



Appeal Decision

Site visit made on 15 February 2022

by Samuel Watson BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 March 2022

Appeal Ref: APP/R0660/W/21/3283969

Queensgate House, Sugar Lane, Adlington SK10 5SQ

- 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 John Mooney against the decision of Cheshire East Council.
 - The application Ref 20/5627M, dated 15 December 2020, was refused by notice dated 19 August 2021.
 - The development proposed is the demolition of existing house and construction of new house, carport and external terrace.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the heading above has been taken from the planning application form. Although the development was amended during the planning application process, to remove the car port and external terrace, the description on the Council's decision notice is the same. As I am dismissing the appeal, I have not sought to change the description to improve its accuracy.
3. The third reason for refusal given by the Council, relating to flood risk, has now been withdrawn. I have therefore not considered this matter in my considerations below.

Main Issues

4. The appeal site is within the Green Belt and therefore the main issues are; whether the proposal would be inappropriate development in the Green Belt, having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies; and the effect of the proposal on protected species, with particular regard to bats.

Reasons

Whether Inappropriate Development

5. Paragraph 147 of the Framework establishes that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 148 states that substantial weight should be given to any harm to the Green Belt and very special circumstances 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.

6. Subject to a number of exceptions, as listed in Paragraphs 149 and 150, the Framework makes it clear that the construction of new buildings should be regarded as inappropriate in the Green Belt. The list of exceptions includes the replacement of a building, provided that the new building is within the same use and not materially larger than the one it replaces. Policy PG3 of the Cheshire East Local Plan: Local Plan Strategy 2010-2030 (the CLP, July 2017) similarly allows for the replacement of existing buildings, within the same use. Therefore, insofar as it is relevant to this appeal, this policy is consistent with the Framework and supports development within the Green Belt where it is considered acceptable by the Framework. Saved Policy GC1 of the Macclesfield Borough Local Plan (the MLP, January 2004) allows for the replacement of existing dwellings and is therefore not wholly consistent with the Framework, which does not limit replacement to dwellings only. I have therefore given MLP Policy GC1 limited weight in my determination of this appeal.
7. Neither of the main party disputes that the proposal would result in the replacement of the existing dwelling with a new dwelling. It is also agreed between the parties that the proposal would be larger than the existing dwelling with regards to footprint, floor space and volume. As such, this issue turns on whether the proposal would be materially larger than the building it replaces. Neither local nor national policy defines 'materially larger', but the appellant has referred to MLP Policy GC12 and a number of examples of recent permissions to demonstrate how it is treated by the Council.
8. With regards to MLP Policy GC12, although I have not been provided with a copy of the policy, I understand that it relates to extensions and allows for increases in floor space of up to 30%. However, this policy is not strictly relevant due to the differences between the Green Belt requirements for extensions and replacement buildings set out within CLP Policy PG3 and Paragraph 149 of the Framework.
9. Furthermore, although I have been provided with examples of a number of recent permissions for replacement dwellings, I have not been provided with sufficient information to fully understand the context of each. As such, although I note that the percentage increase of each example is similar to, or greater than that, before me without the full context I cannot be certain of the similarity of the cases. Therefore, I have given them limited weight.
10. The replacement dwelling would be narrower than the existing dwelling and would be of the same height. The main increases, therefore, stem from the increased depth of the building and the enlargement of the roof by way of front and rear gables. Whilst the volume and floorspace of the replacement building would be noticeably larger than the existing building this is achieved without increasing the overall height of the building and with only a marginally larger footprint. As such the main increases, via the enlarged roof and deeper footprint would be limited, relative to the existing dwelling and that the overall proposal would result in a scale which is visually similar to that of the existing building. I therefore do not find the replacement building would be materially larger than the one it replaces.
11. Therefore, as the proposal would be the replacement of an existing building in the same use and not materially larger, it would not be inappropriate development in the Green Belt. The proposal would therefore comply with Policy PG3 of the CLP and Paragraph 149(d) of the Framework as outlined

above. As I have found that the development would not amount to inappropriate development, I need not consider the matter of openness of the Green Belt.

Protected Species

12. It has been agreed between the two main parties that bats are present at the appeal site, and that they would be affected by the development. Bats are protected by the Conservation of Habitats and Species Regulations 2017 and the Wildlife and Countryside Act 1981, and I am statutorily required to have regard to the purposes of conserving biodiversity by Section 40 of the Natural Environment and Rural Communities Act 2006.
13. The appellant has submitted three bat surveys by Dunelm Ecology which have concluded that the roof of the host dwelling contains a maternity bat roost for brown long-eared bats. Due to its size, the roost is considered to be of regional importance and its loss would also be of regional significance.
14. It appears, from the evidence before me, that the most recent revision of the survey was not considered by the Council in their determination of the planning application. However, as it was submitted with the appellant's appeal documents the Council have had the opportunity to consider it and it would not prejudice them for me to consider it here.
15. The Bat Survey by Dunelm Ecology dated August 2021 recommends a number of mitigations, including with regard to the timing of the works and subsequent monitoring following the works. As the development would result in the complete loss of the roost, compensatory measures have also been recommended in the form of a replacement roost.
16. The proposal had originally included the replacement roost within the roof of the proposed car port. However, as the car port was removed from the proposal through amendments during the planning application process this is no longer possible. Nevertheless, the latest amended plans and bat survey included a proposed roost within the roof of the replacement dwelling.
17. As this proposed roost would be largely in the same location as the existing and would be of a comparable size, I find that the principle of such a replacement attic roost would be suitable. However, the submitted details of the roost are relatively limited, of particular note, no details have been provided as to the location of accesses to the roost. As bats are often sensitive to noise and light disturbance, I find it would be necessary to know where the bat accesses are located so any such disturbance can be considered. Without further information I am concerned that there is a risk that the replacement roost would not be able to maintain the favourable conservation status of the species.
18. The additional details required to satisfy these concerns could not be provided through a condition in the event of the appeal being allowed as this would result in permission being granted before it is established that an appropriate level of compensation is possible.
19. I note that house is suffering from subsidence and that doing nothing may, in the long term, result in the loss of the roost. However, it has not been demonstrated that no other options are available to ensure the viability of this roost. Therefore, dismissing this appeal would not necessarily mean that no

other works could be done and as such, I find the risk of allowing this appeal to be greater.

20. Therefore, and given the above, the proposal would have the potential to unacceptably affect a protected species and roost and would conflict with Policy SE3 of the CLP. This policy requires that all developments positively contribute towards the conservation and enhancement of biodiversity. The proposal would also conflict with Section 15, including Paragraph 174, of the Framework which, amongst other matters, seeks to protect and enhance the natural environment.

Other Matters

21. The appellant has made reference to a number of court judgements to support their case on the issues of Green Belt and protected species. However, I have not been provided with copies of these judgements and therefore do not know the full context of each case. As such, they have not been determinative in my consideration of this appeal.

Conclusion

22. Although the proposal would not result in harm to the Green Belt it would still nonetheless risk harm to a protected species. Therefore, the proposal would conflict with the development plan. There are no other considerations, including the Framework, that outweigh this conflict. As such, for the reasons given above I conclude that the appeal should be dismissed.

Samuel Watson

INSPECTOR