



Appeal Decision

Site visit made on 20 September 2021

by L Wilson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 November 2021

Appeal Ref: APP/F4410/W/21/3276971

Land South Of Ridgill Avenue, Skellow, Doncaster DN6 8HS

- 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 Brian Sables against the decision of Doncaster Metropolitan Borough Council.
 - The application Ref 20/00992/FUL, dated 3 April 2020, was refused by notice dated 16 December 2020.
 - The development proposed is described as demolition of nissen hut and erection of 9 x 3 bedroom dwellings (in the temporary siting of a mobile home during construction). Resubmission of 19/01422/FUL.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since making its decision, the Council has adopted the Doncaster Local Plan (2021) (LP). The reasons for refusal did not refer to the LP due to the limited weight given to it at the time of determination of the application. The Doncaster Unitary Development Plan (1998) and Doncaster Council Core Strategy 2011-2028 (2012) have therefore been superseded and the policies referred to in the reasons for refusal are no longer relevant. In addition, a revised version of the National Planning Policy Framework (Framework) has been published since the application was determined. The main parties were given the opportunity to comment on any relevant implications for the appeal. Based on the evidence before me, the most relevant local planning policies to this appeal are: Policies 1, 30, 42, 44, 48 and 57 of the LP.

Main Issues

3. The main issues are:
 - Whether the proposal is inappropriate development in the Green Belt for the purposes of the Framework and development plan policy;
 - The effect of the proposal on the openness of the Green Belt;
 - The effect of the proposal on the living conditions of the occupiers of 42 and 44 Repton Road, having regard to outlook and light;
 - The effect of the proposed development on the character and appearance of the surrounding area;

- Whether the proposal would comply with local and national planning policy which seeks to steer new development away from areas at the highest risk of flooding;
- The effect of the development on biodiversity; and
- If the development is inappropriate, whether the harm, by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal.

Reasons

Inappropriate development

4. As part of the development of the recently adopted LP, the appellant made representations to the Council to promote the appeal site as a potential housing allocation for removal from the Green Belt. The site was not included as an allocation in the adopted LP and therefore remains in the Green Belt.
5. Paragraph 149 of the Framework states that new buildings are inappropriate in the Green Belt unless they fall within the given list of exceptions. These include e) limited infilling in villages, f) limited affordable housing for local community needs under policies set out in the development plan (including policies for rural exception sites) and g) 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; or not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.
6. The appellant has drawn my attention to a Court of Appeal judgement¹ regarding infill development. In that case it was common ground between the parties that the boundary of a village defined in a local plan would be a relevant consideration in determining whether or not a proposed development constitutes limited infilling in a village, but it would not necessarily be determinative. Thus, consideration should also be given to the situation 'on the ground' as well as relevant policies.
7. Although the site lies close to built development and the appellant considers that local residents do not typically associate themselves as living in a 'rural area', there is a clear break in development to the south and west of the site. The amenity spaces of the properties to the north and east also adjoin the site. Visually, the site does not read being associated with nearby built development. Instead, it is viewed more in the context of open land to the south and west. Consequently, given the separation distance to built development and the relationship with the adjacent dwellings, the scheme would not represent infill development.
8. The appellant states that the proposal would result in housing of an affordable nature. They intend to provide starter homes but are open to consider all options of affordable housing, as defined in the Framework. They have also

¹ Julian Wood v SSCLG, Gravesham Borough Council [2015] EWCA Civ 195

provided a property valuation report and discussions have taken place with a registered social provider. However, a viability assessment has not been undertaken. Moreover, the application submitted did not include an affordable or starter home scheme.

9. There is an absence of convincing evidence to demonstrate that the scheme would provide affordable housing or represent a rural exception site, having regard to the definition in the Framework. Furthermore, the appellant has not provided any legal certainty that the affordable homes would be delivered.
10. The site is located at the end of a residential street. It is currently overgrown and contains a Nissen hut. Having regard to the relevant definition within the Framework, the whole of the site cannot be considered previously developed land. This is because the Nissen hut occupies only a small proportion of the site whereas the proposed development would occupy a significantly larger proportion of the site. Even if the proposal amounted to development on previously developed land, the scheme would have a significantly greater impact upon the openness of the Green Belt than the existing development. This matter is addressed in more detail in the following section.
11. Accordingly, the proposal would not fall under any of the exceptions listed in the Framework and would be inappropriate development in the Green Belt, having regard to Policy 1 of the LP and paragraph 149 of the Framework.

Openness

12. Paragraph 137 of the Framework confirms 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 and their permanence.
13. The proposal would have a visual and spatial impact upon the Green Belt. The existing built development and trees would partially screen the scheme. Nonetheless, the dwellings would be conspicuous from the surrounding area. The nine dwellings would have a significantly greater scale, bulk and volume than the existing Nissen hut because they would be two-storey dwellings with accommodation in the attic and would have a raised floor level to mitigate flood risk. The proposal would substantially increase the level of built development on the site and would introduce buildings where there are currently none.
14. Consequently, the development would have a significant adverse impact on both the spatial and visual openness of the Green Belt. As such, the proposal would conflict with the fundamental aim of Green Belt policy, as stated in the Framework, to keep land permanently open.

