



Appeal Decision

Site Visit made on 12 October 2021

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 October 2021

Appeal Ref: APP/Z4718/W/21/3278523

Near Law Slack Farm, Penistone Road, Hepworth, Holmfirth HD9 2TR

- 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. Jackson against the decision of Kirklees Council.
 - The application Ref 2021/62/91229/W, dated 2 March 2021, was refused by notice dated 26 May 2021.
 - The development proposed is described as the "demolition of existing dwelling and reinstatement of grassland and erection of replacement dwelling".
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken account of the new Framework¹ in my decision.

Main Issues

3. The main issues are as follows:
 - whether the proposed development would be inappropriate development in the Green Belt having regard to relevant development plan policies and the Framework;
 - the effect of the proposed development on the openness of the Green Belt and the purposes of including land within it; and
 - if the proposed development is inappropriate development, whether harm by reason of inappropriateness and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the proposal.

Reasons

Whether Inappropriate Development

4. 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. The Framework states that the construction of new buildings should be regarded as inappropriate in the Green Belt. A number of exceptions to this are listed. Exceptions include the replacement of a building, provided the new building is in the same use and not materially larger than the

¹ The National Planning Policy Framework, 2021

one it replaces. Criterion b of Policy LP57 of the Local Plan² includes a similar exception.

5. The proposed development would be the same use as the building to be replaced and so would satisfy this requirement.
6. The Council estimates that the volume of the existing building is approximately 194 cubic metres, whilst the proposed dwelling would be 500 cubic metres. No figures have been provided by the appellant on the volume of the existing or proposed dwelling. The appellant states that the footprint of the existing and proposed dwellings is 147m² and 128m² respectively and calculates that the appeal scheme would represent a 13% reduction in footprint. This figure is based on the existing dwelling as extended under permitted development rights which were the subject of a Lawful Development Certificate (LDC) granted by the Council³. However, it is the extent of physical built development on the site that is the baseline for undertaking the comparison of size between the new building and the one that it would replace. The appellant states that the domestic curtilage of the existing dwelling is approximately 390m² whilst the domestic curtilage of the proposed dwelling would be 310m².
7. When establishing whether the proposed dwelling would not be materially larger than the one it would replace, my view in this case is that volume and footprint are the more relevant considerations.
8. Based on the submitted elevations and floor plans for the existing dwelling as it is on the site and of the proposed dwelling, and from what I observed of the existing dwelling, the appeal scheme would have a greater width, depth and height and its roof would have a greater massing. Overall, the proposed dwelling would be materially larger in footprint, volume, bulk and mass than the current dwelling. The proposed development would not therefore fall within exception d) in paragraph 149 of the Framework or criterion b of Policy LP57 of the Local Plan. It would therefore be inappropriate development. In line with paragraph 147 of the Framework, the proposed development would be harmful to the Green Belt.
9. I note the disagreement between the Council and the appellant as to whether the proposed development would form a replacement building. Even if I were to adopt the position that the proposed development would not be a replacement building, then I would be led to the same conclusion of it being inappropriate development in the Green Belt, as I have not been presented with any justification that it would satisfy any of the other exceptions listed in the Framework.

Openness and Green Belt Purposes

10. The appellant argues that the Framework and the Local Plan do not stipulate that the replacement building has to be on the same footprint or same parcel of land as the one that would be replaced. However, the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and the essential characteristics of Green Belts are their openness and their permanence.

² Kirklees Local Plan Strategy and Policies, 2019

³ Certificate of Lawfulness for proposed erection of single storey extensions and detached garage, application reference 2020/92945

11. The building that would be replaced is a dilapidated residential building that sits just to the west of the main farmhouse at Law Slack Farm. There is an area of hardstanding to the south, a grassed area to the east and north and an area of shrub and other planting to the west. The building is enclosed by a stone boundary wall to the north, west and south.
12. Based on the appellant's figures, the proposed dwelling would be sited some 18m to the west of this building on an area of land that currently has no built development. In spatial terms, this would have a clear and demonstrable effect on the openness of the Green Belt by introducing built development to land which is presently open and leading to an encroachment of built development into the countryside. In visual terms, the introduction of a dwelling at the appeal site would appear more visually separate from the main farmhouse than the existing dwelling. This is due to the greater separation distance and also the presence of the boundary wall that separates the appeal site from the existing building and acts as a visual barrier between the two sites. The car parking area, presence of cars within the site, the laying out of a garden area and its boundary enclosures and the general domestic activities associated with a dwelling would further exacerbate the loss of openness.
13. The proposed development would therefore lead to a loss of openness to the Green Belt causing significant harm. I note the appellant's point that the boundary treatment could be conditioned to ensure that it would be in keeping with its surroundings. However, this would not adequately mitigate the harm that I have found to the openness of the Green Belt.

