



Appeal Decision

Site visit made on 13 June 2023

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 July 2023

Appeal Ref: APP/C2741/W/23/3315249

Holly Tree Farm, Murton Way, York YO19 5UN

- 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 P Mandy against the decision of City of York Council.
 - The application Ref 20/01987/FUL, dated 16 October 2020, was refused by notice dated 1 August 2022.
 - The development proposed is described on the application form as "This application is to renew previously expired planning approval ref 11/00497/FUL allowed on appeal ref: APP/C2741/A/12/2169412 following the removal of the extension and re-instate of the existing stable building which includes change of use from domestic stable building to self contained 2 bedroom holiday let".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has requested confirmation that it would be acceptable to reinstate the existing stable building to match its original form, or for consideration to be given to the use of the building on the site as a shower block to service their adjacent caravan site in place of the approved shower block which it is stated is of a similar size. The appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially the same scheme that was considered by the Council and interested parties at the application stage. The alternatives suggested by the appellant would be markedly different to the scheme considered by the Council. Parties may be prejudiced by my consideration of these alternatives and so they have not formed part of my assessment or decision.

Main Issues

3. The main issues are:
 - whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies, including the effect on the openness of the Green Belt;
 - whether the appeal site is an appropriate location for the proposed development with reference to its vulnerability to flooding; and
 - whether any harm to the Green Belt 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

Policy Context

4. Saved Policies YH9 and Y1 of the Yorkshire and Humberside Regional Spatial Strategy (the RSS) establish the principle of the York Green Belt. Its key diagram illustrates the general extent of the Green Belt. There is no dispute between the main parties that the appeal site should be treated as being within the Green Belt. Furthermore, my attention has been drawn to the planning history associated with the site including previous appeal decisions in which the Inspectors concluded that the site should be considered as Green Belt¹. There is nothing in the evidence before me to indicate that a different conclusion should be reached, and so for the purposes of this appeal I am satisfied that the site lies within the Green Belt.
5. The Council's first reason for refusal refers to the City of York Draft Local Plan Incorporating the 4th set of changes - Development Control Local Plan 2005 (the DCLP) and the emerging Local Plan which is undergoing examination. Although the DCLP and the emerging Local Plan do not form part of the statutory development plan for the purposes of Section 38(6) of the Planning and Compensation Act 2004, they are material considerations in determining planning applications. I have given both the DCLP and the emerging Local Plan weight in so far as they are consistent with the National Planning Policy Framework 2021 (the Framework). When referring to the emerging Local Plan policies, I have referred to the City of York Local Plan Publication Draft 2018 (the PDLP), as referred to in the Council's reason for refusal.

Inappropriate Development and Openness

6. Paragraph 147 of the Framework sets out that inappropriate development is, by definition, harmful to the Green Belt. The Framework states that openness and permanence are the essential characteristics of the Green Belt. Openness has both spatial and visual aspects. Paragraph 149 of the Framework states that the construction of new buildings should be regarded as inappropriate in the Green Belt other than in a number of exceptions.
7. The evidence indicates that the site originally included a stable building. Planning permission was granted on appeal² in 2012 for the change of use of the stable to a holiday let. This development started after the permission had lapsed. Moreover, the resulting development did not accord with the approved plans, as the stable was largely demolished and a larger building was constructed, mainly through a greater width and height. The appellant states that all brickwork and roof tiles were reclaimed and reused. This building remains on the site. A retrospective planning application was submitted for this building and its use as a holiday let which was dismissed on appeal³ in 2017. An appeal⁴ against an enforcement notice which sought the removal of the building was dismissed in 2020.

