

KIRKLEES METROPOLITAN COUNCIL STATEMENT OF CASE
TOWN AND COUNTRY PLANNING ACT 1990

Appeal by Mr S Murphy against the refusal of Kirklees Metropolitan Council to grant planning permission for the siting of a mobile home as holiday accommodation, construction of raised platforms, erection of 'tiki bar' and pergola and formation of vehicular access from Manchester Road with electronic gates and associated hard surfacing at Mulberry Brook, Manchester Road, Slaithwaite, Huddersfield, HD7 6LP

Appellant:	Mr S Murphy
Appeal Site:	Mulberry Brook, Manchester Road, Slaithwaite, Huddersfield, HD7 6LP
Appellant's Agent:	Mr Andy Rushby, Assent Planning Consultancy Ltd
LPA Reference:	2021/91136
Planning Inspector Reference:	APP/Z4718/W/22/3290235

1 INTRODUCTION

- 1.1 The Local Planning Authority's (LPA) case in this appeal is principally set out within the officer's report for the planning application, a copy of which was sent to the Inspectorate with the appeal questionnaire. This Statement of Case does not intend to repeat or duplicate the arguments set out in this report, but instead focusses on responding to and clarifying the key issues that arise from the appellant's grounds of appeal.

2 COMMENTS ON THE APPELLANT'S GROUNDS OF APPEAL

Inappropriate Development in the Green Belt/Harm to Openness

- 2.1 Section 1 of the Statement of Case by the appellant's agent states that *'the LPA have failed to give the appropriate weight to an extant permission and the existence of permitted development rights on the site and has therefore exaggerated the harm to the Green Belt by reason of inappropriateness of the proposed development.'* The LPA holds the view that whilst these factors (permitted development rights and an extant permission) may constitute the basis of a very special circumstances argument, they do not reduce the harm caused to the Green Belt by the development. The LPA consider that the

proposal constitutes inappropriate development in the Green Belt, and Paragraph 147 of the National Planning Policy Framework (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 148 of the Framework goes on to state that local planning authorities should ensure that 'substantial weight' is given to any harm to the Green Belt. Given what is outlined within the Framework, the LPA strongly disagree with the applicant's agent argument that the harm to the Green Belt has been 'exaggerated'. The LPA also consider pertinent to note that it was accepted by the applicant in the supporting statement submitted alongside the planning application that the proposal constituted inappropriate development.

- 2.2 The LPA strongly disagree with Paragraphs 2.3.3 - 2.3.5 of the Statement of Case by the appellant's agent, which note that the driveway, parking spaces and means of enclosure have a 'very little impact' on the openness of the Green Belt and character and appearance of the area. Whilst the site maybe adjacent to Manchester Road, the LPA hold the view that the site is set within countryside and the site had an open and green character (prior to the unauthorised development under the appeal scheme), and such features, most notably the long concrete driveway, have unduly urbanised this site, therefore causing significant harm to the openness of the Green Belt.
- 2.3 What the Statement of Case also fails to mention is that a technical note by Paragon Highways (Appendix 1) submitted with the application displays a revised driveway to address concerns previously held by the Council's Highways Department. The technical note displays a widened driveway, with a turning area further into the site and three parking bays, and this addressed the concerns of the Council's Highways Department. The LPA hold the view that this additional hardstanding, which the Council's Highways Department consider necessary in relation to highways safety, only serves to cause further harm to the openness of the Green Belt.
- 2.4 Paragraph 2.3.5 of the Statement of Case by the appellant's agent states that the appellant would not object to conditions being attached in relation to the surfacing of the access road and parking areas, and for the design and materials of the means of enclosure. However, the LPA consider that the very nature of these works causes harm to the openness of the Green Belt and that such conditions would not address this harm.

Very Special Circumstances

- 2.5 The assessment section of the Statement of Case by the appellant's agent firstly focusses on permitted development rights and an extant planning permission at the site (LPA Ref: 2019/93032, approved on 21st January 2020). Paragraph 2.1.3 goes on to note that development subject of this appeal does not have a materially greater impact upon the openness of the Green Belt than the extant

permission for the erection of cattery building (Appendices 3 and 4 of the Statement of Case by the appellant's agent provides more detail of this approved development).

