

COMMITTEE REPORT

Date: 5 October 2017 **Ward:** Rural West York
Team: Major and **Parish:** Nether Poppleton Parish
Commercial Team Council

Reference: 17/01507/FUL
Application at: Cherry Tree Cottage Millfield Lane Nether Poppleton York
YO26 6NX
For: Erection of 1no. dwelling
By: Mr & Mrs Reynolds
Application Type: Full Application
Target Date: 7 September 2017
Recommendation: Refuse

1.0 PROPOSAL

1.1 The application seeks permission for the erection of a detached dwelling on land adjacent to Cherry Tree Cottage, Millfield Lane, and Nether Poppleton.

PROPOSAL

1.2 The application site lies adjacent to Cherry Tree Cottage and comprises a central brick building, a substantial summer house, a 20ft shipping container, a Railway carriage, two wood storage sheds, a lean to trailer and log store and another shipping container to store recycled materials in. The proposed dwelling would sit back from the highway retaining car parking to the front and access to the adjacent caravan site. The dwelling would be of timber frame construction and has been designed to reflect the design of an agricultural barn. The front elevation would incorporate a long sloping roof incorporating roof lights and a central gable ended section. The ground floor would incorporate narrow windows and a log store. The rear of the dwelling is modern in appearance. It would be two storeys and would be predominantly glazed with a central rearward projecting glazed element. Access would be directly off Millfield Lane.

1.3 The application is being brought to committee at the request of Cllr Steward in order for green belt issues to be discussed.

RELEVANT HISTORY

- 6/116/71/OA Constructing four kennels for boarding dogs Refused 08.03.1978
- 01/00372/FUL - Alterations to roof to create second floor rear extension - Refused 30.04.2001

- 01/03234/FUL - Erection of two pitched roof dormers to rear - Approved 15.01.2002
- 12/03752/FUL - Change of use of land to allow 11 touring caravan pitches - Approved 01.03.2013
- 16/00093/FUL - Increase number of caravan pitches from 11 to 15 and construct seven additional hardstandings to existing and additional pitches - Approved 10.03.2016

2.0 POLICY CONTEXT

2.1 Policies:

2005 Development Control Draft Local Plan

- CYGP1 Design
- CYGB1 Development within the Green Belt
- CGP15A Development and Flood Risk
- CYH4A Housing Windfalls

Upper Poppleton and Nether Poppleton Neighbourhood Plan 2017

- PNP1 Green Belt

City of York Draft Local Plan – Pre- Publication Draft 2017

- GB1 Green Belt

3.0 CONSULTATIONS

INTERNAL

Highway Network Management

3.1 No objections

Public Protection

3.2 Given that there appear to have been a number of former buildings onsite, including the burnt down farm house, and as a result there is the potential that contamination from the former farm house/buildings could have affected the site. The submitted screening assessment indicates that the site has been used for domestic purposes for the past 150 years but looking at historic maps it would appear that the site was part of a farm. In addition the site has been used for

business purposes, container storage etc in the recent past. As such conditions are proposed.

Structures and Drainage

3.3 As the applicant has not provided any foul and surface water drainage information. The Flood Risk Management Team objects to the development and recommends refusal on those grounds.

EXTERNAL

Ainsty Internal Drainage Board

3.4 The scheme appears to enlarge the impermeable area on site and has the potential to increase the rate of surface water run-off from the site if this is not effectively constrained. surface water from the development is to be disposed of via a soakaway. The Board welcomes this approach to surface water disposal however the application does not indicate if this is an existing facility or to be newly constructed for the purpose. If the soakaway already exists the Board would suggest that the Local Authority seek confirmation of its location and that the system is working effectively, and also have evidence that it is capable of handling the additional volume of water that will be generated by the development. If the soakaway is to be newly constructed the Board recommends that the applicant be asked to carry out soakaway testing, in accordance with BRE Digest 365, in order to ascertain that the soil structure is suitable for a soakaway system. Conditions are suggested.

