
Appeal Decision

Site visit made on 5 August 2019

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 September 2019

Appeal Ref: APP/J3720/W/19/3226639

Little Drayton Farm, Alcester Road, Binton CV37 9RQ

- 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 Miss S Rendell-Shelby against the decision of Stratford on Avon District Council.
 - The application Ref 19/00065/FUL, dated 10 January 2019, was refused by notice dated 26 March 2019.
 - The development proposed is for a replacement dwelling and the removal of existing stables.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - whether the proposed dwelling would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies;
 - the effect of the proposal on the openness of the Green Belt;
 - the effect of the proposal on biodiversity, especially in regard to bats; and
 - if the proposal would be inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to very special circumstances to justify it.

Reasons

Inappropriate development

3. The appeal site is within the West Midlands Green Belt. The National Planning Policy Framework (The Framework) explains that the Government attaches great importance to Green Belts. Paragraph 133 identifies that the fundamental aim of the Green Belt is to prevent urban sprawl and keep land permanently open. Paragraph 145 establishes that new buildings would be inappropriate unless they fall within one of the listed exceptions. Exception (d), relates to “the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces”. Inappropriate development

- is, by definition, harmful to the Green Belt and should only be approved if very special circumstances exist. Substantial weight is to be afforded to any harm.
4. Policy CS.10 of the Stratford on Avon District Core Strategy 2011-2031 (CS), responds to the national exceptions. Section (b) of this policy, mirrors paragraph 145(d) and explains that the replacement of an existing building for the same use would not be inappropriate, provided it would not be materially larger than the one it replaces. I have applied the normal interpretation of the word 'material' in terms of the significance of increase which is a matter of fact and degree to be determined by the decision maker.
 5. The proposal seeks to replace an existing dwelling. The existing dwelling has a volume of around 476 cubic metres and the proposed dwelling would be around 732 cubic metres (representing an increase of 53.8%). Parties concur with these figures.
 6. The appellant calculates that the demolition of the stable, in combination with the existing dwelling, would result in a net increase in volume of 27.3%. Paragraph 4.1.9 of the CS explains that the Council previously operated a 30% threshold for replacement dwellings. However, this was considered to be arbitrary and proposals are now considered on a case by case basis. Even if the stables were included in the volume calculation this would still result in a substantial increase to the net mass of built form on site. An increase of 27.3% would be significantly greater than the existing building, being taller and having a greater mass especially at first floor. Consequently, in either event the proposed increase in volume would result in a building which would be materially larger than the existing dwelling.
 7. Therefore, the proposal would be contrary to policy CS.10 of the CS, which requires replacement buildings in the Green Belt to not be materially larger. Consequently, the proposal would also not accord with paragraph 145 of the Framework, exceeding exception (d) and therefore be inappropriate development.

Openness

8. The courts have ruled that the openness of the Green Belt has both spatial and visual dimensions. The proposal would result a substantial increase in built form, being both taller and having a greater footprint. This would result in a greater mass and having a substantially greater effect spatially and visually. Furthermore, the appeal site is in an isolated location with especially open views of the countryside to the north, northeast and east. The proposed dwelling would be set away from the barn and annex resulting in a broader sprawl of development. Accordingly, the proposal would result in significant harm both to the openness of the site and the surrounding Green Belt. This harm is in addition to the harm already identified of being inappropriate development within the Green Belt.

Biodiversity

9. The submitted ecological survey¹ has found a historical bat roost in the dwelling. Also, it has identified that the stable is currently in use as an occasional day roost. Paragraphs 4.2 and 4.3 of the survey advise the need to obtain a derogation license from Natural England and make a mitigation plan to

¹ Martin Ecology, Nocturnal Bat Emergence Surveys, October 2018

create new habitat within or adjacent to the proposal. The County's Ecologist² requested the submission of the mitigation and compensation strategy prior to a decision being made.