- 2.6 The LPA strongly disagree with this claim, and hold the view that the amount of built development under the appeal scheme is significantly greater than that under the extant permission and therefore causes much greater harm to the openness of the Green Belt than these approved cattery pens (which were also considered to constitute inappropriate development in the Green Belt). Of note, the 6 relatively modest sized cattery pens did not require any associated operational development and were to sit within the garden, whilst this appeal scheme has a new concrete access track off Manchester Road, excavation into the garden, and hard landscaping features such a decking, fencing and gravel. The cabin and pergola have a combined floor area of approximately 75sqm, whilst the cattery buildings combined would have had a floor area of approximately 40sqm and would have been ~0.7 metre lower in height than the cabin and ~0.9 metre lower in height than the pergola. When taking into account the scale of the cabin and pergola along with all the other built development forming part of this appeal scheme, including the ~2.2 metre high tiki bar, concrete driveway and hard landscaping, as well as the excavation works to the garden, the LPA consider that this appeal development causes significantly greater harm to the openness of the Green Belt than the scheme for the approved cattery. Of note, the 'Kabin & Decking Plan' displayed on Drawing No. SM3/03 demonstrates the amount of area of built development including and associated with the cabin (~195sqm), and this is not even including the long concrete driveway off Manchester Road. Given the above, the LPA consider that this argument in relation to the extant permission is given limited weight.
- 2.7 Further to this, as the development subject of this appeal is in a very different use to the approved cattery, and because the appeal scheme has been developed (without permission) in a similar location to the proposed cattery pens, the LPA consider that the likelihood of the cattery pens being developed now is low. For this reason, the LPA also holds the view that this further reduces the weight that can be given to the extant permission at the site in terms of assessing this appeal scheme.
- 2.8 Paragraphs 2.1.4 – 2.1.8 of the Statement of Case by the appellant's agent discuss permitted development rights. This notes that an outbuilding could be constructed in a similar location to the development subject of this appeal and could be of a greater height. However, as noted in the Officer committee report, the LPA consider it has not been demonstrated that such development under Class E would be reasonably required for a purpose incidental to the enjoyment of the dwelling house. Without specific details what the 'fallback' development would be used for, the LPA hold the view that it is not clear whether such development could be said to be reasonably required for a purpose incidental to

the enjoyment of the dwelling house, and this is considered to reduce the weight of such an argument.

- 2.9 Paragraph 2.1.7 of the Statement of Case by the appellant's agent notes that the use of the development is immaterial in the context of permitted development rights. However, the LPA disagree and hold the view that it is of relevance. The principles relating to 'fallback' were set out in *R v Secretary of State for the Environment and Havering BC* (1998) EnvLR189, and one such consideration is whether there is a likelihood or real prospect of such development occurring. As a domestic addition would not be in a similar use to the development subject of this appeal (a holiday let), the LPA consider that this reduces the likelihood of development under permitted development. In addition to this, no plans were provided of alternatives and a lawful development certificate has not been submitted for such development. Furthermore, the supporting statement submitted alongside the application clearly notes that the applicant is 'not wanting to erect a domestic building'. Given these above factors, the LPA consider that there is not a 'real prospect' of such a development under permitted development occurring, thereby significantly reducing the weight of such a 'fall back argument'.
- 2.10 In addition to the above, whilst the applicant's agent contends that a larger outbuilding could be erected under permitted development, the LPA hold the view that such an outbuilding would unlikely require its own separate access along with a driveway, as well as fencing. Given this, the LPA consider that this holiday let, due to the amount of built development, would likely have a greater impact upon the openness than an outbuilding constructed under permitted development. The LPA hold the view that this further reduces the weight that can be afforded to the permitted development 'fallback' argument.
- 2.11 Section 2.2 of the Statement of Case by the appellant's agent discusses the direct and indirect economic benefits of the tourist accommodation under this appeal scheme. The LPA accepts that there are economic benefits associated with such development, but note that there appears to be more than 6 self-catering accommodation units within the Upper Colne Valley as noted within the Statement of Case. Of note, one view of AirBnB displays 19 self-catering accommodation units between Slaithwaite and Marsden alone (see Appendix 2). Bolster Moor and Linthwaite also offer a number of self-catering units. Given this, the LPA are not in complete agreement with the appellant's agent who states that there is 'dearth' of accommodation within the Colne Valley. Further to this, whilst Policy LP10 of the Kirklees Local Plan is supportive of tourism development in rural areas, it also states that: *"in all cases where development is proposed in the Green Belt, regard must be had to the relevant policies in this plan and relevant national policy."*
- 2.12 The LPA also hold the view that with regard to the tourism/economic benefits argument, this does not justify the creation of a separate access with a long