Other Considerations

14. The appellant emphasises the fallback positions of a planning permission for the demolition of the existing dwelling and erection of a detached dwelling⁴ and the LDC for the proposed erection of single storey extensions and detached garage⁵. The appellant highlights a number of benefits of the appeal scheme compared to these fallback positions.
15. The Council considers that the fallback positions should not be given weight as they relate to a different domestic curtilage. However, based on the evidence before me, I am satisfied that the fallback positions are a realistic proposition and were I minded to dismiss the appeal there is a reasonable likelihood that one of them would be implemented. As such, the fallback positions are relevant considerations, notwithstanding that they relate to the site of the existing building rather than the appeal scheme.
16. Benefits for existing and future occupiers may result from the appeal scheme compared to the fallback positions. However, whilst not having the information that was before the Council, I am mindful that it granted permission for the detached dwelling and therefore must have found it acceptable in terms of its size and its effect on the living conditions of existing and future occupants. In addition, based on the description of the development within the Council's officer report, it would be reasonable to conclude that the dwelling with permission would be within the same site as the existing dwelling. It would be seen in the context of its proximity to the main farmhouse which would not be

⁴ Application reference 2020/09532

⁵ Application reference 2020/92945

the case with the proposed dwelling. This would result in less impact on the openness of the Green Belt.

17. In terms of the LDC fallback, the resulting dwelling, whilst having a larger footprint than the appeal scheme, would have significantly less massing and would be seen in the context of its proximity to the main farmhouse which would not be the case with the proposed dwelling. This would result in less impact on the openness of the Green Belt.
18. I note that the Highways Authority considers that the proposed access point would be situated further away from the bend on the road which would increase visibility to the left and would be a benefit to road safety. The appellant states that the existing dwelling, as extended through exercising the permitted development rights, would not be able to accommodate the parking provision required by the Council for a four bedroom property. Although parking provision and its conformity with the development plan would not have been examined as part of the LDC process, from what I observed on site, it may be difficult to satisfactorily accommodate three vehicles which is the number the appellant identifies as being required by the Council. Although I have not been provided with evidence that the existing access causes an unacceptable impact on highway safety, I am satisfied that the appeal scheme would result in a more satisfactory access point and parking arrangement for the proposed use than the one that would be used for the fallback positions. As such, I give the highway benefits moderate weight.
19. The proposed dwelling would be constructed out of natural stone and would be more sympathetic to the character and appearance of the area than the existing dwelling. However, the existing dwelling is of a very modest scale and height and is not particularly obtrusive in the wider area. I therefore give this benefit limited weight.
20. I note the appellant's points that the appeal scheme would incorporate an air source heat pump and electric vehicle charging point, would be more energy efficient than the existing dwelling and would have a much greater lifespan. However, I give these matters very limited weight as energy saving measures would generally be expected with a new development.
21. I note the appellant's willingness to accept a condition that would require the entering of a unilateral agreement to restrict future development of the site where the existing dwelling is located. However, such a condition is unlikely to be enforceable nor would it address the harm to openness that I have found.

Planning Balance and Conclusion

22. The proposed development would be inappropriate development in the Green Belt, which is by definition harmful, and should not be approved except in very special circumstances. I attach substantial weight to the harm to the Green Belt by reason of inappropriateness and the loss of openness that would result from the proposed development. Very special circumstances will not exist unless the harm to the Green Belt and any other harm is clearly outweighed by other considerations. I find that the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the proposed development do not exist.

23. The proposed development would be inappropriate development in the Green Belt in conflict with Local Plan Policy LP57 and relevant provisions of the Framework and there are no very special circumstances to justify it.
24. The proposed development would conflict with the development plan taken as a whole as well as the Framework. There are no material considerations that indicate the decision should be made other than in accordance with it. Therefore, for the reasons given, I conclude that the appeal should not succeed.

F Wilkinson

INSPECTOR