The Planning Inspectorate

# Appeal Decision

Site visit made on 5 November 2018

**by Susan Ashworth BA (Hons) BPL MRTPI**

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

**Decision date: 30th November 2018**

**Appeal Ref: APP/A0665/W/18/3198387**
**Land adjacent to The Dairy, Marbury Road, Anderton with Marbury, Anderton, Northwich, Cheshire CW9 6AQ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr & Mrs Tudor against the decision of Cheshire West & Chester Council.
- The application Ref 17/03807/FUL, dated 30 August 2017, was refused by notice dated 1 November 2017.
- The development proposed is the erection of a specialist bungalow.

## Decision

1. The appeal is allowed and planning permission is granted for the erection of a specialist bungalow on land adjacent to The Dairy, Marbury Road, Anderton with Marbury, Anderton, Northwich, Cheshire CW9 6AQ, in accordance with the terms of application Ref 17/03807/FUL dated 30 August 2017 and subject to the conditions set out in the attached schedule.

## Preliminary Matter

2. Since the application was refused, the Government has introduced the revised National Planning Policy Framework (the Framework) in July 2018. Both main parties have had the opportunity to comment on the relevant parts of the revised Framework and I have referred to it in my decision.

## Main Issues

3. The main issue in this case is whether or not the proposal would be inappropriate development in the Green Belt.

## Reasons

4. The appeal site comprises an irregularly shaped area of grassed land located between buildings fronting Marbury Road. The site is bounded by a hedge to the road and a fence at the rear, beyond which is open countryside.

5. The proposal is for the erection of a single storey bungalow on the site, designed for use by a disabled person, specifically for the appellant's personal needs. The building, which would have a substantial footprint would be located on the north-east side of the site and would be provided with a new vehicular access from Marbury Road. It is proposed to retain the western part of the site as open land.

6. The proposal follows an appeal for a single bungalow on a larger site area, which was dismissed in January 2015[1].

7. The development plan for the area includes the Cheshire West and Chester Council Local Plan (Part One) 2015 (the Local Plan). Relevant Local Plan Policy STRAT9 states that the construction of new buildings within the Green Belt is considered inappropriate. Limited infilling in villages is set out as being one of the exceptions to this, an exception reflected in the provisions of the Framework at paragraph 145.

8. There is no definition of the term 'limited infilling' in either the Framework or in Policy STRAT9. My attention has been drawn to the supporting text to Policy STRAT8, which explains that infill is the 'filling of a small gap, up to two dwellings, in an otherwise built up frontage in a recognised settlement', albeit that this definition is set out in the context of targets for housing delivery.

9. The site has a frontage of some 30m to the road, although it is wider at the rear. The Inspector in the previous appeal noted that gap could not reasonably be described as small. Nevertheless it is well-defined by boundary treatment and contained by the built development on either side of it. From the evidence before me, whilst the frontage is larger than that relating to some of the semi-detached and terraced houses in the vicinity it is comparable with others, particularly the frontages of some detached properties locally. Moreover, the proposal, for the erection of one dwelling is of a small scale. I acknowledge concerns that a complete infill of the site would not be achieved by this development and that the proposal would provide an opportunity for further development in the future. However, I am unconvinced that to be considered infill development, the whole of a site must be developed.

10. The site lies just outside of the defined settlement boundary of Anderton. However, there is nothing in paragraph 145 which specifies that to constitute 'infill' development it must be situated within a boundary line. The bulk of development in the village lies to the south of Marbury Road. However, there is also a significant amount of development on the north side. The site lies between development fronting Marbury Road to the west of the site and a sizeable collection of residential buildings, including barn conversions, to the north-east. Although the buildings within this group do not face the highway, they are nevertheless clearly visible in the street scene behind an extensive fencing and walling, which itself contributes to the built up character of this section of the street. Consequently the site is within a clear continuum of development despite not being within the settlement boundary.

11. I acknowledge that the Council is not proposing to re-define the boundary of the settlement as part of the emerging Part 2 (Land Allocations and Detailed Policies) of the Local Plan. However, this does not convince me that the site does not form part of the village. I note that the house itself would not be positioned immediately adjacent to the settlement boundary and a gap would be left. I also acknowledge that the site is a greenfield site which lies close to a transitional point and is reflective of the wider countryside. However, the Framework does not preclude the development of greenfield sites as part of the exception referred to above, nor does it require the development of a continuous frontage.

[1] Appeal ref: APP/A0665/A/14/2228579

12. The previous Inspector noted the convenient links between this location and local services and facilities in Anderton, Barnton and Northwich. This is acknowledged by the Council. As such, taking all these factors together, the site can reasonably be regarded as part of the village which is a recognised settlement.

13. Consequently, taking all matters raised into account, I conclude that the proposal constitutes limited infilling in a village. As such it is not inappropriate development in the Green Belt. Consequently, the proposal is consistent with Local Plan Policy STRAT9 and the Framework.

**Other Matters**

14. In a recent court case[2], it was found that where development is considered to be 'not inappropriate' applying paragraphs 89 or 90 of the Framework, it should not be regarded as harmful either to the openness of the Green Belt or to the purposes of including land in the Green Belt. In other words, the impact of a proposal on openness is implicitly taken into account in the exceptions set out in the Framework unless there is a specific requirement to consider the matter. The Council has pointed out that the above case related to agricultural rather than residential development. Nevertheless it sets out principles with regard to the issue of openness. Although the previous Inspector concluded that the development would harm openness this pre-dated the case law. Therefore, for the above reasons, there is no need for me to consider openness as a separate issue.

