



Appeal Decision

Hearing held on 9 January 2024

Site visit made on 9 January 2024

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th January 2024

Appeal Ref: APP/Z4718/W/23/3326224

Meadowlands, Bristfield Road, Bristfield, Dewsbury WF12 0PA

- 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 Oldfield against the decision of Kirklees Metropolitan Council.
 - The application Ref 2022/62/93972/E, dated 7 December 2022, was refused by notice dated 28 June 2023.
 - The appeal development is described as the 'erection of equestrian building following demolition of stables.'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In response to a Pre-Hearing Note (PHN), the Council and the appellant submitted further evidence, including a signed Statement of Common Ground (SOCG) and comments on the Coal Authority's consultation response to the Coal Mining Risk Assessment submitted after planning permission was refused. I have had regard to the evidence submitted in response to the PHN in determining this appeal.
3. A new version of the National Planning Policy Framework was published on 19 December 2023 (the Framework). It is agreed by the main parties that the new Framework is substantively the same as the previous version insofar as it relates to this appeal, other than the paragraph numbers have changed. I have had regard to the Framework in determining this appeal and have referred to the relevant paragraphs identified by the parties, recognising that the numbering has changed.
4. Following discussions at the Hearing, I agreed to accept some items of late evidence: the correct site location plan; the comments of the Council's Environmental Health Department and photographs and text showing the construction of the appeal building. I am satisfied this is procedurally fair to all parties.
5. However, I informed the parties that I would not accept details of a relatively recent, nearby approval, which the appellant considered to be relevant to this appeal, because this was not available for discussion at the Hearing.

Main Issues

6. The main issues are:

- Whether the appeal development is inappropriate development in the Green Belt, having regard to the relevant development plan policies and the National Planning Policy Framework 19 December 2023;
- The effect of land stability and mine gas on the appeal development; and,
- If the development is inappropriate, 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 appeal development.

Reasons

Inappropriate Development

7. The Government attaches great importance to Green Belts, the essential characteristics of which are their openness and their permanence¹.
8. The Framework states that the construction of new buildings in the Green Belt should be regarded as inappropriate, subject to a number of exceptions². These include:

154 b) the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation...; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it;

154 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...

9. In addition to these paragraphs in the Framework, the Council considers the appeal development also conflicts with parts a and b of Policy LP56 (facilities for outdoor sport, outdoor recreation and cemeteries) contained in the Kirklees Local Plan 2019 (KLP).
10. Part a) of Policy LP56 seeks to ensure that the scale of the facility is no more than is reasonably required for the proper functioning of the enterprise or the use of the land to which it is associated. Part b) of the policy seeks to ensure that the facility is unobtrusively located and designed so as not to introduce a prominent urban element into a countryside location, including the impact of any new or improved access and car parking areas.
11. Part a) of the Policy, and to a lesser extent part b), is not fully consistent with the Framework with regard to development in the Green Belt. However, I note the supporting text to Policy LP56, which recognises that even if a development was compliant with Parts a) and b), 'the consequent impact on the Green Belt may render a proposal unacceptable.' On this basis I am satisfied Policy LP56 is

¹ Paragraph 142 of the Framework

² Paragraph 154 of the Framework

generally consistent with the Framework and I give it substantial weight³; I give the Framework full weight as a material consideration.

12. The appeal site is to the northwest of Briestfield Road next to a large and recently constructed detached dwelling, which has tarmac hardstanding to the front and a rear and side garden. Both the dwelling and the appeal site are within a larger area of land that is divided into grass fields, bounded by hedgerows, timber fences and dry stone walls and containing some areas of woodland; the dwelling and the surrounding fields are also owned by the appellant.

Existing situation

13. The equestrian/storage building that comprises part of the appeal development has been constructed and has a shallow, dual-pitched corrugated roof. The dimensions of the building are some 14.6m wide by some 20.6m deep with a height of some 4.7m and an eaves height of some 3.7m. The footprint of the building is some 300sqm with an internal floorspace of some 279sqm.
14. By Briestfield Road, a largely solid gate and stone surrounds, which is joined to and of a similar scale and design to the front boundary treatment to the dwelling, has also been constructed.
15. The associated access between Briestfield Road and the appeal building is currently tarmac, joined to the tarmac area in front of the aforementioned dwelling. A raised stone planter within the garden of the dwelling and an area of landscaped space outside the appeal site demarcate the access.

