

APPEAL BY MR PHILIP GIBSON AGAINST THE DECISION OF THE COUNCIL TO REFUSE FULL PLANNING PERMISSION FOR THE ERECTION OF A DETACHED DWELLING AT 3 DALES GREEN ROAD, ROOKERY, KIDSGROVE

<u>Application Number</u>	16/01008/FUL
<u>LPA's Decision</u>	Refused by delegated powers 21 March 2017
<u>Appeal Decision</u>	Dismissed
<u>Costs Decision</u>	Refused
<u>Date of Appeal and Costs Decisions</u>	09 January 2018

The appeal decision

The full text of the appeal decision is available to view via the following link
<http://publicaccess.newcastle-staffs.gov.uk/online-applications/plan/16/01008/FUL>

The Inspector considered that the main issues in this case are;

- whether the proposed development is inappropriate development in the Green Belt,
- the effect on the openness of the Green Belt,
- whether the proposed development would be a suitable location for housing,
- the effect on the living conditions of the future occupants of the replacement dwelling at 3 Dales Green Road with particular regard to outlook and light; and,
- if the proposed development is inappropriate, 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 development.

In dismissing the appeal, the Inspector made the following comments:

Green Belt

- The proposed development is to erect a detached dwelling within the garden of the existing property. The appeal lies in between the Rookery and Mow Cop. Both are settlements and have a range of services and facilities. Dales Green consists of ribbon development along Dales Green Road from Mow Cop Road. This development includes detached and semi-detached dwellings as well as farms and extends along the western side of Dales Green Road down to close to the appeal site.
- Whilst Dales Green, along Dales Green Road, is an extension of Mow Cop, the gap between Dales Green Farm and the appeal site is sufficiently expansive and open that it is difficult to conclude that the appeal site lies within the village. It is considered that the appeal site is in open countryside.
- However, even if it was found that the appeal site was in the village, the proposed development would not constitute limited infilling. Limited infilling has tended to be defined as the filling of a gap in an otherwise built up frontage. Whilst situated between two dwellings, it is considered that the appeal site is not a gap in an otherwise built up frontage given the expansive open areas of countryside to the north and south of the dwellings.
- Regard was had to the appeal and the Council decisions referred to the Inspector. No. 14 Dales Green Road lies on the opposite side of the road to the appeal site and closer to Mow Cop. It is part of the ribbon development on that side of the road and the development which was proposed was considered to be filling a gap in the otherwise built up frontage.

- The Inspector concluded that the circumstances of the decisions were different to those of the current case and in any event, the case has been determined on its merits and on the basis of the evidence.
- The Inspector concluded that the proposed development would constitute inappropriate development in the Green Belt as it would not represent limited infilling in a village.
- A fundamental aim of Green Belt policy, as set out in paragraph 79 of the Framework is to keep land permanently open. The construction of a new detached dwelling on the site would result in built development where there is none at present. It would impact on views across to the hills and fields behind the appeal site. The dwelling and its domestic accoutrements would inevitably lead to a loss of openness in this open countryside location.
- For these reasons the proposed development would lead to a significant loss of Green Belt openness.

Suitable location for housing

- Paragraph 55 of the Framework seeks to locate new housing where it will enhance or maintain the vitality of rural communities. Isolated homes in the countryside should be avoided unless there are special circumstances.
- The appeal site lies some distance from the shops and services in Mow Cop or Mount Pleasant. The nearest primary school is around 650m walking distance away in Mow Cop. Whilst there is a footpath for the majority of the route into Mow Cop, there is no footpath between the appeal site and the end of the ribbon development on the eastern side of Dales Green Road.
- Mow Cop Road between Dales Green Road and Mount Pleasant is narrow and does not have a pavement for much of its length. This does not encourage walking and the gradient from the appeal site to Mow Cop or Mount Pleasant does not encourage cycling.
- It is considered that the proposed development would not represent isolated housing in the countryside given the proximity of the appeal site to existing housing in Dales Green. However, for the reasons set out above, it is likely that the occupants of the proposed house would tend to rely on a motor vehicle for accessing services in Mow Cop, Mount Pleasant and other settlements, and that the appeal site is not in a sustainable location for housing having regard to the core planning principle of the Framework which seeks to make the fullest possible use of public transport, cycling and walking. The Inspector concluded therefore that the appeal is not a suitable location for housing.