Living conditions

15. The site adjoins the bungalows on Repton Road. I observed on my site visit that the bungalows have a communal private amenity space which adjoins the site, and they have windows which would face the development.
16. The blank side elevation of the end dwelling of the eastern-most Block C, nearest to the bungalows, would be visible from the windows and amenity space of the bungalows. Due to the height of this proposed dwelling and its proximity to the common boundary, the side elevation of the end dwelling would compromise the outlook from the windows of 42 and 44 Repton Road in

particular. It would result in an oppressive form of development which would create a claustrophobic feeling. The development would therefore have an overbearing impact upon the occupiers of Nos 42 and 44.

17. I am not convinced that the proposal would result in unreasonable loss of daylight to the bungalows amenity space to a degree that would warrant planning permission being refused given the orientation of the proposed dwellings and size of the amenity space. Based on the evidence presented, the bungalows amenity space would still receive adequate daylight and sunlight.
18. Although the proposed development would not result in unreasonable loss of light, it would adversely affect the living conditions of the occupiers of Nos 42 and 44, having regard to outlook. Accordingly, it would conflict with Policy 44 of the LP which seeks, amongst other matters, to ensure developments protect existing amenity and do not significantly impact on the living conditions of neighbours or be overbearing. It would also not comply with section 12 of the Framework which seeks to achieve well-designed places and requires new development to provide a high standard of amenity for existing users.

Character and appearance

19. The layout of the development would result in parking spaces across the entire frontage of the dwellings. The turning area and visitor spaces would require further hardstanding. Existing trees and hedgerows would be retained to ensure a visual barrier between the built form and the Green Belt.
20. The supporting text of Policy 48 of the LP seeks to maximise the benefits of tree planting in housing areas and aims for a minimum of 1 tree per dwelling, including street trees to be designed into the public realm.
21. The proposed layout would have a frontage dominated by parking and hardstanding with extremely limited space for soft landscaping including trees. The proposal would not include appropriate soft landscaping and the hard landscaping would dominate the street scene. Accordingly, the development would be poorly designed in this respect.
22. The proposed dwellings would be higher than the two-storey dwellings within the surrounding area primarily due to flood risk mitigation measures. Furthermore, they would be substantially higher than the neighbouring bungalows. As a result of the proposed dwellings' height, they would appear at odds with the character of the surrounding area and would be a dominant addition.
23. For these reasons, the proposal would cause harm to the character and appearance of the surrounding area. Consequently, the scheme would conflict with Policies 42, 44 and 48 of the LP. These policies seek, amongst other matters, to promote good design and ensure housing proposals are sympathetic to the character of the area and provide a high quality, attractive hard and soft landscaping. It would also conflict with section 12 of the Framework which seeks to ensure new development is visually attractive as a result of good architecture, layout and appropriate and effective landscaping as well as being sympathetic to local character.

Flooding

24. Paragraph 159 of the Framework states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). The site is located within Flood Zone 3 (area with a high probability of flooding). The appellant highlights that neither the site or immediate vicinity have been affected by recorded historical flooding events which is likely to be due to existing flood defences.
25. Given the flood zone location, the Council must apply the Sequential Test. It is the responsibility of the applicant to demonstrate that there are no reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.
26. The Sequential Test submitted covers Skellow, Carcroft and within approximately a three-mile search of Skellow. It concluded that there were no other suitable alternative sites.
27. The appellant has made reference to an approved application which covered a similar search area². However, I understand that the highlighted application, and search area, cannot be compared to the scheme before me as it related to land designated within the settlement boundary.
28. The appellant states that a borough wide search would not be justified for the affordable starter home model, which is specifically tailored for local need. However, as stated above, the appellant has not robustly demonstrated that the scheme would comprise affordable housing.
29. The Council's Development and Flood Risk Supplementary Planning Document (2010) (SPD) sets out that the area of search will normally apply to the whole borough, with some variation possible dependent on the scheme type and location. Whilst a whole borough search might be excessive in this instance, having regard to the SPD, the area of search within the Sequential Test is extremely limited and has not been robustly justified.
30. The sequential test must be passed before the exception test can be applied. Given my findings above, my decision does not turn on whether the exception test has been passed. Similarly, in the absence of an appropriate sequential test, the proposed development is unacceptable in principle. It is therefore not necessary for me to consider the mitigation measures.
31. For these reasons, the proposal would not comply with local and national planning policy which seeks to steer new development away from areas at the highest risk of flooding. Consequently, it conflicts with Policies 1 and 57 of the LP which states, amongst other matters, that all development proposals will be considered against the Framework, including application of the sequential test. It would also conflict with section 14 of the Framework which seeks to avoid inappropriate development in areas at risk of flooding and to steer new development to areas with the lowest risk of flooding. Additionally, it would not comply with the SPD which seeks to manage flood risk within Doncaster and acknowledges the need to facilitate the regeneration of deprived communities.

