
Appeal Decision

Site visit made on 7 July 2016

by Keith Manning BSc (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 11 August 2016

Appeal Ref: APP/N4720/W/16/3146753

Land at Clifford Moor Road, Clifford, Wetherby, West Yorkshire LS23 6JU

- 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 Partner Construction Ltd against the decision of Leeds City Council.
 - The application Ref 15/03497/FU, dated 12 June 2015, was refused by notice dated 18 September 2015.
 - The development proposed is construction of 20 affordable dwellings along with associated access and landscaping.
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Decision

1. The appeal is dismissed.

Procedural matter

2. My attention was drawn by the Council to a nearby appeal decision¹ issued on 8 June 2016. I therefore allowed the parties an opportunity Council to comment on its significance. I have taken those comments into account.

Main Issues

3. I consider the main issues to be as follows:-
 - Whether the proposed development represents inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework ('the Framework') and development plan policy;
 - The effect of the proposed development on the openness of the Green Belt and the purposes of including land within it;
 - The effect of the proposed development on the character and appearance of the area, with particular regard to adjacent land within the Green Belt;
 - The effect of adjacent land uses on the living conditions of future residents with particular regard to privacy and noise disturbance;
 - The adequacy of open space provision within the proposed development;
 - If the proposed development does represent inappropriate development in the Green Belt, whether the harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations so as to constitute the very special circumstances required to justify the development.

¹ Ref APP/N4720/A/13/2208551 – Land at Grove Road, Boston Spa

Reasons

Preamble

4. The appeal site comprises agricultural land impliedly in the Best and Most Versatile category². I have no evidence to suggest that this implied categorisation is anything other than correct. It is circa 0.6 hectare and abuts a housing estate on the northern fringe of Clifford, a freestanding settlement encircled by Green Belt, the protective designation of which includes the appeal site in its entirety.
5. The much larger settlement of Boston Spa lies a short distance to the north, separated from Clifford at this location by only five fields, including the appeal site. Nevertheless the separation is discernible in the sense that Clifford appears to be a separate settlement set in the open countryside to the south of Boston Spa. The settlement of Bramham, closer in size to Clifford than to Boston Spa, lies a comparable distance to the south of the former, again across intervening countryside. A short ribbon of suburban residential development fronts the opposite side of the road directly opposite the appeal site but is excluded from the Green Belt. Immediately to the north of the appeal site Clifford Moor Road is fronted by a small commercial operation which appears to currently trade in architectural salvage items/garden ornaments primarily taking the form of open storage. This is within the Green Belt.
6. The appellant's statement presents a complex multi-faceted argument concerning Green Belt, the delineation of Green Belt boundaries and the purposes of including land within Green Belts but fails to directly confront the first issue I have identified, appearing to confuse, at paragraph 4.16, the need for very special circumstances to be demonstrated for inappropriate development in a Green belt with specified categories of development that the Framework specifically states not to be inappropriate. This is further confused by the preceding general acknowledgement at paragraph 4.15 simply that... *"housing development within the Green Belt comprises 'inappropriate development'..."*
7. Be that as it may, the correct approach is reflected in my setting out of the main issues above, which takes the relevant considerations back to their basics. The appropriateness or otherwise of the Green Belt boundary is not a matter for me. The Framework is abundantly clear that Green Belt boundaries are to be altered only in exceptional circumstances, through the preparation or review of the Local Plan. Moreover, the Framework is clear that, notwithstanding paragraph 49 and the potential engagement of the decision-taking approach specified in paragraph 14, this does not apply in the case of land protected by Green Belt designation.
8. With those considerations in mind I therefore take the Green Belt status of the site and the appeal proposals as I find them in the context of relevant policy, correctly applied in straightforward fashion.

