



Appeal Decision

Site visit made on 9 August 2021

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 September 2021

Appeal Ref: APP/N4720/W/21/3273515

3 Nunnery Way, Clifford, Wetherby, West Yorkshire LS23 6SL

- 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 & Mrs J Butler against the decision of Leeds City Council.
 - The application Ref 20/06173/FU, dated 11 October 2020, was refused by notice dated 4 March 2021.
 - The development proposed is change of use including a new boundary fence to enlarge a domestic garden.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the heading above has been taken from the planning application form. However, in Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording has been entered. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original application.
3. A revised version of the National Planning Policy Framework (the Framework) was published on 20 July 2021. Both main parties have had the opportunity to comment on any relevant implications for the appeal.

Main Issues

4. The main issues are:
 - Whether the proposal would be inappropriate development in the Green Belt;
 - The effect on the character and appearance of the area, with due regard to the Clifford Conservation Area (CA);
 - The effect on Local Green Space;
 - The effect on biodiversity and protected trees; and
 - 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 proposal.

Reasons

Green Belt

5. The appeal site is located within the Green Belt. The proposed enlargement to the garden would project beyond the existing rear garden boundary and into an extent of shrubs and trees on the edge of an area of open space. Although the extent of planting acts as a buffer on the edge of the open space and adjacent built development, the area of planting is apparent as part of the open countryside setting of the village rather than being integral to the built form.
6. Paragraph 150 of the Framework specifies forms of development which are not inappropriate within the Green Belt, providing they preserve its openness and do not conflict with the purposes of including land within it. This includes paragraph 150(e), which specifies material changes in the use of land, such as changes of use for outdoor sport or recreation, or for cemeteries or burial grounds. Even if I was to conclude that the proposed change of use to garden land would fall within that provision, the effect on openness and the Green Belt purposes still needs to be assessed.
7. The proposal would include the extension of a domestic garden enclosure into an area of open space. Whilst the appeal site is part of a belt of tree and shrub planting, the extension of the enclosure would be apparent, with subsequent harm to openness. As a garden area, the proposal may remain free from built development. However, this does not outweigh my conclusions in respect of the harm to openness from the enclosure of this area of land. The proposal would also be apparent as the encroachment of the settlement into the surrounding countryside.
8. The proposal would not project further to the rear than a previously approved extension to the garden at 1 Nunnery Way, which also extends to the rear of 2 Nunnery Way. However, the development at No 1 served to confirm the harm that would arise in respect of openness and encroachment.
9. Due to the scale of the proposal, the harm in respect of openness and encroachment would be very limited. Nevertheless, the proposal would not preserve the openness of the Green Belt, and would represent encroachment into the countryside contrary to the Green Belt purposes. The proposal would therefore not meet the provisions of paragraph 150 of the Framework with regards to whether it could be considered to be not inappropriate in the Green Belt.
10. In conclusion on this issue, the proposal would be inappropriate development in the Green Belt. Inappropriate development is, by definition, harmful to the Green Belt and the Framework requires that substantial weight should be given to any harm.

Character and Appearance

11. The proposal would extend an enclosed garden into an extent of tree and shrub planting which acts as a visual buffer between playing fields and the boundary of built development. Whilst the planting may be self-seeded, it makes a positive contribution to the soft landscaped edge of the settlement and the interface with the playing fields. This positive contribution will increase as the trees mature. Due to its location on the edge of public open space, this planting is readily visible from that open area.

12. The extent of the solid fence would be apparent as a stark hard edge which would diminish the effectiveness of this planting as a buffer between built development and the open grassed playing field. Whilst the appellants propose to retain the trees, this would not mitigate for the visual intrusion arising from the extended means of enclosure. It may be possible to provide further planting on the boundary, but due to the limited extent of land available I consider that the extent of fencing would still be apparent. The proposal would therefore lead to significant harm to the contribution that this buffer planting makes to the character and appearance of the area.
13. The playing field is identified as a key green area in the CA Appraisal¹, although the Spatial Analysis Map indicates that this does not include the strip of buffer planting. Nevertheless, the buffer planting makes a positive contribution to the setting of this key green area and its relationship with the settlement. The CA Appraisal emphasises that trees make an important contribution to the character of the CA, particularly on the edges of the village.
14. I conclude that the proposal would lead to significant harm to the character and appearance of the area. The proposal would also fail to maintain or enhance the character or appearance of the CA, although that harm would be less than substantial.

