



Appeal Decision

Site visit made on 3 June 2024

by R Major BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd July 2024

Appeal Ref: APP/R0660/W/24/3337588

The Grange, Moss Lane, Ollerton, Cheshire East WA16 8SH

- 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 Tim Hatton against the decision of Cheshire East Council.
 - The application Ref is 23/1511M.
 - The development proposed is demolition of the two-storey residential property on the site, including the associated single storey ancillary buildings, and its replacement by a new five bedroomed property.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. Subsequent to the Council issuing its decision the revised National Planning Policy Framework (the Framework) was published on 19 December 2023 and updated on 20 December 2023. Both parties, within their respective submissions, had an opportunity to comment on the revised Framework. Where reference is made to the Framework in this decision, the paragraph numbers are those that appear in the latest version.

Main Issues

3. The main issues are:
 - Whether the proposal is inappropriate development in the Green Belt having regard to the Framework and relevant development plan policies;
 - the effect on the openness of the Green Belt;
 - the effect on protected species, specifically bats, or their habitats; and
 - if found to be inappropriate development, whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances to justify the development.

Reasons

4. The appeal relates to a two-storey dwelling situated within a substantial plot, on land defined as Green Belt. To the rear / north of the appeal property is an outdoor swimming pool and to the northeast is an existing detached garage. At

the time of my site visit an additional outbuilding was being constructed to the northwest of the dwelling.

5. To the west of the appeal site runs the highway of School Lane, with the Grade II Listed Building known as Ollerton School House located on the opposite side of this highway. The highway of Moss Lane runs to the south of the site, with the detached dwelling known as The Old School situated on the opposite side of this highway, at the junction of School Lane and Moss Lane. The appeal site is located within the School Lane (Ollerton) Conservation Area (CA).

Whether inappropriate development

6. The appeal proposal seeks to demolish the existing dwelling and replace it with a new dwelling that would be located on a different footprint within this substantial plot. The submitted application details that the existing outdoor swimming pool would be removed, and the detached garage in the northeast corner of the site would also be demolished.
7. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, with the essential characteristics of the Green Belt being their openness and permanence. The Framework goes on to state that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
8. The Framework further establishes that the construction of new buildings in the Green Belt should be regarded as inappropriate, subject to a number of exceptions as set out in paragraph 154. One such exception, criterion (d), being the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces.
9. Policy PG 3 of the Cheshire East Local Plan Strategy 2010 – 2030 (2017) (LPS) mirrors the wording of the Framework in respect of the construction of new buildings in the Green Belt, including the listed exceptions.
10. Policy RUR 13 of the Cheshire East Local Plan Site Allocations and Development Policies Document (2022) (SADPD) also reinforces the requirements of the Framework. In addition, this policy also provides a detailed expectation for replacement buildings in the Green Belt, stating that matters including height, bulk, form, siting, design, floorspace and footprint will be taken into account. As such, LPS Policy PG 3 and SADPD Policy RUR 13 both conform, and are consistent, with the provisions of the Framework.
11. The Council's Officer Report includes a table detailing the floor area, height and volume of both the existing dwelling and the proposed replacement dwelling, stating that these figures were submitted by the appellant during the planning application. The appellant's submissions do not challenge these figures and therefore I have no reason to dispute them.
12. This evidence demonstrates that the replacement dwelling would be substantially larger than the existing dwelling in respect of floor area, volume and height. The submitted table does not provide a direct footprint comparison between the existing and proposed dwelling. It is however apparent from the submitted plans that the footprint of the replacement dwelling is larger than that of the existing. Furthermore, the Council's table does include existing and proposed floorspace figures for ground

floor level, which is a useful guide in respect of footprint, and this also shows a significant increase between the existing and proposed dwelling.

13. Consequently, the replacement dwelling would be materially larger than the existing dwelling. The proposed development is therefore not in the list of exclusions within Policy PG 3 of the LPS and paragraph 154 of the Framework, and conflicts with Policy RUR 13 of the SADPD where it requires the replacement building to not be materially larger than the existing building. Therefore, when judged against the wording of both local and national policy, the proposal is inappropriate development in the Green Belt which is by definition, harmful.

Openness

14. The Framework emphasises that a 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. Openness has spatial as well as visual aspects.
15. The proposed replacement dwelling would have a significantly larger volume and footprint than the existing house, resulting in harm to spatial openness. Furthermore, the replacement dwelling would be relocated within the site, and re-orientated with its wider front elevation facing towards School Lane. This repositioning within the site, along with the increased footprint, bulk and height would make the replacement dwelling more imposing and prominent in comparison to the existing dwelling. As such, there would also be harm to visual openness.
16. While I acknowledge the proposal is for a replacement dwelling, the extent of the size increase, as well as the repositioning of the dwelling within the site, means that I find the harm to openness to be moderate. This harm would be in addition to the inappropriateness of the scheme.

