



Appeal Decision

Site visit made on 8 May 2024

by N Kempton BAHons PGDip MA IHBC MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th January 2025

Appeal Ref: APP/Z4718/W/23/3334623

Corn Mill Bottom, Long Lane, Shelley, Kirklees, Huddersfield HD8 8JJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Chris Walker against the decision of Kirklees Metropolitan Council.
 - The application Ref is 2022/62/93377/E.
 - The development proposed is erection of one proposed new dwelling and associated landscaping and parking on site of existing barn with planning approval for extension and conversion into one dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the determination of this application, the Government published a revised National Planning Policy Framework (the Framework) (published in December 2024). Parts of the Framework most relevant to this appeal have been amended. As a result, both parties were given the opportunity to comment on the amended Framework, and I have taken into account representations received.

Main Issues

3. The main issues are:
 - whether or not the development is inappropriate development in the Green Belt having regard to the development plan and the Framework;
 - if the proposal is inappropriate, the effect on the openness of the Green Belt;
 - whether the proposal represents an acceptable form of development having regard to its flood zone location and the provisions of the Framework; and,
 - if the proposal is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

Inappropriate development

4. The Framework sets out that the fundamental aim of 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.

5. Paragraph 154 of the Framework stipulates that development in the Green Belt is inappropriate save for stated exceptions listed. Amendments have been made to those exceptions in the recent revisions to the Framework. In addition, it introduces the concept of the grey belt.
6. The appellant's position is that the proposal falls within exception 154 g). Amongst other things, this exception allows for the partial or complete redevelopment of previously developed land, which would not cause substantial harm to openness of the Green Belt. What constitutes previously developed land is defined in the Framework. The appellant relies on commencement of planning permission granted in April 2020 for the erection of extensions and alterations to an existing barn to form one dwelling (ref: 2019/62/93372/E) as evidence that the appeal site constitutes previous developed land.
7. In the absence of a Certificate of Lawfulness, given the wording of some of the conditions, there is room for doubt as to whether a lawful commencement of that development has been made. My determination does not purport to equate to such a certificate. Nevertheless, I have been provided with legal opinions on the matter, and I am satisfied on the evidence before me, that for the purposes of paragraph 154 g), the appeal site falls within the definition of previously developed land, as defined by the Framework.
8. Hence, it is necessary to consider what the impact upon openness would be, and whether the proposal would avoid substantial harm. Planning Practice Guidance (PPG) advises that openness is capable of having both spatial and visual aspects.
9. Spatially, the footprint of the proposed dwelling would be larger than other properties in the vicinity and in that respect would have a greater impact on the openness of the Green Belt, by reason of its siting, scale, design, form and function. Nevertheless, the proposed building would have a relatively compact form, representing a reduction in volume compared with the elongated range of buildings currently occupying the site. Furthermore, the area of hardstanding would be reduced.
10. Visually, the compact form of the proposed dwelling and its siting closer to other dwellings on Long Lane, would help to visually relieve the effect of the volume and bulk of the dwelling and lessen its' impact on the openness of the Green Belt. The dwelling would be visible from a terrace of cottages on higher ground, which looks down into the site and from a public footpath, which traverses the valley side and affords views into the site. Notwithstanding this, the steeply rising valley sides and established tree belts limit long range views of the site. Furthermore, the green roof, the reduction in area of hardstanding, the existing planting and proposed landscaping scheme would lessen the visual impact of the proposed development.
11. For these reasons, the proposed development would not cause substantial harm to the openness of the Green Belt and thereby satisfies the exception set out at paragraph 154 g). It is not necessary therefore, for me to consider grey belt.

12. I have found that the development is not inappropriate development in the Green Belt. It follows, therefore, that no assessment of whether very special circumstances exist is necessary.

