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# Appeal Decision

Site visit made on 28 September 2021

**by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 18 October 2021**

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**Appeal Ref: APP/W4223/W/21/3271657**

**Land at Buckstones Road, Shaw, Oldham OL2 8LJ**

- 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 Mr David Trippier against Oldham Metropolitan Borough Council.
  - The application Ref FUL/346052/21, is dated 6 January 2021.
  - The development proposed is a dwellinghouse with lower ground floor and associated garden and parking area.
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## Decision

1. The appeal is allowed and planning permission is granted for a dwellinghouse with lower ground floor and associated garden and parking area at Land at Buckstones Road, Shaw, Oldham OL2 8LJ in accordance with the terms of the application, Ref FUL/346052, dated 6 January 2021, and the plans with it, subject to the conditions in the attached schedule.

## Procedural Matters

2. The Government published the revised National Planning Policy Framework on 20 July 2021 (the Framework), which forms a material consideration in the determination of this appeal. The main parties have had an opportunity to comment on the significance of the changes. Therefore, I will not prejudice either party by taking the Framework into account in reaching my decision.
3. The appeal is against the failure to give notice within the prescribed period of a decision on an application for planning permission. Following the lodging of the appeal, the Council considered the application and indicated in its Statement of Case (SoC) that they would have refused the application.

## Main Issues

4. As outlined in the SoC, the Council's reasons for refusing planning permission would have been regarding the effect of the proposed development on the Green Belt. I have formulated my main issues on this basis.
5. Accordingly, I identify that the main issues on this appeal are:
  - i. whether the proposed development would be inappropriate development in the Green Belt;
  - ii. the effect of the proposed development on openness of the Green Belt;
  - iii. if the proposal is inappropriate development, whether 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.

## **Reasons**

### *Inappropriate development*

6. The Framework identifies inappropriate development as harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 149 of the Framework sets out that the construction of new buildings should be regarded as inappropriate in the Green Belt. This is subject to a number of exceptions, which includes paragraph 145 g), which advises that an exception could be the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt than the existing development.
7. The main parties are not in dispute over whether the site constitutes Previously Developed Land. Nonetheless, my conclusions on the next issue will, therefore, determine whether the proposed development is inappropriate.

### *Openness*

8. The Framework indicates that openness is an essential characteristic of the Green Belt with a key objective being to keep land permanently open. The Planning Practice Guidance (PPG) identifies factors which can be taken into consideration when assessing the impact of a proposal on Green Belt openness. It states that openness is capable of both spatial and visual aspects. The Council have referenced a judgment<sup>1</sup> in support of its submission, which I have noted and consider to be a material consideration.
9. The site currently does not have any building located upon it. However, I note that there was previously another building occupying the site, which has since been demolished, leaving only a hardcore surface remaining. There are little details of this building in the submission, although I note that it was a consideration in the previous applications submitted to the Council, including the most recent application that was approved in 2018<sup>2</sup> (the previous scheme). As such, this previous building does not alter my findings on the scheme before me and the appeal scheme would inevitably result in there being a considerably greater built form on the site than at present.
10. It follows that the development would be visually intrusive and have a harmful impact on openness due to its spatial characteristics. Therefore, I conclude that the proposed development results in a notable loss of openness to the Green Belt. As such, the proposed development would represent inappropriate development, contrary to the Green Belt aims of Policy 22 of the Council's Local Development Framework, Development Plan Document, Joint Core Strategy and Management Policies 2011, and the requirements of the Framework.

### *Other considerations*

11. I have concluded that the proposal represents inappropriate development in

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<sup>1</sup> Turner v Secretary of State for Communities and Local Government and East Dorset Council [2016] EWCA Civ 466

<sup>2</sup> PA/342365/18 approved on 19 November 2018

the Green Belt and harms the openness of the Green Belt. Paragraph 148 of the Framework requires decision makers to ensure that substantial weight is given to any harm to the Green Belt. Other considerations in favour of the development must clearly outweigh the harm. The appellant contends there are considerations that would outweigh harm arising from inappropriate development and any other harm to amount to very special circumstances. This is in the form of the previous scheme.

12. My attention has also been drawn by the appellant to a number of judgements in relation to the previous scheme as a fall-back position, which I have noted. I consider these to be relevant in the determination of this appeal and form a material consideration. In order to establish the validity of the fall-back position it is necessary to first establish whether there is a greater than theoretical possibility that the fall-back may take place. In this instance, there is nothing to indicate that the fall-back could not be implemented. The development of the fall-back is therefore a realistic possibility.
13. I accept that the previous scheme, resulted in a larger internal volume with a basement being incorporated than the earlier permission<sup>3</sup> approved in 2017. This resulted in the volume of the proposed building increasing from approximately 360m<sup>2</sup> to approximately 670m<sup>2</sup>. Nonetheless, the starting point for the proposed development is the previous scheme, which is extant. Despite a lack of volume calculations for the proposed development, it is accepted that the size of the proposed development is comparable to the previous scheme, albeit with a modest increase to the basement area. Additionally, the raised patio area on the previous scheme is no longer a feature on the proposed development. Although, a proposed retaining wall would be installed to create an open courtyard, between the wall and lower ground floor area, where the glazing would be located.
14. The proposed development relies on earthworks to provide screening of the retaining wall when viewing the site from the rear. The earthworks would comprise an engineering operation in itself, but would have a limited impact on Green Belt openness. Additionally, whilst there is a marked increase in the gradient of the existing topography to screen the retaining wall, there is little before me to suggest that this approach would not be achievable.