Earlier situation

16. From the evidence I am satisfied that in 2021, prior to the construction of the appeal building, a barn-type building with a footprint around one third the size of the appeal building (90-100sqm) existed on the appeal site. This building was demolished to allow the construction of the significantly larger appeal building.
17. The height of this earlier building is not clear from the evidence but is likely to have been similar to the height of the appeal building. The earlier building was similarly orientated and positioned to the appeal building, near to, and seen within the context of, the next door dwelling. However, the earlier building was narrower and extended a significantly shorter distance to the rear than the appeal building.
18. In terms of the use of the appeal site, and setting aside the temporary use for storage around the time of the construction of the next door dwelling, the limited evidence shows it to be largely unoccupied space, separate from the dwelling and its gardens. Nevertheless, given the surrounding fields I consider it is likely that some storage of maintenance equipment took place to the rear, side or front of the earlier building.
19. There are very limited details regarding the gateway in 2021. However, in 2019 there is evidence of a timber field gate with five horizontal bars, and I have taken this to be the condition of the gateway prior to the construction of the appeal building.
20. The surfacing of the access on the appeal site has changed over time and I note that some temporary surfacing was provided around the time the next

³ With reference to paragraph 225 of the Framework

door dwelling was constructed, to improve its resilience as a means of access and for the storage of equipment or materials. However, I am satisfied that in 2021, prior to the construction of the appeal building, the access was largely mud and not formally surfaced.

Appeal development

21. The appeal development would entail the retention of the existing building; the removal of the tarmac access, the gate and surrounds and their replacement with an alternative access and a five-bar field gate. No elevational details of the proposed gate and surrounds have been provided.
22. I consider the appeal building and associated access to be an 'appropriate facility' for outdoor recreation, given the size and proximity of the surrounding fields, and that it is constructed in part on previously developed land.
23. However, I am satisfied that the scale and massing of the appeal building harms the spatial openness of the Green Belt. I am also satisfied that the scale and massing of the appeal building has a substantially greater impact on the spatial openness of the Green Belt than the aforementioned earlier building/any outdoor storage of equipment.
24. The terrain of the appellant's land generally slopes downwards from west to east and from south to north. Together with its scale and massing, its position means the appeal building can be readily seen in views across the area, including from Briestfield Road to the southwest, the southeast and east, as well as from further afield. The appeal building, therefore, also detracts from the visual openness of the Green Belt.
25. Nearby hedgerows and trees, such as those on Briestfield Road would provide greater screening of the building from late Spring to early Autumn but would not prevent it from being visible.
26. I note the appellant's offer to provide further native landscaping for the northwestern and northeastern sides of the appeal building. However, even if such landscaping were to be provided, which could be controlled by suitably worded planning conditions, it would not fully screen the appeal building from view, given its position and the sloping terrain of the area.
27. The substantially greater scale and massing of the appeal building compared to the earlier building, and that it extends northwards over what was previously grassland, means it is an encroachment into the countryside. This is one of the five purposes for Green Belts⁴ contained in the Framework.
28. I am satisfied the proposed five-bar field gate would not harm the spatial or visual openness of the Green Belt and would not be an encroachment into the countryside. The design and position of the proposed gate could be satisfactorily controlled by a condition attached to any grant of planning permission, were the appeal to be allowed.
29. However, the access to the appeal building constructed of stone chippings would be an urbanising feature encroaching upon the countryside, when compared to its condition in 2021. The use of an alternative modular mechanism to reinforce the ground, as the appellant proposed at the Hearing by reference to a proprietary brand – 'grasscrete' – would be likely to reduce its

⁴ Paragraph 143 c) of the Framework

visual impact. However, it would be a substantial artificial treatment, and in my view, would still be an encroachment into the countryside.

30. For these reasons, the appeal building harms from the spatial and visual openness of the Green Belt and is an encroachment into the countryside. The proposed access would harm the spatial openness of the Green Belt and would also be an encroachment into the countryside. The appeal development is, therefore, inappropriate development in the Green Belt and conflicts with Policy LP56 of the KLP and with the Framework, in this regard.

