



Appeal Decision

Site visit made on 3 July 2023

by S Pearce BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 September 2023

Appeal Ref: APP/J4423/W/23/3317767

Lower Butterthwaite Farm, 125 Butterthwaite Lane, Sheffield S35 9WA

- 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 Thomas Cowen and Lisa Parker against the decision of Sheffield City Council.
 - The application Ref 22/01409/FUL, dated 7 April 2022, was refused by notice dated 5 September 2022.
 - The development proposed is described as the “demolition of disused barn (retrospective) and erection of replacement building to create 1 no. dwellinghouse with associated landscaping and access arrangements.”
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Thomas Cowen and Ms Lisa Parker against Sheffield City Council. This application is the subject of a separate Decision.

Preliminary Matters

3. There is no resolution regarding the lawful use of the appeal site. The appellants have submitted information and evidence, including a signed affidavit, in support of their assertions the land has a lawful residential use. However, resolving an issue with regard to the lawful use of land or buildings is not a matter for determination as part of an appeal made under section 78 of the Town and Country Planning Act 1990 (the Act). In this regard, it is open to the appellants to apply to have this matter determined under section 191 of the Act.
4. Indeed, the appellants have made a Certificate application to the Council to seek to demonstrate that an incidental outbuilding to the main dwelling could be erected on a site, under permitted development rights. This is a matter for the Council to determine and nothing in this decision should be seen to prejudice the detailed consideration of that proposal.
5. Planning permission¹ was granted for the conversion and extension of a building on the appeal site to a separate dwelling. That permission was granted in October 2018. However, rather than the building being converted it was demolished in 2020. That permission requiring the conversion of the standing building to form a dwelling cannot, therefore, be undertaken. The demolition

¹ Application 17/04006/FUL

element of the proposal in this case is retrospective and I have considered the appeal on that basis.

Main Issues

6. The main issues are:

- whether or not the proposal would be inappropriate development in the Green Belt having regard to the development plan and the National Planning Policy Framework (the Framework), including the effect upon the openness of the Green Belt, and,
- 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

Whether or not inappropriate development

7. The Framework explains that the Government attaches great importance to Green Belts. 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.
8. The construction of new buildings within the Green Belt are inappropriate development with the exceptions of the types of development listed in paragraph 149 of the Framework. The appellants contend that the proposed development complies with paragraph 149 c), d) and g) of the Framework. It would only require one of the exceptions to be met for the proposal to be considered not inappropriate development.
9. If the lawful use of the appeal site was found to be residential, paragraph 149 c) of the Framework allows for the extension or alteration of a building provided it does not result in disproportionate additions over and above the size of the original building. However, the appeal proposal comprises a new and separate dwelling. It would not, therefore, comprise an extension to be used incidental to the main building. Indeed, the building has been demolished and the proposal would not be an extension or alteration of the previous building in this location. As a consequence, the proposed development would not meet paragraph 149 c) of the Framework.
10. Paragraph 149 d) of the Framework can allow the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces. Whether the previous use of the demolished building was agricultural or an incidental residential use to the main house, it would still be a different type of use to a new and independent dwelling and this exception under paragraph 149 d) would not be met by the scheme.
11. The case is made by the appellants that the scheme would also meet with paragraph 149 g) of the Framework. This criterion can allow new buildings where it consists of, among other things, 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.

