
Appeal Decision

Site visit made on 20 June 2022

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 June 2022

Appeal Ref: APP/A4710/W/22/3293216

Land adjacent to Styes Lane and Ellen Holme land below Finkle Street (HX6 1NG)

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mrs Robertshaw and Baalam against Calderdale Metropolitan Borough Council.
 - The application Ref 21/01353/FUL, is dated 8 October 2021.
 - The development proposed is two detached dwellings with retained existing site entrance and water harvesting tank.
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Decision

1. The appeal is dismissed and planning permission for two detached dwellings with retained existing site entrance and water harvesting tank is refused.

Preliminary Matters

2. The appeal has been made following the Council's failure to determine the application within the required period. Following the submission of the appeal the Council has clarified the position it would have taken on the application if it had made a decision within the required timescales. I have had regard to the Council's position in formulating the main issues and in reaching my decision.

Main Issues

3. The main issues are:
 - whether the proposal would be inappropriate development in the Green Belt having regard to relevant development plan policies and the National Planning Policy Framework (the Framework), including the effect on the openness of the Green Belt;
 - the effect of the proposal on the character and appearance of the area;
 - the effect of the proposal on the safe use of the highway; and
 - if the proposal is inappropriate development, whether 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

Inappropriate Development and Openness

4. Paragraph 147 of the Framework sets out that inappropriate development is, by definition, harmful to the Green Belt. The Framework advises that openness and permanence are the essential characteristics of the Green Belt. Openness has both spatial and visual aspects.
5. Policy GNE1 of the Replacement Calderdale Unitary Development Plan, 2006 (the UDP) seeks to restrain development outside the urban areas through the general extent of the Green Belt.
6. Paragraph 149 of the Framework states that the construction of new buildings should be regarded as inappropriate in the Green Belt other than in a number of exceptions. The exception at paragraph 149 g) allows for the limited infilling or the partial or complete redevelopment of previously developed land (PDL) which would not have a greater impact on the openness of the Green Belt than the existing development. There is some dispute between the parties as to whether the proposal would involve the use of PDL.
7. The appellants consider that the site is PDL. This is mainly because of the existing buildings within the site which the submitted plans describe as a garage, stable and hut together with a solid foundation. The appellants also contend that the site was previously the curtilage of the former Swamp Mill and Dam. As the mill was present on 1 July 1948, it makes it the 'original building', and the proposed development would be a replacement for the mill.
8. I do not agree that the site would be classed as PDL by virtue of the previous mill building. This is because the Framework defines PDL in its Glossary as excluding land "that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape" – which is the case here, irrespective of whether the mill was present on 1 July 1948. In addition, the Framework applies the 'original building' concept in Green Belt terms to the extension or alteration of a building which is not what is proposed.
9. The proposal would remove the existing buildings. However, notwithstanding that some parts of the site may comprise PDL, the largest area comprises a number of small grass fields. In addition, the proposed dwellings would not be constructed on the same footprint as the existing buildings but would be located within these fields. On this basis, I am not persuaded that the proposal can be considered as the limited infilling or the partial or complete redevelopment of PDL.
10. However, even if I were to accept that the proposal is on PDL, new buildings would not be inappropriate development only if they would not have a greater impact on the openness of the Green Belt than the existing development.
11. Given the sloping topography and existing built development, there is quite limited visibility of the site and the existing buildings from the south. However, from other vantage points, including roads to the north, north east and east along the valley and on the upper slopes, the site is clearly visible. The existing buildings are relatively unobtrusive however, given their very limited scale and the small part of the site that they occupy.

12. The proposed development would, by contrast, be two substantial dwellings. The appellants' evidence indicates that the footprint of the existing buildings at the site amounts to around 66m² plus 17m² for what is described as the temporary timber structure. The volume of what the appellants identify as the permanent structures is around 111m³ plus a volume of 18.5m³ for the temporary timber structure. The above ground footprint for the proposed dwellings is identified as about 510m² and the above ground volume would be about 789.4m³. While the proposed dwellings may be smaller than the mean average of detached dwelling sizes in the surrounding area, the proposed development would nevertheless result in a built form that would be significantly larger than the development currently on the site in terms of its scale and massing.
13. In addition, the garden areas of the proposed dwellings would extend further outwards towards the edges of the site. The nature of residential gardens, with the associated boundary treatment and domestic activities and paraphernalia, would have a further urbanising effect on the area, as would the extensive hard surface area proposed to accommodate the site entrance and parking for eight cars.
14. There would be limited visibility of the proposed development from the south due to the sloping nature of the land and the screening effect of existing built development. However, while vegetation would provide some screening from certain vantage points, the proposed development would nevertheless be clearly visible from much of the surrounding area, including during times of the year when trees are not in leaf and overnight, when domestic lighting would be conspicuous.
15. The proposed development would therefore significantly diminish the openness of the Green Belt, in both visual and spatial terms.
16. For the above reasons, I conclude that the footprint of the proposed dwellings, their scale and mass and the accompanying domestic accoutrements, would have a greater impact on the openness of the Green Belt than the existing development. Accordingly, the proposal would be inappropriate development in the Green Belt and would be inherently harmful to it.

