



Appeal Decision

Site visit made on 16 August 2022

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 August 2022

Appeal Ref: APP/Z4718/W/22/3291990

**Land off Rowgate / Heator Lane, Upper Cumberworth HD8 8XJ
(420611, 408875)**

- 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 outline planning permission.
 - The appeal is made by Mr C Hitchens against Kirklees Metropolitan Council.
 - The application Ref 2021/92850, is dated 9 July 2021.
 - The development proposed is 'Outline planning application with all matters reserved for the erection of 2 no. dwellings with associated works to include landscaping'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal relates to a planning application that was not determined by the Council within the prescribed period. The Council have subsequently issued a statement for the purposes of this appeal highlighting that it would have refused the application for outline planning permission for development in the Green Belt. I have had regard to this statement for the residential development of the site in framing the main issues.
3. The application was submitted in outline with all matters reserved and I have determined the appeal on that basis. In addition to a location plan defining the extent of the site, the appellant has provided plans of a potential layout and site section. These are described as 'indicative' and I have only had regard to them in that context.
4. According to the appellant there is an outstanding dispute between the main parties as to the status of works that may, or may not, take place on the eastern parcel of the site. Nothing in this decision letter should be read as providing any determination in regard to that outstanding matter.

Main Issues

5. The main issues are:
 - whether the proposal would be inappropriate development in the Green Belt having regard to the revised National Planning Policy Framework (the Framework) and any relevant development plan policies
 - 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 required to justify the proposal.

Reasons

Whether inappropriate development in the Green Belt

6. The Government's approach to protecting the Green Belt is set out in Section 13 of the Framework. It states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of the Green Belts are their openness and their permanence. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
7. Paragraph 149 of the Framework makes it clear that new buildings are inappropriate in the Green Belt. However, it lists a number of exceptions. Of these, the appellant draws my attention to Paragraph 149 g) which provides for the 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.
8. Policy LP59 of the Kirklees Local Plan Strategy and Policies [2019] (the KLP) reflects the provisions in Paragraph 149g) and provides details of the Council's approach to infilling and the partial or complete redevelopment of brownfield sites. It defines infill as development on small gap sites located between existing built form. As the site lies adjacent to open land on 3 sides, it would fall outside of the scope of the adopted definition of infilling.
9. For brownfield site redevelopment, the policy requires that the extent of the existing footprint is not exceeded. Supporting paragraph 19.33 explains that this is to ensure new development has no greater impact on the openness of the Green Belt.
10. The extent of the site includes land that benefitted from a Certificate of Lawfulness dating from 1992. This was for the limited storage of materials and plant (the eastern parcel) and an area to its west described as having a nil use. On the evidence before me, the 'western parcel' would fall outside of the Framework's definition of previously developed land¹ (PDL). Nevertheless, the proposed development could be restricted to the eastern parcel as PDL, as illustrated in the indicative plans.
11. At the time of my site visit there were no permanent buildings on the site. However, the eastern parcel has a lawful use for the storage of specified items up to a maximum height of 3m. Although potentially of a transient nature, stored items and parked vehicles, for example, are capable of having both spatial and visual effects on the openness of the Green Belt.
12. At the time of my site visit, various items were stored on the land. The majority were largely enclosed and visually contained by a combination of the vegetation to the front of the site, a vegetated bank along the northern edge of the terrace, the treed landscape to the west and the rising land to the south. Only limited glimpses of the stored items were visible from the adjacent roadway and to a more limited extent from the public footpaths and roads to the north. However, I am mindful that much of the storage was below the 3m height maximum allowed. Storage at that height would be more visible in the landscape.

