



Appeal Decision

Site Visit made on 25 May 2021

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th November 2021

Appeal Ref: APP/N4720/W/21/3269039

1 Brandon Hall Cottages, Tarn Lane, Wike, LS17 9JQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr J Grantham against the decision of Leeds City Council.
 - The application Ref 20/07176/FU, dated 9 October 2020, was refused by notice dated 27 January 2021.
 - The application sought planning permission for the demolition of three houses and construction of one detached dwelling with detached garage, new vehicle access and gates without complying with a condition attached to planning permission Ref: 18/05715/FU, dated 2 November 2018.
 - The condition in dispute is No. 2 which states that: The development hereby permitted shall be carried out in accordance with the approved plans listed in the Plans Schedule.
 - The reason given for the condition is: For the avoidance of doubt and in the interests of proper planning.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application form and the Decision Notice issued by the Council refer to a variation of condition 1 of planning permission reference: 18/00704/FUL. However, it is clear from the evidence that the proposal relates to planning permission reference: 18/00571/FU and a copy of this permission was included in the appellant's submissions. The planning appeal form refers to a variation of condition 2 of planning permission reference 18/00571/FU for an amendment to increase the size of the garage. Therefore, notwithstanding what is stated on the planning application form and the decision notice, all the other evidence clearly indicates that this latter description was what was considered by the Council.
3. The appeal proposal sought to vary a condition attached to a previous planning permission, referenced 18/05715/FU which specified the approved drawings that related to that permission. The schedule of plans attached to the permission and referenced in condition 2 gave this drawing number as 111 Revision K. Planning permission reference: 18/05715/FU was itself a permission derived from an application made under Section 73 of the Town and Country Planning Act 1990 to vary a condition specifying the approved plans that was attached to planning permission reference: 18/00704/FU. From the evidence, although there have been a series of different planning permissions granted on the appeal site, planning permission reference: 18/00704/FU was the implemented scheme and established the original form of the proposed

development. This permission describes the development as 'Demolition of three houses and construction of one detached dwelling with detached garage, new vehicle access and gates'.

4. The practical effect of granting a planning permission under Section 73 is the creation of a new planning permission for the original development that is subject to a different set of conditions from the original permission. Therefore, notwithstanding that the Decision Notice for planning permission reference 18/05715/FU describes the proposal as a variation of a condition, the development permitted by it is essentially the same as permitted by planning permission reference 18/00704/FU, albeit subject to a modified design. I have therefore used the description of the development from planning permission 18/00704/FU for the purposes of the appeal and determined the appeal on the basis that it seeks to further modify the design of the proposal from that shown on Drawing Number 111 Revision K, the current approved drawing, to that shown on drawing number 17115 705, which was submitted with the application that forms the subject of the appeal.
5. At the time of my site visit, the development had been implemented and was very close to completion. I have no reason to believe that what I saw was not in accordance with the details shown on Drawing Number 111 Revision K.
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. The parties were asked for comments on whether any changes to the Framework affected the evidence previously submitted. The appellant confirmed that they had nothing further to add and no comments were received from the Council. 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 on the openness of the Green Belt.
 - Would the 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

Whether the proposal is inappropriate development

8. The appeal site is located within the Leeds Green Belt. Paragraph 149 of the Framework sets out that, with certain exceptions, the construction of new buildings in the green belt should be regarded as inappropriate development. Among these exceptions are the extension of a building provided it does not result in disproportionate additions over and above the size of the original building, and the replacement of a building, provided that the new building is in the same use and not materially larger than the one it replaces. A further

exception relates to 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.

