



Appeal Decision

Hearing Held on 26 September 2018

Site visit made on 26 September 2018

by Beverley Wilders BA (Hons) PgDurp MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 November 2018

Appeal Ref: APP/N4720/W/18/3194862

Farfield House, Wetherby Road, Bramham, Wetherby LS23 6RE

- 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 Alec Colgan (AC Developments Yorkshire Ltd) against the decision of Leeds City Council.
 - The application Ref 16/06046/FU, dated 27 September 2016, was refused by notice dated 31 July 2017.
 - The development proposed is demolition of existing residential dwelling and outbuildings and the layout and erection of 18 dwellings, gardens and open space.
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Decision

1. The appeal is dismissed.

Application for costs

2. At the Hearing an application for costs was made by Leeds City Council against Mr Alec Colgan (AC Developments Yorkshire Ltd). This application is the subject of a separate Decision.

Procedural Matters

3. The description of development used in the heading above has been taken from the planning application form. However the proposal was amended prior to the application being determined by the Council with the number of dwellings proposed being reduced from 18 to 15. A revised description of development to reflect the amended proposal was used on the Council's decision notice and by the appellant on the appeal form, though I have seen no evidence that a revised description of development was agreed by the appellant. Nevertheless it is clear that the proposal was amended and in reaching my decision I have had regard to the revised plans.
4. The Council's decision notice lists the relevant plans including drawing number Y81:961:24 but I have been provided with drawing number Y81:961:24 Rev A. At the Hearing the parties confirmed that Y81:961:24 Rev A was the drawing considered by the Council and I have therefore had regard to it in reaching my decision.
5. On 24 July 2018 the Government published its revised National Planning Policy Framework (the Framework). The revised Framework is applicable to planning decisions from the date of publication and sets out the Government's planning

policies for England. It is therefore a material consideration in the determination of this appeal. The main parties have been consulted on the revised Framework and in reaching my decision I have had regard to it where relevant and to any responses received from the main parties.

6. At the Hearing the appellant drew my attention to the fact that a legal challenge has been made against the Framework. I am aware of the recent challenge in the High Court regarding the adoption of the Framework. However as no decision has yet been made on this challenge, in reaching my decision I give full weight to the Framework as a material consideration.
7. The Bramham cum Oglethorpe Neighbourhood Development Plan 2018-2033 (NP) has been submitted for examination but has not been made. Consequently in reaching my decision I give it limited weight.

Main Issues

8. At the Hearing there was a lengthy discussion about the land use designation of the appeal site having regard to its inclusion within the Council's emerging Site Allocations Plan (SAP). I was advised by the Council that the latest version of the SAP is at an advanced stage with hearings sessions having been concluded. However I was also advised that there are outstanding objections to it and that the report of the Examining Inspectors is still awaited.
9. Following the Hearing I was advised by the appellant that the Examining Inspectors have issued a post hearing note (PHN). The main parties were given the opportunity to comment on the PHN insofar as it affects the consideration of the proposal. I have been provided with responses from both parties and in reaching my decision have had regard to them.
10. There was agreement between the main parties at the Hearing that at the present time the majority of the site, excluding the access track, is within the Green Belt. Whilst I note that at the time that the application was made, the site was allocated for housing in the emerging SAP, this is no longer the case with the latest version of the SAP identifying the site as a broad location for future growth within the Green Belt.
11. However as stated, the situation regarding the SAP has evolved further since the Hearing took place. There is disagreement between the main parties as to how the PHN affects the consideration of the proposal. The appellant acknowledges that there remains further uncertainty with regard to the SAP but nevertheless considers that weight should be given to the May 2017 version of the SAP which allocates the site for housing. By contrast the Council considers that the PHN strengthens its position as it advises removal of all of the broad location sites and their re-instatement as Green Belt.
12. Though I have had regard to the emerging and evolving policy situation, the SAP has yet to be adopted and is likely to be subject to further changes given the apparent level of objection to it and the publication and content of the PHN. I therefore afford it limited weight. Consequently in reaching my decision I have assessed the proposal as including development in the Green Belt.
13. The main issues are:
 - whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;

- the effect of the proposal on the openness of the Green Belt;
- whether the proposal makes adequate provision for affordable housing;
- whether the proposal makes adequate green space provision;
- 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 proposal.

