



Appeal Decision

Site visit made on 8 December 2021

by Patrick Hanna MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 January 2022

Appeal Ref: APP/R4408/W/21/3271635

Land west of Millstones, Oxspring, Penistone S36 8WF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Yorkshire Land Limited against Barnsley Metropolitan Borough Council.
 - The application Ref 2020/1269 is dated 30 October 2020.
 - The development proposed is a "rural exception site including three affordable homes and two open market properties with landscaping and associated infrastructure."
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Decision

1. The appeal is dismissed and planning permission is refused.

Procedural Matters

2. Since submission of the appeal, the revised National Planning Policy Framework (2021)(the Framework), the Barnsley Strategic Housing Market Assessment (2021)(SHMA) and the consultation draft Affordable Housing Supplementary Planning Document (AHSPD) have been published. The main parties have been given opportunity to comment on these documents, and I have taken these comments into account.
3. Following submission of the appeal, the Council resolved that it would have refused the application and provided five putative reasons for refusal, relating to inappropriate development in the Green Belt, viability, flood risk, biodiversity and waste management.
4. A planning obligation by Deed of Agreement under s106 of the Town and Country Planning Act 1990 (as amended) has been submitted, which has been signed by both Barnsley Metropolitan Borough Council (the Council) and Yorkshire Land Limited, dated 22 September 2021. This contains obligations relating to provision of affordable housing and biodiversity net gain (BNG). I return to this later in my decision.

Main Issues

5. The main issues are:
 - whether the proposal would be inappropriate development in the Green Belt having regard to relevant development plan policies and the Framework;
 - the effect on the openness of the Green Belt;
 - whether the proposal would comply with local and national policy which seek to steer development away from areas at the highest risk of flooding;
 - the effect of the proposal on biodiversity;

- the effect of use of the proposed access on the safety of road users; and
- would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

6. The appeal site is a grassed area of open land, of some 0.36 hectares, with the existing Millstones residential development and gated site access to the east, the River Don to the south, woodland to the east and steeply sloping woodland to the north. The site is largely level along the northern boundary, along the route of an existing access track, and slopes down towards the river. The proposal is for three affordable discounted market sales houses and two market houses. The effect of the proposal would be to introduce new residential development into an open area of designated Green Belt land.

Inappropriate development

7. Policy GB1 (Protection of Green Belt) of the Barnsley Local Plan (2019)(BLP) and the Framework together identify that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances.
8. Paragraph 149 of the Framework states that construction of new buildings should be regarded as inappropriate in the Green Belt. Exceptions to this include paragraph (f) which provides for limited affordable housing for local community needs under policies set out in the development plan, including policies for rural exception sites. In this respect, policy H7 (Affordable Housing) of the BLP allows rural exception sites in or on the edge of villages.
9. Policy H7 and its supporting text indicate that such proposals should address four key matters. First, it will be seen below that the requirement to mitigate visual impact is not met due to impact on openness, by way of inappropriateness. Second, provision of affordable housing should be secured by planning obligation, and I find below that the submitted obligation can be taken into account in this respect. The remaining matters require the development to meet an identified local community need and consider any market housing necessary to make the affordable housing viable.

Local community need for affordable housing

10. The supporting text to policy H7 of the BLP indicates that affordable homes are needed in all parts of the borough to a varying extent. The SHMA expands on this, indicating that whilst house prices in the borough have consistently tracked below those of the wider region, with the gap widening over time, the population of the borough is nonetheless predicted to increase by some 7.9% to 2033. It concludes that there is a net need of 190 affordable dwellings across the borough each year, with the AHSPD confirming that the housing waiting list across the borough is 8,370.
11. In the Rural West sub-area, which contains Oxspring village, whilst gross affordable housing need is stated as being 65 units, the net need is calculated as negative, being -29 dwellings. This figure is qualified in the supporting text, which indicates that when reviewing need at the sub-area level, the gross

shortfall across all sub-areas should be recognised, and that negative net need figures do not indicate no need in those areas, as the net figure is based on lettings and new build activity data which is variable from year to year.