Nether Poppleton Parish Council

3.5 Object on the grounds that the dwelling would be built within the green belt. It was considered that the design of the house should be no higher than the present roof levels and should be sympathetic to the rural environment. The large section of glass to the rear of the property can be seen clearly from the bypass and is not in keeping with the rural ambience

Neighbours and Publicity

3.6 Eleven responses supporting the application:

- Would not result in a loss of outlook from the immediate neighbour
- Would not result in overdevelopment of the plot
- A dwelling would be an improvement of the site
- The design is sympathetic to the location
- The site is a brownfield site

- The site is already developed and a business operating from the container on the site in the form of storage
- The dwelling would result in infilling between Cherry Tree Cottage and the caravan site

4.0 APPRAISAL

4.1 Key Issues

- Principle of the development in the green belt
- Previously developed land
- Curtilage definition
- Design

4.2 The National Planning Policy Framework (March 2012) sets out 12 core planning principles that should underpin both plan-making and decision-taking. Of particular relevance here is that planning should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings, a principle set out in paragraph 17.

4.3 Paragraph 187 states that when Local Planning Authorities are considering proposals for new or improved residential accommodation, the benefits from meeting peoples housing needs and promoting the economy will be balanced against any negative impacts on the environment and neighbours' living conditions.

4.4 Paragraph 79 (Protecting Green Belt land) confirms the great importance the Government attaches to Green Belts. It states that the fundamental aim to prevent urban sprawl by keeping land permanently open and the essential characteristics of Green Belts are their openness and their permanence. The construction of new buildings within green belts should be regarded as inappropriate.

4.5 The site falls within the general extent of the Green Belt as shown on the Key Diagram of the RSS (the Yorkshire and Humber Plan) saved under The Regional Strategy for Yorkshire and Humber (Partial Revocation) Order 2013. Policy YH9 and Y1 of the Yorkshire and Humber Plan - Regional Spatial Strategy to 2026 defines the general extent of the green belt around York with an outer boundary about 6 miles from the city centre and although the spatial strategies have now been withdrawn these policies relating to York's green belt have been saved.

4.6 The protection of the Green Belt is one of the core planning principles of the NPPF (Para 17). The NPPF states the types of development that are appropriate within Green Belts. All other development is deemed inappropriate and by definition harmful to the Green Belt. The NPPF states that the local planning authority should ensure that substantial weight is given to any harm to the Green Belt. The NPPF

sets out the 5 purposes of the Green Belt (Para 80) these are: to check unrestricted sprawl of large built up areas; to prevent neighbouring towns merging into one another; to assist in safeguarding the countryside from encroachment; to preserve the setting and special character of historic towns; and to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

4.7 Policy SP2 'The York Green Belt' in the City of York Council Development Control Draft Local Plan (2005) states that the primary purpose of the York Green Belt is to safeguard the setting and historic character of the City of York.

4.8 The Development Plan also comprises the Upper Poppleton and Nether Poppleton Neighbourhood Plan which came into statutory force with effect from 23 August 2017. Section 38(6) of the Planning and Compensation Act 2004 and NPPF at para 14 requires that determinations be made in accordance with the development plan unless material considerations indicate otherwise.

4.9 The aim of the neighbourhood plan is:

- Maintain the historic character, setting and identity of Nether and Upper Poppleton village core.
- Manage the growth of new developments of housing and employment within the parished areas.
- Ensure that new development is built to be sustainable and commensurate with the rural setting.
- Ensure that any brown field sites are developed with the amenities, facilities and road structures that will allow, maintain and enhance the identity of the community.
- Promote development of brownfield sites as a priority over any Greenfield site or grade 1, grade 2 or grade 3a agricultural land classification (ACL).

4.10 Paragraph 4.1.3 of the plan states that 'It is accepted that if new housing and business development envisaged in the Draft emerging York Local Plan preferred sites consultation (July 2016) is to be accommodated, then this should be on Brownfield sites. All Brownfield and windfall sites acknowledged by the City of York planning department should be brought back into use in the first instance.'