Land stability and mine gas

31. Following the refusal of planning permission, a Coal Mining Risk Assessment, as requested by the Coal Authority in their initial objection, was undertaken. However, and despite being clearly identified in the previously submitted Coal Risk Report, the subsequent assessment did not consider the presence of a mine entry (Ref. 423417-020).
32. When consulted on the subsequent assessment, the Coal Authority noted this and suggested two conditions be attached to any grant of planning permission, were the appeal to be allowed, to investigate and address any issues caused by the presence of this mine entry as well as past shallow coal mining activity.
33. With regard to the presence of mine gas, I was not made aware of the comments of the Council's Environmental Health Department until the Hearing, due to an administrative error. However, I have considered these comments in my decision.
34. The Council's Environmental Health Department did not object to the appeal development. However, their comments were based upon the submitted evidence, showing that the building was 'largely Yorkshire boarded with a roller shutter type door allowing for good natural ventilation.' It was also directly noted by the Council's Environmental Health Department that 'any attempt to encapsulate or insulate the building in future would compromise the natural ventilation and may put receptors within the building at risk.'
35. Both the Council and the appellant were aware of the Environmental Health Department comments and it is not disputed that the barn has internal panelling on its walls and roof. From the evidence submitted by both the Council and the appellant following the close of the Hearing, it appears this panelling, which may be intended for insulation purposes, would significantly limit natural ventilation of the appeal building.
36. Given the circumstances, the conflict with the Environmental Health Department comments and the potential consequences for users of the building were coal mine gas to be present, it is unclear why the Council did not directly address this matter during the application process.
37. The appellant states that 'the base contains type 1 hardcore (crushed and levelled) above the underground clay. There are then 2 layers of heavy duty visqueen on top of this' and then the concrete. However, there is no compelling evidence to support these statements.
38. As explained at the Hearing, I am concerned the Coal Authority's suggested conditions fail to meet the tests for planning conditions contained in the

Framework⁵, with particular regard to precision and enforceability. I am also concerned the Council's suggested alternative conditions fail to meet the purpose of planning conditions set out in the Framework and the test of reasonableness⁶.

39. Nevertheless, were the appeal development otherwise acceptable, I am satisfied that in this case issues of land stability and coal mine gas could be addressed by suitably worded conditions. These would require the appellant to conduct appropriate investigations and monitoring at the appeal site and if necessary to undertake remedial actions.
40. For these reasons, with regard to land stability and coal mine gas, the appeal development could be made acceptable in planning terms. It would, therefore, accord with Policy LP53 (contaminated and unstable land) of the KLP and with the Framework, in this regard.

Other Considerations

41. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Substantial weight should be given to any harm to the Green Belt and 'very special circumstances' will not exist unless the potential harm to the Green Belt by reasons of inappropriateness, and any other harm resulting from the appeal development, is clearly outweighed by other considerations.
42. The appellant has made reference to what are considered to be improvements to the character and appearance of the area as a result of the appeal development. The replacement building replaces one that was said to be unsightly and to provide internal space for the storage of equipment used to maintain the surrounding land. However, few substantive details are provided regarding the appearance of the now demolished building or the external storage of equipment. A photograph from 2019 shows the earlier building to have a reasonable appearance, similar to a timber clad barn, and the outdoor storage of equipment is characteristic of rural areas. Even if I were to accept the appellant's position regarding visual improvements, the differences would not be greatly significant and these considerations would carry only very limited weight.
43. I have found the appeal development could be made acceptable in terms of land stability and mine gas, but this would be necessary of any such development and so carries neutral weight in my decision.
44. Part of the appeal development would entail the removal of a tarmac access and a largely solid access gate with stone surrounds. These features are harmful to the visual and spatial openness of the Green Belt and are an encroachment into the countryside. In comparison with the existing situation the appeal development would be an improvement in terms of openness and the character and appearance of the countryside. However, the existing tarmac access and gateway does not have planning permission and so I give these considerations no weight in my decision.
45. For these reasons I find that the other considerations in this case, as set out above, do not clearly outweigh the totality of the harm to the Green Belt that I

⁵ Paragraph 56

⁶ Paragraphs 55 and 56

have identified. Consequently, the very special circumstances necessary to justify the appeal development do not exist. The appeal development therefore conflicts with Policy LP56 of the KLP and with Paragraphs 154 b) and g) of the Framework.

Conclusion

46. For the reasons given above, and taking into account all relevant matters, I conclude the appeal is dismissed.

Andrew Parkin

INSPECTOR

APPEARANCES – 9 January 2024

FOR THE APPELLANT

- James Roberts – JR Planning

FOR THE LOCAL PLANNING AUTHORITY

- Kevin Walton – Senior Planner
- Elenya Jackson – Planning Officer

INTERESTED PARTIES

- Patrick Townsend