



Appeal Decision

Site visit made on 20 September 2022

by C McDonagh BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd November 2022

Appeal Ref: APP/N2739/W/22/3296667

1-4 The Cottages, London Road, South Milford, Leeds LS25 5DP

- 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 Messrs O M and L R Ward against the decision of Selby District Council.
 - The application Ref 2021/1014/FUL, dated 10 August 2021, was refused by notice dated 11 February 2022.
 - The development proposed is described as 'Replacement of existing 4 dwellings with 4 new dwellings'.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are as follows:
 - Whether the proposal would constitute inappropriate development in the Green Belt;
 - Whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations and if so, whether this would amount to the very special circumstances required to justify the proposal.

Reasons

Whether Inappropriate in the Green Belt

3. The appeal site comprises a terrace of four dwellings set adjacent a building formerly used as a restaurant and a paved parking area. The site is located between Low Street and London Road with agricultural fields to the east and west beyond these roads and the settlement of South Milford to the north. The proposal seeks to replace the terrace with two semi-detached and two detached dwellings with associated parking areas and landscaping.
4. Paragraph 149 of the National Planning Policy Framework (the Framework) establishes the construction of new buildings as inappropriate in the Green Belt. Several exceptions to this are given, with the refused planning application considered against both 149(d) - the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces; and 149(g) - 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.
5. Policy SP3 of the Selby District Core Strategy Local Plan (CS) (adopted October 2013) states that in accordance with the Framework, in the Green Belt planning permission will not be granted for inappropriate development unless the applicant has demonstrated that very special circumstances exist to justify why permission should be granted.
 6. The Council advises that the proposed dwellings would represent increases of 33% and 39% in terms of footprint and volume respectively. The appellant does not dispute these figures. There is no percentage increase figure given in any development plan policies which is considered acceptable in any of these regards. This invariably requires that a judgement be made by the decision maker.
 7. The replacement buildings would be of the same use as those they would replace. However, given the increases in both floorspace and volume by over a third, alongside an increase in ridge height, the proposed buildings would be materially larger than those existing. Accordingly, it is my judgement that the proposal would not meet the exception of 149(d).
 8. Turning to 149(g), there appears to be some dispute as to whether the proposed development site extends out towards an area which is not previously developed. This land to the south has evidence of footings which were evidently laid for a hotel, although this was not built above this level. Regardless, this exception also requires an assessment of openness.
 9. The area of land covered by built form and the increase in volume and height as described above would be greater than the existing situation. Moreover, I observed on the site visit that the area to the rear of the terraces is currently open with no formally established garden areas for the existing properties. The proposed site plan indicates that gardens would be established by residents and plots are designated on the plans. This would inevitably lead to the introduction of domestic paraphernalia, such as garden furniture and sheds. Despite gaps between the proposed dwellings and the recently granted variation of planning permission¹ to increase the heights of plots 4 and 5 of the China Palace site, overall, the proposal would lead to a reduction of openness spatially.
 10. From my observations on the site visit, there would be some screening afforded by foliage along Low Street and by the China Palace building along London Road. However, the proposal would be readily visible from Low Street to the north and London Road to the southwest to pedestrians and road users. Therefore, the proposal would also cause a loss of openness visually.
 11. My attention is drawn to other appeal decisions², all of which allowed replacement dwellings. I do not have detailed plans for each of these developments, so I am unsure as to the exact circumstances of each case, although I have had regard to the decision letters provided. These all involve larger percentage increases in size than the proposal before me. Be that as it may, I must form my own judgement based on the evidence before me. The approval of other developments, while ostensibly similar, does not convince me

¹ 2022/0374/FUL

² APP/N2739/W/20/3251897, APP/J4423/W/18/3208670 & APP/J1535/W/21/3277828

to conclude differently as the issue of whether a development would be materially larger is inevitably assessed on a case-by-case basis.

12. For the above reasons, the proposal would constitute inappropriate development in the Green Belt. In the context of the whole Green Belt this harm would be limited although, as the Framework stipulates, any harm to the Green Belt is given substantial weight.

Other Considerations

13. The proposed four dwellings would replace the same number of units. As such this would not result in additional units to the Council's existing housing stock. Whether or not the dwellings would be 'beautiful' is subjective, although their modernised appearance and improved thermal efficiency over the existing dwellings is worthy of some limited weight in favour.
14. I am presented with several fallback options for the redevelopment of the terrace, which could include single-storey rear and upward extensions to each dwelling and to either side in relation to the end properties. These would evidently involve either prior approvals or exercising permitted development rights. Although the prior approval procedures for additional storeys and larger rear extensions have their own limitations and requirements, this fallback position is worthy of some moderate weight in favour of the scheme.
15. I have had regard to relevant Case Law³, which dictates that a fallback position does not have to be probable or even have a high chance of occurring; it has to be only more than a merely theoretical prospect to be considered a material consideration. I don't dispute that the fallback proposal is a material consideration and I have duly considered it as such. However, this merely dictates that appropriate weight is attributed to the fallback position in the balance. This is still a matter for the decision maker to ascertain, which I have undertaken above.
16. The existing homes may not meet the sizes advised in the Nationally Described Space Standards (NDSS). However, paragraph 1 of the NDSS states that this standard deals with internal space within new dwellings. A lack of compliance with this guidance in relation to the existing dwellings does not weigh in favour of the proposal before me.
17. I understand that it would be convenient to develop the China Palace and hotel sites concurrently with the appeal site in order to create a more coherent development. However, there is nothing substantive before me to indicate the hotel site would be redeveloped in the near future. Moreover, while there are some similarities in the designs of the dwellings of the China Palace and this appeal site, they would be unlikely to appear as part of the same development. As such, this carries little weight in favour of the proposal before me.

Green Belt Balance and Conclusion

18. The proposal would constitute inappropriate development in the Green Belt. As per paragraph 148 of the Framework, this matter carries substantial weight against the scheme.

³ Zurich Assurance Limited T/A Threadneedle Property Investments v North Lincolnshire Council and Simons Developments Limited [2012] EWHC 3708

19. The material considerations cited in support of the proposal carry some positive weight in favour. However, the Framework is clear 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.
20. Consequently, even if I was to agree with the appellant that substantial weight should be afforded to the other considerations cited in favour of the scheme, the very special circumstances necessary to justify inappropriate development in the Green Belt would not exist in this case.
21. As such, the proposal would conflict with Policies SP2 and SP3 of the CS and Green Belt policy as set out in paragraphs 147 – 151 of the Framework. For the reasons given above, having taken account of the development plan as a whole along with all other relevant material considerations, I conclude that the appeal should be dismissed.

C McDonagh

INSPECTOR