Whether or not the proposal represents 'inappropriate development'

9. The proposed development essentially takes the form of a relatively small housing estate arranged along an open-ended spine road leading off Clifford

² Described in the officer's report as falling into the Natural England Agricultural land Classification map for Yorkshire and the Humber as "very good"

Moor Road, proposed to be terminated by an agricultural access gate. Paragraph 89 of the Framework is clear that the construction of new buildings is inappropriate in Green Belt and the only potentially relevant exceptions to this principle in this case are those listed under the penultimate bullet point, namely *"limited infilling in villages"* and *"limited affordable housing for local community needs under policies set out in the local plan"*. I note that saved UDP policy N33 contains the same two exceptions but does not qualify the second by reference to policies set out in the local plan. This is an important difference and represents an inconsistency with the more recent Framework which, according to the principle set out in its paragraph 215, effectively prevails. Policy N33 carries little weight alongside paragraph 89 of the Framework in this particular.

10. To describe the proposed development as 'limited infilling' for the purposes of paragraph 89 would be to stretch the concept beyond its intended purpose. I have three mutually reinforcing reasons for concluding thus. First, the site is in the countryside adjacent to but not within Clifford, which is not within the Green Belt.³ Secondly the commercial premises to the north are small low density rural buildings standing apart from Clifford with essentially transient open storage uses round about them, whereas the housing estates to the south which clearly form part of the settlement, represent substantial development in depth along the Clifford Moor Road frontage. Therefore the closure of the gap between the commercial premises and the existing housing estates would not in my estimation be infilling, notwithstanding the ribbon of development opposite. Thirdly, an estate of 20 houses, although relatively small by comparison with many such estates would not in any event represent limited infilling in this context.
11. Whether or not the proposal represents 'limited affordable housing for local community needs under policies set out in the local plan' requires a more complex consideration, bearing in mind, however, that I do not consider the proposed development of 20 houses to be 'limited' for the previous purpose. I acknowledge that the appellant refers to the definition of 'rural exception sites' in the glossary to the Framework but 'small' does not translate directly across as 'limited' for the purposes of Green Belt policy and a site capable of accommodating 20 suburban dwellings would not normally be considered small bearing in mind also that a capacity of 10 or less is a commonly deployed planning threshold for a 'small' housing site.
12. Following the prevalent approach of paragraph 89 of the Framework, the policies of the 'local plan' are of critical importance to the determination of this issue, the most relevant one being Saved UDP Policy H14 as interpreted by cross-reference to Saved UDP Policy GB17. Policy H14 indicates that where the site is in the Green Belt... *"it will be necessary to show that no suitable sites are available outside the Green Belt"*... before adding very specifically that..... *"Development under this policy will be required to conform with Policy GB17..."* Saved UDP Policy GB17, on its face, only concerns affordable housing in villages within the Green Belt (my emphasis). Although in this instance the appeal site itself is within the Green Belt, the settlement of Clifford is itself excluded (i.e. 'inset' rather than 'washed over'). Logically, therefore, the proposal is unable to comply with the policy under any circumstances and the

³ Paragraph 86 of the Framework advises that only villages with an open character contributing importantly to the openness of the Green Belt should be included within it. The local policies map indicates Clifford to be excluded.

criteria of the policy are therefore not relevant in terms of accordance with it or not. If Clifford itself was within the Green Belt the converse would apply and the tests embodied in UDP Policy H14 would be applicable. As it is, however, they are not. Paragraphs A5.10.5 and A5.10.6 of the UDP confirm that the policy interpreted on its face applies only to smaller villages washed over by Green Belt.

13. The Council states at the outset of its decision notice that the proposal represents inappropriate development in the Green Belt. It postulates in the officer's report that in effect everything points to the development being classified as inappropriate, a conclusion reiterated in its statement. For the reasons set out in my analysis I have no reason to disagree with that conclusion. The proposal does not fall within the list of exceptions set out in paragraph 89 of the Framework. Therefore it can only be concluded that it represents inappropriate development in the Green Belt for the purposes of the both the Framework and development plan policy, to the extent that the latter remains consistent with the former.

