



Appeal Decision

Site Visit made on 27 April 2021

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th October 2021

Appeal Ref: APP/X4725/W/20/3252232

Wintersett Farm Court, Ferry Top Lane, Wintersett, Wakefield WF4 2EB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mrs L Trnikova against the decision of Wakefield Metropolitan District Council.
 - The application Ref: 19/02622/OUT, dated 22 November 2019, was refused by notice dated 16 April 2020.
 - The development proposed is described as: Proposed Residential Development: Three Link-Semi-Detached Dwellings.
 - This decision supersedes that issued on 24 July 2020. That decision on the appeal was quashed by order of the High Court.
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Decision

1. The appeal is allowed, and planning permission is granted for three link-semi-detached dwellings at Wintersett Farm Court, Ferry Top Lane, Wintersett, Wakefield WF4 2EB in accordance with the terms of the application, Ref: 19/02622/OUT, dated 25 November 2019, subject to the conditions in the attached schedule.

Applications for costs

2. An application for an award of costs has been made by Mrs L Trnikova against Wakefield Metropolitan District Council. This application is the subject of a separate decision.

Preliminary Matters

3. The development proposal was submitted in outline with approval sought for matters relating to access, appearance, and layout. Landscaping and scale were reserved for future approval. I found that on considering the evidence, the submissions in respect of appearance did not meet the requirements of Article 7(1)(c) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 which sets out what information must be submitted with an application for planning permission. As such it was not possible to properly consider the appearance of the proposed development based on the information submitted.
4. The views of the main parties were sought on this matter and both agreed that for the purposes of determining the appeal appearance should become a reserved matter and the submitted drawings be treated as illustrative only.
5. The drawings that were submitted with the application show three dwellings in an L-shaped configuration to the rear of a parking and circulation area that would be accessed from a new entry/egress formed to the main road to the

south west of the current gateway giving access to the site. Some of the elevations are shown in sketch form. In the light of the above, I have had regard to these drawings in so far as they are indicative of the proposed design approach to the development.

6. On 20 July 2021, the Government published a revised version of the National Planning Policy Framework (the Framework). The policies in the previous version of the Framework relating to the Green Belt are carried over unchanged into the revised version. Although there have also been some amendments to Chapter 12 of the Framework, these do not have a direct bearing on the principle disputed matters in this appeal. I have determined the appeal based on the policies in the revised Framework.

Main Issues

7. The main issues in this appeal are:

- Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies;
- The effect of the development on the openness of the Green Belt; and
- The effect of the proposed development on the character and appearance of the area.

Reasons

Whether the development is inappropriate development in the Green Belt

8. Winterset is a small settlement in the countryside to the south east of Wakefield. It is proposed to construct three dwellings on a site of approximately 1100m² adjacent to Ferry Top Lane. The site is currently laid to grass and at the time of my site visit was being used for informal storage of various items and materials.
9. It is common ground that the appeal site is within the Green Belt. Paragraph 147 of the Framework sets out that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 149 of the Framework states that the construction of new buildings is inappropriate in the Green Belt subject to certain exceptions including, amongst others, limited infilling in villages. It is this exception that forms the principal matter in dispute in this appeal.
10. Policy CS1 of the Wakefield Core Strategy 2009 (the Core Strategy) states that in the Green Belt development is expected to conform to national, regional and Local Development Framework policies relating to the Green Belt. Core Strategy Policy CS3, which addresses the scale and distribution of new housing, sets out that in the Green Belt housing development will be of very limited scale and only permitted where it will conform to national Green Belt Policy. Policy D1 of the Wakefield Development Policies Document 2009 (the DPD) sets out criteria to be met for housing development in the Green Belt and differentiates between settlements that have an infill boundary, and those that do not.
11. The Core Strategy and the DPD pre-date the first publication of the Framework in 2012 and were prepared under the previous, and now withdrawn, Planning

Policy Guidance Note 2: Green Belts (PPG2). At the time when the Core Strategy and DPD were prepared and adopted, settlements within proposed Green Belt areas were either “inset”, where the Green Belt boundary was drawn around the settlement, or “washed over”, where the settlement is wholly within the Green Belt. Infill boundaries were referred to in PPG2 and were included to clarify where infilling may be allowed in villages that were “washed over” by the Green Belt notation. The Framework, however, does not make reference to infill boundaries. In this respect, DPD Policy D1 is not wholly consistent with the Framework.