12. At parish level, the Oxspring Neighbourhood Development Plan (2019)(NDP) states that the long term viability of the Parish is compromised by the lack of affordable housing, including that for young people. To address this, policy OH1 (Meeting Local Housing Needs) of the NDP reiterates the affordable housing policy H7 of the BLP (albeit only in respect of larger sites) indicating that affordable housing should be allocated to those with a local connection. The NDP is informed by a Summary Housing Needs and Capacity Assessment (2014). Although this is not the most recent assessment of housing need and does not give specific figures in respect of affordable housing, it acknowledges general support for affordable housing in the parish.
13. To assess housing need in the village itself, the appellant conducted a survey in Oxspring in November 2020. This involved distribution of leaflets to households in the village and local advertising, with survey questions derived from the definition of a rural exception site¹. Of the 24 responses received, a range of between 9 and 13 respondents met the Framework criteria of being either resident or employed in the village, or related to someone in the village, as well as being between 23 and 40 years of age².
14. The appellant's survey provides the most recent and accurate position of the affordable housing needs of the local community. It indicates a local need for more than the three affordable dwellings proposed. This need at village level reflects the wider need for affordable housing in the parish, in the Rural West sub-area, and across the borough.
15. That no affordable housing has been delivered in the village for over two decades is not challenged by the Council. Although seven affordable houses for rent have been recently approved on the allocated site at Roughbitchworth Lane, this would not in any case meet all of the identified need. Whereas that development will offer affordable housing for rent and shared ownership, the appeal proposal would expand the range of tenures on offer in the village.
16. Overall, the proposal would contribute towards addressing the affordable housing need of the local community by accommodating households who are either current residents or have an existing family or employment connection.

Viability

17. The supporting text to policy H7 of the BLP and the Framework both indicate that consideration should be given to allowing some market housing on rural exception sites where this would help to facilitate the affordable housing. The proposed scheme offers three affordable dwellings and two market dwellings. The affordable market sales dwellings would be discounted by 35%. Estimated values³ for the two two-bedroom units would reduce from some £235,000 to £152,750 and the three-bedroom property from some £250,000 to £162,500. This would result in a total discount of some £252,500. The Gross Development Value (GDV) for all five dwellings would be some £1,618,000.

¹ As set out in both the Framework and the NDP

² The appellant further claims that the survey respondents are low income households, with income not exceeding £80,000 per annum, however I have not been directed to the evidence for this.

³ Lancaster Property Management property valuation dated 16 October 2020

18. Two high level viability assessments have been provided by the appellant. The February 2021 assessment submitted with the planning application is based on a high quality specification to reflect the edge of village location, with total costs being some £1,683,541 including abnormal allowance, contingencies and professional fees. With a 15% developer profit, the scheme would result in a negative residual land value (RLV) of some -£308,241. This figure suggests that the scheme is a very long way from being a viable development.
19. A subsequent August 2021 assessment submitted during the appeal reduces the build quality to BCIS median quartile costs, concluding total costs of some £1,340,043. With a 15% profit, the RLV would be some £35,257. Whilst this suggests a marginally viable scheme may be achievable on these terms, no benchmark or existing use land value has been provided for comparison. Furthermore, the way in which this substantial reduction in build costs would be achieved has not been made clear.
20. The February 2021 build cost of some £1,399 per square metre is confirmed in the appellant's cost review⁴ as being of higher specification than that of typical new builds, on the basis that the dwelling would feature stone elevations with feature quoins, as well as external works such as natural dry stone walling and stone paving. The review concludes that this build cost is both reasonable and achievable. The build cost also broadly reflects what is shown on the proposal drawings. Given the sensitivity of the edge of village location and the relatively high quality of the adjacent existing development, a high quality design and finish would be necessary for any development of the site.
21. The appellant claims that the August 2021 build cost reduction to some £1,085 per square metre would still deliver a very good standard of development. However, it has not been demonstrated how this considerable reduction in build costs would continue to achieve the design standards set out in the proposal drawings, particularly in light of the appellant's own earlier justification for higher build costs. Therefore, this latter viability assessment is unconvincing as it is unsupported by detailed evidence.
22. The appellant suggests that the viability assessments only need to show that the developer would not make an unreasonable profit. However, the purpose of rural exception sites is to boost the supply of affordable housing where housing would not normally be acceptable. The provision of market housing is in effect an enabling element to that purpose. The viability of this proposed rural exception site should therefore be considered in the round, in order to ensure that the proposed affordable units could be delivered on the basis of the proposal as a whole.
23. Additionally, whilst the proposal is for 60% affordable dwellings, the design and layout of the proposal is substantially weighted towards the delivery of the two large market units. The market dwellings would dominate the scheme in terms of apportionment of the site and footprint of the proposed dwellings. The expectations that "some" or "a proportion of" market housing⁵ could be allowed to facilitate delivery of affordable housing would, in my view, be considerably exceeded by the appeal proposal. The balance has tipped beyond what could reasonably be described as a rural exception site delivering affordable housing.