urbanising driveway, and the addition of domestic features such as decking, excavations works, a pergola and bar, which add to the harm to the openness of the Green Belt. In addition, the LPA consider that it unclear why the holiday home has to be so disconnected and isolated from the existing dwelling, rather than connected with it which would help reduce the harm to the openness (although the LPA are of the view that it would unlikely eliminate such harm). The LPA have recorded evidence of tourism self-catered accommodation once being provided within part of the existing dwelling at Mulberry Brook (called 'Jasmine Lodge') (see Appendix 3), but this now appears to have been taken down from a number of websites. The LPA hold the view that such accommodation within the dwelling would have less of an impact upon the openness of the Green Belt. The LPA therefore hold the view that 'Jasmine Lodge' (which is noted to be able to accommodate 6 guests on Air BnB, and pictures on the AirBnB and Facebook websites for Jasmine Lodge seem to confirm this), appears to be a more suitable option to provide tourism development in the locality than the cabin development.

- 2.13 The LPA also consider that the amount of direct employment resulting from such development is likely to be minor given that the proposal relates to one holiday let. The part time roles mentioned within the submission and the Statement of Case are considered to be on an extremely limited basis only given the use. Of note, the site was previously maintained by the appellant before the unauthorised holiday let, so the LPA fail to understand why there is now a need for a grounds person for such a garden area. The LPA also fail to understand why managing this holiday let will provide 'one full-time equivalent job', especially given that this one unit is self-catered.
- 2.14 Given the above, the LPA hold the view that the tourism/economic benefits of appeal scheme fall considerably short of outweighing the substantial harm the LPA has identified to the Green Belt.
- 2.15 Paragraph 2.4.2 of the Statement of Case by the appellant's agent states that the new access was required to access the property at times of flooding. However, the site and existing access are within Flood Zone 1 (lowest probability of flooding). In addition, a neighbouring resident in their representation has noted that works took place to the highway during the Winter of 2020-2021 which has improved this issue significantly. The LPA are also of the view that if this flooding is of such a concern, it is unclear as to why the existing access needs to be retained as well as creating another access, thereby causing greater harm to the openness of the Green Belt. The LPA therefore consider that this argument on the need for a new access should be given limited weight.
- 2.16 Paragraph 2.2.8 of the Statement of Case by the appellant's agent refers to a Local Ward Member being supportive of the appeal scheme. Whilst this is noted, the application was refused by Planning Committee, going along with the Officer recommendation.

2.17 In conclusion, the LPA consider that the development, by its very nature, constitutes inappropriate development in the Green Belt. As stated in Paragraph 147 the Framework, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 148 of the Framework goes on to state that local planning authorities should ensure that 'substantial weight' is given to any harm to the Green Belt. The LPA consider that that development subject of this appeal has urbanised what was previously an open and green garden, thereby causing significant harm to the openness of the Green Belt as well as the visual amenities of the Green Belt and the character and appearance of the wider area, and this adds to the substantial harm by reason of inappropriateness. The LPA consider that the arguments put forward by the appellant do not constitute very special circumstances which clearly outweigh the harm caused by inappropriateness and other harm identified by the LPA.

Other Matters

2.18 Paragraph 2.4.1 of the Statement of Case by the appellant's agent provides to justification for completing the development without the necessary permission in respect to a written ministerial statement in 2015 in relation to intentional unauthorised development in the Green Belt. The LPA consider that this justification, if true, displays a high level of naivety on the appellant's behalf, especially given the difference between the approved scheme for cattery pens and the appeal scheme.

3 CONCLUSIONS

3.1 It is the opinion of the Local Planning Authority that the appeal proposal clearly conflicts with Government guidance contained within the National Planning Policy Framework as well as development plan policy for the reasons set out in its decision notice, the case officer's delegated report, and this statement of case. Accordingly, the Inspector is respectfully requested to uphold the decision made by the Local Planning Authority and dismiss this appeal.

4 SUGGESTED CONDITIONS

1. The development hereby permitted shall be begun within three years of the date of this permission.

Reason: Pursuant to the requirements of Section 91 of the Town and Country Planning Act 1990.

2. The development hereby permitted shall be carried out in complete accordance with the plans and specifications schedule listed in this decision notice, except as may be specified in the conditions attached to this permission, which shall in all cases take precedence.

Reason: For the avoidance of doubt as to what is being permitted and so as to ensure the satisfactory appearance of the development on completion, and to accord with Policies LP1, LP2, LP10, LP21, LP22, LP24, LP30, LP51, LP52

and LP57 of the Kirklees Local Plan and Chapters 6, 9, 12, 13, 14 and 15 of the National Planning Policy Framework.

