
Appeal Decision

Site visit made on 21 January 2020

by R E Walker BA Hons DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 February 2020

Appeal Ref: APP/A0665/W/19/3234783

Totternhoe, Manley Road, Alvanley, Frodsham WA6 9DE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Robert Bentley against Cheshire West & Chester Council.
 - The application Ref 19/01193/FUL, is dated 26 March 2019.
 - The development proposed was originally described as the demolition of remaining element of Totternhoe (1 no dwelling) and erection of one detached dwellings.
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Decision

1. The appeal is dismissed and planning permission is refused.

Procedural Matters

2. The appeal results from the Council's failure to determine the planning application within the prescribed period. There is no formal decision on the application, as jurisdiction over that was taken away when the appeal was lodged. However, the Council's statement of case includes the reasons why the planning application would have been refused had it been empowered to do so. I have also taken into account the appellant's statement of case and representations received from interested parties. I have drawn on this, together with other evidence before me, to inform the main issues in this appeal.

Main Issues

3. The main issues in this appeal are:
 - whether the proposal constitutes inappropriate development in the Green Belt and its effect on openness;
 - whether the proposal would preserve or enhance the character or appearance of the Alvanley Conservation Area having particular regard to the demolition of Totternhoe as a non-designated heritage asset;
 - the effect of the proposal on protected species; and
 - if it is inappropriate development, 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

Green Belt

4. The National Planning Policy Framework (the Framework) says (paragraph 145) that, other than in connection with a small number of exceptions, the construction of new buildings should be regarded as inappropriate in the Green Belt. 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”.
5. This is generally reflected in Policy STRAT 9 of the Cheshire West and Chester Council Local Plan (Part One) Strategic Policies (LP1) adopted 2015, which also provides a list of exceptions. In so far as they are relevant to this appeal, these are largely similar to the exceptions set out in the Framework.
6. Policy DM 21 and its supporting text of the Cheshire West and Chester Local Plan (Part Two) Land Allocations and Detailed Policies (LP2) adopted 2019 provides further criteria by which a replacement dwelling in the Green Belt should be assessed. It says that the Council’s position of what constitutes ‘materially larger’ for sites within the Green Belt is a 10% increase in external floor space to the original dwelling.
7. I have no substantive evidence regarding the precise net increase from the original dwelling. However, the Council advise that the proposed replacement dwelling would result in a net increase in floor space of 67% from the existing dwelling to be demolished and this has not been disputed by the appellant. Moreover, the replacement dwelling would be appreciably taller than the existing property. As such, in scale and massing, the dwelling would be materially larger than the one it replaces.
8. A fundamental aim of Green Belt policy, as set out in paragraph 133 of the Framework, is to keep land permanently open. This openness is an essential characteristic of the Green Belt. Whilst the appeal site is within an area comprising other dwellings, my assessment must also include the effect of the proposal on openness. Given the overall size and form of the proposed replacement dwelling in comparison with the existing dwelling, I consider that the openness of the Green Belt would be adversely affected.
9. On this issue, I therefore conclude that the proposal constitutes inappropriate development in the Green Belt and has a harmful effect on openness. It would therefore be at odds with Policy STRAT 9 of the LP1, Policy DM 21 of the LP2 and the Framework in this regard.

Heritage Assets

10. The appeal building lies to the edge of the Alvanley Conservation Area (CA). In determining this appeal, I have a duty to pay special attention to the desirability of preserving or enhancing its character or appearance. Within the CA there appears to be no overriding pattern of housing styles, however there is a mix of historic buildings. It appears to me to have a spacious character with gaps between buildings providing links to the rural surroundings.
11. The main parties agree that the appeal building is a locally listed building, although there is a dispute regarding its contribution to the historic environment. Due to its local listing it is, nonetheless, a non-designated heritage asset. The submitted heritage statement says that the building first

appeared on the 1873 Ordnance Survey map and was likely originally a farmhouse. Despite unsympathetic additions and the building's poor state of repair, it nonetheless, retains some original elements such as the original single pile building and chimney. The building retains an architectural vernacular which, in my view, due to its modest size and prominent position along Manley Road, does make a positive contribution to the rural character of the CA.