² 18/01230/FULM

Biodiversity

32. The site was previously part of the former Brodsworth Tip site which is an area of good ecological value.
33. I acknowledge that, whilst the Biodiversity Net Gain units are negligible on this site when reviewed by the DEFRA metric 2.0, the Ecological Appraisal states there is some value for nesting and foraging birds. Thus, there is still a requirement to negate the loss of biodiversity following the site clearance and the demolition of the Nissen hut.
34. The appellant highlights that no protected species will be endangered, and they would accept a condition in relation to this matter. The appellant has also stated that they would be open to a unilateral undertaking to provide a commuted sum towards enhancing the green infrastructure in the village.
35. There is limited scope to provide biodiversity enhancements within the site because the development would be dominated by hard surfaces. Hence, based on the evidence submitted, I am not satisfied that an appropriately worded condition could address this matter due to the limited space available to enhance the site for biodiversity.
36. Furthermore, a unilateral undertaking has not been justified and would not be appropriate. This is because the scheme fundamentally would not provide comprehensive landscaping due to the extent of proposed hard surfacing. This results in a poorly designed development, where opportunities to improve biodiversity in and around the development have not been integrated in the design. In this instance, there is no appropriate mechanism before me by which I can be certain that the compensatory measures would be secured.
37. For these reasons, the appellant has failed to demonstrate that the proposal's effect on biodiversity would be acceptable. Accordingly, the proposal would conflict with Policy 30 of the LP. This policy states, amongst other matters, that all proposals shall be considered in light of the mitigation hierarchy in order to ensure ecological features are protected and harm to biodiversity is minimised. It would also conflict with section 15 of the Framework which seeks to protect and enhance biodiversity.

Other considerations

38. The proposal would provide new homes in an accessible location which could help boost the local economy, including services and facilities. Furthermore, there would potentially be jobs for local tradespeople during construction. Based on the evidence submitted, the Council is able to demonstrate a 5 year housing land supply. The provision of nine market dwellings would provide a modest contribution to the supply of homes and the local economy. Consequently, given the scale of the scheme, I attach limited weight to the benefits of the proposed development.
39. Although the existing building is of no architectural or historic merit and may be replaced in the future, this does not constitute a fall back position. Based on the evidence submitted, planning permission has not been approved for an alternative development. Thus, this consideration does not amount to a positive factor in favour of the development.

40. The appellant considers that the proposal would represent an improvement in visual terms, particularly as a result of the proposed high quality and eco-friendly materials. They also highlight that the site is vulnerable to fly-tipping and trespassers. However, the appearance and security of the site could be improved without constructing nine new dwellings. Furthermore, the appellant has not submitted any robust evidence to demonstrate that the design would be of exceptional quality. In any event, the absence of harm and compliance with local and national planning policies does not amount to a positive factor in favour of the scheme.

Whether very special circumstances exist

41. The proposal would be inappropriate development in the Green Belt which is, by definition, harmful to the Green Belt. It would also cause harm to the openness of the Green Belt. Paragraph 148 of the Framework is clear that substantial weight should be given to any harm to the Green Belt and that 'very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
42. The other considerations relating to the benefits of the proposed development, including housing supply as well as economic benefits, are given limited weight. The other considerations in relation to the existing building and the appearance and security of the site are given neutral weight in that they neither weigh in favour or against the proposal.
43. When drawing this together, the other considerations advanced in support of the appeal whether taken individually or cumulatively, do not, clearly outweigh the totality of the harm that I have found. Therefore, the very special circumstances necessary to justify the development do not exist.

Planning Balance and Conclusion

44. I conclude that the proposal would amount to 'inappropriate development'. There are no very special circumstances to outweigh the harm caused. This would be contrary to Policy 1 of the LP, which confirms that national planning policy will be applied including the presumption against inappropriate development except in very special circumstances, and the aforementioned paragraphs 148 and 149 of the Framework as set out above.
45. The scheme would also adversely affect the living conditions of the occupiers of Nos 42 and 44, cause harm to the character and appearance of the surrounding area, would not comply with planning policy with regard to flood risk and the appellant has failed to demonstrate that the proposal's effect on biodiversity would be acceptable. Accordingly, there would be conflict with LP Policies 1, 30, 42, 44, 48 and 57 and sections 12, 14 and 15 of the Framework.
46. I note the appellant considered the local plan policies to be out of date but given the recent adoption of the LP, the basket of the most important policies is not out-of-date in this case and therefore paragraph 11(d) of the Framework is not engaged.
47. The benefits associated with the development would be limited, due to its scale. The benefits do not outweigh the deficiencies that would arise as a result of the conflict with the development plan as a whole and there are no other considerations, including the Framework, that outweigh this conflict.

48. For the reasons given above, the appeal is dismissed.

L M Wilson

INSPECTOR