



# Appeal Decision

Site visit made on 18 April 2024

**by Hannah Ellison BSc (Hons) MSc MRTPI**

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

**Decision date: 2 May 2024**

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**Appeal Ref: APP/R0660/W/23/3329965**

**31 Hough Lane, Wilmslow SK9 2LQ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Mr Daniel Fitzpatrick and Ms Melissa Dalton against the decision of Cheshire East Council.
  - The application Ref is 23/1992M.
  - The development proposed is the demolition of dwelling and construction of a replacement dwelling.
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## Decision

1. The appeal is dismissed.

## Preliminary Matter

2. Since the appeal was lodged a revised version of the National Planning Policy Framework was published (December 2023). This does not materially change the planning policy context in respect of the main issues in this case.

## Main Issues

3. The site is situated within the Green Belt. Both main parties are in agreement that the proposal would constitute inappropriate development in the Green Belt by virtue of the proposed replacement dwelling being materially larger than the existing property. Based on all I have seen and read I have no reason to find otherwise.
4. Against that background, the main issues are:
  - The effect of the proposal on the openness of the Green Belt;
  - The effect of the proposal on protected species; and
  - Whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations and if so, whether this amounts to the very special circumstances required to justify the proposal.

## Reasons

5. The appeal site comprises a two-storey detached dwelling set within a generous plot, with attached garage to the side and a further garage and carport to the rear. It is within a built-up ribbon of development along Hough Lane. Beyond the site to the rear is a stretch of open countryside.

### Openness

6. Paragraph 142 of the Framework advises that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.
7. The proposed replacement dwelling would have a significantly larger footprint and volume than the existing built form. The additional massing of the proposal would be readily apparent from public vantage points. The proposal would also introduce considerable built form where currently there is none.
8. For these reasons, the proposed development would result in a reduction to both the spatial and visual openness of the Green Belt. Together, this would result in limited harm to the openness of the Green Belt overall.

### *Protected species*

9. The planning application was supported with a Daytime Bat Survey and Bat Emergence Surveys. It was found that the appeal site supports evidence of a bat roost in the form of bat droppings in the small roof void above the rear extension. Nevertheless, during the two emergence surveys, which were carried out on separate dates, no bats were recorded emerging from the access points in the roof void.
10. Whilst I acknowledge that the site has good access to bat foraging and commuting habitat in the mature gardens and countryside surrounding the site the evidence also indicates that there was a low level of bat activity during the surveys.
11. Should this appeal succeed, I consider that appropriate conditions could be attached which require due care during demolition to ensure that any bats which may be found are safeguarded, as well as the installation of bat boxes on the replacement dwelling.
12. Therefore, the proposal is unlikely to have a significant adverse impact on this protected species and thus it complies with Policy SE3 of the Cheshire East Local Plan Strategy 2010-2030 (July 2017) (the CELPS) and Policy ENV2 of the Site Allocations and Development Policies Document (December 2022) (the SADPD) which, along with chapter 15 of the Framework, aim to protect habitats and biodiversity.

### *Other considerations*

13. The Framework notes that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
14. A Certificate of Lawfulness of Proposed Use or Development (CLOPUD)<sup>1</sup> was granted for the existing dwelling. This confirmed that the property could be extended to the rear, side and the roof, as well as the erection of an outbuilding, utilising permitted development rights. This therefore represents a fallback.