### **Green Belt Balance**

15. The Framework requires that substantial weight is given to any harm to the Green Belt and states that very special circumstances will not exist unless harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
16. I have concluded that the proposed development has harmful implications for the Green Belt in terms of inappropriate development and the erosion of the openness of the Green Belt. I have also carefully considered the benefits of the proposed development, including the resulting economic and social benefits through the construction phase and the subsequent occupation of the dwelling. There is also an absence of other identified harm, including character and appearance, highway safety and biodiversity.
17. The appellant contends that there is a very real possibility that the fall-back

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<sup>3</sup> PA/340501/17 – Approved on 25 October 2017

position using the previous scheme would be relied upon should the appeal fail. This is a matter that I give significant weight in the determination of this appeal. The proposed development takes a different design approach to the previous scheme and I agree that in this instance the proposed development comprises a well-considered contemporary scheme that responds better to the site than the previous scheme. Whilst there would be a modest increase in the basement area when compared against the previous scheme, the proposed development would be of a similar scale and massing to the previous scheme. Furthermore, the raised rear patio, as proposed on the previous scheme would be omitted, moderately improving the openness of the Green Belt.

18. Although the Council have raised concerns surrounding the use of the lower ground floor for habitable purposes, the previous scheme could be used in a similar way, due to there being no restrictions imposed on the previous scheme in this regard. Even, if the lower ground floor was the subject of any re-configuration, I am not convinced that would, in itself, have harmful implications for the Green Belt. When taken together, the other considerations, particularly the presence of the extant previous scheme, the improvements in design within the proposed development, and other associated benefits, clearly outweigh the identified harm to the Green Belt. Consequently, the very special circumstances necessary to justify the development exist in this instance.

### **Conditions**

19. The Council has suggested conditions which I have considered, making amendments and minor corrections, where necessary, to ensure clarity and compliance with the tests contained within Paragraph 56 of the Framework and the PPG.
20. In addition to conditions relating to the time limit for implementation, for reasons of certainty a condition requiring the development to be undertaken in accordance with approved plans is necessary. A condition is reasonable and necessary for the materials specified on the application form and drawings to be used in the construction of the proposed development.
21. I have not included a condition(s) to withdraw permitted development rights on the proposed development. Whilst the Framework is silent on such matters, permitted development is development for which the principle has already been granted by secondary legislation, and there are no restrictions within the GPDO for domestic extensions or development within the curtilage of a dwelling located within a Green Belt.
22. Furthermore, it has not been demonstrated that the presence of such permitted development rights, which the Council is seeking to remove in suggested conditions no's 3 and 4 would be so excessive to form the required exceptional circumstances. Additionally, due to the scale of the proposed development consideration to landscaping is not reasonable or necessary, although the maintenance and retention of the earthworks is reasonable and necessary in the interest of the surrounding Green Belt. Finally, whilst a condition has been suggested regarding ground water, there is little evidence to support the imposition of such a condition, especially as such a condition was not imposed on the previous scheme.

## **Conclusion**

23. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that any application for planning permission must be determined in accordance with the Development Plan, unless material considerations indicate otherwise.
24. Overall, I consider that there would be no adverse effects resulting from the proposed development that would significantly or demonstrably outweigh the favourable factors associated with the proposed development, including the extant previous scheme. Therefore, in this instance there are material considerations which indicate that the proposal should be determined otherwise than in accordance with the development plan and planning permission should be granted.
25. For the reasons given above, I conclude that the appeal should succeed.

*W Johnson*

INSPECTOR

## **Schedule of Conditions**

- 1) The development must be begun not later than the expiry of three years beginning with the date of this permission.
- 2) The development hereby approved shall be fully implemented in accordance with the approved plans and specifications, which are referenced as follows: MHG-035(PL) 001; MHG-035(PL) 002; MHG-035(PL) 003; MHG-035(PL) 004 Rev B; MHG-035(PL) 005 and Street MHG-035(PL) 006 Rev B.
- 3) The external surfaces of the development hereby permitted shall be constructed in the materials shown on drawing no.MHG-035(PL) 005 and on the application form.
- 4) The earthworks as shown on the approved drawings to the rear of the proposed retaining wall shall be maintained and retained for the life of the development.

End of Schedule