12. The proposed replacement dwelling would be a large detached property which would maintain the general spatial pattern of housing along the road. Its design would not reflect the vernacular of the existing property, nor that of some of the historic buildings in the CA. Instead it would be of a size, scale and design which would draw from some of the other more modern houses in the village.
13. I recognise that other properties in the village would continue to provide links to the historical agricultural and rural associations of the CA. However, the loss of the existing building and the size, scale and design of the proposed replacement would result in an erosion of the rural character and quality of the CA. In this respect, the proposal would be an undesirable incremental change that would harm the character and appearance of the CA. Such harm weighs against the proposal.
14. The harm would be localised and, as such, would be less than substantial in the context of paragraph 196 of the Framework. Although the harm may be less than substantial any harm to the CA is a matter that attracts great weight, having regard to paragraph 193 of the Framework and the statutory duty to preserve or enhance CA's. In accordance with paragraph 196 of the Framework I must balance that less than substantial harm against the public benefits of the proposal.
15. The proposal would provide a good level of accommodation built to modern standards, would result in the removal of unsightly additions and improved landscaping and parking provision on site. However, there would appear to be no specific additional public benefits beyond those associated with the proposed replacement dwelling. I therefore give these factors only limited weight.
16. As such, I am not persuaded that the benefits outweigh the harm to the character and appearance of the Alvanley CA. Accordingly, there would be conflict with the statutory test and with the requirements of Policy ENV5 of the LP1, Policies DM46 and DM48 of the LP2. These require, amongst other things, that development within or affecting the setting of CAs, will be expected to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.

Protected Species

17. The Conservation of Habitats and Species Regulations 2017 (the Regulations) transposed into UK law, the European Union Directive 92/43/EEC (the Habitats Directive). The Habitats Regulations include a strict system of protection for European sites and European Protected Species (EPS). Amongst other things, they place a duty on decision-makers to have regard to the requirements of the Habitats Directive in the exercise of their functions. In addition to the relevant provisions of the Wildlife and Countryside Act 1981, this role is also supported by the Framework.

18. The Framework says that if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused. Policy ENV 4 of the LP1 says that sites will be protected from loss or damage taking account of, amongst other things, the impact on protected/priority species.
19. The submitted ecological survey¹ has found that the appeal site is used as a day roost by singular/small numbers of Common Pipistrelle bats which are an EPS. However, the ecological survey identifies a range of indicative mitigation measures and I am satisfied that these could be secured by condition. As such, there would be no demonstrable harm to this protected species population.
20. In the event of planning permission being granted, Natural England would need to be satisfied that suitable measures were in place before a licence was granted. Without such a licence, the development could not proceed. Thus, there are adequate safeguards in place to ensure the long-term viability of the site's bat population.
21. As such, on the evidence before me, the proposal would not lead to harm to protected species. It therefore complies with the requirements of Policy ENV 4 of the LP1 and the Framework in this regard.

Other Considerations

22. I recognise that the replacement dwelling would not harm the living conditions of the occupiers of neighbouring properties. However, the lack of harm in this respect weighs neither for or against the proposal. As previously stated, the proposal would provide a good level of accommodation built to modern standards, would result in the removal of unsightly additions and improved landscaping and parking provision on site. However, in line with my previous findings, these benefits have limited weight in favour of the scheme.

Conclusion

23. I have concluded that the proposal would not lead to harm to protected species. However, 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 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. Moreover, the proposal would result in harm to the character or appearance of the CA attracting great weight.
24. As explained above I give only limited weight to the benefits of this replacement dwelling and I find that the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.
25. For the reasons given above the appeal is dismissed and planning permission is refused.

Robert Walker

INSPECTOR

¹ Tyrer Ecological Consultants Ltd, Dusk Survey Results in Relation to Bats, December 2018