



Appeal Decision

Site visit made on 18 June 2025

by **J Hobbs MRTPI MCD BSc (hons)**

an Inspector appointed by the Secretary of State

Decision date: 22nd July 2025

Appeal Ref: APP/A4710/W/25/3361903

The Croft, Moor Bottom, Heath Hill Road, Halifax, Calderdale, HX2 7SX

- 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 Anthony O'Leary against the decision of Calderdale Metropolitan Borough Council.
 - The application Ref is 24/01224/FUL.
 - The development proposed is replacement dwellinghouse.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Following the deadline for final comments, the appellant submitted an appeal decision¹, alongside the Officer's Report and application plans associated with that proposal, as well as a letter advising why they considered that information to be relevant to this appeal. The Council indicated that I should not accept the documents as they were submitted following the deadline and the Council did not provide comments on the contents of the submission.
3. Paragraph 9.4.8 of the Procedural Guide² is clear that if documents are received after the statutory time limits, they will normally be returned. It goes on to explain that when there is a change in circumstances, consideration will be given to accepting late documents, this includes where a relevant decision is made on another case. That appeal decision relates to the redevelopment of previously developed land in the Green Belt in Calderdale. That decision was issued following the deadline for final comments. As such, the appellant could not have submitted it within the statutory time limits. Taking this into account, I will consider the late submission when determining the appeal.

Main Issues

4. The main issues are:
 - whether the proposal would be inappropriate development in the Green Belt, having regard to the National Planning Policy Framework (the Framework) and relevant development plan policies;
 - the effect of the proposal on the openness and purposes of the Green Belt;
 - the effect of the proposal on the character and appearance of the area; and,

¹ Appeal Ref. APP/A4710/W/24/3351787, Decision Date: 23 May 2025

² Procedural Guide: Planning appeals - England

- 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

Green Belt - principle

5. The appeal site is entirely within the Green Belt. Paragraph 142 of the Framework indicates that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and the essential characteristics of Green Belts are their openness and their permanence.
6. Policy GB1 of the Calderdale Local Plan 2018/19-2032/33, March 2023 (LP) sets out that the construction of new buildings in the Green Belt is inappropriate development except within specified circumstances. The specified exceptions are largely consistent with the Framework, subject to a few notable differences.
7. Paragraph 232 of the Framework indicates that existing policies should not be considered out-of-date simply because there were adopted or made prior to the publication of the Framework. It goes on to explain that due weight should be given to them according to their degree of consistency with the Framework.
8. Within part I, paragraph f of LP Policy GB1, the redevelopment of previously developed land which does not have a greater impact on the openness of the Green Belt than the existing development would not be inappropriate. However, paragraph 154(g) of the Framework indicates that the redevelopment of previously developed land which would not substantially harm the openness of the Green Belt would not be inappropriate. Therefore, the exception specified within LP Policy GB1 is not consistent with the Framework. In accordance with paragraph 232 of the Framework, I ascribe very little weight to any compliance or conflict with this part of LP Policy GB1.
9. For clarity, the exception to inappropriate development in the Green Belt specified in part I, paragraph d of LP Policy GB1 is entirely consistent with the exception specified in paragraph 154(d) of the Framework. I therefore ascribe full weight to any compliance or conflict with this part of the policy.
10. I will address the exception specified in paragraph 154(d) of the Framework first. The appeal proposal comprises of the replacement of an existing dwelling, with a larger dwelling. The parties do not agree upon how large the proposed dwelling would be. Nonetheless, it is clear that the volume of the proposed dwelling would be more than 100% larger than the existing dwelling. Furthermore, the ridge height of the proposed dwelling would be 2.6m taller than the existing roof. Therefore, I conclude that the proposed dwelling would be materially larger than the one it would replace. As such, the proposal would not comply with part I, paragraph d of LP Policy GB1 or with paragraph 154(d) of the Framework.
11. To assess whether the proposal meets the exception specified in paragraph 154(g) of the Framework, I need to consider whether the appeal site comprises of previously developed land. The definition given in Annex 2 of the Framework specifies land which has been lawfully developed and is or was occupied by a permanent structure including the curtilage of the developed land.

