



Appeal Decision

Site visit made on 5 January 2017

by **Helen Heward BSc (Hons) MRTPI**

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

Decision date: 8 February 2017

Appeal Ref: APP/Z4718/W/16/3159792

Hi Pylon Works, Slades Road, Golcar, Huddersfield HD7 4JS

- 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 David Fisher against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2016/62/91881/W, dated 16 June 2016, was refused by notice dated 20 September 2016.
 - The development proposed is erection of 14 dwellings.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr David Fisher against Kirklees Metropolitan Borough Council. This application is the subject of a separate Decision.

Main Issues

3. The site is within a Green Belt therefore the main issues in this case are:-
 - i. Whether or not the proposed development is inappropriate development within the Green Belt, and
 - ii. If the proposal is inappropriate development, whether or not there are very special circumstances to justify the harm caused to the Green Belt by reason of its inappropriateness and any other harms.

Reasons

Green Belt

4. Paragraph 79 of the National Planning Policy Framework (2012) (the Framework) advises that the Government attaches great importance to Green Belts. 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. Paragraphs 87 and 89 of the Framework include advice that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances, and that the construction of new buildings should be considered inappropriate unless they fall within specific exceptions listed at paragraphs 89 and 90.
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5. The exception in the sixth bullet point of paragraph 89 provides for the limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development. One of the 5 main purposes of a Green Belt set out at paragraph 80 is to preserve the setting and special character of historic towns.
6. The appellant refers to the High Court Case *Timmins & Anor v Gedling Borough Council*¹ and argues that a key factor in judging openness is the relative size of existing and proposed buildings, with particular reference to empirical calculations of volumes and areas, and that visual impact and architectural design are factors that do not effect openness.
7. However, the Court of Appeal in *Turner v SSCLG & East Dorset Council*² recognised that the question of visual impact is implicitly part of the concept of openness of the Green Belt and the visual dimension of the Green Belt is an important part of the point of designating land as Green Belt. The Court of Appeal found that, with regard to the *Timmins & Anor v Gedling Borough Council* judgement, the judge had gone too far in stating that there is a clear conceptual distinction between openness and visual impact and stating that it was wrong in principle to arrive at a specific conclusion as to the openness by reference to visual impact. The absence of visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt as a result. But this does not mean that the openness of the Green Belt has no visual dimension (paragraph 25). Accordingly I shall proceed to consider this matter.
8. The main visual impacts of existing buildings are appreciated in views from Slades Road. In these views commercial buildings built to the back edge of the public path present a solid and continuous built frontage to the street. With the exception of one relatively short two storey section, they appear to be single storey, notwithstanding the pitch of roofs over. Save for an access way width, the single storey buildings appear to wrap around the southern corner, extending back into the site where they meet a flat roof building and present another view of a continuously developed edge. The flat roof building can only be partially seen but appears to be two-storey in scale. From the north views into the site are more limited but a site access provides a restricted view. Photographs in the appellant's Design and Access Statement (D&A) demonstrate that previously single-storey buildings could be seen at the rear of the site. But from what I saw the site was largely open at the rear.
9. In the proposed scheme the gable ends to a pair of semi-detached dwellings would be seen at the site frontage, set a short distance back from the pavement. The gables would be quite wide and occupy roughly half the width of the site frontage. The eaves would be set above the first floor but large flat roof dormer windows would occupy most of the roof area with their cheeks close to the main gable ends. The dormers and vertical emphasis to fenestration would create a strong impression of three-storey dwellings. The effect would be that side elevations facing the street would appear broadly rectangular in outline, roughly three storeys in height and large in scale. I

¹ *Timmins & Anor v Gedling Borough Council* [2014] EWHC 654 (Admin)

