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## Appeal Decision

Site visit made on 22 January 2025

by **P Eggleton BSc(Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 February 2025

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**Appeal Ref: APP/U2750/W/24/3353358**

**Mulberry Farm, Butts Lane, Lumby, Selby, North Yorkshire LS25 5JA**

- 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 S Onion against the decision of North Yorkshire Council.
  - The application reference is 2023/0366/FUL.
  - The development proposed is a detached dwelling and garage following demolition of existing building.
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### Decision

1. The appeal is allowed and planning permission is granted for a detached dwelling and garage at Mulberry Farm, Butts Lane, Lumby, Selby, North Yorkshire in accordance with the terms of the application, reference 2023/0366/FUL, and the plans submitted with it, subject to the schedule of conditions attached to this decision.

### Main Issues

2. The main issues are whether the proposal would amount to inappropriate development within the Green Belt; whether there would be any other harm to the Green Belt; whether this is a suitable location for new housing; the effect on the character and appearance of the area; the effect on biodiversity; and whether the 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 necessary to justify the development.

### Reasons

3. The description is for a detached dwelling and garage following the demolition of the existing building. As the building has already been removed, I have considered the proposal as a detached dwelling and garage only. The council are unable to identify a five year supply of available sites for new housing.
4. The council previously accepted the proposed dwelling on this site in the Green Belt. With regard to whether the development was inappropriate, it considered two of the exceptions set out in the National Planning Policy Framework 2012. These were limited infilling and the redevelopment of previously developed sites. As the council considered the site represented previously developed land and given that an existing larger building would be replaced, it concluded that the dwelling would fall within the latter exception and would not represent inappropriate development in the Green Belt. It was therefore considered to satisfy the Green Belt elements of

policies SP2 and SP3 of the Selby District Core Strategy 2013 (CS) and national policies with regard to the Green Belt. It was acknowledged that the site was located outside but adjacent to the defined development limits of Lumby which was identified as a Secondary Village by the Core Strategy. It was also found that the design and detail of the new house, subject to appropriate landscaping, would be acceptable with regard to the character and appearance of the area. It was also found to satisfy policies ENV1 and ENV15 of the Local Plan 2005 (LP) and CS policy SP19.

5. The foundations were constructed within the permission time limit but a 'prior to commencement' condition relating to contamination had not been satisfied. The council advised that a new application should be submitted. The appellant has not sought a lawful development certificate to establish whether the works were lawful. I have therefore assumed that the permission did expire. The council suggest that the previous decision does not weigh significantly in favour of the proposal as it was considered, at that time, not to be inappropriate development. However, the matters of its location, impact on character and appearance and biodiversity appear not to have changed significantly since that decision. I am also mindful of the refused application which immediately preceded the approval which did not raise a number of the current concerns as issues at that time.

*Whether inappropriate development in the Green Belt and other Green Belt harm*

6. This proposal relates to the same development as previously approved but the original building on the site has been removed. The LP (in part) and CS remain in force, but government guidance has been updated and is now within the National Planning Policy Framework 2024. The council now suggest that the entire site should not be considered as being previously developed. I am unclear whether this view is consistent with their original decision. However, setting aside the Framework's provisions within paragraphs 154(g) and 153, including footnote 55, I find this site to fall within the exception set out in paragraph 154(c) as it appears to represent limited infilling within the village.
7. The council suggest that it does not satisfy this exception. However, it represents a relatively small gap between the adjacent house and the buildings of the equine veterinary business. There are no development gaps between this site and the remainder of the village. Opposite the site are farm buildings and there are similarly no development gaps between them and the remainder of the village. Whilst the Framework does not define what constitutes a village, I have found nothing that would suggest that this site does not form part of the village; or indeed that it lies outside the village.
8. The development plan does provide development limits for Lumby. The site lies outside these limits. The limits are defined by the LP in 2005, primarily to assist in guiding and controlling new housing development. With regard to Green Belt, these development limits were referred to in LP policy GB2(2) which allowed for small-scale residential development and infilling within the Green Belt within the defined development limits of settlements in accordance with policy H7. However, policies GB2 and H7 have been replaced by CS policies SP2 and SP3; and SP2, SP4 and SP5, respectively. Policy SP2 advises that villages washed over by Green Belt must conform with policy SP3 and national Green Belt policies. Policy SP3 does not make reference to defined development limits. Policy SP4 advises that villages washed over by Green Belt must accord with national and local Green Belt policy.