12. In August 2023 a Certificate of Lawful Use or Development³ under Section 191 of the Town and Country Planning Act 1990 (TCPA) was issued for the construction of a building for use as a dwelling house and use of land for domestic use. This certificate confirms that the construction is lawful as well as the use of the building and surrounding land. As per Section 191(1)(b) of the TCPA, in issuing the certificate the Council has confirmed that the building was lawfully constructed. As such, the area within the red line boundary shown on the location plan within Appendix 1 of that decision is previously developed land.
13. Notwithstanding this, the location plan approved as part of the Certificate of Lawful Use or Development specifies that the area around the building enclosed by the red line is 16m from the wall which runs along the lane. Within their Final Comments the appellant has demonstrated that the red line area of the appeal site goes beyond 16m from that wall. Moreover, the measurement shown on the drawing is close to the narrowest point, the appeal site extends further from the lane to the south east. The proposed dwelling and retaining wall would be sited very close to this boundary. Therefore, it has not been demonstrated that the proposed dwelling would not extend beyond the previously developed land.
14. Regardless of the effect on openness, the proposed development would not comply with the exception specified in paragraph 154(g) of the Framework, as it has not been demonstrated that it would be sited entirely upon previously developed land. It would also be contrary to the exception specified in part I, paragraph f of LP Policy GB1.
15. I conclude that the proposal would be inappropriate development in the Green Belt, having regard to the Framework and relevant development plan policies. The proposal would be contrary to LP Policy GB1 for the reasons given above and it would not be in accordance with Chapter 13 of the Framework.

Green Belt – Openness and purposes

16. There is both a spatial and a visual aspect to the openness of the Green Belt. The appeal site is well screened from public views due to the surrounding vegetation and the topography of the area. Furthermore, the proposed dwelling would largely be viewed alongside the sharply rising hill behind the property and parts of the proposed dwelling would be subterranean. Notwithstanding this, the proposed dwelling would be materially larger than the existing dwelling. Taking the above into account, it would have a harmful effect on the openness of the Green Belt. My findings are consistent with the Appeal Decision⁴ submitted by the appellant.
17. The applicant has highlighted four different planning permissions⁵ granted by the Council either for replacement dwellings or for extensions. Firstly, it is not clear whether these proposals were assessed against the same exceptions to inappropriate development in the Green Belt as the appeal proposal. Secondly, proposals are assessed on their individual merits. None of those developments are in proximity to the appeal site and are therefore assessed against a different context. As such, those proposals are materially different to the appeal proposal and do not set a precedent.

³ Reference 22/00892/191

⁴ Appeal Ref. APP/A4710/W/24/3351787, Decision Date: 23 May 2025

⁵ Planning Permission Refs. 08/01333/HSE; 14/00077/FUL; 18/00465/FUL and 22/00787/HSE

18. Paragraph 143 of the Framework outlines the five purposes that the Green Belt serves. This includes “to assist in safeguarding the countryside from encroachment”. It has not been demonstrated that the proposal does not extend beyond the extent of the previously developed land. Therefore, it has not been demonstrated that the proposal would not result in an encroachment upon the countryside.
19. Overall, I conclude that the proposal would have a harmful effect on the openness of the Green Belt and would conflict with the purposes of including land within it. The proposal would not be in accordance with chapter 13 of the Framework.

Character and appearance

20. The appeal site is located on a steep hill side overlooking the valley below. There are some dwellings in proximity to the appeal site; however, the area is largely characterised by agricultural development. It is within the Calder Terrace Landscape Character Area and Northern Calderdale Moorlands and Fringes Special Landscape Area. The key characteristics of this area include the dramatically undulating land and the dispersed settlement pattern comprising scattered traditional stone farmsteads. The appeal site is characteristic of the Special Character Area, due to the undulating landscape and its position within the dispersed settlement pattern; albeit the existing dwelling is not of a stone construction.
21. As above, the proposed dwelling would be materially larger than the existing dwelling. Nonetheless, it would not be highly prominent as it would be well screened by vegetation and partly subterranean. Moreover, the proposed external finishes of metal cladding and tiled roof, as well as the form of the dwelling, would assimilate with nearby agricultural buildings. There is no evidence to indicate that the proposed finish would appear utilitarian or low quality and it would not contrast with nearby stone buildings. The proposed dwelling would appear congruous within the landscape.
22. I conclude that the proposal would not have a harmful effect on the character and appearance of the area. It would comply with LP policies BT1, HS1 and GN4 which indicate that proposals within Special Landscape Areas should be carefully designed to ensure they are in keeping and the design style in new developments should respect or enhance the character and appearance of existing buildings and surroundings, amongst other matters. Furthermore, the proposal would be in accordance with paragraphs 131, 135, 139 and 187 of the Framework which advise that the creation of beautiful and sustainable buildings is fundamental to what the planning process should achieve, and planning decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside, amongst other matters.

