
Appeal Decision

Site visit made on 9 August 2021

by C Coyne BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 November 2021

Appeal Ref: APP/N2739/W/21/3275050

7 Byram Park Avenue, Byram WF11 9EH

- 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 David Draper against the decision of Selby District Council.
 - The application Ref 2020/0570/COU, dated 2 October 2020, was refused by notice dated 4 February 2021.
 - The development proposed is described on the application from as 'retrospective change of use of land to domestic garden and driveway and erection of new boundary fence'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. On 3 August 2020 a revised application form was requested from the appellant by LPA to clarify certain matters. This amended application form was dated 10 October 2020 and for clarity I have used this date in the banner heading above.
3. On 20 July 2021 a revised version of the National Planning Policy Framework (the Framework) was published. However, as the main parties have had an opportunity to comment on this matter and I am satisfied that neither party has been prejudiced in this regard.
4. When on my site visit, I observed that the proposed development apart from the landscaping was already completed. I also note that the application has been submitted retrospectively. However, it is only partially retrospective, and I have therefore determined the appeal on this basis.

Main Issues

5. The main issues are:
 - whether elements of the proposal would be permitted development under Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO);
 - whether the proposal would represent inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant Development Plan policies;
 - if the proposed development is inappropriate, whether the 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 permitted development

6. It is a matter of dispute as to whether the proposed boundary walls and fencing are classed as permitted development (PD).
7. Paragraph A.1. (a) (ii) of Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) states that development is not permitted if the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed 1 metre above ground level.
8. According to the submitted plans, the proposed close boarded timber fencing measures approximately 2 metres in height and is located along the boundary of the site furthest from the proposed vehicular access. As a result, I find that the proposed fencing is PD.
9. These plans also show that the proposed brick walls with pillars and artstone cappings measure approximately 1.1 metres in height and are located adjacent to this vehicular access and the highway. Consequently, I find that the proposed boundary walls are not PD.
10. I therefore conclude that the proposed boundary walls do not satisfy the requirements of Schedule 2, Part 2, Class A of the GPDO and therefore are not development permitted by it.

Whether inappropriate development

11. The *National Planning Policy Framework* (the Framework) states at paragraph 147 that inappropriate development is, by definition, harmful and should not be permitted except in very special circumstances. As set out in the Framework, the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open as set out in Paragraph 137.
12. Policies SP2 and SP3 of the adopted Selby Local Plan (SLP) aim to prevent inappropriate development in the Green Belt in accordance with national planning policy. As a result, I consider these policies to be broadly consistent with the Framework and afford them due weight.
13. Given the scale of the proposal, I find that it does not have a significant adverse impact on the Green Belt purpose of assisting in safeguarding the countryside from encroachment.
14. The creation of the proposed vehicular access and driveway is classed as an engineering operation under Section 336 of the Town and Country Planning Act 1990 (the Act). Paragraph 150 b) of the Framework states that engineering operations are not inappropriate development in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it.
15. The proposal has also changed the use of land from forestry to a vehicular access, driveway, and garden. Likewise, paragraph 150 e) of the Framework states that material changes in the use of land are not inappropriate development in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it.