¹ Appeal references APP/C2741/W/17/3176560 and APP/C2741/C/20/3248406

² Appeal reference APP/C2741/A/12/2169412

³ Appeal reference APP/C2741/W/17/3176560

⁴ Appeal reference APP/C2741/C/20/3248406

8. The Inspector for the 2017 appeal dealing with the retrospective application for the building that is currently on the site identified that *'a significant degree of demolition, alteration and extension over and above the building which was originally in place'* had occurred and it was *'not therefore simply a conversion of the original stable block'*⁵.
9. The Inspector for the appeal against the enforcement notice in 2020 concurred with this position, stating that *'I acknowledge that 50% of the original walls remain however, the development included the rebuilding of the entire south and east elevations and approximately one third of the west elevation, in order to increase the footprint of the building. Additionally, the overall height has been increased by 0.6m. I consider these works exceed what could reasonably be described as conversion and are so extensive as to amount to a new building'*⁶.
10. The extensive demolition and rebuilding are also highlighted by the Council's evidence for this current appeal. This states that only the rear northern elevation up to around one metre in height and approximately two thirds of the west side wall are all that remain of the former stable building.
11. These remaining walls would be retained and incorporated into the building as now proposed. The front south wall and parts of the side east and west walls, which formed the larger building, would be demolished. These elevations and the roof would then be constructed using what is stated on the submitted plans as reclaimed bricks and pantiles from the stable. The evidence before me indicates that the building as proposed would be similar in scale to the stable that was previously on the site.
12. I appreciate that quite extensive works can be undertaken under permitted development rights, but these relate to specific circumstances. I also appreciate that the term 'new building' is not specifically defined in the Framework. Nevertheless, in my judgement, given the extent of demolition that has taken place and the amount of construction required, the works would not amount to the conversion of a building but are so extensive as to represent a new building. This is consistent with the position taken by the previous Inspector for the 2020 enforcement appeal, who considered a smaller alternative development in addition to addressing the acceptability of the larger building that is on the site. The evidence before me indicates that this current appeal proposal would be a similar scale to that smaller alternative development. The previous Inspector stated that *'In respect of either development as the original building has been substantially demolished, both constitute the erection of a new building'*⁷.
13. For the same reasons, I am also not persuaded that the works would fall within the scope of section 55(2)(a) of the Town and Country Planning Act 1990, as highlighted by the appellant, which defines what operations or use of land do not include development.
14. The upheld enforcement notice is a very relevant material planning consideration as it requires the demolition of the building that is on the site within a prescribed period and establishes that such a building is unauthorised

⁵ Paragraph 2 of appeal decision APP/C2741/W/17/3176560

⁶ Paragraph 15 of appeal decision APP/C2741/C/20/3248406

⁷ Paragraph 19 of appeal decision APP/C2741/C/20/3248406

development and hence unlawful. The evidence indicates that there are no extant planning permissions in place for the erection of any building on the land. It is therefore in this context that I must consider whether the proposal amounts to inappropriate development in the Green Belt.

15. Both main parties have made specific reference to the exceptions at paragraph 149 c), d) and g) of the Framework. Given my conclusion that the appeal proposal would represent a new building, it would not meet the exception at paragraph 149 c) which relates to the extension or alteration of a building. The proposal would also not meet the exception at paragraph 149 d) as the proposed use of the building as a holiday let would be a different use to a stable.
16. While the evidence indicates that there was a building on the site that had been used as a stable, there is no clear evidence as to its lawfulness. Nevertheless, I have proceeded on the basis that it was, and so for the purposes of this appeal, have considered the site as previously developed land. The exception at paragraph 149 g) of the Framework would therefore be relevant. This allows for the limited infilling or the partial or complete redevelopment of previously developed land which would not have a greater impact on the openness of the Green Belt than the existing development.
17. The appeal site is set back from Murton Way and is located to the rear of Holly Tree Farm, a two-storey dwelling. The site can be clearly seen from Murton Way when near to the entrance but is relatively well screened in longer distance views by the roadside vegetation, although this would provide less effective screening during winter months. Immediately to the south is a development of eight holiday lodges located around a small lake, which is served by the same access from Murton Way. Notwithstanding the nearby industrial estate and electricity substation which are discernible within a vegetated backdrop, the site and its immediate surroundings have a rural character. A stable would not be an incongruous form of development in this rural type setting.
18. The scale of the proposed building would be similar to the former stable. In spatial terms therefore, the proposed building itself would not have a greater impact on the openness of the Green Belt than the former stable.
19. However, the assessment of impact on openness, in both a spatial and visual sense, is about more than a straightforward calculation of volume or footprint. In this regard, I am mindful of the consideration given by the Inspector to the smaller alternative development in the 2020 enforcement appeal.
20. When considering the smaller alternative development, the previous Inspector concluded that *'notwithstanding the limited public views, the permanent impact of a dwelling, albeit used for holiday accommodation, with the associated domestic paraphernalia and parking areas, combined with comings and goings, would undoubtedly have a greater impact on openness when compared to the former circumstances⁸'*.
21. The submitted evidence indicates that this current appeal proposal would be similar in scale and appearance to the smaller alternative development considered by the previous Inspector. Furthermore, the proposed use would be

⁸ Paragraph 26 of appeal decision APP/C2741/C/20/3248406

the same. Within this context, notwithstanding the fact that the adjacent holiday lodges have now been constructed, I have no justifiable reason to reach a different conclusion to that of the previous Inspector. Hence, I find that based on the evidence that is before me, and given the existing lawful position for the site, the proposal would have a greater impact on the openness of the Green Belt. Therefore, the exception in paragraph 149 g) would not be met. For the same reasons, there would be some limited encroachment into the countryside and hence the proposal would conflict with one of the purposes of the Green Belt.

