



Appeal Decision

Site visit made on 9 August 2022

by Diane Cragg Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th September 2022

Appeal Ref: APP/N4720/W/22/3297680

Oldworks House, Wharfeside, Boston Spa, Wetherby LS23 6AN

- 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 Thompson against the decision of Leeds City Council.
 - The application Ref 20/08597/FU, dated 22 December 2020, was refused by notice dated 26 October 2021.
 - The development proposed is replacement of the old boiler house with a residential annexe (ancillary to the residential use of the host dwellings, Oldworks House).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the heading above has been taken from the planning application form. However, in Part E of the appeal form it is stated that the description of development has changed, and a different wording has been entered. Nevertheless, the appellant has confirmed that a revised description of development has not been agreed. Accordingly, I have used the one given on the original application.
3. The appeal site is within Boston Spa Conservation Area (CA) wherein I have a statutory duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) to pay special attention to the desirability of preserving or enhancing the character or appearance of the area.
4. The lawful use of the building is not for me to determine as part of this section 78 appeal, it is within the appellant's remit to seek to establish the building's lawful use by applying for a lawful development certificate under the planning acts. Nevertheless, I have had regard to the evidence before me and my own observations at my site visit to consider the use of the site where it is relevant to do so here.
5. The drawings were amended during the application process. For clarity the drawings I am considering as part of this appeal are Drawing Nos PL(00)001; PL(00)002; PL(00)005 rev C; PL(00)006 rev C; PL(00)007 rev C; PL(00)008; PL(00)009 rev C; PL(00)010 rev C; PL(00)011 rev B; PL(00)012 rev C; PL(00)013 rev C; PL(00)014 rev C; PL(00)015 and PL(00)016, since I understand from the submissions before me that those are the versions on which the Council based its decision.

Background and Main Issues

6. The appellant applied for the construction of a replacement building to be used for ancillary accommodation in association with Oldworks House. The Council considers that the proposal is effectively a separate dwelling. Accordingly, the Council changed the description of the development and determined the application as if it were a new dwelling. The appellant maintains that the proposal would be used as ancillary accommodation and seeks a determination based on the original description of the development.
7. The proposal would provide all the facilities necessary for the living accommodation to be self-contained. The appellant states that the ground floor training facilities are to meet the appellant's son and daughter in law's (now owners of the site) triathlon training needs at home. The appellant has moved to New Zealand and the other accommodation would provide space for family visits when the appellant returns to the UK and would not be used all year round. The appellant does refer to the living accommodation being restricted to the first floor, but I note the drawings before me show a bedroom on part of the ground floor. Nevertheless, being sited close to the main house and utilising the same access and garden, the appellant also states that the proposed development would not operate separately from the main house.
8. The Council draws my attention to a great deal of case law which in summary sets out the matters that may be considered to establish when proposed ancillary accommodation that provides facilities for independent day-to-day living would become a separate planning unit.
9. There is no evidence before me that the proposed development would be occupied independently of the main house. Although I note the Council's concern that the proposed accommodation would be tantamount to a new residential planning unit, I must consider the development applied for, which is ancillary accommodation. Even if the structure is not built or used as proposed, or if there is a material change of use in the future to create an independent dwelling, then a separate grant of planning permission would be required, and the building would be at risk of enforcement action if such permission is not granted. Therefore, as the appellant has applied to replace the existing building with a new structure to be used ancillary to the main house, I have considered the appeal on this basis.
10. Taking the above matters into account, the main issues are:
 - whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
 - the effect of the proposal on the openness and purposes of the Green Belt;
 - the effect of the development on the character or appearance of the Boston Spa Conservation Area (CA), flood risk, and highway safety; 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 required to justify the proposal.

