



Appeal Decision

Site visit made on 1 March 2022

by L Wilson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 March 2022

Appeal Ref: APP/X4725/W/21/3285027

53 Almshouse Lane, Newmillerdam, Wakefield WF2 7ST

- 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 Lowe against the decision of Wakefield Metropolitan District Council.
 - The application Ref 20/02182/FUL, dated 7 January 2021, was refused by notice dated 20 May 2021.
 - The development proposed is erection of detached bungalow.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Whether or not 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;
 - Whether or not it has been demonstrated that the site would provide a suitable site for development having regard to past coal mining activity; 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

3. Paragraph 149 of the Framework states that new buildings are inappropriate in the Green Belt unless they fall within the given list of exceptions. This includes e) limited infilling in villages.
4. I agree with the main parties that the site would constitute limited infilling. The main issue therefore relates to whether the appeal site is located within a village. The term village is not defined in the Framework. Consequently, whether the appeal site is located within a village would depend on a number

of factors having regard to the situation on the ground as well as any relevant policies.

5. The proposed development follows a dismissed appeal. The appellant has drawn my attention to a legal judgement¹ to support their stance. Whilst not specifically mentioned within the appeal decision, the Court of Appeal ruling was made prior to the appeal decision. The judgement primarily focuses on the interpretation of paragraph 55 of the 2012 Framework in relation to the meaning of the word "isolated" rather than the interpretation of a village for the purpose of paragraph 149e) of the Framework. Nonetheless, I have considered the Braintree and Tate² judgements and definitions within the dictionaries to determine whether the appeal site is located within a village.
6. As noted by the previous Inspector, the appeal site and the wider surrounding area (including Almshouse Lane and Barnsley Road) do not form part of the main built up area of Newmillerdam, although it is in close proximity. This is due to the physical built form and the surrounding open land, and the appeal site has little visual relationship with the main part of Newmillerdam.
7. The dwellings on the three limbs of Almshouse Lane and the west side of Barnsley Road form a cluster of development. However, they are separated by fields which are towards the rear of the appeal site. This results in a noticeable visual separation between the dwellings and provides a clear break between the built development. Although not in isolation a determinative factor, the cluster of development also lacks facilities and services. Accordingly, for the purpose of Green Belt policy and having regard to the situation on the ground (including the number of properties and buildings grouped together, their inter-relationship and spacing as well as facilities and services), I do not consider that the cluster of development can be considered a village in its own right.
8. 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 CS 1 of the Wakefield Metropolitan District Council Local Development Framework (2009) (LDF) and paragraph 149 of the Framework.

Openness

9. 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.
10. The appeal site comprises a garden area and driveway which is enclosed by primarily fencing. The proposal would have a visual and spatial impact upon the Green Belt. Whilst the appeal site is situated amongst existing built form, the proposal would substantially increase the level of built development on the site and would introduce a building where there are currently none. In addition, the proposed bungalow would be visible from Almshouse Lane.
11. Consequently, having considered relevant case law³, given the scale of the development and surrounding built form, the development would result in

¹ Braintree DC v SSCLG, Greyread Ltd & Granville Developments Ltd [2018] EWCA Civ 610

² R (Tate) v Northumberland County Council [2018] EWCA Civ 1519.

³ Including Lee Valley Regional Park Authority, R (on the application of) v Epping Forest District Council & Anor (Rev 1) [2016] EWCA Civ 404

modest harm to 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.

Past coal mining activity

12. The appeal site is located within a Development High Risk Zone as defined by the Coal Authority. The Coal Authority has objected to the proposal and require a Coal Mining Risk Assessment. The appellant considers that the use of a suitably worded condition would be adequate to assess the works required prior to developing the site.
13. However, based on the evidence before me, I am not satisfied that a condition would adequately address this matter. It has not been demonstrated that the site can be developed as proposed whilst avoiding the potential zone of influence of the recorded mine shaft. Development over or within the influencing distance of a mine entry raises significant safety and engineering risks. The submitted information does not adequately address the impact of coal mining legacy on the proposed development and that the site is safe, stable and suitable for development.
14. For these reasons, the appellant has not demonstrated that the site would provide a suitable site for development having regard to past coal mining activity. Consequently, it would conflict with paragraph 183 of the Framework which states that decisions should ensure that a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination and adequate site investigation information, prepared by a competent person, is available to inform these assessments.

Other considerations

15. I acknowledge that the proposal would support services in the locality, would help to boost the supply of housing and provide economic benefits. Given the scale of the scheme, I attach limited weight to these benefits.

Whether very special circumstances exist

16. 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.
17. The other considerations relating to the benefits of the proposed development are given limited weight. 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

18. 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 CS 1 of the LDF and the Framework. The appellant has also failed to demonstrate that the site would provide a suitable site for development having regard to past coal mining activity.

19. 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.
20. For the reasons given above, the appeal does not succeed.

L M Wilson

INSPECTOR