



Appeal Decision

Site visit made on 21 March 2023

by L Wilson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 April 2023

Appeal Ref: APP/N4205/W/22/3302516

Land at Grundy Fold Farm, Chorley Old Road, Bolton

- 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 Thompson against the decision of Bolton Metropolitan Borough Council.
 - The application Ref 12632/21, dated 10 November 2021, was refused by notice dated 25 March 2022.
 - The development proposed is erection of a single dwelling with associated works (Plot no. 5).
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a single dwelling with associated works (Plot no. 5) at Land at Grundy Fold Farm, Chorley Old Road, Bolton in accordance with the terms of the application Ref 12632/21, dated 10 November 2021, and the plans submitted with it, subject to the attached schedule of conditions.

Preliminary Matters

2. I have taken the appeal site address in the heading and formal decision above from the appellants appeal form as this is a more accurate reflection of the site location.

Main Issues

3. The main issues are:
 - Whether or not 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, including an assessment on the effect of the proposal on the openness of the Green Belt.
 - 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

4. The site originally formed part of a working farm known as Grundy Fold Farm, although the buildings were more recently used for commercial purposes. The appeal site has a complex planning history. Whilst I have considered the full history of the site, the timeline of events below sets out the pertinent applications and appeals.

5. Planning permission was granted in 2014 for the redevelopment of Grundy Fold Farm and the erection of 4 dwellings and extension/refurbishment of the former farmhouse¹. The appeal site is known as Plot 5, where the farmhouse stood.
6. The dwellings that were built were all of a different siting, orientation, footprint and design to those approved. The developer demolished the farmhouse in 2016 and carried out works on the construction of a new build dwelling house in a different location to where the original farmhouse stood. This meant that planning permission fell away for the dwelling at Plot 5.
7. A certificate of lawfulness was issued by the Council in 2018 confirming that planning permission 91673/14 remains extant and capable of completion². The Council served an Enforcement Notice on the relevant parties in 2018 requiring the demolition of the dwellings alongside the partially erected garage and other structures. A further planning application was submitted for all the plots, which was refused planning permission³. Subsequently, a public inquiry was held for a combined Section 78 and Enforcement Appeal⁴. The combined appeal was dismissed and as a result all five unauthorised dwellings have been demolished (in accordance with the requirements of the Enforcement Notice).
8. The dismissed combined appeal is fundamentally different to the proposal before me. In terms of Plot 5, the dismissed scheme was for a new build house circa. 20m further northwards than the original farmhouse and away from the central courtyard. It also formed part of a wider scheme seeking consent for 4 other dwellings larger than that granted in the 2014 planning permission and in different locations.

Whether Inappropriate Development

9. Paragraph 149 of the Framework states that new buildings are inappropriate in the Green Belt unless they fall within the given list of exceptions. One such exception is 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. This is also reflected in Policy CG7AP of the Bolton's Allocations Plan: Local Plan (2014) (LP). In relation to the 2014 permission, the development was granted on the basis of the site being previously developed land and the residential development would not have a greater impact on the openness of the Green Belt.
10. The Inspector found in the combined appeal that the existing lawful development on the site comprises the two outbuildings (which are remnants from the previous use of the land) and the footings of a garage. Furthermore, the Inspector confirmed that there is no extant planning permission for a dwelling at Plot 5 as the approved house can no longer be built in accordance with the extant 2014 permission (as the dwelling approved under application 91673/14 at Plot 5 comprised an extension to the original farmhouse and the farmhouse has been demolished). The Inspector considered that the detached garage approved at Plot 5 still had extant permission. It was found that plots

