
Appeal Decision

Site visit made on 14 January 2022

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 28th February 2022

Appeal Ref: APP/P2935/W/21/3282705

Kingshaw Green, Warden, Hexham NE46 3SA

- 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 James Turnbull against the decision of Northumberland County Council.
 - The application Ref 20/03542/FUL, dated 15 October 2020, was refused by notice dated 13 May 2021.
 - The development proposed is erection of shepherd's hut for tourist accommodation.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr James Turnbull against Northumberland County Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues are:
 - whether the proposal would be inappropriate development in the Green Belt, having regard to the National Planning Policy Framework (NPPF) and any relevant development plan policies;
 - the effect of the proposal on the openness of the Green Belt;
 - whether or not the proposal would result in an unacceptable risk of flooding for future occupiers of the development;
 - whether or not the proposal would be acceptable in terms of foul water disposal; and
 - whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the proposal.

Reasons

Whether or not the proposal would amount to inappropriate development

4. Kingshaw Green is a residential property with a number of associated barns and outbuildings. It is located in the Green Belt and is in the open countryside

for planning purposes. The site is also within an Area of High Landscape Value. It is proposed to develop a shepherd's hut on paddock land associated with the property for use as a holiday let for a maximum of two people.

5. Paragraph 147 of the NPPF sets out that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 148 of the NPPF requires local planning authorities to ensure that substantial weight is given to any harm to the Green Belt, stating that 'very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
6. Paragraph 149 sets out that the construction of new buildings in the Green Belt should be regarded as inappropriate, but identifies a list of building types that may be considered to be exceptions. Paragraph 149(b) allows for the provision of appropriate facilities, in connection with the existing use of land or a change of use, for outdoor sport and outdoor recreation, amongst other things, as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.
7. Paragraph 149(g) allows for the limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use, which would not have a greater impact on the openness of the Green Belt than the existing development.
8. Policy NE7 of the Tynedale Local Plan (LP) states that planning permission will only be granted for the construction of new buildings in the Green Belt for a limited number of purposes. The LP predates the NPPF by some years, and as a result, the list of purposes is no longer entirely consistent with NPPF policy. However, the LP is still in force, and so LP Policy NE7 carries weight in terms of its overall aim to protect the Green Belt.
9. I have also taken into account the emerging policies of the Northumberland Local Plan (Publication Draft Plan) (NLP). In view of the advanced progress of the NLP, its policies attract moderate weight in the consideration of the appeal. NLP Policy ECN 16 recognises the potential of the Green Belt to contribute towards strategic economic and tourism aims, subject to a number of criteria.
10. The new hut would measure approximately 5.5m by 2.3m with a height of around 3.5m. It would sit on wheels with timber steps attached to one side. It would be constructed of timber with a corrugated metal sheeting roof. In terms of servicing, the hut would be connected to the existing water and electricity supplies and the existing septic tank.
11. The appellant contends that the proposed development would meet the criteria in NPPF paragraph 150(e), which refers to material changes of use of land for outdoor sport or recreation. He argues that the new hut is not a building for planning purposes, and that the application was for a material change of use of the land. A building is defined by section 336 of the 1990 Act as including any structure or erection. The courts have held that three primary factors to establish what constitutes a building are (a) that it is of a size to be constructed on site, as opposed to being brought onto the site, (b) permanence and (c), physical attachment. No one factor is decisive.

