



Appeal Decision

Site visit made on 10 August 2022

by C Rafferty LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 23rd January 2023

Appeal Ref: APP/Z4718/W/22/3292554

Fox Cottage, Whitley Road, Whitley, Dewsbury WF12 0LU

- 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 and Mrs Brotherton against the decision of Kirklees Council.
 - The application Ref 2021/62/93765/E, dated 21 September 2021, was refused by notice dated 14 January 2022.
 - The development proposed is the demolition of existing buildings and erection of a small dwelling.
-

Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing buildings and erection of a small dwelling at Fox Cottage, Whitley Road, Whitley, Dewsbury WF12 0LU in accordance with the terms of the application, Ref 2021/62/93765/E, dated 21 September 2021, subject to the conditions set out in the attached schedule.

Main Issues

2. The main issues are:
 - 1) 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; and
 - 2) the effect of the development on the living conditions of residents of No. 106 Whitley Road, with particular regard to privacy.

Reasons

Whether the proposal constitutes inappropriate development

3. The appeal site comprises land to the rear of Fox Cottage, a dwelling located off Whitley Road within the Green Belt. The surrounding area has a rural feel, with areas of undeveloped land and open fields. However, residential development is present, including in the vicinity of the site which sits among a cluster of dwellings and to the west of other residential properties, which are on a lower land level. The site contains several buildings and a shipping container.
4. The Framework states at paragraph 149 that construction of new buildings in the Green Belt should be regarded as inappropriate development which is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. This is subject to several exceptions including, at 149(g), limited infilling or partial or complete redevelopment of previously developed land (PDL), 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. There is no dispute between the main parties that the appeal site is PDL. Accordingly, whether the proposal would constitute inappropriate development will depend on whether it would have a greater impact on the openness of the Green Belt than the existing development.
6. The Framework states that “the 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.” It has been established that openness has both a spatial and visual aspect.
7. The proposal would replace the shipping container and buildings currently at the site, including those in the western section beyond where the proposed dwelling would be sited. While the Council states that some of these structures have a temporary appearance, there is nothing substantive before me to suggest that they are not permanent within the site. Based on my observations they represent elements of built form that at present have an effect on both the visual and spatial openness of the Green Belt.
8. The main parties agree that the proposal would have a greater footprint than the current structures combined. However, based on the figures provided the increased footprint would not be significantly larger, and the overall volume of development would decrease. In addition, the proposal would reduce the sprawl of development by removing the western buildings and consolidating the built form within the plot. This would result in a greater single area of open space within the site, with the development appearing more contained such that its visual appearance and presence would read as more compact than the current situation.
9. While the proposal would also result in the introduction of an additional domestic curtilage in the vicinity, this would be modest in scale. It would be contained to, and experienced within, the section of the site that would house the consolidated built form. Although residential paraphernalia could be placed within the curtilage, this would be limited by the scale of the proposal and, in any event, would replace the high level of current unrestricted open storage at this section of the site.
10. I further note that planning permission has been granted for the erection of a stable at the site of the same size as the proposed dwelling. While this may have been permitted under a different policy exception, it nevertheless represents an approved element of built form, such that it is a legitimate fallback position. Other buildings at the site would not be removed if the stable were constructed. As such, even acknowledging that it would not be in residential use or feature a residential curtilage, when combined with the other buildings that would remain at the site the presence of the stable would have a greater impact on the spatial and visual openness of the Green Belt than the proposal.
11. As such, while the proposal would have a larger footprint than the development presently at the site and would introduce a residential curtilage, it would result in both the consolidation and reduction in volume of built form at the site. As a result, I find that it would not have a greater impact on the openness of the Green Belt than the existing development or, as outlined above, the fallback position.
12. I conclude that the proposal is not inappropriate development in the Green Belt for the purposes of the Framework, as it would preserve the openness of the Green

Belt and does not conflict with the purposes of including land in Green Belt. In this regard there would also be no conflict with Policy LP59 of the Kirklees Local Plan, adopted 27 February 2019. As I have found that the proposal would not be inappropriate development in the Green Belt, it is not necessary to consider whether there are other considerations in favour of the appeal which would amount to very special circumstances necessary to justify the development.