22. Accordingly, I conclude that the proposal would constitute inappropriate development in the Green Belt and would be inherently harmful to it.

Flood Risk

23. The Council identifies that the site is located in flood zone 3a, information which is not specifically contested by the appellant. The Planning Practice Guidance (the PPG) identifies this zone as having a high probability of flooding and defines dwellings as 'more vulnerable' in terms of flood risk.
24. Chapter 14 of the Framework seeks to steer development to areas with the lowest risk of flooding including through the application of a sequential test. The PPG advises that the sequential test should be applied to major and non-major development proposed in areas at risk of flooding unless specified circumstances apply⁹.
25. The site is not in an area at low risk from flooding. The development type would not fall within one of those identified in footnote 56 of the Framework as being exempt from the sequential test. There is no evidence before me to indicate that the site has been allocated for development and subject to the sequential test at the plan making stage. Consequently, as the site is in an area at risk of flooding and none of the specified circumstances apply, the proposal is subject to the sequential test requirements.
26. There is no evidence before me to indicate that the appellant has undertaken a sequential test. On this basis, the appellant has failed to demonstrate that there are no reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. The sequential test has not therefore been passed.
27. Paragraph 167 of the Framework and associated footnote 55 specify that a flood risk assessment (FRA) is required for developments in flood zone 3. Development should only be allowed in areas at risk of flooding where, in the light of this assessment, it can be demonstrated that certain criteria are met.
28. An FRA was submitted with the application¹⁰. Following amendments to it, the Environment Agency removed its objection to the proposal, subject to the imposition of a condition to ensure adherence to the identified mitigation measures. However, even where an FRA shows the development can be made safe throughout its lifetime without increasing risk elsewhere, the sequential test still needs to be satisfied. Furthermore, it is for the relevant decision makers and not the Environment Agency to consider whether the sequential test is passed.

⁹ PPG paragraph reference ID: 7-27-20220825

¹⁰ Flood Risk Assessment, Topping Engineers, reference 21152-FRA-001 Rev A, April 2021

29. Given that the sequential test has not been passed, it is not necessary for me to address the exception test that is required for more vulnerable development in flood zone 3, although I note it is referenced in the second reason for refusal on the Council's decision notice.
30. For the above reasons, I conclude that it has not been demonstrated that the site is an appropriate location for the proposed development with reference to its vulnerability to flooding. Consequently, the proposal would conflict with the objectives in chapter 14 of the Framework which seek to ensure that development takes place in areas with the lowest risk of flooding.

Other Considerations

31. The proposal would increase the quantity of tourist accommodation serving York and the wider area in a location that is within a reasonable walking distance of a range of services and facilities. Economic benefits to the local area through local expenditure would consequently result. However, the proposal would be for just one holiday let and so the weight that I can give these associated benefits is inevitably limited.
32. The proposal would make use of previously developed land, and this is a matter to which I afford some limited positive weight.

Balance and Conclusion

33. The proposal would be inappropriate development in the Green Belt, which is by definition harmful. In line with paragraph 148 of the Framework, I attach substantial weight to the harm to the Green Belt by reason of inappropriateness. Additionally, I have found harm in terms of flood risk. Although the Council's first reason for refusal also refers to harm caused by a lack of ecology information, there is no evidence to suggest that the proposal is unacceptable in this regard.
34. I have taken into account the aforementioned other considerations. However, inherent in my reasoning above in terms of 'other considerations', these do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the proposal do not exist. The proposal would therefore conflict with the requirements of chapter 13 of the Framework which have been summarised above. The proposal would also conflict with Policy GB1 of the DCLP and Policy GB1 of the PDLP.
35. The Council has referred to Policy YH9 of the RSS in its first reason for refusal. However, as that policy is concerned with providing guidance on setting the detailed boundaries of the Green Belt, I do not find a conflict with its requirements.
36. For the above reasons, I conclude that the appeal should be dismissed.

F Wilkinson

INSPECTOR