appearance that would be incongruous within the rural context of their surroundings.
18. The existing embankment to the rear of the site is comprised of rocks, grass and trees and has a natural, informal appearance which is in keeping with its rural surroundings. It does not appear untidy or unattractive and its replacement with a formal, engineered retaining wall would not represent a visual benefit weighing in favour of the scheme.
19. Although the site is in the countryside, it is close to nearby settlements including Barkisland and Greetland. Whilst detached from those nearby settlements, the site is not so physically separate or remote from them as to be isolated for the purposes of paragraph 79 of the Framework. In any event, whilst I note the intention that the dwellings would be constructed of high quality materials, I have little other detail before me to indicate why they would be so remarkable, outstanding or innovative in their design as to reach the high bar of exceptional quality. Rather, for the reasons given, I find that the development would detract from rather than enhance its immediate setting and would not be sensitive to the defining characteristics of the local area. Consequently, even if the site was isolated, the development would not meet the exception criteria in paragraph 79 relating to new homes in such locations.
20. The development would involve the removal of the existing greenhouse and storage building from the site. However, as I have no substantive evidence to indicate that those structures are lawful I afford their presence little weight. In any event, the removal of those relatively modest structures would not outweigh the significant harm to character and appearance that would arise as a result of the proposed development.
21. Given the above, I conclude that the proposed development would have an adverse effect on the character and appearance of the appeal site and its surroundings. It would thus conflict with Policy BE1 of the RUDP which requires

development proposals to respect the established character and appearance of existing buildings and the surroundings in terms of scale, form and design.

Biodiversity

22. The site is in the countryside. It contains and is surrounded by trees and there are larger areas of woodland nearby. The site and its surroundings are therefore likely to provide suitable habitat for commuting and foraging bats.
23. A number of trees are proposed for removal, including some on or adjacent to the site which would be removed to facilitate the development. Several of those trees have features such as cavities or hollow sections which could provide opportunities for use by bats. On that basis, and having regard to the presence of woodland nearby, I consider that there is a reasonable likelihood of bats being present on the site and affected by the development, including the proposal to remove those trees.
24. A Bat Survey was carried out in May 2013 in association with the renovation and reconstruction of the buildings adjacent to the site (the 2013 bat survey)¹. It confirmed the presence of a bat roost in one of the buildings to the west of the site and observed moderate bat activity around the buildings. It therefore lends support to the view that bats are likely to be present in the vicinity of the site. However, its primary focus was the adjacent buildings rather than the current appeal site or the trees within or around it. Furthermore, as around 8 years have passed since the 2013 bat survey was conducted, it is likely that the condition of trees around the site has changed since then and there is a realistic possibility that new roost opportunities could have been created in the intervening period. Therefore, I afford it very limited weight as a reliable indicator of whether bats are currently present on the site which forms the subject of the current appeal or, specifically, in the trees within and around it which would be removed as part of the development.
25. The appellant's 2020 bat survey² refers to not having seen any evidence of bats during site walkovers. It states that the existing structures on the site are modern with few gaps or openings. However, whilst it seems that some observations were carried out within neighbouring buildings, the 2020 bat survey offers little detailed commentary regarding the bat roost identified in a nearby building in the 2013 bat survey, whether it is still likely to be active or the implications for the proposed development if so. Reference is made to visual observations of the vacant land within the site and the adjacent retaining walls. However, the 2020 bat survey does not include a detailed survey of the trees proposed for removal or provide any commentary or assessment as to their potential for use by bats. Furthermore, the inspections which did take place were carried out in January, outside the May to August bat survey period. For those reasons, I afford the 2020 bat survey limited weight as a reliable indicator of the current situation with regard to likely bat activity and presence within and around the site.
26. The proposed tree removals may not have adverse implications for character and appearance. However, in the absence of a detailed up-to-date survey of the site including those trees to be removed, any subsequent activity survey as may be required, carried out at the appropriate time of year, or details of any

¹ Bat Survey – Reference: 060_13/RE01 Version 001, conducted by BL Ecology Ltd, dated 14 June 2013.

² Basic Bats Report Statement, Jade3 Architecture, dated January 2020.

necessary mitigation, I cannot be certain that the development, including the removal of those trees, could be undertaken without harm to bats or that any necessary mitigation could be incorporated within the scope of the proposed development.

27. I therefore conclude that the proposed development would result in an unacceptable likelihood of harm to biodiversity with regard to a protected species (bats). It would thus conflict with Policy NE16 of the RUDP which states that development will not be permitted if it would harm the habitat requirements of legally protected species or the species themselves. It would also conflict with the Framework, which requires planning decisions to minimise impacts on and provide net gains for biodiversity.