¹ Annex 2: Glossary of the National Planning Policy Framework

13. Whether or not any change on the site will have an adverse impact and so cause harm to openness would depend on factors such as the scale of the development, its location on the site, and its spatial and/or visual implications. Due to the outline nature of the proposals, the effects of the change on the site between the existing development and that proposed are not clearly demonstrated. It is not therefore possible to firmly conclude that the proposed development would not lead to a greater impact on the openness of the Green Belt.
14. I have little doubt that the volume of proposed buildings against that of theoretical stored items could be construed to provide an equitable or reduced effect on the spatial openness of the Green Belt. However, I find there is insufficient evidence to demonstrate that the visual openness of the Green Belt would be preserved, or that an appropriate balance could be struck between those aspects of openness.
15. Although not determinative, the effect of the 2-storey houses illustrated on the indicative plan would have a clear and greater degree of visual prominence. This would be due to their height and massing when compared to the existing limited height storage, or any partially screened storage at a maximum height of 3m. In my view, such prominence would cause harm to the visual openness of the Green Belt.
16. Despite that the majority of views would be against the backdrop of the rising land to the south, any development above the existing maximum storage height would have a greater degree of prominence and be clearly more visible across the largely open landscape to the north. Accordingly, as a matter of planning judgement, I find that the effect on visual openness is a relevant consideration and a determinative matter in the circumstances of the case.
17. As an application for outline planning permission, whereupon the principle of acceptability must be established – in this case the explicit test set out in Paragraph 149g) of not having a greater impact on the openness of the Green Belt, even when accounting for potential mitigating effects of landscaping, in the absence of the details of the proposed siting, scale and design of the dwellings, I cannot be sure that the Framework's requirements would be met.
18. I recognise that restrictions on development such as a height limit, for example, could be imposed. However, in the absence of any design approach, this would be an arbitrary imposition and may therefore be unduly restrictive, lack justified precision, or fail to achieve a policy compliant form of development. It would not therefore pass the tests set out in Paragraph 56 of the Framework. Nor could it demonstrate that the Paragraph 149g) test would be achievable. In those circumstances, it would not be appropriate to postpone that assessment to a reserved matters stage to establish the acceptability, or otherwise, of the principle of development on the site.
19. For the reasons given, I conclude that the development has not been demonstrated to fall within the exceptions outlined in the Framework. It would thereby constitute inappropriate development in the Green Belt. As such, it would be contrary to the requirements in the Framework and conflict with Policy LP59 of the KLP as it seeks the aforesaid aim of preserving the openness of the Green Belt.

Other Considerations

20. In support of the proposal the appellant refers me to the fact that the lawful use of the eastern parcel of the site could generate activity at any time of the day and throughout the year. This and associated vehicle movements, including heavy goods vehicles or on-site plant, could result in adverse impacts on the living conditions of nearby residents through noise and disturbance, including at unsociable hours. I note reference to a Noise Abatement Notice served in relation to the site. Whilst it is unclear as to the nature of the use that caused it to be issued, or indeed its current status, I have little doubt that in normal use the proposal would provide a more neighbourly use of the site and this is a matter to which I attribute considerable weight.
21. The appellant asserts that the proposal would lead to a substantial net reduction in traffic visiting the site. I acknowledge that some benefit would be likely to accrue through the potential displacement of large commercial vehicle movements on the adjacent rural lane by domestic-type vehicles. Nevertheless, given the scale of the site and the acknowledged fluctuating intensity of its existing lawful use, in the absence of evidence to demonstrate the frequency and type of vehicles currently using the site, or that they result in highway safety or capacity concerns, this is a benefit restricted to limited weight.
22. The development of the site could incorporate landscaping to improve its appearance and to provide biodiversity benefits in a manner compatible with existing nearby habitat and biodiversity assets. These could be secured through planning condition/s. Notwithstanding that they are a requirement of the development plan and the Framework, the securing of such benefits and their future maintenance would likely be beneficial in the particular circumstances of the case. Accordingly, this is a matter to which I attach moderate weight.
23. The proposal would add to the supply of housing in the area. It could contribute to the local economy through its construction and the spend of prospective occupiers utilising local shops and services. This could support the vitality and viability of the local community. However, as a development limited to 2 dwellings, this is a benefit limited to moderate weight.
24. The site is identified as being potentially contaminated due to former uses. Whilst this does not fetter the beneficial ongoing use of the site, remediation would potentially be required for the proposed more sensitive land use. Although the site is not derelict, the development would drive the improvement of the land in a manner consistent with the aims of Policy LP7 of the KLP and the Framework in achieving the efficient and effective use of land. However, in the context of the ongoing rural employment use, I find this is a benefit of limited weight.
25. I acknowledge that the site lies in reasonable proximity to services and public transport routes. As a requirement of the Council's spatial strategy for new housing, these are neutral matters in the circumstances of the case. I note the assertion that the site could be designed to provide continuity with existing dwellings higher up the lane, including the use of common materials. As a requirement of new development specified in the KLP this, or the lack of objections from statutory and non-statutory consultees, are not benefits in favour of the development.

Conclusion

26. In the absence of demonstration otherwise, the erection of the dwellings on the site would be inappropriate development in the Green Belt. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and that substantial weight should be given to that and any other harm to it.
27. The considerations presented by the appellant, taken individually or together, do not clearly outweigh the harm to the Green Belt. Consequently, I find that the very special circumstances necessary to justify granting planning permission do not exist. Furthermore, the development would be contrary to the adopted development plan and the Framework and there are no other material considerations to indicate a decision otherwise than in accordance with it.
28. For the reasons set out above, I conclude that the appeal should be dismissed.

R Hitchcock

INSPECTOR