Flood risk

13. The Framework seeks to avoid inappropriate development in areas at risk of flooding by directing development away from areas at highest risk. A sequential risk-based approach forms part of the approach advocated in national policy.
14. The Environment Agency's (EA) Flood Map for Planning identifies the appeal site as being within Flood Zones 1, 2, 3 and 3a. In these circumstances, a sequential test is required in line with paragraph 173-175 of the Framework and Policy LP27 of the Kirklees Local Plan (LP)(February 2019).
15. The appellant asserts that the EA's flood zone areas have been incorrectly mapped. On this basis, the appellant contends that the appeal site is in Flood Zone 1 and that therefore, the flood risk is low. Nevertheless, the EA flood maps are based on modelled assessments and are designed to support flood risk assessments in line with the PPG. The evidence before me does not show that the EA, or the Local Lead Flood Authority concede that the appeal site should be categorised as low risk, which reduces the weight I attribute to these findings in the submitted Flood Risk Assessment.
16. In any event, as shown on submitted drawing number 2-11-PP revision D and at Figure 10 of the KRS Environmental Services FRA (2023), part of the access and land beyond the parking area to the west of the dwelling, would be at risk of flooding.
17. The submitted sequential test, which references outdated policy, fails to comply with the guidance set out in the PPG and Policy LP27 of the LP with regards to the area of search and the sources of reasonably available sites. Neither am I persuaded that the circumstances before me fall into those identified in the PPG (paragraph 027) whereby a sequential test becomes unnecessary. Although the Flood Risk Assessment (FRA) contains measures that may assist in reducing flood risk, this does not negate the requirement to first pass the sequential test.
18. I acknowledge that the planning history and extant consent which permit a residential dwelling at the appeal site is a factor that weighs in favour of the appeal proposal. Even so, based on the evidence before me, it does not surmount the deficiencies in the sequential test I have found or the conflict with national or local flood risk policy.
19. For these reasons, it is not demonstrated that the proposal represents an acceptable form of development having regard to its flood zone location and the provisions of the Framework. It therefore conflicts with Policy LP27 of the LP.

Other Matters

20. The appellant states that the proposed development is outstanding design of exceptional quality. In the Planning Officer's report, the Council raised visual amenity concerns, though no conflict with Design Policy LP24 (LP) has been raised and I see no reason to find conflict. Policy LP24 (LP) states that good

design should be at the core of all proposals in the district. In meeting policy expectations, as set out in Policy LP24 (LP), I attribute neutral weight to the design quality of the proposal.

21. The appellant's intention to develop an eco-friendly scheme which delivers high levels of sustainability and energy efficiency, beyond the constraints of a conversion scheme and retrofitting, is noted. Whilst such intentions are commendable, specific commitments, in accordance with the requirements of Policy LP24 (LP), would need to be defined and secured by condition to any consent granted. I attribute moderate weight to this matter.
22. Subject to securing a Biodiversity Enhancement Management Plan (BEMP), which could be secured by condition to any consent granted, it is acknowledged that the proposed development would deliver ecological benefits, including creating attenuation ponds which would provide opportunities for habitat creation for wildlife. Such measures would enhance the ecological value of the site and create significant Biodiversity Net Gain (BNG) relative to a single dwelling on this site. As such, the proposed development would comply with LP Policy LP30 and exceed that which is required by Policy LP24 (LP). Overall, I attribute favourable weight to this matter.

Conclusion

23. I have found that the proposed development would not amount to inappropriate development in the Green Belt because it would constitute previously developed land, which would not cause substantial harm to the openness of the Green Belt. As such, an exception to the Framework's requirement that development should be considered as inappropriate in the Green Belt, has been established.
24. Notwithstanding this exception, I have found that the proposed development would constitute flood risk harm by reason of its flood zone location. The extant permission, which was determined under previous planning policy, does not justify departing from current policy in determining this appeal.
25. Therefore, the proposed development conflicts with the development plan and the Framework, and the material considerations do not indicate that the appeal should be decided other than in accordance with it.
26. For the reasons given above, the appeal is dismissed.

N Kempton

INSPECTOR