Local Green Space

15. Policy GS-1 of the Clifford Neighbourhood Plan 2016-31 (the Neighbourhood Plan) designates a number of Local Green Spaces. The policy requires that development within these spaces will not be permitted other than in very special circumstances, as well as consideration of other factors including character and appearance. The designations include the Northways Playing Fields, as specified on map D of the Neighbourhood Plan. However, due to the scale of the map and the thickness of the boundary line of the designation, it is unclear whether the appeal site falls within the boundary of the designated Local Green Space.
16. However, the designation includes an area of mature tree planting adjacent to the car park. The characteristics of the extent of planting which includes the appeal site is more readily associated with the area of mature trees, as opposed to the enclosed gardens of the neighbouring dwellings. Whilst an extent of woodland to the west may be excluded from the designation, the inclusion of the trees adjacent to the car park indicates that the designated Local Green Space is not restricted to the area of the playing field. Viewed objectively and in context, it is reasonable to conclude that the extent of planting containing the appeal site is part of the Local Green Space designation.
17. The schedule of Local Green Spaces refers to a 99 year lease, and the comments from the Parish Council refer to the land ownership of the appellants. This indicates that the site is not included in the extent of the lease. However, this is a land ownership matter, and does not negate my conclusions on the characteristics of the appeal site and its relationship with planning policy.

¹ Clifford Conservation Area Appraisal and Management Plan 2010.

Biodiversity and Protected Trees

18. The appellants do not propose to fell any of the trees within the appeal site at this stage. The trees are also protected due to their location within the CA.
19. However, the proposed fence would extend into the root protection area of these trees. Excavations and other works associated with the proposal may therefore lead to damage to the protected trees, affecting their long term survival or potentially leading to their removal. It is therefore appropriate that a Tree Survey as referred to by the Council should be submitted to aid in the assessment of the proposal.
20. The unmanaged self-seeded nature of the site also has some biodiversity benefits compared to the more closely managed environment likely to result from its incorporation within a domestic garden. Even allowing for the small area of the site, this could lead to the removal of an extent of habitat that contributes to the biodiversity of the area.
21. I have considered whether a Tree Survey could be required by condition. However, due to the relationship between the trees and the proposal there is no certainty that such a report would demonstrate that the trees could be retained.
22. I conclude that it has not been demonstrated that the proposal would not harm protected trees or biodiversity. The proposal would therefore be contrary to the green infrastructure and biodiversity requirements of policies SP13, G1, G9 and P12 of the Core Strategy². The proposal would also be contrary to policy Land 2 of the Natural Resources and Waste Publication Document 2010 in respect of the conservation of trees. The proposal would also conflict with the Framework with regards to conserving and enhancing the natural environment.

Other Considerations

23. In support of the proposal, reference has been made to anti-social behaviour associated with the strip of planting. However, substantive evidence regarding the nature and extent of this anti-social behaviour has not been submitted as part of the appeal, and I give this limited weight in favour of the proposal. Issues of litter were also not apparent on my visit. Whilst the trees and shrubs may be self-seeded and overgrown, the appeal site still makes a positive contribution to character and appearance as well as openness.
24. An extension to the garden at No 1 has previously been permitted by the Council, and this was in place at the time of my visit. There are two elements to this previously extended garden; first, an area between No 1 and the car park; second, an extent to the rear of No 2.
25. The circumstances of the garden extension to No 1 adjacent to the car park are materially different to the proposal before me, as it consists of land between the dwelling and an area of hard surfacing and associated parking activity. Based on the evidence before me, there were also substantive concerns regarding anti-social behaviour, exacerbated by the adjacency of the car park to the planted area.