Other considerations

23. In July 2024, the Council granted a Certificate of Lawful Use or Development⁶ for the construction of side extensions on the existing dwelling. As the certificate has been granted there is a realistic possibility that this development would come forward. Henceforth I will refer to the existing dwelling with the proposed side extensions as the ‘Fallback Proposal’.

⁶ Reference: 24/00339/192

24. The volume of the Fallback Proposal would be smaller than the proposed dwelling, but the proposed dwelling would have less volume above ground. The Fallback Proposal would also have a larger footprint than the proposed dwelling. Therefore, I conclude that the effect on the openness of the Green Belt of the Fallback Proposal to be similar if not slightly worse than the proposed dwelling. Similarly, the Fallback Proposal would be harmful to the character and appearance of the area as the large flat roof would appear incongruous. The proposed dwelling may have a smaller carbon footprint and have a reduced effect on the surrounding natural habitats compared to the Fallback Proposal. Nonetheless, the Fallback Proposal would not be inappropriate development within the Green Belt, nor would it conflict with the purposes of including land within it. As such, the presence of the Fallback Proposal alone does not justify granting planning permission.
25. The proposed dwelling would be built to Passivhaus standards and there would be economic benefits associated with the construction of the proposed dwelling. Overall, given the modest scale of the proposal, I ascribe modest weight to the benefits. For clarity, this includes the benefit that certain aspects of the proposed dwelling would provide better outcomes than the Fallback Proposal.
26. The appellant has indicated that the proposed dwelling would be a self-build dwelling which they would occupy. I have no reason to doubt the appellant's intention to occupy the proposed dwelling. However, permission runs with the land and there is no mechanism before me which would ensure that the property would be occupied by them. If permission was granted, the Council would have no assurance that the proposed dwelling would not be sold prior to occupation by the appellant. If the proposed dwelling was sold, it would not meet the definition of self-build or custom housebuilding as set out within the Self-build and Custom Housebuilding Act 2015 (as amended by the Housing and Planning Act 2016). Without an appropriate mechanism to ensure that the proposed dwelling would be occupied by the appellant, I ascribe very limited weight to the benefit of providing a self-build dwelling.
27. The fact neighbours did not object to the planning application is a neutral factor. Similarly, the ability to remove permitted development rights and include conditions on any resultant permission are neutral factors, which neither weigh in favour nor against the appeal proposal.
28. Paragraph 153 of the Framework indicates that substantial weight is given to any harm to the Green Belt, including harm to its openness. Footnote 55 of the Framework indicates that substantial weight should not be given to harm to the openness of the Green Belt on previously developed land, where development is not inappropriate. However, I have found that the proposal would be inappropriate.
29. Paragraph 153 of the Framework goes on to advise that very special circumstances will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. I have concluded that the appeal proposal would be inappropriate development and is, by definition, harmful to the Green Belt. I have also found harm to the openness of the Green Belt and concluded that the proposal would conflict with the purposes of including land within it.
30. I ascribe modest weight to the other considerations in favour of the proposal. Therefore, the other considerations do not clearly outweigh the substantial harm.

Consequently, the very special circumstances necessary to justify the development do not exist.

31. In reaching this decision, I have had due regard to the Public Sector Equality Duty set out within the Equality Act 2010. The appellant has indicated that the existing house has narrow corridors and is unsuitable for people using mobility aids. They have also indicated that they want to ensure the proposed dwelling would be suitable for future living in retirement. Nonetheless, the harm caused to the Green Belt, outweighs the proposal's benefits in terms of eliminating discrimination against persons with the protected characteristic of age and/or disability, advancing equality of opportunity for those persons, and fostering good relations between them and others.

Other Matters

32. I acknowledge the appellant's comments in relation to the conduct of the Council during the determination of the application. However, these are matters between the appellant and the Council and it is not a matter for my consideration on the acceptability of the appeal proposal.

Conclusion

33. The proposal conflicts with the development plan, when considered as a whole, and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Therefore, the appeal should be dismissed.

J Hobbs

INSPECTOR