



Appeal Decision

Site visit made on 16 November 2023

by David English BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 December 2023

Appeal Ref: APP/C2741/W/23/3318792

Mulberry Farm, Askham Richard, York YO23 3NY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Daryl Thompson against the City of York Council.
 - The application Ref 22/02282/FUL, is dated 2 November 2022.
 - The development proposed is Erection of replacement agricultural barn and associated access from existing private drive.
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Decision

1. The appeal is allowed, and planning permission is granted for the erection of replacement agricultural barn and associated access from existing private drive at Mulberry Farm, Askham Richard, York YO23 3NY in accordance with the terms of the application, Ref. 22/02282/FUL, dated 2 November 2022, subject to the conditions in the attached schedule.

Preliminary Matters

2. The appeal has been made against the failure of the Council to give notice of its decision within the prescribed time period. The Council's appeal statement sets out that, had it been in a position to make a decision on the application, it would have refused permission. The reasons for refusal the Council would have used relate to the failure of the appellant to demonstrate a functional need for a building of the size proposed which, the Council considers, presents conflict with the exceptions to inappropriate development in the Green Belt given at paragraph 149 a) of the National Planning Policy Framework (the Framework). I have had regard to the Council's position in defining the main issues in this appeal.
3. The Council refers to progress made on the emerging City of York Local Plan - Publication Draft (2018) (Regulation 19 Consultation) (the Emerging Plan), more specifically that consultation has taken place on proposed modifications and that it anticipates adoption towards the end of 2023. However, I have not been provided with further information about the modifications to the Emerging Plan, nor does the Council indicate the weight it would have afforded to policies in that Plan had it been in a position to make a decision on the planning application. Therefore, whilst I have had regard to the policies referred to in the Council's appeal statement in my determination of this appeal, and the associated extracts provided from the Emerging Plan, in accordance with paragraph 48 of the Framework, I have given these policies limited weight.
4. The planning application form refers to the application site address as 'Village Farm Bungalow'. However, the appeal submission refers to 'Mulberry Farm', as

does the Council's appeal statement. I saw that the entrance to the site included a name plate indicating the property to be 'Mulberry Farm'. Given that the appellant has referred to the appeal site as 'Mulberry Farm' in his appeal documentation I am satisfied that the site name used in this decision reflects the correct location of the proposed development.

Main Issues

5. The main issues in this appeal are:

- whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies, and the effect on the openness of the Green Belt;
- if the proposed development constitutes inappropriate development in 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; and
- the effect of the proposal on the character and appearance and setting of the Askham Richard Conservation Area.

Reasons

Whether inappropriate development in the Green Belt

6. The proposal is for the erection of an agricultural building in the countryside and Green Belt to house livestock and agricultural equipment. The building would be constructed largely on the site of an existing low barn that would be removed to facilitate the development, as would a nearby dilapidated pole barn situated in the adjacent Askham Richard Conservation Area (the Conservation Area). The proposed building would be larger than the barn it would replace. However, when considered in association with the removal of the pole barn which comprises part of the proposal, the development would lead to a significantly smaller area of built development on the agricultural holding in comparison to that created by those existing barns.
7. The appeal site forms part of an agricultural holding covering some 1.87ha which, at the time of my visit was largely laid to pasture, albeit no livestock were present on the land. I also saw various agricultural related equipment on the appeal site. There is no dispute between the main parties that the appeal site comprises agricultural land or that the development proposed is for agricultural purposes.
8. The Government attaches great importance to Green Belts. Paragraph 137 of the Framework identifies that the fundamental aim of national 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' in the Green Belt is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The Framework regards the construction of new buildings as inappropriate development in the Green Belt, subject to various exceptions set out in paragraph 149.

