



Appeal Decision

Site Visit made on 26 October 2021

by Mark Caine BSc (Hons) MTPL MRTPI LSRA

an Inspector appointed by the Secretary of State

Decision date: 11 November 2021

Appeal Ref: APP/P2365/W/21/3279582

Council Depot, Bescar Brow Lane, Scarisbrick, Ormskirk L40 9QH

- 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 Broadley Developments Ltd against the decision of West Lancashire Borough Council.
 - The application Ref 2021/0529/FUL, dated 22 April 2021, was refused by notice dated 21 June 2021.
 - The development proposed is described as 'Resubmission of a previously refused application for the erection of 8 no. new dwellings, all with private gardens, in-curtilage car parking and served by the existing crossover and a new internal access road, all following demolition of existing commercial buildings'.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. A revised version of the Framework¹ was published on 20 July 2021. I have considered its provisions in relation to the appeal scheme and note that there are no significant changes from the 2019 iteration which would affect the main issues of the case. Accordingly, I have referred to the 2021 Framework in my findings.

Main Issues

3. The main issues are:
 - (i) Whether the proposal would be inappropriate development in the Green Belt for the purposes of the Framework and development plan policy;
 - (ii) If the proposal is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to very special circumstances necessary to justify it.

Reasons

Whether inappropriate development

4. The appeal site is hard surfaced, with a long part single part two storey metal clad frame workshop building and an 'L' shaped single storey modular office unit situated on it. Other structures found on the site include timber and concrete open storage compounds, a low brick built unit, and lighting and CCTV

¹ The National Planning Policy Framework 2021

columns. Part of the north and west boundaries are also enclosed by a man-made bund, with mature trees planted around the perimeter of the site. Although there are some houses nearby, the surrounding area is rural, comprising open fields and agricultural land.

5. Policy GN1 of the Local Plan² advises that development proposals within the Green Belt will be assessed against national policies. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness. It goes on to state that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The Framework further establishes that the construction of new buildings in the Green Belt should be regarded as inappropriate, subject to a number of exceptions as set out in paragraph 149.
6. I concur with both main parties that the exception relevant to this appeal would be paragraph 149 (g) which provides for limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt than the existing development.
7. It is also common ground that the appeal site meets the definition of previously developed land as set out within Annex 2 of the Framework and, taking into account my earlier comments, I have no reason to disagree. This appeal therefore centres upon whether the proposal would comply with the qualifying part of this exception in not having a greater impact on the openness of the Green Belt than the existing development.
8. The site contains development which has already reduced the openness of the Green Belt, including the spatial and visual effects of the fixed surface infrastructure, earth bunds, buildings and structures. Activities associated with the previous uses of the site from comings and goings of employees, HGV movements, loading and unloading operations and the storage of inert materials would have also had an impact on the openness of the site. However, a large extent of the site is open and free from the influence of built development. There is also little conclusive evidence to demonstrate that the activity and the generation of traffic associated with the previous use of the site would be reduced by the proposed development.
9. The appellant's evidence indicates that the total footprint of the proposed dwellings would be 5% less than those of the existing buildings that occupy the site. Nonetheless, it is also calculated that the proposed dwellings would result in a total volume increase of 6.5% on the site. Furthermore, I am mindful that the appellant's statistical measurements for the existing buildings have included the modular office building.
10. I appreciate that the Framework does not provide a definition of a temporary building and that the 'L' shaped office is fixed to the ground and connected to main services. Nonetheless, it is not within my remit to formally determine whether the modular office building is lawful within the context of an appeal under section 78 of the Town and Country Planning Act 1990 (the Act). However, I shall consider the evidence so far as it is material to this appeal. If

² West Lancashire Local Plan 2012-2027 Development Plan Document 2013

the appellant wishes to ascertain whether the development is lawful, they may make an application under section 191 of the Act, and any such application would be unaffected by my determination of this appeal.