12. As I have explained above, there is no resolution between the parties over the lawful use of the land. If the appeal site fell within the residential curtilage, and being outside any settlement within the countryside, it could be considered as previously developed land in terms of the Framework definition. Notwithstanding this, and also whether or not the scheme could be considered limited infilling, to benefit from the exception under paragraph 149 g) it is necessary for the proposal to not have a greater impact on the openness of the Green Belt than the existing development.
13. The Planning Practice Guidance provides advice on the factors that can be taken into account when considering the potential impact of development on the openness of the Green Belt and that openness is capable of having both spatial and visual aspects². As outlined above, there is agreement that there was formerly a building, identified in the submissions as Building 1, within the appeal site. The proposed development has been designed to reflect the broad location, size and massing of Building 1 and the development granted under ref: 17/04006/FUL, which included an extension. However, Building 1 has since been demolished and the appeal site is now vacant and open land. It contributes to a modest extent within this part of the site to the openness of the area.
14. I have considered the photographs that the appellants have submitted from various vantage points and visited the site and area. I consider the proposed development would be visible from vantage points along Butterthwaite Lane and the nearby cycle route, bridleway and public right of way. Due to the siting of the proposed development, it would be viewed against and as part of the existing cluster of buildings associated with No 125.
15. The visual impact of the appeal proposal would be reduced as a result of its siting in broad association with the other buildings. The proposed landscaping, reuse of stone from Building 1 and utilising the same materials palette agreed under ref: 17/04006/FUL would provide some mitigation. However, it is necessary to judge the proposal against current circumstances. While acknowledging there would be some reduction in the visual impact of the proposal because of its location, the introduction of a physical building into an otherwise open site, that is devoid of structures in that specific area, would inevitably have a greater impact on the openness of the Green Belt than the existing layout in both visual and spatial terms.
16. In light of this analysis, the proposed development would have a greater impact on the openness of the Green Belt than the existing development and consequently the scheme would not meet with the requirements of paragraph 149 g) of the Framework.
17. For the above reasons, the scheme would not meet with any of the Framework exceptions for the construction of a new building and I conclude that the proposed development would comprise inappropriate development within the Green Belt and would not preserve openness. This harm to the Green Belt is a matter to which I attach substantial weight, as required by paragraph 148 of the Framework.

² I have also had regard to the Courts cases referred to by the appellants including *Turner v SSCLG* [2016] EWCA Civ 466 and *Goodman Logistics v SSCLG* [2017] EWHC 947 (Admin)

18. The development plan includes the Sheffield Unitary Development Plan (adopted March 1998) and contains policies applicable to the Green Belt, such as Policies GE1, GE2, GE3, GE4 and GE5. While these policies are somewhat dated and not entirely consistent with the Framework, nevertheless the appeal proposal does not garner support from these policies. The effect of these policies should merit limited weight and the Council has relied on the Framework in its decision notice and I agree with this approach.

Other considerations

19. The appellants have set out a series of benefits which are argued in support of the case for approval, and I have considered and taken them all into account. In particular, the case is made that the scheme would deliver a dwelling, adding to the stock available, and in a plan area where the Council is unable to demonstrate a Framework compliant supply of housing land. The appellants indicate in the appeal statement that the five year supply is about 3.63 years, which is a significant undersupply. The proposed dwelling would therefore make a modest but worthwhile contribution towards local housing numbers, although as only one unit would be added to the stock, I attribute this benefit limited weight.
20. The scheme would also secure biodiversity benefits and deliver economic and social benefits during construction and in subsequent occupations. Again, I attribute these benefits limited weight.
21. The design of the proposed development, having regard to site's context and proposed materials, would be acceptable. I also note that the Council did not raise concerns in respect to a number of other matters, including highway safety, amenity, character and appearance, ecological interest or drainage. Based on the information before me, I see no reason to disagree. There would be no conflict with the development plan or the Framework in these respects. However, a lack of harm in these respects is neutral and weighs neither for nor against the development.
22. The appellants set out the case that the construction of an incidental outbuilding to the main house, under permitted development rights, should be considered as a viable fallback option, the impacts of which should be compared with the appeal scheme. I have had regard to the submitted information on this issue, including the certificate application and all the Court judgements that have been raised in the submissions, in particular, the case of *Mansell v Tonbridge and Malling BC [2017] EWCA Civ 1314*. However, each case needs to be considered on its merits. In the circumstances of this case, despite the affidavit and supporting evidence, the Council has not confirmed as part of this appeal that it accepts the appellant's case, and these matters require detailed scrutiny.
23. The outbuilding the subject of the certificate has not therefore been agreed at this stage as permitted development, as far as the information is before me. Even if it was to be agreed, it seems to me that the proposed incidental outbuilding would be lower than the proposed dwelling and because of this, even having regard to the respective floor areas, it would have less visual impact on openness than the taller, and, in my view, more prominent proposed dwelling in terms of Green Belt effects. While I consider that the potential fallback option is material to the considerations in this appeal, it nevertheless

should, for the reasons explained, merit limited weight at the present time in terms of its support for the appeal proposal.