Living Conditions

13. Due to the layout of the site, the proposed dwelling would face the rear garden of No. 106 Whitley Road, sitting on higher land and with a large amount of glazing along the facing elevation. The main parties agree that there would be no direct overlooking of the rear garden of No. 106 and, based on my observations, I have no reason to disagree.
14. It has been argued that a perception of being overlooked would remain for the residents of No. 106. I acknowledge that this is a legitimate, material consideration. However, any such perception for the residents of No. 106 would be reduced by the fact that the majority of the facing glazing of the proposal would be screened, with only the topmost part of the windows visible. As such, it would be reasonably evident to residents that no direct overlooking would be possible from the visible section of the proposal's windows. This would remove any undue perception of overlooking and ensure that residents' enjoyment of the rear garden would not be impacted.
15. Concerns have been raised about the ownership of the boundary wall, and whether this would remain. While there is no substantive evidence before me to suggest that the wall would be removed, I nevertheless note that the appellant is agreeable to a condition requiring suitable boundary treatment. Such a condition would be necessary to ensure that no undue overlooking of No. 106 Whitley Road would occur in the event that the boundary wall was to be removed.
16. For the reasons given, and subject to the imposition of the above condition, I find that the proposal would not result in harm to the living conditions of residents of No. 106 Whitley Road with regard to privacy. As such, there would be no conflict with Policy LP24 of the Kirklees Local Plan, adopted 27 February 2019 which seeks to ensure development provides a high standard of amenity for neighbouring occupiers.

Other Matters

17. Interested parties have raised concerns that the proposal could result in a level of traffic movement that would cause undue harm to highway safety, would damage to the boundary wall and would result in disturbance to surrounding residents. However, based the likely limited level of traffic movements associated with a single dwelling, I do not consider such harm would arise.
18. I note further concerns raised by interested parties that the proposal would be out of place in the area, would not provide adequate internal floorspace for future occupiers and would have flooding implications. I note that the Council has not found harm in this regard. Based on my observations and the evidence submitted, I have no reason to disagree with this position of the Council. In any event, with regards to flooding, I have attached a condition that drainage aspects of the proposal are to be agreed with the Council.

Conditions

19. I have had regard to the conditions referenced in the Council's Officer Report. In addition to requiring commencement within the standard statutory period, I have imposed a condition requiring compliance with the supporting plans in the interests of clarity. A condition specifying materials is not necessary, as these are noted on the plans. I have also attached a condition requiring approval of boundary treatments in the interest of the character and appearance of the area, and the living conditions of residents of No. 106 Whitley Road.
20. The Officer's Report refers to conditions requiring details of a septic tank to be installed at the site. However, the appellant is clear that a septic tank is not to be provided as part of the proposal. As such, I have instead imposed a condition relating to the approval of drainage works to ensure adequate provision is made. Similarly, the Officer's Report has requested a condition that a dry riser be installed at the site. However, limited justification is provided for this and the appellant has stated that they dwelling can be appropriately accessed by emergency vehicles. Based on my observations, I have no reason to disagree and do not consider such a condition to be necessary.
21. The Framework advises that conditions should not be used to restrict permitted development rights unless there is clear justification to do so. The effect of permitted development works could result additional built form at the site which would be likely to result in an adverse effect on the openness of the site. Consequently, I am satisfied that these rights should be removed in the interests of the protection of the Green Belt

Conclusion

22. For the reasons given, the proposal would accord with the development plan when taken as a whole. There are no material considerations that indicate the appeal should be determined other than in accordance with the development plan. I therefore conclude that the appeal should be allowed subject to the conditions in the attached schedule.

C Rafferty

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall begin not later than 3 years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans and documents: Existing Site Location and Layout Drawing No. 2115/100 Rev B dated September 2021; Existing Site Layout Drawing No. 2115/101 dated September 2021; Proposed Site Location and Layout Drawing No. 2115/110 Rev A dated September 2021; Proposed Layout and Elevations Drawing No. 2115/111 dated September 2021; and Existing and Proposed Site Section Drawing No. 2115/112 dated December 2021.
3. No development shall take place on site until details of the works for the disposal of foul and surface water have been submitted to, and approved in writing by, the local planning authority, together with a programme of implementation. The drainage works shall then be implemented in accordance with the approved details and retained thereafter.
4. Prior to the first occupation of the dwelling hereby permitted details of the boundary treatment shall be submitted to, and approved in writing by, the local planning authority. The boundary treatment shall be erected prior to occupation and retained thereafter.
5. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development otherwise permitted by any of Classes A, B, C, D and E of Part 1 of Schedule 2 of that Order shall be carried out within the area of development hereby approved.