⁴ Cushman & Wakeman Viability Appraisal Cost Review dated 26 February 2021

⁵ Extracts from BLP policy H7 supporting text and the Framework glossary respectively

24. Consequently, the proposed market housing would not help to facilitate provision of affordable housing of the high quality required.

Conclusion on inappropriate development

25. Whilst I find that there is an identified local community need for affordable housing, the high quality affordable housing that the site requires would not be facilitated by the proposed market housing. As such, the proposed development of the appeal site as a rural exception site would conflict with policy H7 of the BLP and paragraph 78 of the Framework. Consequently, I conclude that the proposal would not represent limited affordable housing for local community needs and would be inappropriate development in the Green Belt, having regard to development plan policy GB1 and the Framework.

Openness

26. The essential characteristics of Green Belts are their openness and their permanence, as set out in paragraph 137 of the Framework. Openness in terms of the Green Belt has a spatial aspect as well as a visual aspect. Despite the relatively modest height of the proposed dwellings, the spatial intrusion arising from the very presence of permanent buildings in a location that is currently free from built form would have a negative effect on the openness and permanence of the Green Belt, notwithstanding that the proportion of Green Belt affected may be small.
27. Visual impact forms 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 appeal site is an open field, adjacent to an existing residential development, and the effect of the proposal would be to extend an urban form of development into the otherwise open countryside, notwithstanding that the appeal site is relatively enclosed on all other sides by the river and woodland. Overall, the proposal would not keep the land permanently open. In doing so, it would fail to safeguard the countryside from encroachment, one of the five purposes of the Green Belt. The proposal therefore conflicts with policy GB1 of the BLP and the Framework.

Flood risk

28. Policy CC3 (Flood Risk) of the BLP and Chapter 14 of the Framework require that new development should be steered to areas with the lowest risk of flooding, and development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The larger part of the site is within Flood Zone 1, but two proposed dwellings would be partially within Flood Zones 2 and 3⁶.
29. The appellant asserts that, as floor levels would be raised, no residential development would be within Flood Zones 2 and 3. However, raising levels does not affect the application of flood risk zoning boundaries. Accordingly, a sequential assessment is required, notwithstanding potentially appropriate mitigation measures, lack of objection from the Environment Agency, and alleged inconsistency of the Council on this matter.
30. To my mind, the first step in the sequential assessment of this proposal should be to consider the appeal site itself. The incursion of Flood Zones 2 and 3 into

⁶ The EA consultation response dated 18 December 2020 shows the extent of the FZs

the appeal site is relatively limited, and the development could potentially be accommodated wholly within Flood Zone 1. No substantive evidence or explanation has been provided to indicate why locating the development within the Flood Zone 1 part of the appeal site would not be sequentially preferable to the appeal proposal. Therefore, it is not necessary for me to go on to consider other potential sites, whether in the Green Belt or not.

31. Consequently, the proposal would not comply with local and national policy which seek to steer development away from areas at the highest risk of flooding, contrary to policy CC3 of the BLP and the Framework.

Biodiversity

32. The Council's original concerns relating to potential bat roosts in existing riverside trees and the creation of a riverside buffer have been resolved. Remaining points of dispute relate to the ancient woodland buffer and BNG.
33. Natural England and Forestry Commission guidance suggests that a 15 metre buffer should be provided for the ancient and semi-natural woodland that lies to the north of the site, in order to avoid root damage. However, the submitted tree survey indicates that the root protection area of this group of trees lies entirely outside the appeal site. Furthermore, the part of the appeal site nearest the woodland currently contains a stone surfaced access track with foul sewer below that run for the length of the site, and at a substantially lower level than the trees. On this basis, the roots would not be affected by the proposal and such a buffer is not necessary.
34. In terms of BNG, the Council agree that the principle of the proposed mitigation, enhancement and creation of features on the appeal site is satisfactory but require that this be demonstrated by way of a biodiversity metric by condition. However, a BNG assessment⁷ has already been submitted indicating a potential gain of 14% for area habitats and 200% for hedgerows. This represents a benefit of moderate weight in favour of the proposal.
35. Overall, the proposal would have a positive effect on biodiversity. The development accords with policy BIO1 of the BLP, the Biodiversity and Geodiversity SPD (2019) and the Framework. Together, these require development to conserve and enhance biodiversity features.