² *John Turner v SSCLG and East Dorset Council* [2016] EWCA Civ 466

- conclude that from Slades Road they would be seen to occupy a similar or equal amount of space as the existing frontage buildings.
10. Oblique views including side and rear elevations of the frontage dwellings would emphasise the scale and mass. In most views two terraces of similar three-storey dwellings spanning most of the width of the rear of the site would be seen behind. The relatively close positioning of the main building elements, together with their height, scale and mass would result in the buildings often being viewed together. In many views the gaps between would often be indistinguishable with few opportunities to perceive spaces between and around them. The impression from Slades Road would be of a large mass of closely developed three-storey buildings appearing to occupy almost all of the site.
 11. The large three-storey scale and mass of the proposed dwellings would be emphasised when seen in close juxtaposition with the smaller scale of existing development, particularly the modestly scaled stone cottages adjacent the southern boundary. The verticality of the proposed fenestration would emphasise this and neither the limited setback of the rear dwellings, nor the separation from the frontage dwellings, would materially diminish the impact of the apparent scale on the perception of space occupied by the development, and its effect upon openness visually.
 12. Boundary walls and the close proximity of the dwellings would enclose and restrict appreciation of two new garden spaces adjacent to the frontage. The central access parking area would be very much enclosed by the three-storey buildings built close to parking spaces which would often be occupied by vehicles also diminishing openness.
 13. In plan form the layout of the buildings would be more spacious than that of all of the previous buildings. The site is located on a broad hillside which offers some elevated viewpoints in which the dwellings might not break the sky line. In most views I could see that a large part of the rear of the site was clear. Photographs in the D&A demonstrate that until relatively recently buildings covering a large area of the site were partially visible in these views. The buildings were commercial in scale and some had large gables, but from what I saw and in studying the D&A, most appeared single storey and I am not persuaded that they would have appeared to rise across the site.
 14. Overall, I find that the scale, height, mass and design of the development would appear significantly less open than existing development and moderately less open than the previous buildings shown in the appellant's D&A.
 15. The appellant refers to paragraph 7.15 of the report to the Secretary of State in APP/B1930/W/15/3028110 where it was noted there would be a marked reduction in the amount of built development on the site which should be afforded substantial weight. I am informed that the previous buildings occupied 57% of the site area and the 14 dwellings would occupy 26.5%. The Council accepts that the overall layout would result in a reduced footprint in comparison to the previous buildings and would not have a greater impact on the openness of the Green Belt than the previous buildings in this way. Nor does the Council contend that the volume of the commercial buildings that had occupied the appeal site was 7423.5m³ or that the proposed would have a volume of 6956.3m³. These changes would result in a noticeably lesser area of ground covered by buildings and an absolute physical reduction in the total volume of built form in comparison to the previous buildings.

16. However, the appellant's ground of appeal and D&A are predicated upon an extent of commercial buildings on the site that I did not find, some of the buildings shown in the D&A were no longer in existence. The Planning Officer's report also informs me that at the time the application was considered a number of buildings had been demolished.
17. There is no evidence before me in relation to the area or volume of the buildings in existence at the time of my visit and I have no way of knowing the exact amount of buildings removed. Nonetheless, from my observations on my visit and having studied the submitted drawings of the proposed development. I am not persuaded that the proposed buildings would occupy a lesser area or volume than proposed. This limits the weight I attach to the empirical evidence.
18. The Council's first reason for refusal includes that the proposal would be contrary to one of the five purposes of the Green Belt by failing to preserve the setting and special character of historic towns. There is little evidence before me in this regard and from my observations I saw nothing to indicate the potential for a greater impact.
19. Overall, and on balance, I conclude that the proposal would result in a loss of openness and therefore fails to comply with the provisions of the sixth bullet point of paragraph 89 of the Framework for the partial or complete redevelopment of previously developed sites, and as such the proposal would be inappropriate development within the Green Belt and is contrary to advice in the Framework. I attach substantial weight to these harms to the Green Belt.

Other Matters

20. In considering an outline planning application in 2015 the Council concluded that demolition of the existing buildings and erection of eight dwellings met the requirements for redevelopment of brownfield land within the provisions of the sixth bullet point in paragraph 89 of the Framework (outline planning permission 2015/93066). The Planning Officer's report informs me that the indicative layout for the eight dwellings was similar to that before me. Images in the D&A indicate that the previous scheme had been illustrated to have a similar two-storey with roof dormers design. However, the footprint for the eight dwellings appears somewhat less than the proposal I am considering and I am not persuaded that there is evidence to say that that permission would enable development of similar overall scale and mass as this proposal. Nor is there evidence to say that the effect on openness of domestic paraphernalia and parked cars, including those of visitors, would be the same for 14 dwellings as it would be for eight. Nonetheless, I attach significant weight to the existence of this permission.
21. The development would result in modest contributions to the local economy during construction and by supporting local services after. I attach a modest amount of weight in favour of these economic gains.
22. Redevelopment of a brownfield site of known environmental constraints would contribute to reducing pressure for development of green field sites. Gardens would be created and new planting made on the former brownfield site. I attach a modest degree of weight to these environmental gains.