¹ 91673/14

² 04276/18

³ 05083/18

⁴ APP/N4205/C/18/3208247 and APP/N4205/W/19/3237913

- 1-4 and garages pursuant to the 2014 permission benefit from an extant planning permission. I see no reason to disagree with these findings.
11. The Council does not dispute that the proposal comprises limited infilling or that the site is previously developed land for the purposes of paragraph 149(g) of the Framework. Nonetheless, the exception only applies subject to the proviso that the proposal would not have a greater impact on the openness of the Green Belt than the existing development. The appellant highlights that the wording of paragraph 149(g) and Policy CG7AP of the LP allows for limited infilling and a simplistic approach whereby any material impact on openness is a breach would render this exception impracticable.
 12. Paragraph 137 of the Framework confirms 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. Planning Practice Guidance sets out factors that can be taken into account when considering the potential impact of development on the openness of the Green Belt⁵. The openness of the Green Belt has a spatial and visual aspect. My attention has been drawn to legal judgements in this regard⁶.
 13. The size of the proposed dwelling reflects that previously granted planning permission in 2014. However, there is no extant permission for a dwelling on Plot 5, and the former farmhouse has been demolished. The farmhouse had been in-situ for circa. 100 years, but there has now been a reasonable period of time since the farmhouse was demolished. The only existing development on Plot 5 is the single, storey outbuilding and a caravan (but that is temporary). The existing outbuilding has a simple design, and due to its limited footprint and volume it is not a prominent building within the Green Belt. Even when considering the extant permission for the erection of a detached garage on the plot, the two buildings are small, single storey buildings.
 14. The proposed development would introduce a large dwelling. The proposed dwelling would have a greater impact on the openness of the Green Belt than the existing outbuilding, and also if the garage was erected. This is because the proposed dwelling's scale, massing, height, footprint and volume is considerably larger than those buildings. I observed on my site visit that the appeal site is visible from the surrounding area, and the dwelling would be visible from particularly Chorley Old Road.
 15. The current built development within the wider Grundy Fold Farm site is limited. I acknowledge that the proposed dwelling would be seen in the context of the other dwellings being constructed pursuant to the 2014 planning approval, the other dwellings would be larger than the proposed dwelling and the scheme seeks consent to infill a gap in the new properties fronting onto the central courtyard. However, at the time of my site visit the development of plots 1-4 was largely incomplete and therefore I can only give limited weight to these considerations.
 16. For these reasons, the proposed development would have a greater impact, visually and spatially, on the openness of the Green Belt than the existing development. Having regard to the outbuilding in-situ, the approved detached

⁵ Paragraph: 001 Reference ID: 64-001-20190722

⁶ Euro Garages Ltd v SSCLG & Anor [2018] EWHC 1753 (Admin) and Samuel Smith Old Brewery (Tadcaster) & Oxtan Farm v North Yorkshire CC & Darrington Quarries Ltd [2018] EWCA Civ 489

garage being erected at Plot 5 and considering the development of the wider site where construction works has commenced, the harm would be moderate.

17. The Inspector found in the combined appeal that the development would have a significant harmful effect on the openness of the Green Belt. Having said that, as set out in the previous section, there are fundamental differences between that case and the scheme before me. Therefore, it is not unreasonable to come to a different conclusion in relation to the proposals impact on openness.
18. A further exception, set out under paragraph 149 d) of the Framework and Policy CG7AP of the LP, is the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces. An objection comment has referred to an appeal decision in this regard⁷.
19. The appellants appeal submission does not specifically refer to this exception, but I understand that this has previously been part of the appellants case and has been considered by the Council. This matter was addressed as part of the combined appeal. The original farmhouse has been demolished, and the partially built new dwelling (now demolished) did not benefit from planning permission. The proposal therefore results in the erection of a new dwelling in the Green Belt. In any event, the proposed dwelling would be materially larger than the original farmhouse.
20. For these reasons, the proposal would not fall under any of the listed exceptions and would be inappropriate development in the Green Belt, having regard to Policy CG7AP of the LP and Chapter 13 of the Framework.

Other Considerations

21. The appellant has set out other considerations which they consider amount to the very special circumstances required to justify the proposal.

Previously Approved Scheme

22. As stated above, there is no extant permission for a dwelling at Plot 5 (because the dwelling that was approved at Plot 5 under the 2014 permission no longer has permission as the extended dwelling can no longer be built in accordance with the permission since the farmhouse was demolished). There are fundamental differences between the appeal scheme before me and the combined dismissed appeal, and the Inspector did not assess Plot 5 in isolation.
23. The appellants have drawn my attention to appeal decisions whereby it has been found that significant weight should be afforded to a previous grant of planning permission for similar works⁸. Whilst there are differences between the appeal scheme before me and those decisions (including site history and context of the site), these decisions relate to cases where a breach of planning control had rendered the previously approved schemes invalid, and the appeal proposals were to rebuild what the Council had previously found acceptable.
24. The dwelling would be located in the same location as the original farmhouse, which had been in-situ for circa. 100 years. The proposed scheme is for a dwelling in the same location and slightly smaller to that granted consent by the Council in 2014. Having regard to the proposed dwelling's location,

⁷ APP/C2741/W/19/3242886

⁸ APP/P2365/A/08/2090703 and APP/B1605/D/17/3184074

footprint, height and scale, the proposed development would not have a greater impact on the Green Belt than the scheme previously granted planning permission.