Other considerations

28. I have had due regard to the Public Sector Equality Duty contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination and to advance equality of opportunity between people who share a protected characteristic and people who do not share it.
29. The appellant has advised that the dwellings would provide accommodation for his parents and sister, allowing them to live close together and stay in the local area, and that the dwellings would be accessible and adaptable for 'senior age living'. Such benefits weigh in favour of the proposal. However, the houses would be substantial buildings with accommodation across 3 floors and at least 4 bedrooms each. I have not been provided with detailed evidence to explain why the large amount of accommodation proposed would be necessary to meet the day-to-day needs of the appellant or his family. Nor am I satisfied, from the evidence before me, that the proposed development would be the only means of meeting those requirements identified. Therefore, whilst I have had regard to the accessibility and future adaptability of the proposed houses, the weight I attach to those matters is limited in the context of the scale of the accommodation proposed overall.
30. The development would provide two new dwellings. I note the shortfall in the Council's housing land supply. However, even in that context the two dwellings proposed would make only a modest contribution to housing supply and, whilst it would represent a benefit weighing in favour of the proposal, the weight I afford to it is limited. The development would provide employment opportunities and potential spending in the local economy during construction. However, such benefits arising from the small scale scheme proposed would be modest and the weight I afford them is limited.
31. The submissions state that the dwellings would be designed to maximise energy efficiency and would include solar panels and possibly underground heat sources for heating and water. However, I have little detail regarding the exact specification of the dwellings or those measures which would be incorporated. Therefore, I cannot be certain as to the precise nature or extent of those benefits which may arise or whether they could be secured for the lifetime of the development, thus limiting the weight I afford to those measures as a benefit in favour of the scheme.
32. The appellant has referred to consultation proposals relating to potential changes to development in the Green Belt. It is not clear from the submissions which consultation document(s) are being referred to. However, on the basis

that they are said to be at consultation stage, the proposals therein thus remain subject to change and the weight I afford to such matters is limited.

33. Various arguments have been put forward by the appellant regarding the merits and effectiveness of the Green Belt. However, the Framework sets out that the Government attaches great importance to Green Belts and that, once established, Green Belt boundaries should only be altered where exceptional circumstances are fully evidenced and justified, through the preparation or updating of plans. It is not the place of individual planning applications to seek to review Green Belt designations on an ad-hoc basis. The site is within the Green Belt as defined in the development plan. I have considered the appeal accordingly, having regard to current relevant local and national planning policy, and I find the development inappropriate for the reasons given.
34. The appellant has referred to a judgment cited in his submissions as '*Harrow Meeting Room Trustees v S.O.S & Another* (21/03/1994)'. However, as the appellant was unable to provide a copy of the judgment I have been unable to read his summary of it in the context of the whole judgment. I have thus necessarily based my consideration solely on his summary, which states that it was held that the development proposed in that case was 'appropriate' and that it would not harm openness. In contrast, I have found that the development proposed in this case would have a greater effect on openness than the existing development and that it would thus be inappropriate, having regard to paragraph 145g) of the Framework. Therefore, from the evidence before me, it does not appear that the circumstances in the judgment referred to are directly comparable to those in the current appeal and the judgment does not lend weight to the appellant's case.
35. The Council has not identified any specific harm or objection with regard to the effect of the development on highway safety or the living conditions of nearby residents. However, the absence of harm is neutral, not a matter to be weighed in favour of the proposal.

Green Belt Balance and Conclusion

36. The Framework attaches great importance to Green Belts. Therefore, substantial weight should be given to any harm to the Green Belt when considering any proposal for development within it. In this case I have found harm to the Green Belt by reason of the proposed development's inappropriateness, harm to the openness of the Green Belt and harm to the character and appearance of the appeal site and its surroundings. Furthermore, on the basis of the evidence before me I conclude that there is an unacceptable likelihood of harm to biodiversity, including a protected species (bats).
37. For the reasons given, I afford limited weight to the matters advanced by the appellant in support of the proposal or, in some instances, find that the points made do not weigh in favour of it. Consequently, those other considerations would not, in their totality, clearly outweigh the harm to the Green Belt that I have identified. The very special circumstances necessary to justify the development therefore do not exist. The development would thus conflict with the Green Belt protection aims of the Framework and those of Policy GNE1 of the RUDP.
38. The Council is currently unable to demonstrate a 5 year supply of deliverable housing land. However, in this case I have found harm to the Green Belt.

Having regard to paragraph 11 d) i. and footnote 6 of the Framework, the application of policies in the Framework that protect assets of particular importance thus provides a clear reason for refusing the development. Therefore, notwithstanding the Council's current housing land supply position, the presumption in favour of sustainable development in paragraph 11 of the Framework is not engaged in this case.

39. The development would conflict with the development plan taken as a whole and material considerations do not indicate that the decision should be made other than in accordance with the development plan. Therefore, I conclude that the appeal should be dismissed.

Jillian Rann

INSPECTOR