Policy SP5 sets out the overall strategy for accommodating housing numbers. The CS supporting text does refer to the countryside as being outside defined development limits, but this is generally with regard to the development strategy rather than for the purposes of Green Belt policy.

9. For the purposes of the Framework, I find that the site would be an infill development within the village and as such would satisfy the exception set out in paragraph 154(c). Although the CS indicates that outside the development limits should be considered as countryside, this refers to the development strategy rather than the Green Belt. I am also mindful that the council are not able to demonstrate an available five year supply of land for new housing. As such the policies of the development plan which seek to limit housing development, are out of date. These include those that relate to development limits. In any event, the development limits with regard to the CS, are now primarily focussed on directing new development generally, whether inside or outside the Green Belt. Whilst the now superseded LP policy GB2(2) offered specific guidance in this regard, the policies that replaced it do not; and they require consistency with the Framework.
10. The development plan does not now provide alternative or defined boundaries with regard to the implementation of national Green Belt policies; and it does not set out different policies to the Framework with regard to the Green Belt in this respect. I therefore conclude that the development would not represent inappropriate development in the Green Belt. As it falls within the exceptions set out in the Framework, it would not result in any other harm to the Green Belt. It would also not conflict with the Green Belt elements of CS policies SP2 or SP3.

#### *Any other harm*

11. The council has raised three further concerns. These are that the site is in an unsustainable location; it would have an adverse impact on the character and appearance of the area, including the wider Locally Important Landscape area; and that sufficient information has not been provided to assess biodiversity net gain.
12. I am mindful that the previous approval, under the same development plan policies, was approved. Whilst that proposal included the removal of a large former agricultural building, many of the matters relating to the concerns raised now, have not changed.
13. The site is not in an easily accessible location and most journeys to and from it would be by private vehicle. The village of Lumby does not provide for the day-to-day requirements of its residents. Being outside the development limits, there would be conflict with part A(c) of CS policy SP2 but this element of the policy is out of date. In any event, the site lies almost immediately outside the development limits, which extend to just before the adjoining dwelling. Despite its position within the village, the lack of accessibility by means other than the private car does weigh significantly against the proposal and this is at odds with paragraph 110 of the Framework which seeks to actively manage patterns of growth to promote its sustainable transport objectives.
14. Policy 124c of the Framework requires that substantial weight be given to the value of using suitable brownfield land within settlements for homes, proposals for which should be approved unless substantial harm would be caused.

15. With regard to the impact on the character and appearance of the area, the council have already accepted this impact. The dwelling would sit between existing properties within this area of linear development at the edge of this village. The house design has been previously accepted and appears to replicate a dwelling, in a very similar situation, on Old Quarry Lane. I have found nothing in the council's submissions to support the assertion that the proposal would be harmful to the character or appearance of the area. I find that it would satisfy the requirements of LP policy ENV1 and CS policy SP19; and with appropriate landscaping, LP policy ENV15. No convincing evidence has been provided to indicate why the council has changed its view in this regard, whilst relying on the same plans and policies.
16. With regard to biodiversity, LP policy ENV1 requires that account be taken of any potential loss, or adverse effect upon trees and wildlife habitats. CS policy SP18 seeks to retain, protect and enhance features of biological interest but also seeks a net gain in biodiversity by designing in wildlife and retaining the natural interest of the site. The site is currently open land with some areas of hard standing. It has significant boundary planting and during the previous application the need to consolidate and add to this was fully considered. Subject to the previously accepted landscaping requirements, I am satisfied that it would enhance biodiversity and comply with the above policies. I am unclear why the council have revised their view in this regard as the application was submitted significantly before the calculation requirements regarding biodiversity net gain became mandatory.

### *Conclusions*

17. The proposal would not represent inappropriate development and as such, very special circumstances are not necessary to justify it. It would not therefore be contrary to local or national policies with regard to Green Belt and would not result in any other harm to the Green Belt.
18. Subject to appropriate landscaping, the proposal would not result in harm to the character or appearance of the area and would protect and enhance biodiversity, sufficiently to satisfy the development plan policies.
19. This is not an accessible location and this does result in considerable weight against the proposal. However, the site forms part of the settlement and the new residents would add to the social life of the village and would be likely to support the services of nearby settlements, offering both economic and social benefits. The proposal gains considerable support from the Framework as it represents a small site, using previously developed land, which is more often built-out relatively quickly. It therefore represents an effective use of land in meeting the need for homes.
20. In conclusion, the matters in favour of the proposal, outweigh the concerns with regard to the accessibility of this site. Furthermore, given that the Green Belt policies do not provide a strong reason for refusing the development; and in light of the council's housing supply position, permission should be granted as the adverse impacts relating to the accessibility of the location would not significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination. I therefore allow the appeal.