25. There has been a notable period of time since the farmhouse was demolished. Nonetheless, the evidence before me suggests that the appellants have been seeking to resolve the breach of planning control. The breach of planning control has had devastating consequences and a significant amount of this time has been whilst planning applications and appeals have been determined. The appellants case sets out that they did not authorize or instruct the developer to carry out any works pursuant to the breach of planning control (and I have no evidence to the contrary), and they are currently taking litigation action against the developer.
26. Furthermore, based on the evidence presented, in this time period there has not been a significant change in circumstances such as new planning policy which would have resulted in the 2014 not originally being granted permission if the farmhouse had not been demolished. There is also no clear evidence to suggest that if the farmhouse had been extended as granted permission in 2014, then a replacement dwelling, such as that proposed, would not comply with exception paragraph 149 d) of the Framework and Policy CG7AP.
27. The proposed development would have a similar effect on the openness of the Green Belt to that previously approved. The proposed dwelling is similar to the approved dwelling, and the appellants are essentially seeking planning permission to reinstate the development that the Council previously found to be acceptable. For the reasons given above, I give significant weight to the previously approved scheme.

Personal Circumstances

28. Objection comments set out that financial and emotional hardship should not be taken into account. However, in this case, I disagree. The appellants have drawn my attention to an appeal decision whereby personal hardship alone comprised 'very special circumstances' to justify the grant of consent in similar circumstances⁹, and also legal judgements¹⁰.
29. The appellants personal circumstances are primarily set out in the signed affidavit. They have been in a fortunate position to be able to purchase another house but that is understandable given the length of time the planning issues have been ongoing, and the needs of their son. The signed affidavit provides evidence to demonstrate that the appellants financial losses are substantial. Their legal action and the litigation case remains unresolved with no guarantee of success, and they assert that it is unlikely that they will be able to recoup all costs incurred.
30. It has not been disputed that the appellants did not authorize or instruct the developer to carry out any works pursuant to the breach of planning control. The appellants have not benefited from the unauthorised development, and understandably it has caused great anxiety and stress and it has undermined their health and well-being through no fault of their own. It has also resulted in

⁹ APP/A0665/C/19/3224527

¹⁰ *Stringer v Minister of Housing and Local Government* [1970] 1 W.L.R. 1281 and *Brentwood BC v SSE* [1996] 72 P&CR 61

substantial delays and costs for the appellants. I also understand that there has been significant exposure in national and local press.

31. I have had regard to the rights of the appellants under Article 8 of the European Convention on Human Rights as incorporated into the Human Rights Act 1998. Article 8 affords the right to respect for private and family life and home. I have also had regard to the Public Sector Equality Duty (PSED) under s149 of the Equality Act 2010, insofar as the appellants son has a protected characteristic.
32. The information before me indicates that the appellants son lives nearby with carers supporting him, and he lives with them for short periods of time. Dismissing the appeal would not result in them becoming homeless. Nonetheless, it would result in further uncertainty for the appellants, and their son, which would cause further anxiety and stress, and further undermine their well-being. It appears that the Inspector gave significant weight to the combined personal circumstances in the dismissed appeal, rather than to the owners of Plot 5 alone. Even so, I do not see any clear reasons to disagree with the findings of the Inspector in relation to the personal circumstances and the best interest of the child. For the reasons given above, I give significant weight to the appellants personal circumstances.

Pre-Application Advice

33. The appellants set out that significant weight should be afforded to the positive pre-application advice issued by the Council, and that the Council has consistently accepted the principle of a dwelling house at Plot 5 over the years. The Council highlights that the pre-application advice related to the design of the dwelling, the appellants (and their agent) would have been fully aware of the Inspector's findings, and as established at the public inquiry the Council had been applying the incorrect approach (given that the new dwelling should not be considered to constitute a replacement dwelling).
34. Planning Practice Guidance sets out that pre-application advice could be a material consideration to be taken into account and given weight in the planning application process¹¹. Nonetheless, pre-application advice is given without prejudice to any formal decision the Council may make in dealing with a formal application for planning permission. I therefore afford very little weight to this matter as a factor in support of the appeal.

Design Concept

35. The appellants case sets out that the proposed development would secure the same high-quality design concept for the whole site previously granted, with dwellings set around a central 'farmstead' courtyard. It would serve to reinforce a sense of local. The land associated with Plot 5 would also be maintained and managed by future occupiers. They consider that the alternative scenario (i.e. the baseline position) would be of an incongruous and visually jarring outbuilding and associated land with no mechanisms in place or obligations on the landowners for future management and maintenance of one of the plots associated with the overall redeveloped site.
36. Objection comments have raised concerns in relation to the design of the dwelling, and that it does not give the impression of a farmstead or hamlet.

