



Appeal Decision

Site visit made on 12 December 2023

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th January 2024

Appeal Ref: APP/Z4718/W/23/3323209

Building off Upper Pike Law, Scapegoat Hill

- 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 M Foster of Eco Spas against the decision of Kirklees Council.
 - The application Ref 2023/62/90497/W, dated 13 February 2023, was refused by notice dated 5 April 2023.
 - The development proposed is demolition of existing storage building and erection of new storage building (same siting and footprint).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A new National Planning Policy Framework (Framework) was published in December 2023. I am satisfied that the changes made to the Framework are not relevant to the present appeal. Therefore, the new Framework does not affect the main parties' cases and it has not been necessary to seek further comments. References in the decision are to the December 2023 Framework.

Main Issues

3. The main issues are:
 - whether the proposal would be inappropriate development in the Green Belt including the effect on the openness of the Green Belt;
 - the effect of the proposal on highway safety; 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 Inappropriate Development

4. Paragraph 152 of the Framework states 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.
5. Paragraph 154 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.

6. The exception at paragraph 154 d) allows for the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces. Criterion b of Policy LP57 of the 2019 adopted Kirklees Local Plan Strategy and Policies (the LP) includes a similar exception.
7. There appears to be agreement between the main parties that the proposed building would not be materially larger than the building that would be replaced. I have no reason to take a different view. However, the main parties disagree about the use of the building currently on the site.
8. The appellant has provided information from the previous owners of the site about its uses. This states that the building was originally constructed as a kennels in the late 1950s. It was then used for personal storage before being used for storage in connection with a building/roofing business until around 2008. It was then used by the family for storage for around a further eight years. From that time the building has been used less intensively for storage purposes by the family.
9. No lawful development certificate to establish the lawful use of the building is before me. On the balance of probability and on the available evidence before me, it has not been sufficiently proven that the building has been used for B8 storage continuously for 10 years. The appellant has not therefore reasonably made the case that the building has a lawful B8 storage use.
10. As such, I am not satisfied that the proposed building would be in the same use as the one that would be replaced. Consequently, the proposal would not be compliant with the first test of paragraph 154 d) and Policy LP57b.
11. The proposal can also be considered in relation to exception g) of paragraph 154 of the Framework, and Policy LP59 of the LP, which allow for the redevelopment of previously developed land and brownfield sites respectively. These exceptions require consideration of whether the proposal would have a greater impact on the openness of the Green Belt than the existing development in terms of paragraph 154 g), and in the case of Policy LP59 whether the existing footprint is exceeded. Policy LP59 also requires that regard is had to relevant design policies to ensure that the resultant development does not materially detract from its Green Belt setting. In addition, the policy states that redevelopment should not result in the loss of land that is of high environmental value which cannot be mitigated or compensated for. There is no evidence to indicate that the site is of high environmental value.
12. The Council contends that hardstanding has only recently been introduced at the site without planning permission to support the proposal. The appellant states that there has been no new hardstanding created, rather the areas of hardstanding and access have just been cleared of vegetation. The hardstanding areas at the site may/may not be lawful. Nevertheless, I have assessed the proposal on the basis of what has been applied for, which is the demolition of an existing storage building and the erection of a new storage building, and two parking spaces. The application form states that no new or altered vehicular or pedestrian access to or from the public highway is proposed and no new public roads would be provided within the site.
13. The definition of previously developed land in the Framework's glossary excludes land that is or was last occupied by agricultural buildings. The Council

considers that the building's previous use was more akin to agriculture. However, no clear evidence is presented to substantiate this position. In addition, I note the appellant's evidence which contends that the building has never been used for this purpose. Based on the available evidence, in my view, the site could be reasonably classed as previously developed land.