Reasons

Whether proposal would be inappropriate development and its effect on openness

14. The appeal site comprises a piece of land containing a two storey detached dwelling and a number of one and two storey outbuildings. At the time of my visit the land surrounding the dwelling and outbuildings mainly comprised rough grassland with some evidence of ornamental planting near to the dwelling. It appears from the evidence that part of the site previously comprised an orchard. The site is accessed via a long driveway off Wetherby Road and is located on the edge of the village of Bramham, close to the A1(M) motorway. Land levels fall across the site towards residential properties to the south and east with the site boundaries being marked by fencing and landscaping. A bridleway runs parallel with the driveway and is positioned between the site and the A1(M).
15. The proposal includes the demolition of the existing buildings on the site and the erection of 15 two storey dwellings and a number of garages.
16. Saved Policy N33 of the Leeds Unitary Development Plan 2006 (UDP) sets out what types of development are permitted within the Green Belt. These include limited infilling in villages and limited affordable housing for local community needs. Paragraph 145 of the Framework states that the construction of new buildings should be regarded as inappropriate in the Green Belt unless the development falls within one of the listed exceptions. Although Policy N33 is not wholly consistent with the Framework, it is broadly consistent insofar as it relates to infilling in villages and limited affordable housing. I do not therefore consider it to be out of date and in reaching my decision have given moderate weight to it.
17. The appellant considers that the proposal is not inappropriate development stating that the entire site is previously developed land (PDL), that the proposal would not have an adverse impact on the openness of the Green Belt and that as a whole it complies with parts e), f) and g) of paragraph 145 as it comprises limited infilling in a village; includes an element of affordable housing and the redevelopment of PDL.
18. As stated, the appeal site is located on the edge of the village of Bramham and is not located within the development boundary of the village. Whilst I accept the appellant's point that part e) of paragraph 145 does not refer to village boundaries, even if I were to consider the site as being in a village, having regard to the scale and nature of the appeal site and the proposal and the relationship of the site to the village and surrounding development, I do not consider the proposal to be limited infilling.

19. Reference was made within the application and the appeal submissions to the proposal being policy compliant having regard to affordable housing and this was re-iterated on behalf of the appellant during the Hearing. However there is no indication within the submission as to what affordable housing would be provided on site and where and it seems that no discussions have taken place between the appellant and the Council's housing officers in order to identify what the affordable housing need is within Bramham and the surrounding area and whether the proposed dwellings would meet it. In addition even if the required 35% affordable housing were to be secured on site, the proposal would mainly comprise open market housing. Consequently I agree with the Council that the proposal would not comply with part f) of paragraph 145.
20. I am not convinced based on the evidence before me that the entire site ought to be considered to be PDL. In any event, part g) of paragraph 145 either requires development to have no greater impact on openness or not to cause substantial harm to openness where the development would contribute to meeting an identified affordable housing need. The proposal would result in a significant increase in the amount of built development on the site both in terms of the spread of development across the site and also in terms of mass. This in turn would lead to a substantial loss of openness. The increase in built development and reduction in openness would also be experienced visually as the increased amount of development on the site would be visible from nearby residential properties and from the adjacent bridleway.
21. Taking the above matters into consideration, the proposal would be inappropriate development in the Green Belt and it would lead to a substantial loss of openness.

Affordable Housing

22. Policy H5 of the Leeds Core Strategy 2014 (CS) states that the Council will seek affordable housing either on-site, off-site or financial contributions from all developments of new dwellings. Housing developments above a certain threshold should include a proportion of affordable housing to be normally provided on the development site. The appeal site falls within zone 1 where a target of 35% affordable housing is sought for developments above 10 dwellings. Affordable housing provision should be on site, unless off site provision or a financial contribution can be robustly justified.
23. As stated, the appellant has expressed a willingness to provide the required amount of affordable housing on site as required by Policy H5. However no details of what type of affordable housing or its location on the site have been provided and no mechanism either in the form of a legal agreement or a planning condition has been put forward to secure the required amount and type of affordable housing. At the Hearing the Council expressed a preference for a legal agreement to control the delivery of affordable housing, stating doubts about whether a planning condition would meet the necessary tests. The Council also considers that there is insufficient information regarding affordable housing, particularly given that the issue of vacant building credits would also need to be considered, to enable a proper assessment of the issue.
24. Whilst I note the appellant's willingness for the proposal to be policy compliant in terms of affordable housing, there are no details before me as to how the proposal would comply with the requirements of Policy H5 and in the absence of these, the proposal fails to make adequate provision for affordable housing

and is contrary to CS Policy H5 which seeks to meet the areas need for affordable housing. Given the lack of information I do not consider that this matter could be adequately addressed by the imposition of a suitably worded planning condition.