12. It is likely that the hut would be constructed off site and moved into position. Nonetheless, it would be large enough to be inhabited comfortably by two holiday makers and would undoubtedly be of some weight, even when empty. This weight alone would provide a reasonable degree of physical attachment to the land. It would be connected to services, and according to the second Flood Risk Assessment (FRA), it would be anchored to the ground with chains for safety purposes. Were the amended plans to be implemented, as discussed below, a bund would be built as a base for the structure.
13. Although the hut could be disconnected and moved relatively easily, the evidence points to the intention for it to remain in place permanently as holiday accommodation. Taking all these factors into account, I am satisfied that the proposal would amount to a new building and not solely a material change of use of the land. It therefore falls to be considered against the exceptions in NPPF paragraph 149, and also against LP Policy NE7.
14. I have been referred to the officer's report for planning permission ref: DC/21/00048/COU in the Gateshead area for the provision of glamping pods. This report referred to the exception relating to 'the provision of appropriate facilities ... for outdoor sport, outdoor recreation...', which now appears in the revised NPPF paragraph 149(b). It went on to find that the proposed development would fall within that exception. However, although the hut in this case would be marketed to cyclists and walkers, it would not itself involve or include outdoor recreational activity facilities. The occupation of a permanent building, even as holiday accommodation, does not represent outdoor recreational activity in its own right. Accordingly, the proposal cannot be considered to fall within the exception provided by paragraph 149(b).
15. With regard to NPPF paragraph 149(g), the appellant argues that the appeal site is on previously developed land, on the basis that the paddock is in the curtilage of Kingshaw Green. The glossary of the NPPF defines previously developed land as land which is or was occupied by a permanent structure, including the curtilage of the developed land, although it should not be assumed that the whole of the curtilage should be developed.
16. The courts have held that, for land to fall within the curtilage of a building, it must be intimately associated with the building to support the conclusion that it forms part and parcel of the building. On my visit, I saw that the paddock is an area of rough grass that is fenced all the way round. It has an agricultural appearance akin to the two fields immediately to the east. Whilst it clearly falls within the same ownership as Kingshaw Green, this is not sufficient for it to be termed as curtilage to the dwelling. I was not able to discern an intimate connection between the paddock and the house. I am therefore satisfied that the appeal site falls outside the curtilage of the house, and cannot be defined as previously developed land on that basis.
17. I have had regard to appeal decision ref: APP/Y0435/W/17/3178790 where land was used for the grazing and keeping of horses and was found to be an integral part of a site including a manege and stable building. The three elements were therefore part and parcel of the same equestrian use. In this appeal, however, the principal building is a dwellinghouse. Whilst the paddock is close to the house and within the same ownership, it is not integral to the residential use, or part and parcel of it. I am therefore satisfied that the circumstances of the two cases are not directly comparable.

18. In the light of the above findings that the proposal fails to meet any of the exceptions listed, I consider that it would be inappropriate development in the Green Belt, contrary to the provisions of paragraph 149 of the NPPF.

The effect on the openness of the Green Belt

19. The NPPF states 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.
20. In terms of the design, materials and appearance of the development, the Council are satisfied that it would respect the site at Kingshaw Green and not harm the character of the wider countryside surroundings. From my observations, I agree with this finding. However, the openness of the Green Belt has a spatial as well as a visual aspect. Therefore, the absence of visual intrusion does not in itself mean that there is no impact on openness.
21. The development would introduce a new building into an open area of paddock where no buildings presently exist. There would, therefore, be a greater impact on the openness by the simple merit of the quantum of development proposed compared to that which currently exists. Nonetheless, the courts have held that openness does not imply freedom from any form of development.
22. In this particular case, the new hut would be surrounded on three sides by the built forms of the house and the various existing outbuildings, and would be close to the barn in the south-east corner of the group. Therefore, although it would be visible from the public footpath that runs to the south and east of the site, the hut would blend in with the backdrop of the existing development. Due to its small size and scale, it would be inconspicuous in this setting. Therefore, although there would be a reduction of openness, under these circumstances I consider that the harm to the Green Belt would be very limited.

Flood risk

23. The appeal site is located within Flood Zones 2 and 3. An FRA was submitted with the planning application, but the Council found that insufficient information had been provided for them to adequately assess the proposed development with regard to flood risk.
24. Since the application was determined, the appellant has revised the proposals in response to the Council's concerns. He has submitted a revised site plan showing the shepherd's hut placed on a bund to raise the height and a revised elevation drawing with larger wheels on the shepherd's hut to further elevate it above ground level.
25. I have been provided with an email exchange from April 2021 where the suggestion of raising the floor level of the hut to mitigate against flood risk was put to the Environment Agency. They responded to say that this approach would be acceptable, and that they would withdraw their objection if the development matched the 1 in 1000 year flood level.
26. The appellant's revised FRA shows that the changes would result in the flooding risk being reduced to less than a 1 in 1000-year event. I therefore find that the proposal, as revised, would be acceptable in terms of flood risk for future

occupiers, in accordance with Policy GD5 of the Tynedale Local Development Framework Core Strategy (CS), which requires that the potential implications for flood risk will be taken into account when meeting development needs.