² Core Strategy (as amended by the Core Strategy Selective Review 2019).

26. However, the area of the extended garden to the rear of No 2 has many similarities to the appeal proposal, consisting of an enclosed area of land within the tree belt. That said, this element of the extended garden served to confirm my concerns in respect of openness and character and appearance. The fencing was readily apparent as a hard edge to the adjacent housing projecting into the belt of planting, significantly diminishing its contribution to the landscaped setting of the open space and the openness of the Green Belt.
27. I have some sympathy with the appellants as to the consistency of the Council's consideration of the appeal proposal compared to the area to the rear of No 2, including as to whether the change of use to a garden would impact on the openness of the Green Belt. However, whilst I have had regard to the adjacent approval, it does not lead me to a different conclusion based on my own observations.
28. The appellants refer to the potential to erect a 2m high means of enclosure under permitted development rights. However, there is no certainty that this would take place, particularly with a degree of enclosure similar to the appeal proposal. On that basis, I give this very limited weight as a fallback position.
29. I am also mindful that the Parish Council has written in support of the proposal. However, this support does not outweigh my conclusions in respect of the harm arising from the proposal.

Planning Balance and Conclusion

30. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. For the reasons stated above I consider that the proposal is inappropriate development, and this is a matter which carries substantial weight against the proposal. The development would also lead to very limited harm in respect of openness.
31. The proposal would conflict with policy GS-1 of the Neighbourhood Plan as it would consist of development within Local Green Space, and the issues referred to in support of the proposal are not of such weight to represent the very special circumstances referred to in that policy. It has also not been demonstrated that the proposal would meet the requirements of policy G6 of the Core Strategy with regards to the protection of existing green space. The proposal would also be contrary to the Framework with regards to promoting healthy and safe communities as well as conserving and enhancing the natural environment.
32. I have concluded that the proposal would harm the character and appearance of the area, and would fail to preserve or enhance the character and appearance of the CA. Whilst the harm to the CA would be less than substantial, there are no public benefits of such weight to outweigh that harm. The proposal would therefore conflict with the design, conservation and landscape considerations of policies P10, P11 and P12 of the Core Strategy and policy GP5 of the Unitary Development Plan Review 2006 (the UDP). The proposal would also be contrary to the Framework in respect of achieving well-designed places as well as conserving and enhancing the natural environment.
33. Even allowing for the very limited harm in respect of openness, the substantial weight to be given to Green Belt harm as a whole as well as the harms

identified in respect of the other main issues, are not clearly outweighed by other considerations sufficient to demonstrate very special circumstances. The proposal would therefore conflict with policies N33 and GB25 of the UDP in respect of development in the Green belt. The proposal would also be contrary to policy HDG3 of the Householder Design Guide 2012 (HDG) with regard to alterations to dwellings within the Green Belt. The HDG addresses the effect of boundaries within the Green Belt, and I therefore consider that the provisions of the HDG are relevant to this proposal which alters the boundary of the dwelling. The proposal would also be contrary to the Framework with regards to protecting Green Belt land.

34. Reference is made to the consistency of policies N33 and GB25 with the Framework, and that they should be given limited weight. However, whilst that may be so, this would not negate my conclusions in respect of the harm to the Green Belt and conflict with the Framework.
35. There is some disagreement as to whether the site is within Local Green Space as designated in the Neighbourhood Plan. However, even if I had concluded that the site is not within that designation, a lack of conflict with development plan policy on this matter would be a neutral factor in the overall planning balance.
36. Policy GB4 of the UDP is not relevant to this proposal as the policy relates to the change of use of buildings, not land. The Council also refers to the Neighbourhoods for Living Supplementary Planning Guidance 2015 (SPG), but has not specified how this guidance is relevant to the appeal proposal.
37. Drawing the above together, the proposal would conflict with the development plan and the Framework taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. I conclude that the appeal should be dismissed.

David Cross

INSPECTOR