Green Space

25. CS Policy G4 seeks the on-site provision of green space of 80 square metres per residential unit for development sites of 10 or more dwellings that are outside the City Centre, in excess of the required distance from a community park and located in an area deficient of green space. In areas of adequate supply, contributions of an equivalent value towards the safeguarding and improvement of existing green space will take priority over the creation of new areas.
26. All of the proposed dwellings would have private gardens and in addition a number of areas of public open space are proposed. In the main these comprise fairly narrow strips of land adjacent to the access road and to the northern site boundary. Whilst I note that the appellant states that the required amount of green space would be provided on site, I agree with the Council that even if this is the case, the fragmented configuration of the space means that it would not offer functional and useable green space and would not therefore meet the requirements of Policy G4. Although the appellant suggests that if necessary the re-configuration of the green space could be secured by condition, I do not agree as this is likely to require significant changes to the proposed site layout which would materially alter the proposal.
27. In the absence of adequate on-site provision of green space a financial contribution for off-site provision would be required. At the Hearing I heard evidence from the main parties that there are numerous sites within the village and identified within the Bramham Neighbourhood Plan that are in need of enhancement on which financial contributions could be spent. However notwithstanding this and despite suggestions within the appellant's statement and draft Statement of Common Ground that a legal agreement would be progressed to address matters of affordable housing and green space provision, no such agreement has been submitted. In the absence of this there is no suitable mechanism to secure any financial contributions towards green space provision and I do not consider that the matter could be adequately addressed by the imposition of a suitably worded planning condition.
28. Taking the above matters into consideration, I conclude that the proposal would not make adequate green space provision and would be contrary to CS Policy G4 which seeks to ensure an adequate supply of green space provision.

Other considerations

29. Both main parties agree that the Council cannot currently demonstrate a five year supply of deliverable housing sites with the parties agreeing that the current supply is approximately 4 years.
30. Paragraph 11 of the Framework states that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, planning permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the

development proposed. Such assets include land designated as Green Belt (Footnote 6). Footnote 7 of paragraph 11 states that for applications involving the provision of housing, out-of-date policies include situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites.

31. Having regard to my findings that the proposal would be inappropriate development in the Green Belt and to footnote 6 of the Framework, I find that the proposal is in conflict with part d) i) of paragraph 11 and that the proposal would not be sustainable development.
32. The proposal would provide an addition 14 dwellings and would contribute to the supply of housing in the area. I attach moderate weight to this consideration. It would also provide some moderate economic benefits by providing employment during the construction period and by supporting the local economy. The proposal would include the re-use of previously developed land and it is stated that there would be a high standard of energy efficiency in the design and construction of the development. The site is on the edge of a village which contains a number of services and facilities that would be available to future residents. There would therefore be some modest environmental benefits of the proposal.
33. In reaching my decision I have had regard to the appeal decisions referred to by the appellant. However whilst I note that the decisions reach findings in relation to the Council's housing land supply and delivery position, the circumstances of these cases are not clear from the evidence and in particular the scale of the developments proposed and whether or not the sites are in the Green Belt. In addition it appears that affordable housing formed part of at least some of the proposals and that weight was given to this in the planning balance. Consequently it does not appear that the proposals the subject of these appeal decisions are directly comparable to the proposal and in any event I must determine the proposal before me on its own merits.
34. A Phase 1 Habitat and Bat Survey dated July 2016 was submitted with the application and was found to be satisfactory by the Council's Nature Conservation Officer with no evidence of protected species on the site. I have seen no evidence to lead me to reach a different conclusion on this matter and am therefore satisfied that if I were to allow the appeal, that there would be no significant risk to protected species.
35. I note the concerns raised by interested parties in relation to other matters not dealt with in the main issues. However as I am dismissing the appeal based on my findings in relation to the main issues, there is no need for me to consider the other matters raised as this would not alter the outcome of the appeal.

Conclusion

36. Paragraph 143 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 144 states that substantial weight should be given to any harm to the Green Belt and very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness and any other harm, is clearly outweighed by other considerations.

37. The proposal is inappropriate development and it would lead to a substantial loss of openness. In addition the proposal fails to make adequate provision for affordable housing and green space.
38. There would be some moderate social and economic benefits and modest environmental benefits following the proposal. However I find that the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently the very special circumstances necessary to justify the proposal do not exist.
39. The proposal is contrary to relevant paragraphs of the Framework, to CS policies H5 and G4 and to UDP Policy N33 and having regard to all matters raised, I conclude that the appeal should be dismissed.

Beverley Wilders

INSPECTOR

Richborough Estates

APPEARANCES

FOR THE APPELLANT:

Paul Leeming	Agent
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FOR THE LOCAL PLANNING AUTHORITY:

Andy Ruston	Leeds City Council
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Steven Wilkinson	Leeds City Council
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INTERESTED PARTIES:

Linda Richards	Bramham Parish Council
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Jennifer Mills	Local resident
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Bruce Richman	Local resident
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DOCUMENTS SUBMITTED AT THE HEARING

1. Copy of Map 13a of Leeds Local Plan Policies Map (Nov 2017).
2. Copy of Bramham cum Oglethorpe Neighbourhood Development Plan 2018 – 2033 Submission Draft April 2018.