24. It has been put to me that Building 1 was a non-designated heritage asset. The building is no longer standing, and I was therefore unable to undertake any such assessment during my site visit. Although the Council considered Building 1 to add to the attractive and rural character of the area, there is limited evidence before me which clearly demonstrates the building was of such a standard as to meet the bar required to be considered as a non-designated heritage asset. The Planning Practice Guidance explains that a substantial majority of buildings have little or no heritage significance, with only a minority to merit identification as a non-designated heritage asset. Furthermore, in this case, the building has been demolished and if the scheme was to be approved, a new building, albeit one that could use some of the previous materials, would be constructed. Therefore, any heritage arguments in favour of the scheme merit limited weight.
25. The scheme at Oak Barn³ has been drawn to my attention. Importantly, this scheme for rebuilding, and an earlier approval for conversion, were for development that provided ancillary residential use to the main dwellinghouse. This is materially different to the separate dwelling which is proposed in this case. The Council identified that there were very special circumstances with the Oak Barn case, and while I agree that consistency in decision making is important, there is a material difference between the two planning situations. Each proposal is required to be decided on its merits and I afford the Oak Barn case limited weight in favour of the present scheme.
26. I have had regard to the representations in support of the scheme, the main issues which I have considered elsewhere in this decision, and that the Parish Council raise no objections.
27. The appellants assert it is reasonable to assume that the Council would seek to remedy the replacement of Building 1, particularly as it was demolished without consent. While noting there may be some precedence for such action, ultimately, any such decision, including the use of enforcement action, is a matter for the Council, and lies outside the scope of an appeal under section 78 of the Act.
28. Taking all these considerations into account, I judge that cumulatively the benefits and arguments in favour of approval merit moderate weight in favour of the appeal proposal.

Planning Balance and Conclusion

29. The proposal would constitute inappropriate development in the Green Belt and would harm openness. The Framework requires that the harm by reason of inappropriateness be given substantial weight and that inappropriate development should not be approved except in very special circumstances. Very special circumstances will not exist unless the harm to the Green Belt and any other harm is clearly outweighed by other considerations.
30. I have examined all the benefits and arguments in favour of the appeal proposal above, and cumulatively these other considerations should merit moderate weight in favour of approval. For the reasons I have explained, the

³ Application 21/05043/FUL – Oak Farm, Tofts Lane, Sheffield S6 5SL

harm to the Green Belt should afford substantial weight. Therefore, the substantial weight to be given to the Green Belt harm is not clearly outweighed by the other considerations sufficient to demonstrate very special circumstances.

31. The Council is unable to demonstrate a five-year supply of deliverable housing sites. In such circumstances paragraph 11 d) of the Framework indicates, in summary, that where the policies which are most important for determining the application are out-of-date, permission should be granted, unless the application of policies in the Framework to protect areas or assets of particular importance provide a clear reason for refusing the proposal. Footnote 7 identifies the Green Belt as such a protected area. For the reasons I have explained above, the harm to the Green Belt should form a clear reason for refusing the proposal. As a consequence, the presumption in favour of sustainable development does not apply in this case.
32. The development is contrary to the Framework policy approach for the protection of the Green Belt. I have considered all other matters raised, including the policies of the development plan, but none clearly outweigh the conclusions I have reached that the harm to the Green Belt is not outweighed by other planning considerations. For the reasons set out above, I conclude that the appeal should be dismissed.

S Pearce

INSPECTOR