11. The appellant argues that the office building has been in situ for nearly fourteen years as planning permission Ref: 2007/0079 was for the retention of a single storey modular building and car parking. However, I have been made aware that this was a temporary consent. It is also uncontested that this was granted subject to a planning condition requiring the building to be removed no later than five years from the date of the permission, and that this permission expired on 18 January 2012. Whilst it has yet to take enforcement action, the Council consider this to be a breach of planning condition which does not benefit from a ten year immunity period. I have no substantive reason to question this and on the basis of the evidence before me find that the modular office building is a temporary building. In accordance with the requirements of paragraph 149 (g) it should therefore be excluded from any assessment of the impact of the proposed development on the openness of the Green Belt.
12. In reaching this view I have had regard to a judgment from the Supreme Court *Skerritts of Nottingham Ltd v SSETR [2000] EWCA Civ 5569* that has been submitted by the appellant to support its view that the modular building is permanent. In this case the duration of the presence of a marquee was held to be an important factor in respect of considering the question of permanence. However, this was in the context of whether it amounted to the carrying out of a building or other operation, which constituted 'development' as defined in section 55(1) of the Act, without planning permission. Accordingly, the circumstances are therefore not directly comparable to those which apply for this appeal.
13. I recognise that the proposal would involve returning much of the appeal site to a landscaped state, such that the area of hardstanding that currently covers the entire site, and the fixed surface infrastructure would be substantially reduced. Nonetheless, when omitting the office building from the appellant's calculations, the total floor area and volume measurements of the proposed dwellings would clearly be greater than those of the existing buildings on the site. The metal clad workshop is a solid unrelieved structure that is sited close to the western boundary of the site, and the gaps between and to the rear of the proposed dwellings would provide some visual relief in comparison. However, the proposal would still result in an increase in the presence of built development across the site, in some areas where none currently exists.
14. Although the majority of views into the site are obscured by the perimeter tree planting, the proposed development would still be visible through the vehicular entrance into the site. As a result, the size, scale and siting of the proposed eight dwellings and their garden areas, and the likely associated domestic paraphernalia would result in a substantial increase in the overall bulk and mass of development present within the site and would therefore reduce the openness of the Green Belt in both visual and spatial terms. It would consequently have a greater impact on the openness of the Green Belt than the existing development.
15. Accordingly, the proposal does not fall within the exception at Paragraph 149 (g) of the Framework. For these reasons, it would therefore represent inappropriate development that is, by definition, harmful to the Green Belt and

would be in conflict with Local Plan Policy GN1 and the objectives of Section 13 of the Framework. I subsequently attach substantial weight to the harm arising from the inappropriateness of the proposed development.

Other Considerations

16. In support of its case the appellant has put forward that the principle of development for residential purposes in this sustainable location has been accepted by the Council. In addition, I am aware that the Council did not find the effect of the proposal on the living conditions of the residents of neighbouring properties, ecology, nature interest, foul and surface water drainage or highway safety and traffic generation to be objectionable. I am also satisfied that the existing trees on the site could be protected by suitably worded planning conditions. However, these matters did not appear to be contentious in the appeal and the absence of harm in these respects would be neutral in the overall Green Belt balance.
17. I also appreciate that the appellant's Geo-Investigation Report identifies that there is evidence of concentration of various PAH compounds within the locality for which 'hot spot' remediation will be required. Nonetheless, this would provide mitigation of some of the development's impacts and would not add any positive weight in favour of the proposal.
18. The proposal would change the appearance of the site from an industrial location to a landscaped residential area. The resulting dwellings would be of a bespoke design, with variable fenestration, differing eaves and ridge heights, and contrasting brick and render elevations. As such they would represent a visually attractive addition to the immediate surroundings. Notwithstanding the impact on openness, the dwellings would have a positive effect on the character and appearance of the site and the surrounding area, and as such moderate weight is attached to this.
19. Limited weight is attached to the appellant's argument that the proposal represents the only means of developing the site and realising the benefits put forward. Information relating to viability and development costs have been supplied in relation to the current proposal and alternative schemes for a smaller number of detached dwellings of similar size, scale and design. However, that does not demonstrate that an alternative scheme with less impact on the openness of the Green Belt would not be viable, or that the erection of eight detached dwellings of the size, scale and design proposed is the only way to bring the site forward for residential development.

Conclusion

20. I have identified that the proposal would be inappropriate development in the Green Belt as defined by the Framework. The Framework establishes that substantial weight should be given to any harm in the Green Belt. As such, even when taken together, the other considerations reviewed above do not clearly outweigh the harm that the proposal would cause. Consequently, the very special circumstances required to justify the development have not been demonstrated.
21. For the reasons given above, having taken account of the development plan as a whole, along with all other relevant material considerations, the appeal should be dismissed.

Mark Caine

INSPECTOR