12. Paragraph 144 of the Framework sets out, albeit in connection with the defining of Green Belt boundaries, that if it is necessary to restrict development in a village primarily because of the important contribution which the open character of the village makes to the openness of the Green Belt, the village should be included in the Green Belt. It goes on to state that if the character of the village needs to be protected for other reasons, other means should be used, and the village should be excluded from the Green Belt.
13. From the wording of Paragraph 144 of the Framework, a settlement is either within the Green Belt or it is excluded from it. The wording of paragraph 144 does not preclude development in settlements in the Green Belt but refers instead to restricting development. This is consistent with the exception at Paragraph 149 e) which refers to limited infilling in villages.
14. In its further submissions made following the quashing of the previous appeal decision, the Council accept that the proposed development would close a small gap in an otherwise built up frontage to the northern side of Ferry Top Lane and could be considered to constitute limited infilling in this regard. However, the Council contends that the exception in Paragraph 149 e) of the Framework is not applicable as the settlement of Wintersett is too small to be considered a village for this purpose and is more akin to a hamlet.
15. What constitutes a village is not defined in either the Framework or the Planning Practice Guidance. Nor, for that matter, is there a definition of hamlet within the planning policies. The supporting text to DPD Policy D1 sets out that within the Council’s administrative area there are a number of settlements that are outside of the Green Belt but are too small to be classed as villages. However, in respect of small settlements within the Green Belt, the supporting text is silent with respect to the size of the settlement and only refers to development having to take place within the settlement infill boundaries. This is consistent with the guidance in the now superseded PPG2. Wintersett is not identified as a settlement with infill boundaries. However, as set out above within the present context of the Framework, a settlement is either within the Green Belt or it is not. It is within this context that the appeal must be decided.
16. The Oxford Dictionary defines a village as “a group of houses and associated buildings, larger than a hamlet and smaller than a town, situated in a rural area”. Similarly, it defines a hamlet as “a small settlement, generally one smaller than a village, and strictly (in Britain) one without a Church”. This notwithstanding, the word “settlement” is broad in scope, connoting any community in which people live, and other sources define a hamlet as “a very small village”, or “a small village, usually without a church”.¹

¹ Collins Dictionary, Cambridge English Dictionary, Concise Oxford Dictionary

17. Although the settlement does not have a church, the Design and Access Statement submitted with the application sets out that Wintersett is a civil parish in its own right, and this is not challenged by the Council. A hamlet is usually regarded as belonging to the parish of another village or town.
18. On this basis it is difficult to draw a precise distinction between the two settlement typologies. Whilst the dictionary definition differentiates between a village and a hamlet, which may or may not be a sub-type of village, there is no evidence before me that would indicate that the policies in the Framework seek to draw a similar distinction.
19. Whilst Wintersett is not identified as a village in the Council's settlement appraisal, or in its planning policies derived from this, this is not in itself determinative and whether a site is within a village must be based on an assessment on the ground.
20. Wintersett is a generally linear settlement, largely strung out along Ferry Top Lane and Wintersett Lane. It comprises approximately 15 or 16 dwellings and a public house. From my observations when I visited the site, historically it is likely that the settlement was based around three or four farm steadings, the buildings associated with some of these having now been converted to residential use, with some new properties starting to appear within the settlement from the second half of the twentieth century. Due to the number of dwellings and the physical extent of the settlement which, although spread out along Ferry Top Lane and Wintersett Lane, is not unduly dispersed, when viewed on the ground it could reasonably be described as a village, albeit a small one.
21. The appeal site is clearly within the settlement and is situated between two groups of buildings. There is not a definition of limited infilling in the Framework, although some guidance is provided by the wording of DPD Policy D1 which refers to closing a small gap in an otherwise built up frontage to an existing road. The site has a relatively short road frontage, and the appeal proposal is for three dwellings which would be configured similarly to other nearby groups of buildings. As a consequence, the proposed development would be small in scale and result in a continuation of the existing built form of the village. Within this context, I find that the appeal proposal would constitute limited infilling for the purposes of the exception set out in Paragraph 149 e) of the Framework.
22. Whilst the proposal would to, an extent, conflict with Policy D1 of the DPD in so far as it would not represent development within an infill boundary, or be a change of use of a rural building, or the sub-division or replacement of an existing dwelling, this policy pre-dates the Framework and is not wholly consistent with it for the reasons previously set out. The weight that can be given to the conflict with this policy is not sufficient to warrant withholding permission for a development which otherwise complies with more recent national policies.
23. I therefore find that the appeal proposal would not be inappropriate development within the Green Belt. It would comply with the relevant requirements of Core Strategy Policies CS1 and CS3 and the Framework.