4.11 The Neighbourhood Plan Policy PNP1 Green Belt states 'The general extent of the York Green Belt within the plan area is shown on the Policies Map. Within the general extent of the Green Belt inappropriate development will not be supported except in very special circumstances. New buildings are regarded as inappropriate development and will not be supported other than in the circumstances identified in paragraph 89 of the National Planning Policy Framework. Proposed developments for the following uses will be supported provided that they preserve the openness of the general extent of the Green Belt and do not conflict with the purposes of including land in the Green Belt:

- Minerals extraction;
- Engineering Operations;
- Local Transport Infrastructure that can demonstrate a requirement for a Green Belt location;
- The re-use of buildings provided that the buildings are of permanent and substantial construction; and
- Development brought forward under a Community Right to Build Order

Exceptions to this include: '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.'

4.12 The Pre-Publication draft Local Plan and updated evidence base is currently out for consultation. The emerging Local Plan policies can only be afforded weight in accordance with paragraph 216 of the NPPF and at the present early stage in the statutory process such weight will be limited. However, the evidence base that underpins the proposed emerging policies is capable of being a material consideration in the determination of the planning application. The relevant policy is GB1 which accords with advice contained within the NPPF.

4.13 The 2005 Development Control Draft Local Plan was approved for Development Control purposes in April 2005. Whilst the draft Plan does not form part of the statutory development plan its policies are considered to be capable of being material considerations in the determination of planning applications where policies relevant to the application are consistent with those in the NPPF although it is considered that their weight is limited.

4.14 The relevant draft 2005 York Development Control Local Plan Policies are GP1, GB1 and GP15a. Policy GP1 'Design' of the City of York Local Plan Deposit Draft refers to design, for all types of development. Of particular relevance here are the criteria referring to good design and general neighbour amenity.

4.15 Policy GB1 of the York Development Control Local Plan sets out a clear policy presumption that planning permission for development within the Green Belt will only be forthcoming where the scale, location and design of such development would not detract from the open character of the Green Belt, would not conflict with the purposes of including land within the Green Belt and would be for one of a number of purposes deemed to be appropriate within the Green Belt.

4.16 GP15a 'Development and Flood Risk' all applications in low to medium risk areas must submit a Flood Risk Assessment. Developers must satisfy the Local Planning Authority that any flood risk will be successfully managed with the

minimum environmental effect. Discharges should not exceed capacity of existing sewers and watercourses.

PRINCIPLE OF THE DEVELOPMENT

4.17 The built-up area of Nether Poppleton is a considerable distance from the application site and it is considered that the site is located within the general extent of York's Green Belt.

4.18 The site has a number of structures present on site and lies between the existing Cherry Tree Cottage and the existing caravan park. The site is clearly visible from the highway to the front and the open countryside to the rear.

DEFINITIONAL HARM TO THE GREEN BELT

4.19 Paragraph 89 of the NPPF states that Local Planning Authorities should regard the construction of new buildings in Green Belt that do not fall within the exceptions listed as inappropriate development that is, by definition, harmful to the Green Belt. In accordance with the NPPF, substantial weight should be given to this definitional harm. Paragraph 87 of the NPPF states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in 'very special circumstances'.

OTHER GREEN BELT HARM

4.20 Paragraph 88 of the NPPF refers to the substantial weight that should be given to any harm to the Green Belt. Even though the site has a number of structures on it, all of which are single storey, the site contributes to the openness of the area. The removal of the mixture of building on the site may benefit the character of the area but the erection of a larger, taller dwelling on the site would clearly have an additional impact upon the openness of the greenbelt and the purpose of including land within the green belt resulting in significant harm to the openness of the Green Belt.