23. Paragraph 50 of the Framework advises that where affordable housing is needed, policies should be for meeting this need on site, unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified (for example to improve or make more effective use of the existing housing stock) and the agreed approach contributes to the objective of creating mixed and balanced communities. Paragraph 176 advises that where safeguards are necessary to make a particular development acceptable in planning terms, the development should not be approved if the measures required cannot be secured through appropriate conditions or agreements. However the need for such safeguards should be clearly justified.
24. The Planning Officer's report informs me that there would be a requirement for affordable housing under UDP Policies H10 and H12 and that the Council's Supplemental Planning Document (SPD2) set out the objectives for the provision of affordable housing. However, the Council has not provided evidence of these requirements. I am also informed that a viability assessment was submitted to demonstrate that an affordable housing contribution would make the development unviable, but it has not been submitted in this appeal. I have no way of knowing what it demonstrates, or if it would comply with advice in the Framework and the principles on viability in the Planning Practice Guidance. However, given my conclusions in respect of the Green Belt this issue is not determinative in this case.
25. The site is adjacent to Grade II listed buildings, 70, 72-74 Slades Road which the Planning Officer's report informs me were former weavers' cottages. They are characterised by their modest scale, traditional stone construction and being set well back from the road behind a garden with a low stone wall. Existing industrial buildings adjacent the northern boundary include a quite large flat roof office block and extend forward of the cottages alongside the garden. The appeal site appears lower than the cottages. The closest dwellings would be set back behind the front elevation of the cottages. Those in front would be separated by some distance. These details would mitigate the impact of the development. On balance, I find that the proposal would cause no harm to, and would preserve the setting of, these nationally designated heritage assets and so would not harm their significance. This does not weigh in favour of the proposal. It is neutral in effect.
26. This part of the Green Belt has the character and appearance of a settled landscape. Topography and landform strongly influence the layout and positioning of built form on the broad hill side. In the wider locality buildings are seen set at a variety of levels with some appearing higher or taller than neighbouring dwellings. There are differently scaled buildings, including stone dwellings with tall gables facing roads, tall terraced dwellings, a large Wesleyan Chapel, a range of styles and sizes of modern dwellings and a variety of densities and plot sizes. All influence the character and appearance of the locality. The Council's Conservation and Design Officer noted that the range of industrial buildings added little or nothing to the surrounding area and that the design would make reference to the materials of the surrounding area and respond to the mixture of house types. They concluded that the design was acceptable and, on balance, I agree. This neither adds weight for or against.
27. The side elevation to plot 2 and 4 (facing the rear plots) would include secondary habitable room openings and allow access onto balconies at first floor level. These openings face the front elevations of proposed dwellings to

- the rear of the site. The Planning Officer's report states that the proposal satisfies the requirements of Policy BE12 of the Kirklees Unitary Development Plan (UDP). It seeks to ensure that a reasonable amount of space be provided around new dwellings in the interests of the amenity of future residents, and to prevent overlooking and undue loss of privacy to any existing residents.
28. The secondary window elevations would be narrow allowing only restricted views. There would be doors to a small balcony at the first floor. The front elevations of the rear dwellings would include a garage and door opening at ground floor, bedroom and hall windows at first and second floor levels. The main aspects to their principle habitable rooms would be west facing. The limited potential overlooking of the western plots from openings in the east side elevations of plots 2 and 4 would not be significantly overbearing.
29. Frontage dwellings would cast some shadows across the front elevations of some plots to the rear. The main aspects of the rear dwellings are west facing. The shadows that would fall upon the first and second floor bedroom windows would not be significant and the siting and design of plots two and four would not have a significant adverse effect upon the living conditions of future occupiers of proposed dwellings to the rear.
30. Plots 1 and 2 would have rear openings facing 54 Slades Road and Plots 3 and 4 would have openings facing towards 70 Slades Road. The potential for direct overlooking would be limited to garden areas and given the separation distances would not significantly adversely affect the living conditions of the occupiers of these dwellings. I find no conflict with one of the core planning principles at Paragraph 17 of the Framework which advises that planning should always seek to secure a good standard of amenity for all future occupiers of land and buildings.
31. The appellant submits that the Council has consistently fallen short of achieving a five year housing land supply and has a shortfall of housing land, and the proposal will provide housing in an appropriate location close to local services including a shop, school and nursery. There is no evidence before me on housing land supply and as I have been unable to determine if affordable housing is needed I am not persuaded there is evidence to say the proposal would meet the social dimension of sustainable development.

Conclusions

32. The proposed development would have a greater impact on the openness of the Green Belt and the purpose of including land within it than existing development and therefore fails to comply with the provisions of the sixth bullet point of Paragraph 89 of the Framework for the partial or complete redevelopment of previously developed sites. The proposal is inappropriate development within the Green Belt, which the Framework indicates should not be allowed except in very special circumstances.
33. On balance, the setting of Grade II heritage assets adjacent the site would be preserved and the character and appearance of the wider locality not harmed. There would be no harm to the living conditions of occupiers of existing dwellings adjacent the site or those of future occupiers of dwellings within the proposed scheme. None of these matters amount to very special circumstances and neither weigh for or against the scheme.

34. I have been unable to determine if the development should make appropriate provision to secure affordable housing provision and if so whether a contribution in lieu of on-site provision would be robustly justified.
35. The proposal would result in the redevelopment of a brownfield site and modest economic and environmental gains to which I attach a moderate degree of weight in favour.
36. In this case there was a greater quantum of buildings on the site until recently and which led to the Council granting outline permission for eight dwellings. That application indicated a similar layout to that of the proposed and the permission is still extant. This attracts significant weight in favour.
37. In weighing all of these matters I find that the weight in favour to be attached to the existence of an outline planning permission, and the modest environmental and economic gains that redevelopment would bring, do not together clearly outweigh the substantial harms to the openness of the Green Belt and by reason of inappropriate development within it. Accordingly very special circumstances do not exist.
38. Therefore, and having taken all other matters raised into consideration, including that the application attracted many representations, I conclude that the appeal should be dismissed.

Helen Heward

PLANNING INSPECTOR

Richborough Estates