Reasons

11. The Framework outlines that the construction of new buildings, other than in connection with a limited number of specific exceptions, should be regarded as inappropriate in the Green Belt. Those exceptions include the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building (Paragraph 149c); replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces (Paragraph 149d) and limited infilling or the partial or complete redevelopment of previously developed land (PDL) whether redundant or in continuing use which would not have a greater impact on openness than the existing development (Paragraph 149e).
12. The proposal is not to extend or alter the existing building and so paragraph 149c) does not apply.
13. The appellant contends that the building is used for purposes incidental to the main house for storage of garden equipment¹, however, the appellant also indicates that the lawfulness of the building for office use can be demonstrated² and that the building is being used for storage in connection with a business³. I was able to access the building at my site visit and it appeared that the building was being used for business purposes. Therefore, the new building would not be in the same use as the one it replaces, and the proposal could not meet the requirements of Paragraph 149 d).
14. The existing building is a brick, block and rendered structure with a slate roof. I agree that the existing building is a permanent structure and would be termed PDL with regard to annex 2 of the Framework.
15. The definition of PDL includes the curtilage of the developed land. However, simply because a site contains structures that would meet the definition of PDL does not mean that the whole site should be considered as such.
16. The appellant describes the site as a large residential plot which contains a detached dwelling, large outbuilding used as a domestic garage with garden room and one large outbuilding known as the old boiler house. The appellant also states that the appeal site includes an area of amenity garden space and an area of meadow to the east and that areas of hardstanding surrounding the property provide parking for the property.
17. As I set out above, it appears to me that the building is being used for a business purpose and various parts of the appellants statement allude to this. However, the boiler house is not described as having a separate curtilage and none of the land around the building has been identified as being associated with it.
18. The appeal proposal includes development of the land to the front and side of the building which is to be regraded to provide a sunken terrace, stairs, planters, driveway, and walls to provide flood defences.
19. Therefore, overall, whilst the old boiler house may be termed PDL, the curtilage of the building has not been identified and the area of the appeal site beyond

¹ Paragraph 4.8 of the appellant's statement

² Paragraph 2.4 of the appellant's statement

³ Email dated 16 September 2021 – appendix 3 of the Council's statement

its footprint cannot be established as such. Consequently, the development, as a whole, cannot be termed the partial or complete redevelopment of previously developed land and does not meet the parameters of Paragraph 149g).

20. None of the other exceptions to inappropriate development set out in paragraphs 149 and 150 are identified by the appellant as relevant to the proposal.
21. Consequently, I conclude that the proposal would be inappropriate development which is by definition harmful to the Green Belt. The proposal would conflict with the Framework. In so much as the land is Green Belt in the Leeds Unitary Development Plan (UDP), the proposal would also conflict with saved Policy N33 which only supports development in the Green Belt in a limited number of circumstances, which are not relevant here. I attach substantial weight to the harm to the Green Belt.
22. The Council refers to conflict with Policy H2 of the Leeds City Council Core Strategy (as amended by the Core Strategy Selective Review 2019) (Core Strategy). However, although Green Belt policy is not satisfied, as the proposal does not relate to new housing development on non-allocated sites, I find limited conflict with this policy.

Openness

23. The Framework advises that openness and permanence are the essential characteristics of the Green Belt. Openness is the absence of development, and it has both spatial and visual aspects.
24. The existing building provides two storeys of accommodation in a structure with low eaves and a steep pitched roof. The upper floor is lit via rooflights and windows in the building's gable ends.
25. The proposed replacement structure is designed with a dual pitched roof. The appellant suggests that the perceived scale of the building compared to the existing structure would be reduced. However, the ridge height of the proposed building is imperceptibly lower, and the eaves height is notably higher and at a level that would be comparable with Oldworks House. As a result, the structure would be more apparent in the landscape.
26. The evidence is that the replacement building would occupy a similar footprint. However, in addition to the replacement building the proposal includes ramps, patio, planters, and stairs to the front of the building and planters to the side that would extend the developed area of the appeal site. Spatially, the proposed development would take up more of the site than the existing building and because of the buildings design, massing, and materials the proposal would be more prominent, particularly from the public footpaths on the western and northern sides of the site.
27. I agree with the appellant that the proposed annexe is unlikely to result in notable additional paraphernalia in the garden of Oldworks House. Nor would it generate significant additional trips to the appeal site that may be associated with a separate dwelling. Even so, because of the form of the building and the associated works adjacent to it, overall, the development would result in both a visual and spatial loss of openness.

28. Even if I had concluded that the whole of the development site was PDL, the proposal would have a greater impact on the openness of the Green Belt than the existing site and could not have met the exception criteria set out at Paragraph 149 g) of the Framework.
29. With respect to the purposes of the Green Belt, the appeal site is contained by the land associated with Oldworks House. I am satisfied that the proposal would not result in sprawl or encroachment into the countryside and there would not be any conflict with the purposes of the Green Belt.