Highway safety

36. The proposed site layout indicates that the development would be served by a private access road within the appeal site, taken directly from the public highway Millstones to the east. The proposed bin stores would be located to the west of the site, and bins would need to be transferred to the public road for emptying by refuse vehicles. The appellant has since indicated that the access road would be offered for adoption, but the Council remain concerned that the geometry and layout of the road has not been shown to be suitable.
37. However, swept path analysis has been submitted to demonstrate that the layout is appropriate for refuse vehicles. Furthermore, the proposed shared surface layout with pavements broadly reflects the design and layout of two existing cul-de-sacs on Millstones. Any minor variations to the detailed layout

⁷ DEFRA Metric 3.0 calculation (Appx 2 of Smeeden Foreman Ecology Information, dated September 2021)

(including any allowance for fire tenders), surfacing or drainage could be appropriately dealt with by means of suitably worded planning conditions.

38. Use of the proposed access road would have no significant adverse effect on the safety of road users. The proposal complies with policies GD1 (General Development), T4 (Transport Safety) and D1 (Design and Placemaking) of the BLP and the Framework, which require new development to provide transport users with safe access and to create places that are of high quality design.

Other considerations

39. Notwithstanding my findings relating to inappropriate development, the signed obligation would secure three affordable dwellings at discounted market value for eligible persons prior to the first, or any subsequent, disposal of each unit. I am satisfied that this obligation is necessary, fairly related in scale and kind, and directly related to the development. This obligation complies with Regulation 122 of the Community Infrastructure Levy Regulations 2010 and paragraph 57 of the Framework and can be taken into account as a benefit of significant weight. The biodiversity obligation requires any net gain that cannot be delivered onsite to be delivered offsite or by financial contribution. However, the Council have now agreed that net gain can be delivered onsite. Therefore, this obligation is not necessary and I have not taken it into account.
40. The proposal would contribute two market dwellings to housing supply in the borough. The driver for the market housing is to facilitate affordable housing, but this nonetheless attracts moderate weight in its own right. The cited appeal decisions⁸ gave very substantial weight to both market and affordable housing, but do not relate to rural exception sites and I do not have full details of the evidence heard at that inquiry. I attach very limited weight to those decisions. The availability of the site attracts no more than limited weight, given my above findings. The Council's sale of a previously developed garage site in Oxpsring has limited relevance to the proposed development on the edge of the village. That the proposal complies with other development plan policy requirements, including being in a sustainable location, is of neutral weight.

Other matters

41. The fifth reason for refusal states that the poor design of the proposal would fail to improve the character and quality of the area, as the bin store would be remote from the public road. However, given my above findings in respect of highway safety, the proposed waste arrangements would not adversely impact the character and appearance of the surrounding area. Indeed, the Council's officer report recognises the high quality design of the proposed development.

Conclusion

42. The Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. In addition there are significant adverse impacts on openness, the Green Belt purpose of safeguarding the countryside from encroachment, and flood risk. Substantial weight should be given to the harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt and any other harm are clearly outweighed by other considerations.

⁸ Colney Heath appeal decisions APP/B1930/W/20/3265925 and APP/C1950/W/20/3265926

43. As outlined above, I give significant weight to the provision of affordable housing, moderate weight to market housing and on site biodiversity enhancements, and limited weight to the other identified considerations. The lack of highway harm is neutral. Even when taken together, these considerations do not outweigh the harm that the proposed development would cause. The substantial weight to be given to Green Belt harm is not clearly outweighed by the other considerations sufficient to demonstrate very special circumstances. Even had I found the site to be sequentially suitable in terms of flood risk, this would not have affected my overall conclusion.
44. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

Patrick Hanna

INSPECTOR