4.21 The NPPF considers openness to be the most important attribute of Green Belts. It sets out the five purposes of including land in Green Belts being:

- to check the unrestricted sprawl of large built-up areas;
- to prevent neighbouring towns merging into one another;
- to assist in safeguarding the countryside from encroachment;
- to preserve the setting and special character of historic towns; and
- to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

4.22 The proposal would be contrary to the five purposes of the green belt notably safeguarding the countryside from encroachment, preventing neighbouring towns from merging into one another by introducing built development to an area of undeveloped land between urban York and Nether Poppleton, and assisting with urban regeneration by encouraging the recycling of derelict and other urban land. Therefore, in addition to definitional harm by reason of inappropriateness, it is considered that the proposal would result in further harm to the openness and function of the Green Belt.

PREVIOUSLY DEVELOPED LAND

4.23 The applicant states that the site should be considered as being previously developed land. The relevance of this is that one of the exceptions in paragraph 89 is 'the partial or complete redevelopment of previously developed sites..... 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.

4.24 A recent Court of Appeal decision held that residential curtilage outside built up areas can be classed as being previously developed land under the definition of the NPPF. It is therefore necessary to come to a view as to whether this particular application site adjacent to Cherry Tree Cottage in Nether Poppleton is residential garden land within the curtilage of the existing dwelling and whether it is located outside a recognised built up area.

CURTILAGE

4.25 It is clear that the site is located within the general extent of the York Green Belt and outside the recognised built up area. However, it is considered that the site can not be classed as being garden land within the curtilage of the existing dwelling. Records indicate that there was a farm house on the site which was destroyed by fire and subsequently demolished in the 1950. Over time the associated agricultural buildings have been demolished and removed from site with the exception of a small brick building located centrally within the site.

4.26 The word curtilage is not defined in statute. However, case law has described it as "an area of land attached to a house and forming one enclosure with it". The High Court confirmed that whether or not land is within the curtilage of a dwelling house will be a question of fact and degree each time for the decision maker (Local Planning Authority or Planning Inspector). When determining what constitutes curtilage the decision maker has to identify (i) the physical layout (ii) ownership, past and present and (iii) use or function, past and present. Whilst the function of the land is relevant to the question of curtilage, it is not determinative. The fact that the land in question may have been used for domestic purposes for a period of time does not mean that it is residential curtilage.

4.27 The application site is physically separated from Cherry Tree Cottage by an existing fence and boundary wall. Historic maps clearly show that the site was occupied by a farm house and associated agricultural buildings up until the 1950 and was operated independently of Cherry Tree Cottage. The site also retains its independent access. Whilst the site may be within the ownership of the applicant and the site has a number of structures on it which are used in connection with the residential use at Cherry Tree Cottage it is considered that the site does not form part of the curtilage of the dwelling.

4.28 If the site is not classed as curtilage then the issue of previously developed land does not apply. The NPPF clearly states that 'land that is or has been occupied by agricultural or forestry buildings and land that was previously-developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape in the process of time' are excluded from the definition of previously developed land. The site was previously used for agricultural purposes and whilst one small brick building remains on site the remainder of the agricultural buildings have been removed. It is apparent that there are structures on the site but Council records indicate that they do not benefit from planning permission. As such it is apparent that the erection of a dwelling in this location would be contrary to national Green Belt policy and would clearly result in harm to the Green Belt.

IMPACT UPON THE OPENNESS OF THE GREEN BELT

4.29 Irrespective as to whether the site is considered to be previously developed land within the curtilage of the dwellinghouse the NPPF at paragraph 89 states that the exception only applies to limited infilling or the partial or complete redevelopment of previously developed sites "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."

4.30 The site is currently occupied by single storey structures which, according to the applicant, have a footprint of 138m². This figure is inclusive of all the temporary structures on the site. The proposed dwelling would have a footprint of 171m² and would be two-storey in height. The proposed dwelling would have an overall height of approximately 8.2m for a width of 14.8m. Whilst space would be retained to the sides of the dwelling the increase in mass of the built development on site would be significant. Furthermore, the site is open to clear views from the highway and from the agricultural land around the site. Whilst the glazing to the rear elevation may be lightweight it would still draw undue attention adding to the overall mass and bulk of the development.