Flood risk

30. The part of the appeal site where the annexe is proposed is within flood zone 3a where there is a high probability of flooding. Residential development is classified as a more vulnerable use under the Planning Practice Guidance: Flood Risk and Coastal Change (PPG) with regard to the Flood Risk Vulnerability Classification. The Framework requires that all such development should provide a site-specific flood risk assessment (FRA). The PPG also sets out requirements for site specific flood risk assessments.
31. The objectives of the appellant's FRA are to establish if the development is likely to be affected by current or future flooding from any sources, whether the development would increase flood risk elsewhere and to recommend measures for managing flood risk.
32. Whilst the appellant considers that the FRA meets the Council's policy requirements, there are several shortcomings with how the FRA has assessed flood risk. The Environment Agency's planning application consultation response sets out that the FRA fails to consider how people would be kept safe from the identified flood hazards; the FRA has not considered breach of the proposed flood wall; flood risk mitigation measures are not appropriate for the development's lifetime (considered important in light of the ground floor bedroom); the proposal is not compliant with Leeds City Council's minimum design standards for flood risk. In addition, the Council is not satisfied that it has been demonstrated how the new site layout, roof and external areas would be drained.
33. There is limited evidence before me that indicates how these concerns have been addressed. On this basis, it is unclear if the mitigation measures that would constitute the management of flood risk would be effective in relation to resistance and resilience, and safe access and egress routes. Consequently, the FRA fails to properly demonstrate both how people would be kept safe from identified flood hazards and that the proposal would not increase risk to others elsewhere.
34. Both parties agree that a sequential test is required, however, this is not necessarily the case having regard to the Framework and the PPG⁴. The fact that an assessment has been submitted (even if it is for a different development) does not change the parameters for the submission of a sequential test for an annexe. Even so, as the FRA does not adequately address flood risk for the reasons I have set out, I have not considered this point further.

⁴ Footnote 56 of the Framework and definition of minor development Paragraph: 051 Reference ID: 7-051-20220825 of the PPG

35. Overall, the proposal would have an unacceptable effect on flood risk. As a result, it would be contrary to Policy EN5 of the Core Strategy, and Policies Water 4 and Water 6 of the adopted Natural Resources and Waste Local Plan (January 2013) where these policies seek to manage and mitigate flood risk. The proposal would also conflict with the Framework.

Character and appearance

36. The Boston Spa Conservation Area Appraisal and Management Plan (28 September 2009) (CA appraisal) identifies that the special interest of Boston Spa derives in part from the uniform style of the architecture and the numerous small lanes leading off High Street which are significant in adding complexity and permeability to the settlement.
37. The appeal site is also located within the Wharfe Valley and Chevin Ridge Key Corridor, a wider strategic green infrastructure designation. Within the key corridors the Council seeks to maintain and enhance the strategic connections between green areas for the benefit of people and wildlife, and opportunities for recreation.
38. The buildings on the appeal site form part of a small cluster of relatively traditional structures at the north end of Wharfeside which mark the edge of the settlement. The Oldworks House is defined as a positive building within the CA Appraisal. The materials, linear form and stone boundary walls of the house are characteristic of the CA. The appeal building has a relatively utilitarian appearance, although the slate roof and its simple form sit comfortably with Oldworks House.
39. Although I agree with the Council that from the A659 and from across the river Wharfe the appeal proposal would be screened, the proposal would be visible from Wharfeside due to the lane's topography. The appeal proposal would also be seen when approaching Boston Spa along the riverside footpath particularly in the winter when deciduous trees are not in leaf.
40. There is no disagreement between the parties that the design of the annexe is appropriate in its context and, that the loss of the existing structure is not harmful. The Council concludes that 'the proposed development is a successful contemporary design that is visually interesting. Whilst larger in size than existing, the mass has been broken down by gabled forms that have taken the lead from the positive host. The choice of materials and colours would allow the proposed building to be visually recessive to the positive host'. The details of the design including the materials and roof lights would need to be conditioned to ensure that the high standard of design proposed is achieved, but I see no reason to disagree with the Council's conclusion regarding the form of the structure.
41. Whilst the Council has concerns about the effect of creating a separate dwelling and the visual consequences of the garden being subdivided, the drawings before me do not include any such proposals and are not relevant to my considerations here. Those works proposed to provide the patio, revised parking area and ground works associated with flood risk would not be prominent elements of the development and they would not detract from the special interest of the CA.