- 3 Within 6 months of the date of this permission, the private driveway and parking spaces shall be provided in accordance with Drawing No. 1986-101 contained within the Technical Note by Paragon Highways (ref: 1986 Revision B) dated July 2021. The private driveway and parking spaces shall be laid out with a hardened and drained surface in accordance with the Communities and Local Government; and Environment Agency's 'Guidance on the permeable surfacing of front gardens (parking areas)' published 13th May 2009 as amended or any successor guidance. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (or any Order revoking or re-enacting that Order) these areas shall be so retained, free of obstructions and available for parking thereafter.

Reason: In the interests of visual amenity and traffic safety, to ensure adequate space within the site for vehicle movements and parking and to comply with Policies LP21, LP22 and LP24 of the Kirklees Local Plan and Chapters 9 and 12 of National Planning Policy Framework.

- 4 Within 3 months of the date of this permission, and notwithstanding the details of the fencing and gates on the approved plans, full details of the means of enclosure at the site shall be submitted to and approved in writing by the Local Planning Authority. The means of enclosure shall be constructed in accordance with these approved details within 1 month of their written approval and thereafter retained for the lifetime of the development.

Reason: In the interests of visual amenity and highways safety, and to comply with Policies LP21 and LP24 of the Kirklees Local Plan and Chapters 9 and 12 of National Planning Policy Framework.

- 5 Within 6 months of the date of this permission, 1 electric vehicle recharging point shall be installed within the site. Cable and circuitry ratings shall be of adequate size to ensure a minimum continuous current demand of 16 Amps and a maximum demand of 32Amps. The electric vehicle charging point so installed shall thereafter be retained.

Reason: In the interest of supporting low emission vehicles and to accord Policies LP24 and LP51 of the Kirklees Local Plan and Chapters 9 and 15 of the National Planning Policy Framework.

- 6 Within 2 months of the date of this permission, a noise management plan shall be submitted to and approved in writing by the Local Planning Authority. The plan shall detail the measures that will be taken to effectively control noise arising at the premises from all likely noise sources so that it does not have an adverse impact on nearby residents. The plan needs to consider at least noise from:

- music and other amplified sound at the premises
- loud voices from customers at the premises including all external areas
- Times that external areas/equipment may be used
- How the management will inform customers of house rules

- How management will address poor behaviour of guests
- Contact details for management
- outdoor equipment

The approved noise management plan shall be implemented within 1 month of its written approval by the Local Planning Authority of the date of this permission and retained thereafter.

Reason: In the interests of amenity of the occupiers of neighbouring properties and to accord with the requirements of Policies LP24 and LP52 of the Kirklees Local Plan and Chapters 12 and 15 of the National Planning Policy Framework.

- 7 Within 3 months of the date of this permission, a scheme for biodiversity enhancement, shall be submitted to and agreed in writing with the Local Planning Authority. Within 4 months of the date of the written approval of the scheme of biodiversity enhancement by the Local Planning Authority, the biodiversity enhancement measures shall be carried out in accordance with the approved details and shall be retained as such thereafter.

Reason: To protect habitats of importance to biodiversity conservation from any loss or damage in accordance with Policy LP30 of the Kirklees Local Plan and Chapter 15 of the National Planning Policy Framework.

- 8 The holiday let hereby approved shall be let and occupied solely for the purposes of holiday accommodation and shall not be occupied as a main or principal place of residence. No person occupying the unit shall remain as an occupier for a continuous period of more than 28 days. Having vacated the holiday let no person shall return to occupy the holiday let unit overnight until a minimum period of 14 days has elapsed.

Reason: In the interests of residential amenity as the limited internal accommodation would not result in a good standard of amenity for future occupiers if this were to be used as a main or principal place of residence. This would accord with Policy LP24 of the Kirklees Local Plan and Government guidance contained within Chapter 12 of the National Planning Policy Framework.

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Application Form	-	-	19 th March 2021
Location Plan	SM3-01	-	19 th March 2021
Site Layout Plan	SM3/02	-	19 th March 2021
Elevations and Floor Plans	SM3/03	-	19 th March 2021
Supporting Planning Statement dated 18/03/2021	-	V1	19 th March 2021

Plan Type	Reference	Version	Date Received
Technical Note by Paragon Highways dated July 2021	1986	B	22 nd July 2021

Link to full planning application:

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2021%2F91136>

Planning Inspectorate Reference: APP/Z4718/W/22/3290235

Planning Application Number: 2021/91136

Date: 01/04/2022

Appendices

Appendix 1 – Technical Note by Paragon Highways (ref: 1986 Rev B) dated July 2021

Appendix 2 – Search of AirBnB self-catered holiday lets within the locality

Appendix 3 – Evidence of Jasmine Lodge at Mulberry Brook