
Appeal Decision

Site visit made on 14 November 2016

by Rachel Walmsley BSc MSc MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 19 December 2016

Appeal Ref: APP/J3720/W/16/3155450

130 Malthouse Lane, Earlswood, Solihull, Stratford Upon Avon B94 5SA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Radhesh Bhatt for Parimal Tanna (Damson Homes) against the decision of Stratford on Avon District Council.
 - The application Ref 16/00397/OUT, dated 27 January 2016, was refused by notice dated 5 May 2016.
 - The development proposed is the demolition and replacement of a dwelling and erection of 3 no. bungalows in the rear. Also the demolition of outbuildings.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The application was submitted in outline, with matters relating to appearance and landscaping reserved. I have dealt with the appeal on that basis, treating all plans as illustrative, except where they deal with matters of access, layout and scale.
3. The development proposes a replacement dwelling fronting Malthouse Lane and 3 no. bungalows to the rear. The Council raised no objection to the replacement dwelling but refused the planning application on grounds relating to the 3 no. bungalows proposed. It is the matters relating to the 3 no. bungalows which are the subject of this appeal.
4. Since the planning application was decided, the Council has formally adopted its Core Strategy¹. As a result the Local Plan² is out-of-date and carries no weight. The Council and the appellant have referred in their submissions to the Core Strategy and therefore have had the opportunity to respond to the relevant policies in the newly adopted plan. I have had regard to this in my reasons below.
5. Following the recent adoption of the Core Strategy, the Council has a 5 year supply of housing land. I have dealt with the appeal on the basis that a 5 year supply exists.

¹ Stratford-on-Avon District Core Strategy (2011-2031) (adopted on 11 July 2016)

² Stratford-on-Avon Local plan (adopted July 2006)

Main Issues

6. These are:

- (i) whether the proposal would be inappropriate development in the Green Belt;
- (ii) the effect of the proposal on the openness of the Green Belt;
- (iii) the effect of the proposal on the character and appearance of the area;
- (iv) whether the proposed development would provide adequate safeguards for bats;
- (v) whether or not there are other considerations weighing in favour of the proposal; and,
- (vi) if the 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.

Reasons

- 7. The appeal site is within the Green Belt and within the village of Earlswood, a Category 3 Local Service Village as defined by Policy CS.15 of the Core Strategy. The appeal site includes a detached dwelling which fronts Malthouse Lane. Malthouse Lane is dominated by detached houses which front the road and have gardens to the rear. On both sides of the road there is development that has been built behind the frontage properties.
- 8. The existing dwelling has a rear garden which is bound by mature landscaping and trees. A pedestrian access leads from the garden into an area of open land which includes tennis courts and outbuildings and provides views beyond the appeal site. The open land is secluded, out of public view.

Whether the proposal would be inappropriate development in the Green Belt

- 9. Whilst policy CS.16, together with Policy CS.15 of the Core Strategy, identify Local Service Villages as appropriate locations for some additional housing, Policy CS.16 and Policy CS.10 along with paragraph 89 of the National Planning Policy Framework (the Framework) indicate that, other than in connection with a small number of exceptions, the construction of new buildings should be regarded as inappropriate development within the Green Belt. One such exception is that of limited infilling.
- 10. There is nothing within the evidence before me that shows a built-up area boundary and therefore it is necessary for me to ascertain if the development would constitute limited infilling. In the absence of any definition of limited infill within the Framework, I consider limited infill to be the small scale development of a plot of land which fills in a gap within an otherwise built up area.
- 11. Whilst the site adjoins built development on two of its boundaries, it is also adjoined by open fields. The development would not, therefore, fill in a gap within an otherwise built up area. Although the land on which on the 3 no.

bungalows are to be built is undeveloped and the development of 3 no. properties amounts to small scale development, the development would not constitute infill development. The 3 no. bungalows, therefore, would not meet the exception of limited infill set out in the Framework, nor would it meet any of the other exceptions listed within paragraph 89 of the Framework.

12. Paragraph 90 of the Framework lists other forms of development that are not inappropriate in the Green Belt. The appellant suggests that the proposed development would meet the exception of re-using buildings. There are existing buildings on the site which would be demolished and replaced with 3 no. bungalows. The original structures of the buildings, therefore, would not be re-used and as a result the development would not meet the exception listed.
13. In all, therefore, the bungalows proposed would be inappropriate development within the Green Belt and contrary to the Framework and Policies CS.16 and CS.10 of the Core Strategy. Paragraph 88 of the Framework states that substantial weight should be given to any harm to the Green Belt.