Foul water treatment

27. LP Policy CS27 states that the use of septic tanks will only be considered if connection to the mains sewerage is not feasible, and only then if ground conditions are satisfactory, and the plot of land is of sufficient size to provide an adequate subsoil drainage system or there is a watercourse nearby capable of giving adequate dilution to treated effluent.
28. The foul water from the development would be disposed of by way of connection to the existing septic tank at the property. The Council are concerned that the use of the septic tank would be unlikely to be acceptable so close to the River Tyne. At the time of the planning application, no details of the existing tank had been provided, and no modelling of the likely increases in flows and capacity from the new development had been made available. As the Council were therefore unable to make a full assessment of the proposal, it was found contrary to LP Policy CS27.
29. The existing septic tank has a capacity of 1200 gallons, or 5455 litres, as shown by the receipt at Appendix H. The appellant states that a 4500L tank would serve a maximum of 13 people, and so the current tank would be more than capable of accommodating the extra use that would arise from the shepherd's hut. He contends that the only impact would be the need to empty it slightly more frequently, although he considers this unlikely.
30. In support of his case, the appellant argues that the house is currently occupied only by two adults and a baby. Furthermore, the occupation of the property could increase in ways that would increase the use of the septic tank without the need for planning permission, for example, by creating additional bedrooms and having guests to stay.
31. However, as the development would be permanent, it is necessary to consider the potential of these scenarios to put pressure on the existing system. The existing five bedroom house could, in the future, easily accommodate two adults and four children. Presuming that the hut was frequently used, that would bring the potential occupancy of the property to eight people. If extra living accommodation was created, and guests were staying as well, as the appellant suggests, then the capacity of the existing tank could very quickly be approached.
32. When the proximity of the river and the vulnerability of the land to flooding are taken into account, I consider that it is appropriate to exercise caution with respect to the disposal of foul water in this context.
33. I therefore conclude that it has not been satisfactorily shown that the proposal would be acceptable in terms of foul water treatment, contrary to LP Policy CS27.

Other considerations

34. The appeal site is located just off the No 72 cycle route which gives access to the facilities and services close by in the town centre of Hexham. It is also close to walking routes. As a result, the proposed holiday accommodation

would be marketed to visitors wishing to cycle the Coast to Coast route and walk the Sandstone Way, amongst other local attractions. The site is within reasonable cycling or walking distance of the public house in the settlement of Warden, and so it is likely that visitors would support that rural business.

35. In terms of tourist accommodation, the appellant provides at his Appendix B two screen shots showing search results for accommodation during the first two weeks of September 2021. From these, it can be seen that there is little accommodation within the vicinity of the appeal site itself. Furthermore, the other locations are fully booked, save for one hotel. This evidence points to a high demand for holiday accommodation, and it follows that the proposed development would contribute to the offer in the area.
36. These benefits would accord with CS Policy EDT1 which amongst other things, seeks to protect and enhance existing tourist facilities and infrastructure, whilst also allowing new tourist development where appropriate in order to increase the range, quality and type of facilities available to tourists. They would also accord with NLP Policy ECN 15 which, amongst other things, permits limited development for visitor accommodation in the open countryside, and with CS Policy EDT4, which supports small scale new build tourism in the open countryside, although not specifically within the Green Belt.
37. Conversely, LP Policy TM12 resists proposals within the Green Belt for new and extensions to existing caravan sites and chalet/camping sites, although the wording of the policy would suggest that it refers to larger scale developments than proposed in this case.
38. In summation, I have found that the proposed development would be inappropriate development in the Green Belt. However, due to its acceptable appearance, its small scale, and its proximity to existing development, the harm to the openness of the Green Belt would be very limited. Whilst substantial weight is to be given to any harm to the Green Belt, this is to be set against the contribution of the proposal to the rural and tourism economy in the area, which attracts considerable policy support.
39. I therefore conclude that the other considerations in this case clearly outweigh the marginal harm to the Green Belt that I have identified. Looking at the case as a whole, I consider that very special circumstances exist which would justify the development. It would therefore comply with the provisions of the NPPF, and with LP Policy NE7 and NLP Policy ECN 16.

Conclusion

40. Although the proposal would otherwise be acceptable in the Green Belt, with regard to its effect on foul water disposal, I have found that unacceptable conflict would arise with the local plan as a whole.
41. I therefore conclude that the appeal should be dismissed.

Elaine Gray

INSPECTOR