Character and Appearance

17. The site is located in the countryside and has a rural character. It is located close to a row of stone built terraced dwellings. Other buildings in the vicinity are mainly stone-built properties including individual and terraced dwellings.
18. The appellants' Design and Access Statement provides examples of the area's heritage that the proposed development has sought to reflect. The proposed dwellings would have an unusual design, being a series of stone-built cubes with zinc hipped roofs in a 'dog tooth' roof light style, positioned in a U-shape to form an internal courtyard.
19. There will be occasions when an inventive design approach would be apt. However, in this case, there is a relatively large degree of homogeneity in the built environment context in which the proposed development would be viewed, which is mainly of traditional buildings. The proposed development would appear as a discordant feature on what is a prominent hillside location.

20. I note that the aim of the roof design is to be visually associated with the 'saw tooth' mill roofs and to be symbolic of the stone mill chimneys that were once located in the area. However, in the context of the site and its surroundings, the form of the roof, in particular its height and materials, rather than being representative of local character, would appear out of place.
21. The layout and design of the proposed dwellings together with the large expanse of hardstanding proposed would have an encroaching urbanising effect that would be markedly at odds with the site as it is at present and with the rural character of the wider area. Domestic curtilages, parked vehicles and activities associated with a residential use would further exacerbate the urbanising effect. The proposed landscaping would not provide adequate mitigation for the harm identified.
22. I therefore conclude that the proposed development, by virtue of resulting in incongruous development within a visually prominent site, would have a significant detrimental effect on the character and appearance of the area. The proposed development would therefore conflict with the requirements of Policy BE1 of the UDP which requires development proposals to respect or enhance the established character and appearance of existing buildings and surroundings amongst other matters, and the design objectives of chapter 12 of the Framework.

Safe Use of the Highway

23. The site would access onto Ellen Holme Road. This road, together with the other roads in the immediate vicinity of the site, Styes Lane and Finkle Street, are narrow with no specific provision made for pedestrians. The Council's evidence indicates that there is a Public Right of Way along one of these roads. Accordingly, the roads would be a shared space between pedestrians and vehicles. Stone walls run along a number of the roads in the vicinity of the site for at least part of their length, with the potential to restrict visibility. The junctions of Ellen Holme Road with Styes Lane and Finkle Street are at sharp angles.
24. The appellants state that there would be less than one additional vehicle generated by the proposed development during peak hours, although no information is provided on how these figures were calculated. The Council has not provided any specific evidence on number of vehicle trips that it considers may be generated by the proposed development but does highlight the number of parking spaces proposed as an indication of the increase in traffic that may result.
25. The appellants state that the site is within 400 metres of a bus stop, with the Council stating 650 metres. However, the choice of whether to walk to services and facilities is based on more than just distance. Future residents of the proposed development would likely be heavily reliant on a private vehicle to access day to day services and facilities, including public transport. This is because of the distances involved and/or the nature of the routes in the vicinity of the site, which have no separate footway and a steep incline in places, which would be disincentives to travelling on foot.
26. Based on the proposed parking provision, the site's location relative to services and facilities and the nature of the routes to those, and the scale of the

residential development proposed, a relatively modest increase in traffic would be likely.