16. Section 336 of the Act also states that a building includes any structure or erection. Consequently, the erection of the proposed boundary walls comprises a new building in the Green Belt. Accordingly, I find that this element of the proposal also needs to meet the exceptions set by paragraph 149 of the Framework for it not to be classed as inappropriate development.
17. The erection of the boundary walls introduces built development where there is presently none thereby spatially reducing the openness of the Green Belt and harming it albeit to a limited degree. Similarly, given their location next to the highway and on the boundary of the site closest to Byram Park Avenue, they are clearly visible from public vantage points on the road. For a comparable reason they are also likely to be visible from nearby properties. As a result, and given their prominent location they also have an adverse visual impact thereby similarly reducing and harming openness to a limited degree in this regard.
18. I also note the appellant's points that the other elements of the proposal namely the material change of use of the land and the engineering operations would be largely devoid of built development and that the area is used for the turning of vehicles and not for parking. However, the submitted plans clearly state that the largest part of the new area is for turning and parking for no. 7 and the appellant's submitted supporting letter also contains photographs showing vehicles parked in this area. Indeed, while on my visit I observed one car parking there, and while I note that this represent but a snapshot in time, I consider that what I saw and what I have read makes it reasonably likely that it is being used as a parking area. Therefore, even though it is not likely being used for parking all the time, the proposal also has a limited spatial and visual impact on the openness of the green Belt in this regard even though some of the mature trees have been removed.
19. Consequently, I find that the proposal does not preserve the openness of the Green Belt in conflict with paragraph 137 of the Framework. The proposed development therefore falls outside the exceptions set out in paragraphs 150 b), 150 e) and 149 b) of the Framework. The proposal also: is not a building for agriculture or forestry; does not disproportionately extend or alter a building; does not replace a building with one not materially larger than the original one; is not limited infilling development within a village; or does not provide limited affordable housing for local community needs. It also therefore falls outside the exceptions set out in paragraphs 149 a), 149 c), 149 d), 149 e), and 149 f) of the Framework.
20. I therefore conclude that the proposal is inappropriate development in the Green Belt in conflict with the aims of the Framework. As a result, it also conflicts with policies SP2 and SP3 of the SLP.

Other considerations

21. Reference has been made in the evidence to an appeal decision for a similar development to the proposal. However, I do not have the details of this case before me or the circumstances which led to that decision being taken. Consequently, I cannot be sure that this case was directly comparable to the scheme before me. In any event I have determined the appeal scheme on its own merits. As a result, I afford this consideration limited weight.
22. The appellant has also stated that the proposed new access and turning area is available for other residents on the street to use and that this is therefore a

community benefit. Even so, given the scale of the proposal and the size of the turning area I afford this consideration limited weight.

Any other harm

23. The appellant has also suggested that the proposed new hedge planting, shrubs, lawn, and flower beds would introduce new additional biodiversity to the site attracting different species of wildlife and that the removal of approximately four trees from large, wooded area has had negligible impact on that habitat and its biodiversity and that this would be a benefit. However, the Council's Ecologist has raised concerns that the proposal would lead to a substantial net loss of biodiversity as compared to the previously wooded site which the lawn and ornamental shrubbery would not be able to replace, and from the evidence before me I see no reason to disagree.
24. The Framework aims to secure biodiversity net gain where possible and to minimise impacts on biodiversity as per paragraph 174 d). It also states at paragraph 180 a) that if significant harm resulting from development cannot be avoided then it should be adequately mitigated, or, as a last resort, compensated for. Based on the evidence the proposal would not achieve net biodiversity gain and given the scale and type of landscaping proposed, it would also not adequately mitigate the substantial loss that has been identified. Consequently, and while I note that the DEFRA biodiversity metric for net gain is not proposed to become operational until 2023, I conclude that the proposal would significantly harm the biodiversity of the area in conflict with paragraphs 174 and 180 of the Framework.

Planning Balance and Conclusion

25. The proposed development would not preserve the openness of the Green Belt. It is also inappropriate development in the Green Belt. The proposal also causes additional harm to the biodiversity of the area.
26. The development is therefore harmful to the Green Belt. Paragraph 148 of the Framework makes it clear that substantial weight should be given to any harm to the Green Belt. It establishes that the very special circumstances needed to justify inappropriate development will not exist unless the harm to the Green Belt and any other harm is clearly outweighed by other considerations.
27. I have given limited weight to the other considerations cited in favour of the development. In my view, these do not clearly outweigh the substantial harm to the Green Belt and the other harm to the biodiversity of the area. The very special circumstances necessary to justify the development do not therefore exist. Accordingly, there is conflict with policies SP2 and SP3 of the SLP and Paragraph 147 of the Framework.
28. For these reasons, and having regard to all relevant matters, I conclude that the appeal should be dismissed.

C Coyne

INSPECTOR