The effect on openness and character and appearance

24. Although the council contend that the proposed development would harm the openness of the Green Belt, where development is found to be 'not inappropriate', applying paragraphs 149 or 150 the Framework, it should not be regarded as harmful either to the openness of the Green Belt or to the purposes of including land in the Green Belt².
25. The development proposal was submitted in outline, although it was accompanied by a layout plan showing a proposed layout and the position of a new access. It was also accompanied by illustrative drawings that show the general design concept for the proposed new dwellings. Although these latter are not drawn to scale, do not show all of the elevations and are not particularly detailed, there is, nonetheless, sufficient information to determine the general visual effect of the proposal.
26. Wintersetts contains buildings of different ages and designs, although as noted previously, some of these are converted former agricultural buildings and as a result retain much of their former built form, namely groups of linked buildings partially enclosing circulation space. The proposed development would result in a continuation of the existing built form of the village as a largely linear development running along the main road. From the evidence provided, the proposed development would also adopt a design approach that takes cues from existing surrounding buildings and would utilise similar building materials.
27. As it has been agreed that approval is not being sought for the appearance of the development and that this is to be treated as a reserved matter, based on the above, I am satisfied that a suitably designed scheme could be developed as part of a future submission.
28. I therefore find that the proposed development would not cause harm to the character and appearance of the area. It would not conflict with the relevant requirements of Core Strategy Policy CS10 and DPD Policy D9 which, when read together, expect new development to be of a high standard of design that is appropriate to the location in terms of scale, density, height, layout, and materials, and which protects local character and distinctiveness.

Other Matters

29. Concerns have been raised by neighbouring residents in respect of potential connection to a package treatment plant for foul water that is shared by a number of existing houses. Whilst adequate surface and foul water drainage would be required, I have no evidence before me that would indicate that suitable drainage provision could not be made independently of this package treatment plant and this matter could be addressed through a planning condition.
30. Concern has also been raised in connection with flooding of the road through the village and the potential for the development to exacerbate this. No substantiated evidence has been provided in support of this point and I have had regard to the appellant's point that this is likely to have resulted from blocked road gullies rather than overland flow.

² See: Lee Valley Regional Park Authority, R (on the application of) v Epping Forest District Council & Anor (Rev 1) [2016] EWCA Civ 404.

31. I have also had regard to the concerns raised in respect of loss of outlook and daylight to neighbouring properties. There are windows in the side elevation of the neighbouring property at 1 Stoneleigh Cottages that face towards the appeal site and the proposed development would be visible from these. Nonetheless, due to the degree of separation between these windows and the proposed new dwellings, and the relative positions of the existing and proposed buildings, there would not be an unduly overbearing effect on outlook from the neighbouring house. For similar reasons, any effect on daylight would be at best marginal. There may be some limited effect on sunlight received to these side windows at certain times of the year, primarily during the winter months. However, this alone is not sufficient to warrant withholding permission. The planning system is concerned with the use of land in the public interest and the protection of purely private interests, such as the effect of a development on the value of a neighbouring property, is not a matter that I can take into account.

Conditions

32. I have had regard to the list of suggested conditions that has been provided by the Council. To ensure that the development integrates well with the existing nearby buildings and in the interests of the appearance of the area, it is necessary to attach a condition requiring that the proposed external materials, surface treatments and boundary treatments be submitted for approval.
33. For the same reasons, and in addition to ensure that the site is drained properly, it is also necessary to include a condition requiring the submission and approval of the finished floor levels of the proposed dwellings and the finished external ground levels of the remainder of the site including details of the levels of any surface and land drainage. As the proposal does not contain sufficient detail in respect of foul water disposal, it is also necessary to include a condition requiring details of this to be submitted for approval.
34. Although the submitted drawings show the position, width, and sightlines of the proposed access to the site, in the interests of highway safety, it is necessary to impose a condition requiring that the precise details of the design and construction of the access be submitted.
35. The Phase 1 Potential Contaminated Land and Preliminary Risk Assessment Report submitted with the application identifies that there is low to medium risk of contamination on the site from its historic use. It is therefore necessary to impose conditions requiring an intrusive investigation to be undertaken and any appropriate mitigation approved, implemented, and verified. It is also necessary to include a condition relating to the treatment of any unexpected contamination encountered during the development of the site.
36. In the interests of securing a suitable form of development and to prevent surface water from migrating from hard surfaces within the site to the highway, it is necessary to require that the parking and circulation areas are properly constructed prior to the development being occupied and that surface water runoff from these is contained within the site.
37. Because the application was submitted in outline, to provide certainty with regard to what has been granted planning permission and to ensure that the development corresponds to the description of the proposal applied for, it is

necessary to impose a condition limiting the development to no more than three dwellings.

