



Appeal Decision

Site visit made on 25 October 2022

by H Jones BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 November 2022

Appeal Ref: APP/Z4718/D/22/3303388

41 Lamb Hall Road, Longwood, Huddersfield HD3 3TJ

- 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 Reshad Hossenally against the decision of Kirklees Council.
 - The application Ref 2022/62/90711/W, dated 24 February 2022, was refused by notice dated 28 April 2022.
 - The development is formation of external terracing and grading of garden.
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Decision

1. The appeal is allowed and planning permission is granted for engineering operations to regrade garden with raised patio, hot tub, decking, retaining wall and terraces at 41 Lamb Hall Road, Huddersfield HD3 3TJ in accordance with the terms of the application, Ref 2022/62/90711/W, dated 24 February 2022, and the plans submitted with it, subject to the following conditions:

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: LOC, (100)30 B, and (100)31 A.
- 2) Unless within 4 months of the date of this decision a scheme detailing the seeding and/or landscaping of the regraded garden is submitted in writing to the local planning authority for approval, and unless the scheme is implemented in accordance with the approved details within the first available planting season following the local planning authority's approval, the regraded garden hereby approved shall be reinstated to a condition in accordance with a scheme that shall have first been submitted to and approved in writing by the local planning authority.

If no scheme in accordance with this condition is submitted within 4 months of the date of this decision, the regraded garden hereby approved shall be reinstated to a condition in accordance with a scheme that shall have first been submitted to and approved in writing by the local planning authority.

Upon implementation of the approved scheme specified in this condition, the seeding and/or landscaping scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 3) Unless within 4 months of the date of this decision a site investigation of the nature and extent of any land instability within the rear garden is submitted in writing to the local planning authority for approval, and unless any

agreed remedial measures within the site investigation are implemented within a period of 6 months following the local planning authority's approval, the regraded garden hereby approved shall be reinstated to a condition in accordance with a scheme that shall have first been submitted to and approved in writing by the local planning authority.

If no scheme in accordance with this condition is submitted within 4 months of the date of this decision, the regraded garden hereby approved shall be reinstated to a condition in accordance with a scheme that shall have first been submitted to and approved in writing by the local planning authority.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Preliminary Matters

2. The description of development in the banner 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 which matches that on the Council's decision notice. Therefore, in my Decision, I have taken the wording from the appeal form, which, more accurately describes the entirety of the development depicted on the submitted plans. In doing so, I am satisfied that I have not prejudiced the interests of either main party.
3. Development comprising of a hot tub, retaining walls, raised patio with steps and regrading of garden land has taken place, though the entirety of the development works shown on the submitted plans have not taken place. Furthermore, there is some disparity between the regraded garden land and that shown on the plans. Excavation appears to have taken place in closer proximity to a section of the common boundary with neighbouring 43 Lamb Hall Road. For the avoidance of doubt, I have determined the appeal on the basis of the plans submitted.
4. The Council has subsequently granted planning permission for retention of the raised patio, hot tub, decking and retaining wall under a separate application 2022/62/91655/W. Since these structures are now lawful, I no longer need to consider them in any detail as part of this appeal. My consideration has therefore focused on that aspect of the proposal which remains to be determined, which amounts to the regrading of the lower garden area to form terraces.

Main Issues

5. Having regard to the above, the main issues are:
 - Whether the development amounts to inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any effects upon openness;
 - The effects of the development upon the character and appearance of the area; and

- Whether any harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

Reasons

Whether the development amounts to inappropriate development in the Green Belt and effects upon openness

6. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and that the essential characteristics of Green Belts are their openness and their permanence. It goes on to state that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
7. The regrading works to the garden would constitute an engineering operation. Paragraph 150 of the Framework relates and states that such operations are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it.
8. Whilst the development would result in the profile of the land altering, it would nevertheless remain a grass covered garden including the sloping bunds. I do not find that a grass covered garden with a consistent slope altering to one with a series of cascading elements would have any spatial effects upon openness. The occupancy of the space would not alter. Upon completion the grass coverage would ensure any visual effects of the development would be moderated. Therefore, in the more distant views, for example from around Compensation Reservoir, the modulating land would not be strident nor, in turn, appear out of kilter with the manner in which neighbouring land falls away toward the reservoir. Owing to a combination of a change in levels, high wall and landscaping, the garden is very well screened from the public footpath which runs adjacent to it. I therefore find that the regrading of the garden would not harm the openness of the Green Belt.
9. The development would involve no engineering operations beyond the bounds of the existing garden. I do not find the garden itself is part of the countryside but rather that the countryside commences on land beyond, the other side of boundary fencing. Given this, and the limited visual effects that the regraded land would have, I find that no incursion into the countryside would result from the development nor any urbanising effect upon the countryside. It follows that the development would not conflict with the purposes of including land within the Green Belt, most importantly in this case, the purposes of checking the sprawl of large built-up areas and to assist in safeguarding the countryside from encroachment. With no conflict with these purposes and with the openness of the Green Belt preserved, the garden regrading works do not constitute inappropriate development.
10. I note that the Council consider that the land is not previously developed land, deeming that it is garden land within a built-up area. I have no reason to disagree with this. That the land is not previously developed land does not have a bearing upon the assessment of the effects upon the openness of the Green Belt in this case.

11. The regrading of the garden is an engineering operation which would preserve the openness of the Green Belt and would not conflict with the purposes of including land in it. This would, therefore, not be inappropriate development.