9. One of the exceptions given at paragraph 149 a) in the Framework is for 'buildings for agriculture and forestry'. While Policy GB1 of the Emerging Plan is not expressed directly in the terms given in the Framework, the intention is clear that buildings for agriculture and forestry uses are not to be treated as inappropriate development in the Green Belt. Accordingly, in this specific respect, whilst I have not been provided with any wording associated with modifications to relevant policies in the Emerging Plan, I am satisfied that the version of Policy GB1 I have seen is broadly consistent with the intentions of the Framework.
10. As the proposed building would be for agricultural use to house livestock and agricultural equipment it would fall within the exception given at paragraph 149 a) of the Framework and would not be inappropriate development in the Green Belt.
11. The Courts¹ have held that where the impact on openness is implicitly taken into account in some of the Framework exceptions, unless there is a specific requirement to consider the actual effects on openness, such development should not be regarded as harmful to the openness of the Green Belt and does not have to be justified by very special circumstances. The exception at paragraph 149 a) has no such specific requirement as it simply allows for 'buildings for agriculture and forestry'.
12. Although the Council refer to the requirement in its draft Policy GB1 of the Emerging Plan that scale, location and design of development should not detract from the openness of the Green Belt, I am not convinced that such a requirement would be consistent with the Framework in all cases having regard to the decision of The Courts noted above. Furthermore, no indication has been provided by the Council about any modifications made to that policy subsequent to the Local Plan Examination in Public in this respect. I therefore attach little weight to this part of the Draft Policy GB1. Overall, on this point, I conclude that there is no need for me to assess the impact of the proposed development on the openness of the Green Belt or consider whether the development needs to be justified by very special circumstances. Accordingly, the proposal would not conflict with the intentions of the Framework in respect of the defined exceptions to inappropriate development.
13. The Council's concern with the proposed development lies principally with what it claims to be a lack of demonstration of a functional need on the holding for a building of the size and height proposed given the presence of other buildings on the holding where, the Council claim, some of the equipment could be housed. However, the Framework requires no such demonstration to be made, nor does the Planning Practice Guidance (the PPG) include such a requirement. Furthermore, I have not been directed to any development plan policies or other guidance prepared by the Council in this respect. Moreover, the appellant provided information on this matter to the Council in the various email exchanges which indicates that the other building space within the holding is not appropriate to accommodate the equipment, some of which is currently stored unsatisfactorily outside, and I have no reason to doubt the validity of this information from what I saw on site.

¹ *Lee Valley Regional Park Authority, R (on the application of) v Epping Forest District Council & Anor (Rev 1)* [2016] EWCA Civ 404

14. The Council refer in the email correspondence with the appellant to an appeal decision from several years ago concerning a site at Dunnington which it says is relevant to the matter of functional agricultural needs. However, I have not been provided with that decision nor do I have any details of the circumstances of that case that would allow me to give it further scrutiny or consider any meaningful comparison. In any event I am not convinced that legislation, national policy, or the development plan currently require the approach advocated by the Council in respect of demonstrating a functional need for the building in cases such as the appeal before me. I therefore find that the Council's interpretation of the exception given at paragraph 149 a) of the Framework is not supported by appropriate evidence in this case.
15. On this main issue I conclude that the proposal would not be inappropriate development in the Green Belt. Given my conclusion on this matter, there is no requirement to assess the impact of the development on the openness of the Green Belt or whether there are other considerations that amount to very special circumstances that justify the development. While I have found some inconsistency with the Framework in the draft version of Policy GB1 of the Emerging Plan, and notwithstanding the limited weight I afford to that policy, the proposal would nevertheless accord with its intentions in respect of supporting development in the Green Belt only by exception, including agricultural buildings.

Character and appearance

16. The appeal site straddles the Conservation Area boundary with the largely derelict and dilapidated pole barn sitting just inside the boundary, and the site of the proposed new building being located outwith but close to the boundary of the Conservation Area. As such, I have had regard to the duty to pay special attention to the desirability of preserving or enhancing the character or appearance of that area, and I have had regard to the effect the proposed building would have on the setting of the Conservation Area as required by the Framework.
17. The Askham Richard Conservation Area comprises the historic core of the village which appears to have remained largely unaltered throughout the twentieth century. It is centred on the village green with historic farmsteads fronting the main street and having long plots in which various agricultural buildings are located. The significance of the Conservation Area derives largely from its age and rural character which stems from its development and long-term association with agriculture in the local area.
18. The Council raises no objection to the demolition of the dilapidated pole barn and confirms its opinion that demolition would have a positive impact on the Conservation Area, thereby preserving or enhancing its character or appearance. From my observations during my site visit I have no reason to disagree with that assessment. I therefore find that this aspect of the proposal would enhance the character and appearance of the Conservation Area.
19. While the Council refers to the proposed building resulting in less than substantial harm to the setting of the Conservation Area, other than reference being made to the proposal being visible from beyond the site, a matter also noted by Askham Richard Parish Council, no further explanation is given about the nature of the harm referred to by the Council. However, the Council concludes in its appeal statement that '...subject to any permission being