¹¹ Paragraph: 011 Reference ID: 20-011-20140306

Nonetheless, the Council did not refuse planning permission relating to design concerns.

37. The design of the dwelling would respect the design concept of the approved development. The design is acceptable, and would respect the siting, design and scale of the other dwellings, but compliance with local and national planning policies does not amount to a positive factor in favour of the scheme. The proposed development would be preferable to the alternative scenario, but the non-development of the plot would not be unacceptable visually. I therefore afford very limited weight to this matter as a factor in support of the appeal.

Housing Land Supply

38. The appellants suggest that the Council cannot demonstrate a 5-year housing land supply. They set out that the Council has a 3.9 year housing land supply. The Council has not disputed these points and has drawn my attention to the findings of the Inspector in the enforcement appeal.
39. The proposed development would only provide one new dwelling, albeit small sized sites can make an important contribution to meeting the housing requirements of an area. The proposal would provide a very modest contribution to the Council's housing land supply, and therefore I afford limited weight to this benefit.

Previously Developed Land

40. The appellants highlight that the site is previously developed land for the purposes of the definition in Annex 2 of the Framework, and the Council accepted this to be the case through the 2014 planning permission granted. They set out that the appeal scheme makes efficient and effective use of a brownfield site.
41. I recognise that the Framework promotes making effective use of land, and supports the development of previously developed and brownfield land. However, in relation to previously developed land and the Green Belt, I have found that the proposed development would constitute inappropriate development within the Green Belt. For these reasons, I give this consideration neutral weight.

Other Matters

42. In addition to concerns relating to the above considerations, objection comments have raised other matters. They include concerns relating to light pollution, impact views, foul sewage, complaints should be considered as an additional harm, home would be built as a single individual house, query why Certificate B has been filled out on the application form, overdevelopment and out of character with the surrounding area. The Council's reason for refusal did not relate to these concerns raised.
43. Having regard to the scale of the proposed development, the context of the appeal site and previously approved permission, the scheme would not have an unacceptable effect on light pollution, the living conditions of occupiers of nearby dwellings or drainage. There is also no substantive evidence to demonstrate that the complaints have resulted in harm and should be a consideration to weigh against the proposal. I understand that Certificate B was

completed as the appellants were required to serve notice on the owner of the access road.

44. The proposed development would be sited on the same footprint as the approved dwelling, and would be the same height and scale as that previously approved. The design of the proposed dwelling is acceptable and would not cause harm to the character and appearance of the surrounding area or result in overdevelopment. In relation to comments concerning how the proposal will relate to the other dwellings. It was not unreasonable for a separate planning application to be submitted as the other plots benefit from an extant permission. The proposed dwelling would respect the siting, design and scale of the four approved dwellings (extant 2014 permission). Furthermore, planning conditions relating to materials would help to ensure that the dwelling is in keeping with the other dwellings.
45. Subject to planning conditions, there is no credible evidence before me that would lead me to an alternative conclusion to the Council on the other matters raised, or that could justify the dismissal of the appeal on these grounds.

Planning Balance and Conclusion

46. I have found that the proposal constitutes inappropriate development in the Green Belt which is, by definition, harmful to the Green Belt and have found a moderate loss to the openness of the Green Belt. Paragraph 148 of the Framework is clear that substantial weight should be given to any harm to the Green Belt and 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.
47. As set out above, I give significant weight to the previously approved scheme and the appellants personal circumstances, I afford limited weight to the housing land supply consideration. In addition, I give very little weight to the pre-application and design concept considerations. The consideration relating to previously developed land is given neutral weight.
48. Taken together, I find that the other considerations are considerable and clearly outweigh the identified harm to the Green Belt, by reason of inappropriateness and the effect on openness, such as to amount to the very special circumstances needed to justify the development. Thus, the development would not conflict with Policy CG7AP of the LP and Chapter 13 of the Framework.
49. In the absence of a five year supply of housing land, the most important policies for determining this appeal are out of date and paragraph Framework 11d) is engaged. Nonetheless, weight may still be afforded to policies depending on their consistency with the Framework. Based on the information presented, the most relevant policies are consistent with the aims of the Framework (and this is not disputed by the main parties). As set out above, I find that the proposed development would not conflict with Policy CG7AP of the LP.
50. I have found that the other considerations in this case clearly outweigh the harm that I have identified. Looking at the case as a whole, whilst I accord substantial weight to the harm arising to the Green Belt through

inappropriateness and the effect on openness, I consider that very special circumstances exist which justify the development. Thus, the proposal would be consistent with the Framework. Consequently, the application of policies in the Framework that protect areas or assets of particular importance does not provide a clear reason for refusing the development proposed. There are no other policies within the Framework that indicate that the appeal proposal should be refused. The adverse impacts of the proposal do not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