9. Saved Policy N33 the Leeds Unitary Development Plan Review 2006 (the UDP) does not entirely reflect the wording the Framework, referring to limited extension, alteration, or replacement of existing dwellings and limited infilling and redevelopment of major existing developed sites. Nonetheless, it remains broadly consistent with the Framework. Saved Policy GB9 of the UDP specifically addresses redevelopment of buildings within the Green Belt and is permissive of redevelopment of dwellings in certain circumstances. The Policy sets out several criteria against which such proposals will be considered. These include whether the proposed replacement dwelling, and associated works would maintain or enhance the open character and appearance of the locality, and also the expectation that the replacement dwelling, and any curtilage development, would have no greater impact in terms of height or site coverage than the existing dwelling and its associated curtilage development.
10. As set out under the preliminary matters, the appeal proposal is predicated on altering the design of a previously approved dwelling to replace earlier buildings on the site. Although the application proposed an extension to a building, the planning permission which the proposal sought to alter was for the creation of a new, replacement, dwelling with a detached garage. Within this context, the exception in Paragraph 149 of the Framework relating to extensions to existing buildings would not be applicable.
11. At the time of the site visit the development was largely complete. I have no details of the buildings that previously occupied the site, other than the Ordnance Survey base map (hereinafter, the map evidence) that is appended to the Tree Preservation Order relating to the group of trees to the south of the new dwelling. This shows a short terrace of three buildings located to the east of Brandon Hall, that run on a roughly north to south axis.
12. From the evidence provided, the planning permission previously granted by the Council (Reference 18/00704/FU) represented, according to the Council's calculations, a 32% increase in volume over the buildings that were to be replaced. This is not disputed by the appellant. It is also common ground that the current proposal would result in an 8% increase in the volume of the building when compared to the consented development. Although taken in isolation the proposed addition to the garage would be small in scale, within the context of the application the cumulative effect must be considered. The appeal proposal would result in a new development that would represent a 40% increase in volume when compared to the previous structures on the site.
13. The Framework does not define what would constitute "materially larger" for the purposes of Paragraph 149. Given its ordinary meaning "materially" is defined as "in a significant way", "to a significant extent", or "considerably".
14. The only guidance on this matter that is referred to is Policy HDG 3 of the Leeds City Council Householder Design Guide Supplementary Planning Document 2012 (the SPD). The SPD sets out guidance in respect of extensions to existing dwellings in order to be considered "limited development" that may be permissible under Saved Policy N33. This broadly equates to the exception in the current Framework in respect of the addition or alteration of a building not resulting in disproportionate additions. In this regard, the SPD sets out that

existing and proposed extensions should not exceed a 30% increase over original house volume.

15. Because it refers to extensions to existing dwellings, Policy HDG3 of the SPD is not wholly relevant to the present proposal, which is for a replacement dwelling. However, it is indicative of what the Council consider to be a proportionate increase.
16. A 40% increase in volume over and above the volume of the previous buildings, in purely numerical terms, is not something that could be considered insignificant or minor. Consequently, based on the evidence that I have, the appeal proposal would lead to the resulting development being materially larger than the original buildings on the site and cannot, therefore, benefit from the exception in Paragraph 149 d) of the Framework.
17. Paragraph 149 g) of the Framework makes allowance for 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. It is not suggested by the Council that the site did not fall within the definition of previously developed land set out in the Framework when the original planning permission was granted in 2018. From the evidence before me, I have no reason to find differently. Consequently, whether the appeal proposal would constitute inappropriate development in the Green Belt is contingent on my findings in the next section.

The effect on the openness of the Green Belt.

18. Although located close to built up area of Leeds and to the settlements of Scarcroft and Shadwell, the surrounding area is largely comprised of agricultural fields with roadside trees and hedgerows, and groups of trees following linear features. Whilst there are individual buildings and small clusters of buildings scattered through the area it, nonetheless, remains a largely open and agricultural landscape.
19. The openness of the Green Belt has both a spatial and a visual aspect. Whilst the appellant makes the point that the proposed increase in the size of the garage would be a relatively minimal addition to the development previously approved and would occupy an area previously intended as hardstanding for car parking, the relevant test is whether there would be a greater impact on the openness of the Green Belt than the existing development. In this case, as the appeal proposal is for a replacement dwelling with a modified design, the "existing development" for the purposes of the test would be the three cottages that previously occupied the site.
20. As set out above, there is very little in the appeal submissions in respect of the size, scale, or appearance of these earlier cottages. The map evidence indicates that these were in the format of a short terrace with a north to south axis. There is no evidence that there were any ancillary or curtilage buildings associated with these.
21. The replacement dwelling which has now been constructed occupies a different position on the site and has a broadly east to west axis with the detached garage located a short distance from the west gable. It is common ground that the new dwelling has a greater combined volume than the earlier terrace of cottages. The map evidence also strongly suggests that the built footprint of

the replacement dwelling is larger than that of the earlier cottages. Both the volume and the built footprint would be further increased by the appeal proposal.