Effect on openness and Green Belt purposes

14. The Framework is clear that the essential characteristics of Green Belt are openness and permanence, the aim being to prevent urban sprawl. Green Belt serves one or more of the five purposes specified in paragraph 80.
15. Openness means freedom from built development and I am therefore in no doubt that the proposed development would remove the openness of the land as it is perceived from Clifford Moor Road and the northern margin of Clifford. Open pasture, readily seen from a number of viewpoints, would be replaced by a housing estate, albeit on perhaps the narrowest of the fields separating Clifford from Boston Spa on the east side of Clifford Moor Road and to a shallower depth than the adjacent housing estates to the south.
16. As the land is clearly rural, the proposed development would represent an encroachment upon the countryside and, to the extent that Boston Spa and Clifford may be considered towns, their current separateness, which is maintained by the Green Belt, would be compromised to a degree. Given the narrowness of the gap between the settlements and the fact that in my estimation it would be reduced along the Clifford Moor Road frontage by around 10%, this would be significant. The incremental coalescence of Boston Spa and Clifford would in effect contribute to the unrestricted sprawl of Leeds, of which these settlements are formally part, were it to continue unchecked. In the sense that developing the site might to a small degree ease pressure to accommodate needs on urban land, it is very arguable that the function of the Green Belt to assist urban regeneration would also be compromised.
17. Four of the five specified functions of Green Belt would therefore be harmed to some degree by the proposed development. It is pertinent, moreover, that to be effective in fulfilling these functions Green Belt policy must be rigorously and consistently applied. Incremental harm to those functions, such as would occur in this instance, is therefore not something which may be lightly contemplated.
18. All in all, for these reasons, I conclude that the harm to the Green Belt, through loss of openness and compromise of its functions, would be significant.

Effect on the character and appearance of the area

19. Bearing in mind the proposed screening of access and parking provision along the site's frontage to Clifford Moor Road by virtue of retaining much of the hedgerow and the relatively conventional design of the proposed houses, the construction materials of which could be controlled by planning condition, and the ribbon of residential development facing the site, I do not consider the character and appearance of the northern approach to Clifford would be unduly harmed beyond the loss of the rural appearance of the site that is almost invariably a consequence of development in such circumstances.
20. The relationship of the proposed development to the open land in the Green Belt to the east, however, is a different matter. As the Council says, the development terminates abruptly, so much so in my view that the estate would appear as if it had not been fully developed out as the terminated road and turning head would effectively be open to the field beyond with no effective landscape boundary. The Framework at paragraph 81 notes that positive planning to retain and enhance landscapes and visual amenity, amongst other considerations, should be a characteristic approach within defined Green Belts. The visual offence caused by the raw and prominent eastern and south eastern margin of the proposed development in the context of the essentially rural landscape on the northern fringe of Clifford would harmfully contravene that principle and would, moreover, conflict with Policy P10 of the Council's Core Strategy which, consistent with the Framework, requires good design in context. The land adjacent to the margin of the development is outside the application site and not shown to be controlled by the appellant. It is therefore not clear how the appellant's suggestion of a planning condition could mitigate the harm.
21. For the above reasons, I consider not only would the proposed development cause demonstrable harm to the character and appearance of the Green Belt as perceived from the east, on the northern fringe of Clifford, but that the harm would be significant.