Living conditions

- The design of the replacement dwelling for 3 Dales Green Road granted planning permission and which has commenced, includes principal windows which would overlook, at close quarters, the dwelling proposed in the current case. This would result in the potential for a poor outlook from, and loss of light to, the replacement dwelling. This was a reason for refusal.
- The Council and the appellant have agreed that a Section 106 agreement could be made which would have the effect of ensuring that the principal windows in the elevation facing the appeal site would not be inserted. This would be achieved by an agreement not to implement the first permission but instead implement a second permission for the replacement dwelling, the design of which does not have any principal windows on the elevation overlooking the appeal site. The appellant has submitted a certified copy of a unilateral undertaking dealing with this matter. However, whilst the parties have agreed the principle, the wording of the agreement has not yet been resolved to the satisfaction of both parties.
- If the appeal were allowed, an agreement along the lines proposed by both parties would be a satisfactory way of addressing this matter. Since the appeal is being dismissed on other grounds however, it has not been necessary to consider this matter in any further detail.

Conclusion

- The proposed development would be inappropriate development in the Green Belt. 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 effects on openness. In accordance with paragraph 88 of the Framework, 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. The appeal site is not a suitable location for housing given that its occupants would have to rely on a motor vehicle to access services and facilities.
- Only limited weight has been given to the contribution to addressing five year land supply issues and economic benefits given that the proposal is only for one dwelling. The substantial weight to the Green Belt harm is not clearly outweighed by the benefits and other considerations sufficient to demonstrate very special circumstances.
- For the reasons given above, and having considered all matters raised, the appeal should be dismissed.

The Costs Decision

In refusing the award of costs, the Inspector made the following comments:

- The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
- The appellant submits that the Council has acted unreasonably and cites four examples of unreasonable behaviour which he considers the Council has exhibited. These are: lack of co-operation with the other party; delay in providing information; failure to produce evidence to substantiate each reason for refusal; and, vague, generalised, or inaccurate assertions which are unsupported by any objective analysis.
- The appellant states that the Council has demonstrated a lack of co-operation in relation to the drafting of the unilateral undertaking. There is little evidence to support this claim.
- The Council's comments on the draft agreement are reasonable and include points of clarification as well as issues of grammar and presentation. Whilst it would have been very helpful if those comments were made earlier than 7 December such that discussions could have taken place and a revised version presented, the Inspector was not convinced that this amounts to behaviour so unreasonable as to justify an award of costs.
- The appellant claims that the first two reasons for refusal are based upon an assertion and not supported by objective analysis. These reasons for refusal relate to Green Belt and unsuitable location matters.
- Policy S3 of the Newcastle upon Lyme Local Plan is still part of the development plan and the Council was entitled to refer to it in the determination of planning applications which relate to Green Belt. Whilst Inspectors have found that it is inconsistent with the National Planning Policy Framework (the Framework), the weight to be attached to it is a matter for the decision taker. The Council also have made numerous references to the Framework in the Decision Notice, in the Committee report and in the statement of case.
- The Council has acknowledged the need for housing in the Decision Notice as there is a specific reference to not being able to demonstrate a five year supply of housing land. The Council report did not make reference to the appeal decisions which the appellant refers to in his statement, but the Council is not obliged to do so if it does not consider that they are material to the determination of the application.
- There is no evidence to support the appellant's assertion that the Council relied upon immaterial considerations and refused to give weight to material ones, nor that the application was handled without regard to proper planning principles or without analysis.

- It was therefore found that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, had not been demonstrated.

Your Officer's comments

That the appeal decision and the refusal of the award of costs be noted.