51. Accordingly, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, the appeal succeeds.
52. In relation to Article 8 rights, the best interests of the child, and having due regard to the PSED, since I have decided to allow the appeal, there would be no interference with the appellants rights or interests.

Conditions

53. I have assessed the Council's suggested conditions, and those suggested in consultation responses, in light of guidance found in the Planning Practice Guidance and where necessary the wording of the conditions has been amended for clarity and precision. The appellants and Council were given the opportunity to comment on the altered conditions, and the appellants have confirmed that they agree to the conditions.
54. It is necessary to attach a condition specifying the approved plans as this provides certainty. Conditions relating to materials, doors, windows and a landscape scheme are necessary in the interest of the visual amenity of the area.
55. In the interests of the character and visual amenities of the area and the amenities of the occupiers of neighbouring dwellings, conditions relating to land levels and boundary treatment are necessary. A condition relating to contamination is necessary to ensure that risks from land contamination to the future occupiers and the environment are minimised.
56. In the interest of highway safety, a condition relating to the parking of vehicles is necessary. A condition relating to drainage works is necessary in the interest of satisfactory drainage and to ensure proper provision of the disposal of foul and surface water discharge is provided.
57. In this case, a condition restricting permitted development rights is necessary and reasonable, and in line with paragraph 54 of the Framework there is clear justification, taking into account the size of the original farmhouse, and in the interests of safeguarding the openness and visual qualities of the Green Belt. The wording of this condition is different to that suggested by the Council to ensure that it is reasonable.
58. The Council has suggested a condition defining the curtilage of the dwelling, which refers to drawing 2140 (Proposed Site Plan). A similar condition was used in the approved 2014 planning application. However, this drawing is included within condition 2, and the Council has not provided any robust reasoning for the condition to demonstrate that it meets paragraph 56 of the

Framework. Based on the information presented, this condition is not necessary, and I see no clear justification for the suggested condition.

L Wilson

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: 2140-SLP (Boundary Plan/Site Location Plan), 2140-PSP (Proposed Site Plan), 1001 Rev B (Proposed Ground & 1st Floor Plans), 1002 Rev B (Proposed 2nd Floor Plan & Section AA), and 1006 Rev B (Proposed Front Elevation Option 1).
- 3) No development shall take place until details of the finished levels, above ordnance datum, of the ground floor of the dwelling hereby permitted, in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.
- 4) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 14 days of the report being completed and approved in writing by the local planning authority.
- 5) No development shall commence until details/ samples of the materials to be used in the construction of the external surfaces of the dwelling hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details/ samples.
- 6) No development above slab level shall take place until details of the foul and surface water drainage works have been submitted and approved in writing by the local planning authority. The approved drainage shall be implemented before the development is first occupied and shall be retained thereafter.
- 7) Prior to any doors or windows being installed, a detailed specification for all doors and windows shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented before the development is first occupied and shall be retained thereafter.

- 8) Prior to the development hereby permitted being first occupied, details of the boundary treatment to all boundaries to the site shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented before the development is first occupied and shall be retained thereafter.
- 9) Trees and shrubs shall be planted on the site in accordance with a landscape scheme to be submitted and approved in writing by the local planning authority prior to the development being first brought into use. The approved scheme shall be implemented in full and carried out within 6 months of the occupation of the dwelling or the completion of the development, whichever is the sooner, or in accordance with phasing details included as part of the scheme and subsequently approved by the local planning authority. Any trees or shrubs that die, are removed or become seriously damaged or diseased within five years of planting shall be replaced in the next available planting season with others of similar size and species.
- 10) Prior to the development hereby permitted being first occupied or brought into use, a scheme detailing how parts of the site to be used by vehicles are to be laid out, constructed, surfaced, drained and lit shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented before the development is first occupied and thereafter be kept available at all times for the use of vehicles.
- 11) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no extensions, porches, garages, outbuildings, sheds, greenhouses, hard surfaces, fences, gates, walls, dormers or any other alterations to the roof shall be erected other than those expressly authorised by this permission.