Effect on openness of the Green Belt

14. The land on which the bungalows are proposed is open in character and allows views beyond the boundaries of the appeal site. Paragraph 79 of the Framework indicates that openness is an essential characteristic of the Green Belt. Openness derives from an absence of built form. By virtue of the bungalows being a solid structure in a place where there is currently no development, the bungalows would reduce the openness of the Green Belt.
15. I recognise that there are several outbuildings on the site, as well as tennis courts. There is, however, a degree of subservience to both which maintains the open character of the site; the outbuildings are close to the boundary of the site and therefore do not encroach on its open character and the permeable fencing around the tennis courts limits their intrusion on the landscape. Notwithstanding this, the 3 no. bungalows would be solid in form and located where there is currently no development and therefore the development would have a notable presence. I also appreciate that the development would be largely out of public view, however, this does not diminish its effect on the openness of the Green Belt.
16. For the reasons given, the development would be harmful to the openness of the Green Belt. In light of the Framework, substantial weight must be given to this harm identified.

Effect on the character and appearance of the area

17. Policy CS.5 of the Core Strategy supports development that has a minimal impact on the landscape, having regard to local distinctiveness and visual impact. The Council's concern with regards to character and appearance relates to the layout of the development in relation to its surroundings.
18. Malthouse Lane is characterised by houses on both sides of the road which front the street. In a number of locations access points lead off Malthouse

Lane and provide access to areas of built development behind the frontage properties. Notwithstanding the reasons for this built development, it contributes to the pattern of existing development.

19. The proposed development would introduce development behind a line of frontage properties. This would not be out-of-keeping with the layout of existing developments that have been built behind those properties fronting Malthouse Lane. The development would not therefore be out-of-keeping with the existing layout of development within the area.
20. The Council raised no objections for the form or scale of the development proposed and in the absence of any evidence to the contrary, I find no reason to take a different view. In addition, the 3 no. bungalows would not be visible from the street and therefore would not impact on the character of Malthouse Lane.
21. In all, I find that the development would not be harmful to the character and appearance of the area and as such would comply with Policy CS.5 of the Core Strategy. This matter would be neutral in the planning balance.

Safeguards for bats

22. Bats are a protected species under the Wildlife and Countryside Act 1981 and the Conservation of Habitats and Species Regulations 2010. A First Phase Bat Survey³ submitted in support of the planning application identified that bats have been using the roof space of the dwelling to be demolished. The bat droppings found were considered old and soffit replacement was thought to have obstructed the roof entrance and therefore likely to have prevented further use of the area by roosting bats. Whilst the presence of bats could not be discounted, there is a reasonable likelihood that bats are not present.
23. The advice given in Circular 6/2005⁴ is that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted. Consequently the need to ensure that ecological surveys are carried out should only be left to coverage under planning conditions in exceptional circumstances.
24. Although the presence of bats cannot be discounted, the evidence before me indicates that it is likely that bats are no longer present. Furthermore, if during the course of development bats are discovered, the protections of the Wildlife and Countryside Act would still apply notwithstanding a grant of planning permission. I consider it reasonable, therefore, for any planning permission to be conditioned to ensure that a subsequent survey of the presence of bats is carried out, together with a scheme for mitigation as necessary. It is on this basis that the development would not be contrary to Policy CS.6 of the Core Strategy which encourages development that *supports ecosystems and provides ecological security* and does not have an adverse effect on a site designated through the EC Habitats Directive or Birds Directive.

³ 130 Malthouse Lane, Earlswood: Phase 1 Bat Survey (March 2016)

⁴ Paragraph 99, Circular 06/2005 - Biodiversity and Geological Conservation – statutory obligations and their impact within the planning system.

Other considerations

25. The development would help meet the Council's need for housing, within a Local Service Village which is identified in local policy for some housing, and within a location that has access to services and facilities. However, as found, Policy CS.16 along with Policy CS.10 restricts development within Local Service Villages within the Green Belt. Whilst, therefore, the development would contribute to the Council's need for housing, in light of the site's location within the Green Belt and the harm found, I can give little weight to the contribution the development would make to housing need overall.
26. Paragraph 81 of the Framework encourages local planning authorities to plan positively to enhance the beneficial use of the Green Belt. Suggestions include opportunities for sport and recreational and to retain and enhance visual amenity. It was apparent from my observations on site that the appeal site is an area of managed grassland; part of a residential curtilage and therefore, in part at least, domesticized. The site is not derelict or damaged in a way that its development could be considered necessary to make a significant improvement to the environmental or visual quality of the site. I attach limited weight, therefore, to this consideration.
27. The precedent set by existing development behind the properties fronting Malthouse Lane has been noted in my assessment of character and appearance as discussed above. As highlighted, this consideration is neutral in the overall planning balance.

Very special circumstances

28. Paragraph 87 of the Framework sets out the general presumption against inappropriate development within the Green Belt. It states that such development should not be approved except in very special circumstances. Very special circumstances to justify inappropriate development 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.
29. I have concluded that the proposed development would be inappropriate development and would, therefore, by definition be harmful to the Green Belt. I have also concluded that the proposal would be harmful to the openness of the Green Belt. Substantial weight must be given to these harms.
30. On the other hand I conclude that limited weight can be given in favour of the proposal. That limited weight does not outweigh the substantial weight which I give to the harm identified. As such the proposal cannot be justified on the basis of very special circumstances.

Conclusion

31. For the reasons given above, I conclude that the appeal is dismissed.

R Walmsley

INSPECTOR