appropriately conditioned in terms of the treatments of finishes and the site boundary treatment then the proposal is felt to be acceptable in terms of its impact upon the setting of the Conservation Area.'

20. The proposed building is larger and taller than the existing barn it would replace. However, it is relatively small in comparison to adjacent similar agricultural buildings at White House Farm. Furthermore, it would be nestled towards the bottom of the agricultural holding and, while visible from nearby public highways, it would be reasonably well screened by vegetation along the site boundaries even when leaf cover is limited during winter months. Additional appropriate tree planting could be secured by planning condition were the appeal to be allowed.
21. Having regard to its scale, height and design, when seen in association with the neighbouring agricultural barns and sheds, which is how the proposal would generally be experienced from most vantage points, the proposal would not look out of place given its context and visual association with other nearby active agricultural enterprises and buildings. As a result, I am satisfied that the proposal would not harm the setting of the Conservation Area and would be readily assimilated as an unsurprising element within that setting. In this respect I agree with the Council's conclusions regarding the impact of the proposal on the setting of the Conservation Area.
22. On this main issue I find that the proposal would preserve and enhance the character and appearance and setting of the Askham Richard Conservation Area. Accordingly, the proposal would not conflict with the expectations of Policy D4 of the Emerging Plan which requires development proposals to be designed to preserve or enhance the special character and appearance of the Conservation Area and better reveal its significance. The proposal would also accord with the policies in the Framework on conserving and enhancing the historic environment.

Conditions

23. I have considered the conditions suggested by the Council against the advice in the Framework and the PPG, and to which the appellant has raised no objection. I have amended some for consistency and clarity.
24. In addition to the standard condition that limits the lifespan of the planning permission, I have specified the approved plans for the avoidance of doubt and in the interests of proper planning. In the interests of the character and appearance of the area, it is necessary to impose a condition requiring approval of building materials and landscaping, including the need for maintenance and replacement of trees and shrubs as necessary throughout a reasonable period that allows the landscaping to become established.
25. It is also necessary to secure details of drainage arrangements. However, it is not necessary in this case for this to be a pre-commencement condition since the appellant will be aware of his obligations in this regard and the potential consequences of not securing early approval of these details. I have also imposed a condition requiring the provision of parking and manoeuvring areas in the interests of highway safety. The details of these areas must first be approved by the Council given the lack of clarity on the plans in respect of this matter.

Conclusion

26. For the reasons given above and noting that the Council does not have an adopted development plan, having regard to all material considerations including the Framework, the appeal is allowed subject to those conditions set out in the schedule below.

David English

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following plans:
Location Plan (Drawing No. 5342 PO1 Revision A);
Block Site Plan (Drawing No. 5342 PO2 Revision A); and
Proposed Barn Plans & Elevations (Drawing No. 5342 PO3 Revision A).
- 3) No development shall take place above ground level until details of the materials and finishes to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 4) No development shall take place above ground level until there shall have been submitted to and approved in writing by the Local Planning Authority a scheme of landscaping.
- 5) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the commencement of use of the building or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 6) The building hereby permitted shall not be brought into use until space has been laid out for the parking and manoeuvring of vehicles within the site in accordance with details which shall first have been submitted to and approved in writing by the Local Planning Authority. That space shall thereafter be kept available at all times for the parking and manoeuvring of vehicles.
- 7) No development shall take place above ground level until details of site drainage works for the disposal of surface and foul water have been submitted to and approved in writing by the Local Planning Authority. The approved details shall be carried out before the building hereby permitted is first brought into use and the works shall thereafter be maintained.