Effect on living conditions

22. The appellant does not dispute that the gap between the houses on plots 1 and 17 falls well below the Council's claimed guideline of 21 metres between facing windows, but contends that ingenuity rather than prescription is what the relevant guidance advocates. Be that as it may, the house type shown on plots 1 and 17 is F113, a form of single aspect dwelling that would sit at right angles to its adjoining neighbour, and the facing windows at issue are therefore primary front facing windows facing each other across the access road. At paragraph 4.38 of the appellant's statement a condition to require "*exclusion of windows from the side elevations of plot 1 and/or plot 17*" is suggested. However, in view of the configuration of the buildings shown on the relevant drawings, it is apparent that such a condition would not address the relevant harm.
23. *Neighbourhoods for Living* is guidance rather than prescription but it is clear nevertheless that ingenuity in design is encouraged to tailor layout to circumstance with basic principles, including privacy, in mind. To face single aspect dwellings across a relatively narrow space containing an access road with little scope for suitable intervening structures for screening purposes seems to me to be fundamentally poor design. Such poor design conflicts

harmfully with the Core Strategy policy P10 and the core principle of the Framework that planning should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.

24. Appendix 7 to the appellant's statement is an updated noise report in respect of the nearby commercial operation to the north; described by the Council as a "scrapyard" but by the appellant as a less obviously unneighbourly activity. The appendix has little evidential value as it appears largely constructed on hearsay, professed goodwill on the part of the current operator and a degree of speculation as to the future possibilities. In particular the statement (*"Furthermore it is not clear what planning permission the site has, and if the site operates on an immunity from enforcement basis, it would seem that this would prohibit significant change from the current type of operation"*) in the penultimate paragraph exposes the very real risk while failing to follow through the true logic of what might be the case. If the site has an authorised use for scrap (described as "metal work" in the original noise assessment submitted), as the Council seems to think, a change in ownership or activity could create a very different noise environment for the proposed dwellings than that measured for purposes of the application subject to this appeal; and it follows that the mitigation recommended could be wholly inadequate. The fact is that the relevant facts are for present purposes unknown and unverified and, given those circumstances, it would be imprudent to assume no risk of serious harm to the living conditions of future residents by reason of noise disturbance.
25. All in all there would be certain harm to living conditions as far as privacy is concerned and, in the absence of definitive evidence to the contrary, a potential risk of serious harm as a consequence of uncontrolled noise from the commercial premises immediately to the north of the site. The proposal therefore conflicts harmfully with policy P10 of the Core Strategy and saved policy GP5 of the UDP.

Adequacy of open space provision

26. Policy G4 of the Council's Core Strategy, adopted after the publication of the Framework, seeks to ensure that new development incorporates or provides for adequate open space, and I have no evidence to suggest that aspiration to be anything other than generally consistent with Framework aspirations, including for example those embodied in paragraph 58. Policy G4 sets out a specific standard of 80 square metres per residential unit applicable to this site, albeit contributions to safeguarding and improving existing green space are stated to be an alternative where supply is adequate.
27. I have no evidence to suggest sufficient proximity to a community park for the purposes of satisfying this policy and, clearly, the requirement generated by 20 dwellings could not be accommodated within the layout proposed. The appellant's statement, at paragraph 4.42, suggests that provision could be made through a planning obligation to meet the policy requirement, but no such obligation is before me.
28. In the circumstances, I can only conclude that the policy requirement is not satisfied by the proposal as it stands and that the resultant conflict with the development plan would harmfully undermine its intentions in this respect.

Conclusion: Do other considerations give rise to very special circumstances?