27. The highway authority has objected to the proposed development. Based on the evidence before me and from what I saw on my site visit, I also have concerns about the amount of additional traffic that would be generated along these rural roads and the highway safety implications due to the conflict between highway users and pedestrians. In addition, given the narrow width of the approach roads and the acute angles of the junctions, without any evidence to demonstrate otherwise, I have concerns about the manoeuvring that larger vehicles would have to do to access the site. These concerns are supported by my own experience of negotiating the junctions and walking along the roads, when I found it necessary to stand very close to the stone walls to avoid cars.
28. The submitted plans illustrate a potential passing place on Styes Lane. While this would lead to some benefits to road users it would not result in any tangible benefits for pedestrians. The submitted plans also show a potential green corridor along one of the site's boundaries which the appellants' evidence suggests would be open to the public. However, there appears to be no mechanism in place by which this could be secured and controlled throughout the lifetime of the development.
29. I acknowledge the appellants' submissions about the lack of recorded personal injury accidents in the vicinity of the site. Nevertheless, this cannot provide confirmation of the appeal scheme's future effect on highway safety if allowed, which is the issue I must consider here.
30. For the above reasons, I conclude that the proposed development would cause harm to the safe use of the highway. Consequently, it would conflict with Policies BE5 and BE6 of the UDP which seek to ensure that new development provides for safe and efficient movement by pedestrians, vehicles and cyclists and safe pedestrian environments amongst other matters, and the requirements of paragraph 110 of the Framework regarding safe and suitable access to the site for all users.

Other Considerations

31. The Council's evidence confirms that it cannot demonstrate a five year supply of deliverable housing sites. Therefore, paragraph 11. d) of the Framework is engaged, albeit that Green Belt is a particular policy of protection referred to in associated footnote 7. Nevertheless, the benefits of the scheme in terms of housing provision in that context are relevant in terms of the fourth main issue in this appeal, to which I now turn.
32. In that context the proposal would have certain benefits, notably in terms of housing provision in an area with an acknowledged lack of forward supply. However, given that the proposed development is for two dwellings, this benefit would be limited and as such has limited weight.
33. The appellants have referenced a planning application for a site as establishing a precedent for the appeal scheme. It is stated that this proposal was permitted due to the very special circumstances arising from the site's design, biodiversity and surface water treatment which helped towards mitigating flood risk¹. However, no details are before me to demonstrate where the site is

¹ Application reference 19/00181/FUL

located, what was proposed or what development plan policies may have been in place. Furthermore, very special circumstances are often specific to the particular circumstances of a case. I therefore give this matter very limited weight.

34. Reference has also been made to two previous outline permissions² granted at the site, one for a bungalow and one for two detached bungalows. Based on the application references, these permissions date from around 40 years ago, and I do not have the full details such as the policy context in place at the time. Furthermore, I am mindful that permission has been refused for more recent residential proposals at the site for reasons relating to inappropriate development in the Green Belt and intensification of use of an existing sub-standard highway³. I have therefore determined this appeal scheme on its own merits.
35. The submitted plans show a potential green corridor along one of the site's boundaries and an area identified as a potential community open space. While these areas may provide some public benefits through biodiversity net gain, a link with the Public Right of Way network, and general health and wellbeing, I give these matters limited weight as there is no mechanism before me to ensure that they are maintained as such for the lifetime of the proposed development.
36. No substantive evidence has been submitted to clearly demonstrate that the proposed development would help prevent valley water runoff and tackle lower valley flooding. I therefore give this very limited weight.
37. I note the appellants' points that the appeal scheme would incorporate a ground source heat and air source recovery pump and water harvesting systems. However, I give these matters limited weight as energy and water saving measures would generally be expected with a new development.

Balance and Conclusion

38. The proposed development would be inappropriate development in the Green Belt, which is by definition harmful. In line with paragraph 148 of the Framework, I attach substantial weight to the harm to the Green Belt by reason of inappropriateness. Additionally, I have found harm to the character and appearance of the area and the safe use of the highway.
39. I have taken into account the aforementioned other considerations, including the small contribution that the proposed development would make to boosting the supply of housing where a five year supply of deliverable housing sites cannot be demonstrated. However, I find that the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the proposed development do not exist, and thus there is a clear reason to refuse the proposed development in line with Framework paragraph 11. d) i.
40. The proposed development would therefore conflict with Policy GNE1 of the UDP and the requirements of chapter 13 of the Framework which have been summarised above.

² Application references 78/02638/OUT and 80/00754/OUT

³ Application references 90/01924/OUT and 90/02980/OUT

41. The proposed development would conflict with the development plan taken as a whole as well as the Framework. There are no material considerations that indicate the decision should be made other than in accordance with it. Therefore, for the reasons given, I conclude that the appeal should not succeed.

F Wilkinson

INSPECTOR