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<sup>1</sup> Council ref: 23/0916M

15. The appellant suggests that the CLOPUD scheme would result in more harm to the openness of the Green Belt than the appeal proposal as it would have a greater footprint, floorspace, volume and height. They go on to indicate that they would pursue the CLOPUD scheme if this appeal were to be dismissed. The weight to be afforded to this fallback is a matter of planning judgement based on the specific circumstances of the case.
16. Whilst I note the appellants stated intentions, there is serious doubt in my mind as to the likelihood of the CLOPUD scheme being erected. This is due to its awkward design with very narrow gaps between the three rear extension projections. Practically this would likely be very difficult to implement and maintain. There is no evidence before me to suggest otherwise.
17. The CLOPUD scheme would also be very different to the appeal proposal. Much of the additional living space gained would be at ground floor level, with a considerable amount provided through a large outbuilding which would provide a gym, spa and studio space. This is not reflective of the appeal proposal. Whilst the CLOPUD scheme may provide the required living accommodation for the appellant, I consider it is not a realistic alternative to the appeal proposal.
18. I am also concerned that an outbuilding could be erected prior to or after the implementation of the appeal proposal, therefore negating any purported benefits to the openness of the Green Belt which may be achieved through avoiding the CLOPUD scheme. There is no mechanism before me to prevent such circumstances from occurring.
19. Moreover, the dwelling resulting from the appeal proposal would have permitted development rights which could be utilised to further extend the property. There is no evidence before me to indicate that removal of such rights would be appropriate and meet the required tests as set out in the Framework in this instance.
20. Further to the above, the CLOPUD scheme and the appeal proposal would be arranged very differently. The fallback would have a greater spread of development on the site thus would result in a reduction to the openness of the Green Belt in spatial terms. It would however largely be at ground floor level thus would not be readily discernible. In comparison, the appeal proposal would have a more compact footprint however it would be evidently bulkier given it would be arranged over two storeys. It would therefore result in lesser spatial harm but would however cause a reduction to visual aspects of Green Belt openness. Its siting within a built-up ribbon of development does not overcome this harm.
21. Both schemes would result in harm to the openness of the Green Belt, albeit in different respects. I consider that this varied arrangement of built form would result in a similar degree of harm to the openness of the Green Belt. Therefore, the proposal would not result in a benefit to openness when compared to the CLOPUD scheme.
22. Given all of the above and as I have concluded that the CLOPUD scheme would be no more harmful to the openness of the Green Belt than the appeal proposal, I afford this fallback no more than moderate weight.
23. It has been suggested that the proposed replacement dwelling would be a significant improvement in design compared to the CLOPUD scheme however I

find that the latter would not be readily apparent and, moreover, is not of a design which would be harmful to the appeal property or the wider area. I therefore afford this matter limited weight.

24. The appellant suggests that the appeal proposal would be more energy efficient than the CLOPUD scheme however there is no conclusive evidence on this matter before me. I am not therefore convinced that the existing dwelling could not be updated to a similar standard, with or without the fallback development. This matter is afforded limited weight.
25. I have taken into consideration the other appeal decisions and decisions made by the Council which have been referred to by the appellant. Whilst they serve to confirm that permitted development rights can be a fallback consideration of sufficient weight to amount to very special circumstances, each decision is case and circumstance specific and are not therefore directly comparable to the appeal proposal.
26. It has been suggested that the appeal proposal would bring benefits to the character and appearance of the area. The existing property, whilst it may be in a state of disrepair, is a characterful property in keeping with the locality. It does not harm the area and thus has a neutral effect.
27. The purported benefits to highway safety through the alteration to the access point to the site are unclear and I am not aware that the existing access is below standard or raises concerns in this regard.

#### *Whether very special circumstances*

28. The appeal proposal would be inappropriate development in the Green Belt and would cause harm, albeit limited, to its openness. In accordance with the Framework I afford substantial weight to the totality of this Green Belt harm.
29. As set out above, the other considerations put forward in support of the proposal attract only moderate weight therefore they do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.
30. For this reason, the proposal would fail to comply with Policy PG3 of the CELPS and Policy RUR13 of the SADPD, along with the similar aims of protecting the Green Belt as set out in the Framework.

#### **Conclusion**

31. The proposal conflicts with the development plan as a whole and there are no material considerations worthy of sufficient weight that would indicate a decision other than in accordance with it. The appeal should therefore be dismissed.

*H Ellison*  
INSPECTOR