4.31 As such it is clear that the erection of the proposed dwelling at this location would have a greater impact upon the openness of the green belt than the existing development by introducing significant new built development. This would harm the

openness of the green belt as well as having a significant and harmful impact on the existing character of the area.

DESIGN AND AMENITY

4.32 The proposed dwelling has taken reference from agricultural buildings in terms of the timber frame, the front sloping roof and the limited openings to the front elevation. The dwelling is lower in height than the neighbouring Cherry Tree Cottage and as such would not dominate the existing property. Whilst the rear elevation is predominantly glazed there would be no loss of privacy due to the relationship with the neighbouring dwelling and the open aspect to the rear. Adequate provision is made for off street parking..

DRAINAGE

4.33 The application site lies within flood zone 1 and as such should not suffer from river flooding. However, the applicant has submitted insufficient information in connection with foul and surface water drainage to assess whether there would be any impact as a result of the proposal.

5.0 CONCLUSION

5.1 In summary, the proposal constitutes inappropriate development within the general extent of the York Green Belt. According to the Framework (paragraph 87) inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. 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. In addition to the definitional harm to the Green Belt arising from inappropriate development, the proposal would cause a considerable loss of openness to the Green Belt when the most important attributes of Green Belts are their openness and permanence. The proposed dwelling would also be contrary to the purposes of including land within the Green Belt, notably because it would not safeguard the countryside from encroachment, assist with urban regeneration by encouraging the recycling of derelict and other urban land and prevent neighbouring towns merging into one another. In accordance with the Framework (paragraph 88) substantial weight is given to this harm in the Green Belt. The applicant has not advanced any other considerations to clearly outweigh these identified harms and these harms are not clearly outweighed by other considerations. Consequently the very special circumstances necessary to justify the development do not exist.

COMMITTEE TO VISIT

6.0 RECOMMENDATION: Refuse

- 1 The proposal constitutes inappropriate development in the Green Belt that, by definition, would be harmful to the Green Belt. The application site makes a positive and significant contribution to the openness of the Green Belt to the south east of Nether Poppleton and assists in safeguarding the countryside from encroachment, encouraging urban regeneration and preventing neighbouring towns merging into one another. There has been no compelling case made for 'very special circumstances'. Whilst the scheme would result in the removal of temporary buildings on the site it would not offer significant benefits that would clearly outweigh the identified harm to the Green Belt. Therefore, the proposal is considered to be contrary to paragraphs 87 to 89 of the National Planning Policy Framework, the retained policies YH9(C) and Y1(C1 and C2) of the Yorkshire and Humber Regional Spatial Strategy and the Policy PNP1 of the Upper Poppleton and Nether Poppleton Neighbourhood Plan.
- 2 Insufficient information has been submitted with the application to demonstrate that an acceptable means of surface water drainage can be achieved in this location. As such the proposed development would conflict with paragraph 103 of the NPPF which states that Local Planning Authority should ensure that flood risk is not increased elsewhere. In addition, by virtue of the lack of information the proposal conflicts with Policy GP15a 'Development and Flood Risk' of the City of York Development Control Local Plan (2005) and Section 4.1.c of the City of York Council Strategic Flood Risk Assessment (2013).

7.0 INFORMATIVES:

Notes to Applicant

1. STATEMENT OF THE COUNCIL'S POSITIVE AND PROACTIVE APPROACH

In considering the application, the Local Planning Authority has implemented the requirements set out within the National Planning Policy Framework (paragraphs 186 and 187) in seeking solutions to problems identified during the processing of the application. The Local Planning Authority took the following steps in an attempt to achieve a positive outcome:

Discussed the proposal at pre-application stage and advised that the scheme was contrary to green belt policy. However, the application was submitted and the applicant/agent was unwilling to withdraw the application, resulting in planning permission being refused for the reasons stated.

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