## Conditions

21. Although the council has suggested a raft of conditions, I am mindful of the previous decision, including the numerous approved discharges of conditions; and the need for consistency in decision making. As it is not clear that the already constructed foundations are lawful, I have imposed conditions relating to the commencement of development and the details of the approved plans for the avoidance of doubt and in the interests of proper planning.
22. The council has requested that details of materials be submitted and approved. Details are illustrated on application plan Elevation sheet 1 1667 House at Lumby elevs sheet 1/a and I find them to be acceptable. However, the application form refers to a render finish and details of this have been provided. The render detail has previously been approved. As both walling materials would be acceptable, I have imposed a condition to allow either. Details of levels are also now sought but given the relatively flat nature of the site and the detail of the plans, this new requirement is unnecessary.
23. With regard to landscaping, the council previously accepted the submitted landscaping scheme PWP130-001 rev 00 but sought alternative proposals for the front boundary which were approved as drawing 1667 House at Lumby gates /c. These are part of the current submission. I have amended the suggested condition to accommodate these previously approved details.
24. The council have sought a construction management plan. This has been submitted, MB 003-Construction-Management-Plan. I am satisfied that this is sufficient and have amended the condition accordingly. Conditions have been sought with regard to foul and surface water. Details have been submitted in this regard and were discharged in relation to the previous consent. The conditions are not therefore necessary. Conditions regarding contamination have been suggested and updated information provided. A condition in this respect remains necessary given the previous uses of the site and I have amended the conditions suggested on the basis of the updated information.
25. The council have sought a condition removing permitted development rights for extensions and detached outbuildings. No justification has been put forward for such a condition and it was not previously imposed. I am not satisfied that such a condition would be reasonable or necessary.

*Peter Eggleton*

INSPECTOR

## Schedule of conditions

Planning permission is granted for a detached dwelling and garage at Mulberry Farm, Butts Lane, Lumby, Selby, North Yorkshire in accordance with the terms of the application, reference 2023/0366/FUL, and the plans submitted with it, subject to the following 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 approved plans: MB-001; MB-002; Elevation sheet 1 1667 House at Lumby elevs sheet 1/a; Elevation sheet 2 1667 House at Lumby elevs sheet 2/a; Ground floor plan rotated 1667 house at Lumby GF/b; First floor plan rotated 1667 House at Lumby FF/a; Outline site landscaping plan and specification PWP130-001 rev 00; 1667 House at Lumby gates /c; MB 003-Construction-Management-Plan; Foul Drainage form FDA1/Diamond Small package sewage treatment plants for domestic and commercial properties.
- 3) The development shall be carried out in accordance with the detailed materials specified on Elevation sheet 1 1667 House at Lumby elevs sheet 1/a. Notwithstanding the above, the walls shall be finished either in coursed local limestone or white render in accordance with the submitted details.
- 4) All planting, seeding or turfing comprised in the landscaping scheme PWP130-001 rev 00 shall be carried out in the first planting and seeding seasons following the occupation of the dwelling or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from being first planted die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of a similar size and species. The means of enclosure shown on plan 1667 House at Lumby gates /c, shall be constructed in accordance with these details prior to the first occupation of the dwelling and shall be maintained as such thereafter.
- 5) All construction works must be undertaken in accordance with the approved Construction Management Plan MB 003.
- 6) Prior to first occupation, remediation works should be carried out in accordance with the approved remediation strategy. On completion of those works, a verification report (which demonstrates the effectiveness of the remediation carried out) shall be submitted to and approved by the local planning authority. In the event that unexpected land contamination is found at any time when carrying out the approved development, it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must then be undertaken and, if remediation is necessary, a remediation strategy must be prepared and approved in writing by the local planning authority. Following completion of measures identified in the approved remediation strategy, a verification report must be submitted to and approved by the local planning authority.