42. I appreciate that the appeal site is at the edge of the village and that there is open countryside beyond the site to the east. Even so, the proposed development would be located on the site of the existing structure and the land to the front of the building. There is no indication on the drawings that the development would extend into the open countryside. The appeal site may be at the countryside edge of the village, but I am satisfied that the proposal would not undermine the key functions of the Wharfe Valley and Chevin Ridge Key Corridor.
43. Overall, I conclude that the proposal would preserve the character and appearance of the CA and the proposal would accord with Policies SP13, P10, P11, P12 of the Core Strategy, saved Policies GP5, BD5, LD1, N19, N24 and N37A of the UDP and Policies Des 1 and Des 2 of the Boston Spa Neighbourhood Development Plan 2012-28, which seek to achieve appropriate design and to protect the historic environment and rural landscape. Further, the development would accord with the CA appraisal and the Neighbourhood for Living SPG where these provide a basis to assess significance and to assess residential design respectively.
44. The CA is a designated heritage asset as defined in the Framework. Paragraph 199 states that great weight should be given to the asset's conservation, irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm. Paragraph 200 states that any harm to, or loss of, the significance of a designated heritage asset should require clear and convincing justification.
45. For the reasons set out above, I consider that the removal of the existing building and the design of the proposal would preserve the character of the conservation area. There would be no harm to its character or appearance and, even when attaching great weight to the importance of the heritage asset, I find the details of the development to be acceptable. Consequently, I consider that in terms of heritage assets the scheme complies with the requirements of the Framework. The development also complies with the duty under the Act.

Highway safety

46. Wharfedale is a single width private access track which is largely unsurfaced. It also serves as a public right of way which connects to the Ebor Way just beyond the appeal property. According to the Council the access serves 5 residential dwellings, and the construction of a sixth separate dwelling would be contrary to the Council's Street Design Guide Supplementary Planning Document August 2009 (SPD).
47. The Council's concerns relate to the increase in traffic that an additional dwelling would create. However, whilst I acknowledge the limitations of the access, the development before me is for annexed facilities and there is no indication that the ancillary use would generate notable additional traffic. Nor is there any evidence that the proposal would generate additional refuse collection or deliveries.
48. The level changes to the front of the appeal building would reduce the available space for parking within the appeal site, however, the appeal drawings indicate parking and turning facilities and the Council is satisfied with these arrangements.

49. There is no dispute between the parties that the appeal site is within walking and cycling distance of Boston Spa. The village provides a good range of services and facilities, and the evidence is that there is a bus route through the village. I am satisfied that the appeal site is a location that is accessible by other means than the car to services and facilities.
50. In terms of the ancillary accommodation, I conclude that the proposal would not be harmful to highway safety and would accord with Policies P10 and T2 of the Core Strategy where these policies seek to ensure that development is accessible by foot, cycling or by public transport to services and facilities.
51. Further, there is no evidence before me that the annexe would conflict with the Council's Neighbourhood for Living SPG, Street Design Guide SPD, Accessible Leeds SPD, or Draft Transport SPD. Nor is there any evidence that the proposal would conflict with the Framework which only seeks to refuse applications on highway safety grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Other Considerations

52. I note the other applications that have been brought to my attention where the Council has approved ancillary facilities which seemingly provide a range of accommodation for independent living. Both parties accept that the specific circumstances of a case determine whether development is a separate planning unit. The fact that the Council has approved these other developments as ancillary accommodation neither weighs for nor against the proposal.
53. I acknowledge that the appeal site is within a sustainable location, but as additional accommodation for the existing occupiers and their visitors to utilise, this matter is neutral in the planning balance.

Green Belt Balance and Conclusion

54. The proposal would be inappropriate development in the Green Belt, which is, by definition, harmful. It would also result in a harmful loss of openness of the Green Belt. Furthermore, there would be harm associated with the adverse effects of the proposal on flood risk. These matters attract substantial weight. Very special circumstances will not exist unless the harm to the Green Belt and any other harm is clearly outweighed by other considerations.
55. Overall, there are no other considerations that would clearly outweigh the harm to the Green Belt by reason of inappropriateness, loss of openness and other harm. Therefore, the very special circumstances necessary to justify the proposed development do not exist.
56. The proposal would conflict with the development plan and material considerations, including the Framework, do not indicate that the decision should be made other than in accordance with it. Therefore, I conclude that the appeal should be dismissed.

Diane Cragg

INSPECTOR