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# Appeal Decision

Site visit made on 3 October 2022

**by Hannah Ellison BSc (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 3 November 2022**

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**Appeal Ref: APP/P2365/W/22/3294141**

**174 Gravel Lane, Banks, Southport PR9 8BX**

- 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 Ben Brownley against the decision of West Lancashire Borough Council.
  - The application Ref 2021/1262/FUL, dated 14 October 2021, was refused by notice dated 31 January 2022.
  - The development proposed is a storage building to replace previous storage building.
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## Decision

1. The appeal is dismissed.

## Applications for costs

2. An application for costs was made by Mr Ben Brownley against West Lancashire Borough Council. This application is the subject of a separate decision.

## Main Issues

3. The main issues in this case are:
  - Whether the proposal would be inappropriate development in the Green Belt;
  - The effect of the proposal on the openness of the Green Belt;
  - The effect of the proposal on flood risk; and
  - If found to be inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations and if so, whether this amounts to the very special circumstances required to justify the proposal.

## Reasons

### *Whether inappropriate development*

4. This appeal concerns an area of land to the rear of 174 Gravel Lane on which a large existing storage building is currently sited. This replaced a series of glasshouses on this part of the site. Permission is sought for the part retention of the existing building, however it is indicated that its height is to be reduced.
5. Policy GN1 of the West Lancashire Local Plan 2012-2027 (October 2013) (the LP) states that development proposals within the Green Belt will be assessed against national policy and any relevant Local Plan policies. The National

- Planning Policy Framework (the Framework) makes it clear that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
6. The construction of new buildings should be regarded as inappropriate in the Green Belt subject to a number of exceptions as set out in paragraph 149 of the Framework. One exception, at paragraph 149 d), is the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces.
  7. The appellant's evidence suggests that the building the proposal seeks to replace was a glass building which was used for domestic storage/purposes continuously for more than 10 years. The Council disagrees, suggesting that the building was previously in agricultural use. The submitted neighbour declarations serve to simply confirm that a building existed on the site for several years.
  8. The applicant's declaration however indicates that between 2019 and 2020, the building was used to store automotive parts associated with their hobby. As there is no conclusive evidence to the contrary, it seems to me that the proposed building would be for similar purposes ancillary to the residential property at 174 Gravel Lane than the previous building.
  9. Regardless of this matter however, in order to fulfil the exception at Framework paragraph 149 d) consideration also needs to be given to whether or not the proposed building is materially larger than the one it replaces.
  10. The evidence indicates that the proposed building before me would have a smaller footprint yet greater volume than the previous glass building it seeks to replace. I also note that the roof form of the original glass buildings comprised of three sections of shallow pitched roofs whereas the ridge height of the proposal appears to be greater. Based on the submitted plans, it seems to me that the proposed building would be considerably taller than the original glass building.
  11. I note that the main parties do not agree over the height of the proposed building. Taking the appellant's lower ridge height figure of 2.8 metres into account, based on my findings above, it is difficult to understand how this corroborates with the proposal having a greater volume yet reduced footprint than the original glass building.
  12. Accordingly, by virtue of the volume figures provided, the proposed building would be considerably larger than the building it seeks to replace. It would therefore fail to meet the exception at paragraph 149 d) of the Framework and thus constitutes inappropriate development in the Green Belt.
  13. The appellant also considers that the proposal meets the exception at paragraph 149 g) of the Framework. This states that limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing uses (excluding temporary buildings) would not be inappropriate development subject to not having a greater impact on the openness of the Green Belt than the existing development.
  14. The Framework makes clear that land in built-up areas such as residential gardens is excluded from the definition of previously developed land. The appeal site is located within a linear cluster of built form and indeed the

appellant states that the proposed building is located on land used as domestic garden. Therefore, this proposal cannot be considered against paragraph 149 g) of the Framework.

15. Nevertheless, based on my findings above and regardless of the use of the appeal site and the previous building, consideration should be given to the effect of the proposal on the openness of the Green Belt. It is to this matter which I now turn.

#### *Openness of the Green Belt*

16. Paragraph 137 of the Framework states that a 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. When applying the concept of openness to the particular facts of a case, a number of factors are capable of being relevant. For the purposes of this appeal, I have considered both the visual and spatial aspects of openness.
17. In visual terms, the proposal is surrounded on all sides by existing built form and mature landscaping. Only very limited glimpses would be obtained of the proposal from public vantage points. However, spatially, whilst the proposal would have a smaller footprint than the building it seeks to replace, it would result in a considerably greater volume of built form. Given this and the limited views which may be obtained of the proposed building, the proposal would result in a moderate loss of openness of this part of the Green Belt.