14. As noted above, the proposed building would not be materially larger than the building that is on the site, it would have the same footprint and it would be in the same location. Although no detail of the two parking spaces is provided, a condition could ensure that they would be located near to the building. In my judgement, the inclusion of two parking spaces and the associated vehicle movements would not intensify the use of the site to the extent that it would result in a development with a greater impact on openness than the existing development in either spatial or visual terms, notwithstanding its elevated position.
15. The exception at paragraph 154 g) of the Framework and Policy LP59 of the Local Plan do not require an assessment of the effect of a proposal on the purposes of the Green Belt. Nevertheless, the Council has cited a concern that the hardstanding/access would represent an encroachment into the countryside. However, as set out above, I have assessed the proposal on the basis of the development that has been applied for which is the new building and two parking spaces. For the same reasons as set out above, this would not represent an encroachment into the countryside.
16. While there may be some intensification of the site compared to the current situation, it would not materially detract from the site's Green Belt setting, nor would the form and scale of the building.
17. Based on the evidence before me, I have found that the proposal would not meet the requirements of paragraph 154 d) of the Framework and Policy LP57 of the LP, but it would meet the requirements of paragraph 154 g) of the Framework and Policy LP59. Consequently, I conclude that it would constitute a type of development that is not inappropriate in the Green Belt. The proposal would therefore accord with the requirements of chapter 13 of the Framework and Policy LP59 of the LP, as summarised above. It would also accord with the design objectives of chapter 12 of the Framework and Policy LP24a of the LP which requires that development respects and enhances the character of the townscape, heritage assets and landscape amongst other matters.

Highway Safety

18. Although the access may be existing, it is necessary for me to determine the appeal against up-to-date policy including the Framework which states that proposals should not have an unacceptable impact on highway safety. The site access would be on to Slaithwaite Gate. The Council describes this as a busy C class road. This tallies with my site visit observations, although I accept this was just a snapshot in time. The access is located close to a bend in the road. There are no pavements along Slaithwaite Gate in the vicinity of the site. A bus stop is located just to the north of the access.
19. Based on the Council's assessment, the access would require a 43-metre visibility splay in both directions. However, there is no information to demonstrate that this would be achievable. Furthermore, it is unclear from the submitted evidence whether vehicles would be able to exit the site in a forward

gear. While only two parking spaces are proposed, the possibility of vehicles exiting and entering the site at the same time cannot be ruled out. The Council's evidence sets out that the access is indicated as three metres wide. This would not be sufficient to allow for two-way vehicle movements in and out of the site, giving rise to the potential for a vehicle to have to wait on Slaithwaite Gate, nor is it clear whether emergency vehicles would be able to gain access.

20. Given the characteristics of the access and the highway in the immediate vicinity, it is important that the access for the proposal is acceptable to ensure that the development does not represent a significant risk to highway safety for road users including pedestrians and to the free flow of traffic. However, based on the evidence before me, I cannot be satisfied that the required visibility distances could be achieved at the site. Without further clarity on the required visibility splays and how they could be achieved, and the nature of the manoeuvring that may be required for vehicles, including emergency vehicles, the proposal would significantly increase the potential for conflict between road users.
21. I therefore conclude that the proposal would result in an unacceptable impact on highway safety. Accordingly, it would conflict with the highway safety requirements of Policy LP21 of the LP, the 2019 Kirklees Highway Design Guide Supplementary Planning Document and chapter 9 of the Framework.

Other Considerations

22. As the proposal would not amount to inappropriate development in the Green Belt, there is no need to assess other considerations to conclude whether very special circumstances exist in order to justify it. Nonetheless, the application form sets out that one job would be created. However, the weight that I can ascribe to this would not alter or outweigh the harm I have found to highway safety.

Conclusion

23. I have found that the proposal would not be inappropriate development in the Green Belt. However, I have found that there would be unacceptable harm caused to highway safety. This is a matter of overriding concern and to this extent there would be conflict with the development plan when considered as a whole.
24. Therefore, I conclude that the appeal should be dismissed.

F Wilkinson

INSPECTOR