Character and appearance

12. I have already found that the regrading of the garden would have very limited visual effects. The profile of the land would differ from the consistent slope of neighbouring gardens, but difference does not necessarily equate to harm. That it would remain a grass covered garden area as it was previously moderates the effects of the engineering operation upon the character and appearance of the area.
13. Public representations made reference to the site being within a designated Area of Outstanding Natural Beauty, however, the site does not lie within such an area.
14. Consequently, I find that effects of the development upon the character and appearance of the area would be acceptable in accordance with Policies L24 and L32 of the Kirklees Local Plan 2019 (LP). In summary, and amongst other matters, these policies require that development is of a form, scale and layout which respects and enhances the character of the townscape, landscape and the setting of settlements within the landscape. I also find that the development would accord with relevant advice within the Framework, including that at paragraph 130 which states that development should be visually attractive and sympathetic to local character.

Other Matters

15. Much of the common rear boundary between the host property and the neighbouring Nos 37 and 39 is a low fence which is not closed boarded. Without the development in place, such an arrangement would allow for quite considerable mutual overlooking of rear garden space. I find that neither the altered terrace area nor the land regrading would create any change in circumstances of significance, and, in turn no loss of privacy. As the use of the garden would remain the same it follows that no increase in noise would result.
16. It has been drawn to my attention that there may be some factual inaccuracies on the submitted application form, this includes in relation to when works commenced on site. However, such matters are not determinative factors in the appeal. While some apple and pear trees may have been removed from within the garden, there is no substantive evidence that these were important landscape features.
17. The plans do not depict forms of handrails to the terraced area. I must determine the appeal on the basis of the plans before me and I have no substantive evidence before me that such handrails would be necessary to make the development acceptable. I note the comment raised that the erection of wire fencing would be inappropriate at the site, however, the description of the development includes no reference to the erection of further fencing.
18. The majority of the garden area would remain permeable, and I have no reason to conclude that any particular surface water drainage or soakaway measures would be necessary.

19. Whether the Council's consultation exercises on the planning application were extensive enough has little to do with the planning merits of the case and I have no reason to believe that the statutory requirement has not been fulfilled nor do I have evidence of injustice during the appeal process. Any damage to fencing caused by development works is a private matter between the parties involved. Land within the site may be subject to restrictive covenants, however, these matters are separate from the planning process.
20. The garden area could be subject to further development proposals but these are not for consideration under this case. I have no substantive evidence before me that the cut and fill volumes depicted on the plans are not compatible, that the development would cause harm to wildlife in the area or cause water pollution including from any chemicals utilised within the maintenance of the hot tub.
21. The Written Ministerial Statement of December 2015 sets out the Government's particular concern caused by intentional unauthorised development in the Green Belt. I have had regard to this, but the raised patio, hot tub, decking and retaining wall are now authorised by virtue of a different planning permission whilst I have found the regrading of the garden to not constitute inappropriate development, or harm the character and appearance of the area. In such circumstances, I only attribute a limited amount of weight to the development having potentially been undertaken intentionally without planning permission.

Planning Balance

22. The raised patio, hot tub, decking and retaining wall now all have planning permission under a separate decision. I have identified that the regrading of the garden would be an engineering operation which preserves the openness of the Green Belt and does not conflict with the purposes of included land within it. Therefore, that development would not be inappropriate in the Green Belt. I have also concluded that the development would not harm the character or appearance of the area.
23. It follows that the development would comply with the development plan when taken as a whole and is acceptable on its own merits. There are no material considerations of sufficient weight to indicate that a contrary view should be taken.

Conditions

24. As the development has commenced, there is no need for the standard commencement condition. Given the development is not complete and that I have identified some disparity between works on site and that on the submitted plans, a plans condition (no 1) is necessary to ensure that the development is completed in accordance with the submitted plans.
25. Condition 2 is imposed to ensure that the regraded garden is appropriately landscaped having regards to the character and appearance of the area.
26. On the basis of the evidence before me, the site is not within a coalfield development high risk area or within a location which has any known susceptibility to land instability. Nevertheless, the bunds to form the regraded garden land would be steep. I note the suggestion of the Council that a condition could be utilised to investigate the matter further and minimise the

risk of an instability issue. I have no evidence before me which provides any assurances that the bunds would be stable. In such circumstances and having regard to the content of Policy LP53 of the LP, advice at paragraphs 174 and 183 of the Framework, and within the land stability section of the Planning Practice Guidance, I consider such a condition (no 3) is necessary.

27. A strict timetable for compliance applies to conditions 2 and 3 because this element of the development has commenced, and it is not possible to use a negatively-worded condition to secure the approval and implementation of the landscaping and land stability schemes and investigations before this part of the development is completed. These conditions will ensure that the development can be enforced against if the requirements of each are not met and this includes delay to the necessary agreements with the Council.
28. The Council suggest that, in event of an approval, a condition to secure a scheme to deliver biodiversity net gains would be necessary. I have no substantive evidence before me that the development has caused any biodiversity harm. Amongst other matters, Policy LP30 of the LP states that development should minimise impact on biodiversity and provide biodiversity net gains where opportunities exist. Other than the reinstatement of grass to the regraded areas there is no evidence before me that other forms of landscaping works are proposed. Given the nature of the development within garden land, minimising biodiversity effects are sufficient in this case and further dedicated biodiversity enhancement proposals would be unnecessary to make the development acceptable. I have therefore not imposed such a condition.

Conclusion

29. For the reasons set out above, I conclude that the appeal is allowed subject to the conditions above.

H Jones

INSPECTOR