22. In purely spatial terms, the appeal proposal would reduce the openness of the Green Belt by introducing new built development where previously there was none. I am mindful that the Council granted planning permission for the redevelopment of the site within essentially the same policy context, but I do not know the reasoning the Council applied. Nonetheless, the appeal proposal would represent an increase in the overall size of the replacement property and a further incremental erosion of the openness of the Green Belt in spatial terms.
23. In visual terms, there are two principal views of the appeal site, one from Tarn Lane looking south and the other from Brandon Crescent looking west. In views from the South the appeal site is partly screened by existing trees to the south of the site. In addition, as the landform falls away to both the north and south of the appeal site, the development is less visible looking north because it is partly concealed by the brow of the hill. In views looking east, the appeal site is largely screened by Brandon Hall and its associated landscaping.
24. From the map evidence and the submitted plans, the gable end of the replacement dwelling is not as long as the rear elevation of the earlier cottages. However, there is no evidence regarding the respective heights of the new dwelling and those that it replaced. Consequently, I cannot conclude that the new dwelling has a lesser visual effect when viewed from Brandon Crescent and when approaching from the east. At best, I can conclude that there is a neutral visual effect.
25. Due to the configuration of the earlier cottages shown on the map evidence, when viewed from Tarn Lane, it is most likely that these presented a gable end to the main road. It is clear that the front elevation of the replacement house is wider than this previous gable end. The perceived length of the façade and the extent of the development is increased by the free standing garage building, although this is mitigated slightly by the degree of separation between the two building elements.
26. The appeal proposal would reduce the separation between the main house and the detached garage and also alter the roof form of the garage from having a gabled front elevation with a roof ridge running from front to rear to a pitched roof with the ridge running along the long axis of the building. This, in combination with the reduction in separation would increase the perceived length and massing of the overall frontage and, consequently, have a much greater visual effect on the openness of the area than the gable end of the earlier terrace.
27. I observed that the appeal site is contiguous with a group of agricultural buildings and a single storey dwelling to the south east and that there is a cluster of buildings along Brandon Crescent which have an effect on the openness of the area. It is also adjacent to Brandon Hall. However, the appeal site is more visually prominent in a number of views than these other buildings and from what I saw, and from the other evidence before me, the appeal proposal would be perceived as further increasing the extent of built development in the area and would have a greater visual effect than the previous buildings.

28. Whilst I have noted the appellant's point that the area to the side of the currently approved garage could be used for the parking of vehicles or outdoor storage, this would be transient and impermanent. As such this use would have a lesser effect on the openness of the Green Belt than the enlarged building would.
29. I have also noted that the Council do not object to the design implications of the proposed amendments to the scheme. Taken in isolation, the amended garage structure reflects the design principles of the main house and would appear as a subordinate and ancillary structure to it. However, the effect on the character and appearance of the area should not be conflated with the effect on the openness of the Green Belt¹.
30. Drawing these points together, I find that the appeal proposal would be harmful to the openness of the Green Belt. Consequently, the exception set out in Paragraph 149 g) of the Framework would not apply.
31. It is not argued that any of the other exceptions set out in either Paragraph 149 or Paragraph 150 of the Framework is applicable and I, therefore, find that the appeal proposal would constitute inappropriate development in the Green Belt.

Other considerations

32. Inappropriate development in the Green Belt is by definition harmful. The Framework requires that substantial weight should be given to any harm to the Green Belt.
33. The appellant's case is predicated on the argument that the appeal proposal would not have a greater impact on the openness of the Green Belt than the approved scheme. I have found that not to be the case when considering the appeal proposal against the pre-existing development comprised of three terraced cottages. This is the yardstick against which the appeal proposal must be measured as required by the Framework.
34. No other considerations have been identified or advanced that would clearly outweigh the harm to the Green Belt arising from the proposal by reason of inappropriateness.
35. I therefore conclude that the proposed development is inappropriate development in the Green Belt and that there are no very special circumstances that would warrant granting planning permission. The proposal would conflict with the Framework and with Saved Policies N33 and GP9 of the UDP.

Conclusion

36. For the above reasons, I conclude that the appeal should be dismissed.

John Dowsett

INSPECTOR

¹ See *Turner v SSCLG & East Dorset Council* [2016] EWCA Civ 466 and *R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council (Appellant)* [2020] UKSC 3