29. National policy, as set out in the Framework at paragraphs 87 and 88, reflected in the development plan, is very clear that inappropriate development in the Green Belt is, by definition, harmful to the Green Belt and that such harm, of itself, should be given substantial weight in the decision making balance. Moreover, other harms to the Green Belt also carry substantial weight.
30. The latter paragraph of the Framework further emphasises that inappropriate development will only be permitted in the Green Belt in very special circumstances and that these will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
31. In this case, I have identified significant harm to the Green Belt, not only by reason of inappropriateness but by the undermining of several of its purposes, by a loss of some of its openness and by visual harm to the character and appearance of the Green Belt east of the site by reason of the poor design of the proposed development in that respect.
32. Although it appears that that the Council's original reservations regarding the ability of the site to be sustainably drained can be overcome,⁴ there would be harm to the living conditions of future residents by reason of inadequate privacy in certain instances and, in the absence of firm evidence to the contrary, it has to be assumed that there could be the real possibility of serious harm as a consequence of potentially noisy activities on the adjacent commercial site, notwithstanding the impression at present of relative quietude. Moreover, there is no evidence to suggest that the shortfall of on-site open space provision, relative to the standard required by the development plan, can be overcome or otherwise justified. Such harms would represent harmful conflict with the development plan as well as with the intentions of the Framework. They therefore weigh significantly against the proposed development, quite apart from the harm to the Green Belt which must be accorded substantial weight. Whilst undue weight should not be accorded to the loss of high quality agricultural land in this instance, there would on the face of it be such a loss, which although relatively insignificant would nevertheless represent a negative factor in the balance.
33. Against all these harms in aggregate, the primary benefit of the proposed development would be the provision of 20 affordable dwellings. In principle, such provision is a significant benefit, as is clear from the Framework, which seeks to boost housing supply significantly, including affordable housing; albeit adherence to adequate planning standards concerning living conditions and open space would be an important consideration regarding their acceptability in any event.
34. The appellant's commissioned assessment of affordable housing needs demonstrates significant need within a 2 mile radius of the site and within the smaller area of the parish of Clifford itself; and it seems to me that the important outcome in seeking to address such needs is their satisfaction within a convenient locality rather than necessarily a specific administrative area. This principle cuts both ways in effect because, whilst it reduces the significance of administrative boundaries in the search for suitable site

⁴ Appendix 8 to appellant's statement

opportunities, it also means that the justification for releasing land otherwise protected from development is reduced if opportunities arise elsewhere on less constrained land.

35. In this context I am conscious that the permission granted on appeal recently at the nearby Grove Road site in Boston Spa will only go some way towards fulfilling the identified need overall but that, on the other hand, although it informally endorsed 2 mile radius approach used by the appellant the, the Council nevertheless considers that it is inappropriate to look at needs which encompass the needs of the "larger and more sustainable town of Boston Spa". Moreover, I am also conscious that practical outcomes are constrained by local policy circumstances and that in this case saved policy H14 of the UDP tends towards a fairly constrained view of locality, albeit with a fair degree of scope for interpretation in any particular case, not necessarily being confined to a single village or parish, a flexibility that pulls in the same direction as the Framework's exhortation at paragraph 50 that policies should be sufficiently flexible to take account of changing market conditions over time.
36. All in all, it seems to me that there is significant ongoing need for affordable housing which could potentially qualify small developments to be permitted for that purpose in the Green Belt in appropriate circumstances of the type anticipated in the saved policies H14 and GB17 of the UDP. However, this is not such a circumstance and therefore the proposed development, as I have previously explained, falls outside the list of exceptions in paragraph 89 of the Framework so as to constitute inappropriate development in the Green Belt. Powerful justification is therefore required which would, inter alia, necessitate cogent evidence of lack of allocation, permission or credible prospects elsewhere, whereas the Council maintains that new allocations and other sites outside the Green Belt are in fact likely to come forward.
37. Although the evidence on both sides is limited in this regard, I am conscious that I have identified harm arising from the proposal over and above the harm to the Green Belt in any event. Whilst the development of affordable housing is an important need to which I attach very considerable weight in its own right, bearing in mind the objects of national policy, the other harms I have identified weighing heavily against the proposal must also be accounted for over and above the substantial weight which must, according to the requirements of national policy also, be accorded to the harm to the Green Belt.
38. I have concluded that the proposed development represents inappropriate development in the Green Belt. Therefore very special circumstances must exist if it is to be justified. Very special circumstances will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
39. For the above reasons and having taken all other matters raised in to account I am not persuaded that the planning balance is in favour of the development, let alone in favour with sufficient clarity to meet that test. Therefore very special circumstances do not exist and for that reason, foremost but not alone amongst the others I have given, the appeal must fail.

Keith Manning

Inspector