15. As I have found the development not inappropriate, the need to demonstrate very special circumstances to justify the development is, therefore, unnecessary in this instance.

16. I understand the concerns of local residents that allowing development on Green Belt land could set a precedent for such development elsewhere. However, each site has individual characteristics and the circumstances of each case must be determined in accordance with relevant policy.

17. I noted at my site visit that Marbury Road is a busy road. However, there is no evidence before me that the proposed access would not meet current standards and I am unconvinced that additional traffic on the road as a result of this development is likely to increase the risk of accidents.

18. No specific objection has been raised by the Council to the impact of the development on the character and appearance of the site. It is clear that the proposal will change the site from a green field site to a residential one. However, the bungalow has been well-designed and sited to minimise its visual impact on the street scene. In terms of its massing it seems to me that the bungalow would respect that of its neighbours. Moreover, given that there are a variety of styles of property along Marbury Road, there is no reason to conclude that the building would be detrimental to the character or appearance of the village as a whole.

[2] *Lee Valley Regional Park Authority, R (on the application of) v Epping Forest District Council & Anor (Rev 1)* [2016] EWCA Civ 404

## Conditions and Conclusion

19. The Council has suggested certain conditions in the light of the appeal being allowed. I have altered the suggested wording of the conditions where appropriate to be more precise.

20. In the interests of proper planning and to provide certainty, I have imposed the standard time limit condition and have specified the approved plans. In order to protect the character and appearance of the area conditions requiring the agreement and implementation of external materials and boundary treatment are necessary.

21. In order to protect the character and appearance of the area and to promote local biodiversity, details of proposed landscaping and its implementation are also necessary. A tree and shrub replacement condition should the agreed planting die or become seriously diseased or damaged, is necessary for the same reason.

22. In the interests of highway safety, a condition requiring the provision of a vehicular crossing is reasonable and necessary. In order to protect any wildlife on the site including nesting birds, a condition specifying the times of the year when hedgerows and trees can be removed is reasonable and necessary.

23. In addition, a condition requiring the agreement of details of the existing and proposed ground levels, and the level of the proposed floor slabs, prior to the commencement of development is necessary. A pre-commencement condition is justified in order to ensure that the development reflects the character of the site and its surroundings. A condition requiring the agreement of details of the proposed foul, surface and land water drainage prior to the commencement of development is also necessary. A pre-commencement condition is justified in order to ensure a satisfactory standard of development. No objection has been raised by the appellants to the imposition of these conditions.

24. I have considered the Council's suggested condition which would in effect remove permitted development rights. However the Planning Practice Guidance states that conditions restricting the future use of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances. In this case, given that I have found that the development is not inappropriate in the Green Belt, it would be unnecessary to withdraw permitted development rights. Such a condition would therefore not be justified.

25. For the above reasons and having regard to all other matters raised, the appeal is allowed and planning permission is granted subject to these conditions.

*S Ashworth*

INSPECTOR

SCHEDULE:

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

2. The development hereby permitted shall be carried out in accordance with the following approved plans:

Drawing No. SP01 RevA Location Plan;

Drawing No. SP03 RevB Site Plan

Drawing No. PL01 RevC Floor Plan

Drawing No. EL01 RevC Elevations

3. No development shall commence above ground level until samples of the materials to be used in the construction of external surfaces of the building have been submitted to and approved in writing by the local planning authority. Development shall be carried out in complete accordance with the approved materials and retained as such thereafter.

4. No development shall take place above ground level until a plan indicating the positions, design, materials and type of boundary treatment to be erected has been submitted to and approved in writing by the local planning authority. The boundary treatment shall be completed before the building is occupied. Development shall be carried out in accordance with the approved details and retained as such thereafter.

5. No development shall commence above ground level until full details of all soft landscaping works, which shall include a schedule of replacement tree planting and roadside planting to the west, have been submitted to and approved in writing by the local planning authority. The approved details shall be implemented wholly in accordance with the approved details in the first available planting season following the first occupation of the development.

6. If within a period of 5 years from the date of initial planting, any trees or shrubs planted in accordance with the approved landscaping works are removed, die, become diseased or seriously damaged then replacement trees or shrubs shall be planted in the next planting season with others of similar size and species, unless the local planning authority gives its written approval to any variation.

7. The access hereby approved, must be formed with a vehicular crossing over the highway verge. Such a crossing must be constructed in accordance with a scheme that has received the prior approval of the local planning authority, and must be completed and made available for use prior to first occupation of the development.

8. No tree or hedgerow clearance shall be carried out on the site between the 1st March and 31st August inclusive. If this is not possible, then trees and/or hedgerows should be checked prior to works by an ecologist and details submitted for approval with an appropriate mitigation scheme in writing to the local planning authority. The development shall thereafter only be carried out in accordance with the approved scheme.

9. No development shall commence until details of the existing ground levels within and immediately adjacent to the site, proposed ground levels and the level of proposed floor slabs have been submitted to and approved in writing by the local

planning authority. The development shall be carried out in accordance with the approved details and retained as such thereafter.

10. The development hereby approved shall not commence until a drainage scheme for the site, showing how foul water, surface water and land drainage will be dealt with, has been submitted to and agreed in writing by the local planning authority. No part of the development shall be brought into use until the approved drainage systems have been constructed and completed in accordance with the approved plans.