10. The Framework seeks proposals that would minimise the impact of development on biodiversity and contributes to and enhances the natural environment. It also seeks to refuse development that would cause significant harm. The Regulations³ impose a duty to consider whether European Protected Species would be affected and whether associated mitigation measures would be effective in mitigating any harm. Policy CS.6 of the CS requires development to minimise impacts and pay particular attention to priority habitats or species of principle conservation importance. Furthermore, the policy explains that an impact on biodiversity must be fully mitigated, or the proposal would be refused.
11. There would be an adverse effect to the habitat of the bat population, albeit few in numbers, following demolition of the stables and dwelling. Without a mitigation strategy it is not possible to ascribe weight to the mitigation. Consequently, this would not overcome the adverse effect of the proposal. Furthermore, a condition would not be adequate to secure the mitigation as the policy requires this to be satisfied prior to a decision being made. The loss of habitat would therefore be harmful to the identified bat presence. Moreover, the benefits of the proposal do not clearly outweigh the harm found.
12. Accordingly, the proposal would be contrary to policy CS.6 of the CS, which seeks to safeguard existing habitats.

Other considerations

13. The appellant has referred to two recent approved proposals for replacement dwellings. Stable Lodge⁴ included the demolition of stables and other outbuildings on agricultural land to the rear of the site. The Council has explained that the volume of the stables was not taken into account in that case. The approval instead resulted from the removal of a number of outbuildings, creating a consolidated form of development. This was considered to be very special circumstances having a lesser impact on the openness of the Green Belt. That is therefore different to this case where I have found harm to the openness of the Green Belt.
14. Also, the Council approved⁵ a replacement dwelling with a 62% increase in volume. This was reduced to a 47% increase with the inclusion of outbuildings. In that case the Council considered that the outbuildings were clearly in ancillary residential use. Consistency in decision making is important, nevertheless I am unable to draw clear parallels between the two stated examples and the proposal. The full context of those decisions is also not before me in evidence. In any event, each case must be considered on its own merits.
15. The appellant's Planning Statement⁶ refers to the fall-back position and describes a potential increase in volume of 55%. However, the assertion is not

² Warwickshire County Ecologist 4 February 2019

³ The Conservation of Habitats and Species Regulations 2010

⁴ Planning Application reference: 16/3825/VARY

⁵ Planning Application Reference: 18/00363/FUL

⁶ Planning Design and Access Statement, January 2019

supported with a lawful development certificate. Furthermore, the Statement elsewhere explains that the dwelling is poorly constructed and may not support extensions. As such it is unlikely that the dwelling would be extended in this manner. From the information provided, it is not clear that the suggested permitted development fallback is anything other than a theoretical possibility that is unlikely to be implemented in reality. Furthermore, even if permitted development extensions were implemented, they would be the subject of various limitations and conditions within the statutory instrument. From the evidence submitted it is not clear that such developments would be as harmful as the current proposal. These matters and the improvement in the fabric of the building would, for the appellant's family and in environmental terms, have a modest degree of weight in favour of the proposal.

Whether there would be Very Special Circumstances

16. Paragraphs 143 and 144 of the Framework set out the general presumption against inappropriate development within the Green Belt. They explain 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.
17. I have concluded that the appeal scheme would be inappropriate development that would, by definition, harm the Green Belt. I have also concluded that the appeal scheme would result in significant harm to the openness of the Green Belt. Paragraph 144 of the Framework requires substantial weight to be given to any harm to the Green Belt. The proposal would also harm the protected bat species found on site, based on the absence of a mitigation strategy, a point of significant weight.
18. On the other hand, the other considerations I have identified such as the fallback position and local precedence are of only moderate weight in favour of the proposal. As such the harm to the Green Belt is not clearly outweighed by the other considerations identified and therefore the very special circumstances necessary to justify the development do not exist. Accordingly, the proposal fails to adhere to the local and national Green Belt policies I have already outlined.

Conclusion

19. For the above reasons the appeal is dismissed.

Ben Plenty

INSPECTOR