#### *Flood Risk*

18. The appellant's evidence indicates that the appeal site is located within flood zone 3. Policy GN3 of the LP, in line with the Framework and advice in the Planning Practice Guidance, requires that proposals within flood zones 2 and 3 should satisfy the sequential test. This is the starting point, the aim of which is to steer new development to areas with the lowest risk of flooding. Then, if needed, the exception test should be applied to ensure that flood risk is minimised and appropriately addressed.
19. There is nothing before me to indicate that there are no reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. There is also nothing within the development plan or national guidance to confirm that the sequential test does not need to be applied to the proposed development.
20. Notwithstanding the lack of an explicit sequential test, the appellant nevertheless submitted a flood risk assessment<sup>1</sup> (the FRA) thus implying that a sequential test was carried out. The Council has outlined its concerns with the approach of the FRA, alongside other concerns, namely that details of the drainage design and residual flood risk measures have not been provided. Therefore, regardless of the outcome of any sequential test, as acknowledged by the appellant, the concerns relating to the FRA form the basis for this main issue.
21. The presence of flood defences does not mean that a proposal is safe, only that while the defence is maintained the risk is reduced. Therefore, regardless of the area currently benefiting from flood defences or being identified as being at

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<sup>1</sup> Flood Risk Assessment & Drainage Strategy, Flood Flow Ltd, 2 December 2021

very low risk of flooding, the evidence before me fails to demonstrate that the development is flood resistant and resilient, incorporates sustainable drainage systems if appropriate or that any residual risk could be safely managed. In the absence of further information, I am concerned that the proposal would pose an unacceptable risk to flooding.

22. A previous Costs Decision<sup>2</sup> has been provided however this does not add anything further to this matter. The associated Appeal Decision was also provided within the appellants application for costs. I note that the Inspector in this example found that the Council behaved unreasonably as it insisted on a sequential test despite the Council's flood risk authority not taking issue with the appellants submitted information relating to flooding and did not raise objection to the proposed development. In that instance, the sequential test would not therefore have produced a different result. In this appeal, I have found that the submission of the FRA indicates a sequential test by implication and that the lack of a formal sequential test does not form the crux of this main issue. Rather, the outlined concerns with the FRA do.
23. My attention has also been drawn to a further Costs Decision<sup>3</sup> however I cannot make a fully reasoned comparison between this example and the appeal proposal, based solely on the decision provided. From the information that is before me, it nevertheless seems that this example is similar to the above, in that the Council pursued a sequential test despite circumstances indicating that this would not alter the outcome. Again, this is not comparable to this appeal as the Council's flood consultee has raised concerns with the FRA.
24. The requirement for a sequential test and whether the proposal represents the redevelopment of previously developed land and thus is not inappropriate development in the Green Belt, are separate matters and not interlinked. I do not consider that this was a finding of previous Inspectors in the examples above.
25. Taking all the above into consideration, flood risk at the appeal site has not been adequately dealt with thus the proposal would conflict with the collective aims of Policy GN3 of the LP and the Framework in seeking to ensure that developments reduce the risk of flooding.

#### *Other considerations*

26. The Framework advises that inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
27. I have not been provided with any considerations that may weigh in favour of the proposal.

#### *Whether very special circumstances exist*

28. Paragraph 148 states that substantial weight should be given to any harm to the Green Belt and very special circumstances will not exist unless the potential

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<sup>2</sup> Costs application in relation to Appeal Ref: APP/P2365/W/18/3214555

<sup>3</sup> Costs application in relation to Appeal Ref: APP/P2365/W/20/3261041

harm to the Green Belt by reason of inappropriateness and any other harm, is clearly outweighed by other considerations.

29. The proposal would constitute inappropriate development in the Green Belt and would cause moderate harm to its openness. I afford this Green Belt harm substantial weight. I have also found that the proposal has not adequately addressed flood risk, to which I afford significant weight. No considerations in support of the proposal have been advanced.
30. Accordingly, the very special circumstances necessary to justify the proposal do not exist. As such, the proposal would fail to accord with Policy GN1 of the LP and the Framework.

### **Conclusion**

31. The proposal would be contrary to the development plan taken as a whole and there are no material considerations, including the Framework, which indicate that the decision should be determined other than in accordance with the development plan. I therefore conclude that the appeal should be dismissed.

*H Ellison*

INSPECTOR