38. The Council have suggested that a condition is necessary that requires details of measures to be submitted to minimise the risk of crime and to meet the specific security needs to the site and the development. Whilst the Core Strategy and DPD seek to ensure that developments create safe and secure environments that reduce the opportunities for crime, the suggested wording of the condition is unclear as to what specific measures would be required for this site in order to comply with the condition. I have noted that in their comments West Yorkshire Police acknowledge that the appeal site is situated within a low crime area. No substantive evidence of site specific matters that require a bespoke solution has been provided. As a result, a developer would not know what, if anything was required to satisfy the condition. Nor is there any substantiated evidence that the development would be likely to result in crime and disorder, such that the suggested condition would be necessary to allow planning permission to be granted.
39. Boundary treatments are included in one of the other suggested conditions and cycle storage is something that would form part of the detailed design of the scheme at the reserved matters stage. The detailed specification of doors, windows, and locks would not normally be the subject of planning control or be a determinative matter in an application of this type. Consequently, I do not consider that the suggested condition would meet the tests of necessity and precision set out in the Framework and the Planning Practice Guidance, and therefore, have not included it.

Conclusion

40. I have found that the appeal proposal would not be inappropriate development in the Green Belt, nor would it cause harm to the character and appearance of the area. It would not conflict with the Policies in the Core Strategy or the general design policies in the DPD. Although the proposal would not wholly comply with the requirements of DPD Policy D1, the more recent policies in the Framework are a material consideration which indicate that planning permission can be granted for a development that does not comply with a relevant policy in the development plan.
41. For the above reasons, I therefore conclude that the appeal should be allowed.

John Dowsett

INSPECTOR

Schedule of conditions

1. Details of the appearance, landscaping, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
3. The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
4. Development shall not commence until the following details have been submitted to, and approved in writing by, the local planning authority: (i) the colour, type, and texture of all external building materials; (ii) the height, location, design materials and finish of all screening, retaining and boundary treatments and (iii) the external appearance, colour, type, texture, and composition of materials used in constructing the access. The development shall be carried out in accordance with the approved details, which shall thereafter be maintained.
5. No development shall commence until a scheme of details of finished slab and floor levels together with corresponding existing and finished ground levels and of surface and land drainage associated with any works, have been submitted to, and approved in writing by, the local planning authority. The development shall be carried out in accordance with the details so approved and no dwelling shall not be occupied until the works have been completed. The approved levels shall be so retained for the lifetime of the development, unless otherwise approved in writing by the local planning authority.
6. No development shall commence until details of the arrangements for foul water drainage and disposal have been submitted to, and approved in writing by, the local planning authority. Thereafter, these details shall be implemented in accordance with the approved details prior to the first occupation of any of the dwellings.
7. No works shall take place until such time as detailed plans of the proposed access have been submitted to and approved in writing by the local planning authority. All construction works shall be carried out in accordance with the details shown on the approved plans and retained thereafter.
8. Development shall not commence until a remediation strategy that includes the following components to mitigate the risks associated with contamination of the site has been submitted to, and approved in writing by, the local planning authority:
 - I. A site investigation scheme to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
 - II. The results of the site investigation and the detailed risk assessment referred to in (I) and, based on these, an options appraisal and remediation

strategy giving full details of the remediation measures required and how they are to be undertaken.

The approved remediation measures must be carried out in accordance with the approved strategy prior to the commencement of any development other than that required to carry out the approved remediation. Any changes to the components require the express written consent of the local planning authority. The scheme shall be implemented as approved.

9. No part of the development hereby approved shall be occupied or brought into use until a verification report demonstrating completion of works set out in the approved remediation strategy and the effectiveness of the remediation has been submitted to and approved, in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met.
10. If, during development, contamination not previously identified is found to be present at the site then works shall cease and no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until a remediation strategy has been submitted to, and approved in writing by, the local planning authority detailing how this unsuspected contamination shall be dealt with. The remediation strategy shall be implemented as approved.
11. The development hereby approved shall not exceed three residential units, the details of which shall be submitted as part of the application for the approval of reserved matters.
12. The development shall not be brought into use until all areas indicated to be used for vehicles and pedestrians on the approved plan have been laid out with a hardened, sealed, and drained surface. Provision shall be made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the property. Such areas shall be retained as such for the lifetime of the development.