Bats

17. The Bat Presence / Absence Survey (Prepared by UES and dated 13th June 2023) found the presence of a single common pipistrelle bat roosting within the dwelling to be demolished. Thus, in order to avoid offences under the Conservation of Habitats and Species Regulations 2017, the development would need to be registered under Natural England's (NE) Bat Mitigation Class Licence (BMCL).
18. The application was refused on the grounds that NE would be unlikely to grant a BMCL because the proposal would not meet the three derogation tests of the Regulations. This is on the basis that the proposal would be inappropriate development within the Green Belt, contrary to the Development Plan and the Framework, and therefore there would be no overriding public benefits. However, there is no dispute that the adverse impacts on bats could be adequately mitigated. Consequently, if the proposal was otherwise acceptable, the mitigation could be secured by way of a suitably worded planning condition and I would have no reason to think that a BMCL would not be issued by NE.
19. I therefore conclude that, if I was minded to allow the appeal and subject to the imposition of a condition, the proposal would not harm protected species. It would accord with Policy SE 3 of the LPS and Policy ENV 2 of the SADPD. These policies together seek to ensure, among other things, that proposals would not have a significant adverse impact upon legally protected species and where necessary applications should be supported by an ecological assessment. It

would also accord with the provisions of the Framework, where it seeks to minimise impacts on, and adequately mitigate against any significant harm to, biodiversity.

Other considerations

20. The Framework states 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.
21. The submission details how the existing property benefits from approvals for extensions and outbuildings, consisting of certificate of lawfulness applications¹ and planning permissions² (previous approvals). This therefore represents a fallback position (fallback scheme).
22. As defined in case law³ there only needs to be a “realistic prospect” or “a possibility” of the fallback scheme being implemented and the appellant is clearly seeking to extend or replace this dwelling, as demonstrated by the previous approvals and current appeal proposal. As such, I consider there is a reasonable prospect of the previous approvals, with a generous floor area and volume, being implemented if the appeal is dismissed.
23. In coming to this view, I acknowledge the Council’s comments that the large detached outbuilding within the fallback scheme would impact upon views currently enjoyed from the rear of the existing property. However, I am not convinced that this is sufficient evidence to demonstrate that a realistic prospect of the fallback scheme being implemented does not exist at the appeal site.
24. Nevertheless, the weight to be afforded to the fallback scheme depends on whether it would be more or less harmful than the scheme for which permission is sought. This, along with the weight to be given to the fallback position, is a matter of planning judgement based on the specific circumstances of the case.
25. The measurements provided by the appellant show that the total footprint, floorspace and volume of the proposed dwelling would be considerably less in comparison to the combined total of the existing dwelling and the previous approvals.
26. However, I am not persuaded that this is the key determining factor in this case as the fallback scheme would be arranged very differently to the appeal proposal, with a considerable amount of floorspace and volume within the fallback scheme provided through a single large, detached outbuilding.
27. The fallback scheme would therefore have a much greater spread of development on the site and thus would result in a reduction to the openness of the Green Belt in spatial terms in comparison to the appeal proposal. It would however largely be at ground level and thus would not be as readily noticeable as the appeal proposal which would have a more constrained footprint, but would be evidently bulkier, higher and more visually prominent and imposing. Furthermore, and as mentioned

¹ LPA Ref: 20/1672M; 20/1674M and 18/1527C

² LPA Ref: 20/5710M and 20/2177M.

³ *Mansell v Tonbridge and Malling BC & others* [2017] EWCA Civ 1314; *Samuel Smith Old Brewery (Tadcaster), Oxtan Farm v North Yorkshire CC & Darrington Quarries Ltd* [2018] EWCA Civ 489; and *Samuel Smith Old Brewery (Tadcaster) and others* (Respondents) v North Yorkshire County Council (Appellant) [2020] UKSC 3

earlier, the repositioning and re-orientation of the replacement dwelling within the site, with its wide front elevation closer to School Lane, would increase the prominence of the replacement dwelling in comparison to the existing dwelling and fallback scheme.

28. Therefore, while the appeal proposal would result in lesser spatial harm, it would result in greater harm to the visual aspect of the Green Belt, in comparison to the fallback scheme. Both schemes would therefore result in harm to the openness of the Green Belt, albeit in different aspects. I consider that the difference in arrangement of built form from the fallback scheme and the appeal proposal would result in similar harm to the openness of the Green Belt. Therefore, the proposal would not result in a benefit to openness when compared to the fallback scheme.
29. In addition, I am also concerned that a large outbuilding, very similar to that within the fallback scheme, could be erected prior to the implementation of the appeal proposal, therefore negating much of the suggested benefits to the openness of the Green Belt which may be achieved through avoiding the fallback scheme. The appellant contends that this cannot happen due to an overlap between the siting of the permitted outbuilding and the new replacement dwelling, and also because any outbuilding erected would not accord with the plans approved as part of the appeal scheme.
30. I acknowledge the overlap point raised, however the overlap is minor and thus a similarly sized outbuilding could be erected under permitted development rights excluding the overlap area. Additionally, I do not agree that such an outbuilding could not be erected prior to commencement of the appeal scheme, as any such building could be built under the existing dwelling's current permitted development rights and there would be no requirement for this outbuilding to be removed as part of the appeal scheme. There is no mechanism before me to prevent this circumstance from occurring as adding a condition to remove certain permitted development rights would only apply once the planning permission / appeal scheme is commenced. This is a significant factor against the fallback scheme argument.
31. Whilst the impact of the appeal proposal on the CA, and the nearby listed building, is considered later in this decision, it has also been argued that the proposed replacement dwelling would result in a significant design improvement compared to the existing dwelling and the fallback scheme, to the benefit of the CA. While I acknowledge that the existing dwelling may require some minor cosmetic improvement, I find that it is a characterful property in keeping with the rural nature of the surroundings and therefore it does not currently have a harmful impact upon the character and appearance of the area or the CA.
32. As previously detailed, the fallback scheme includes a large, detached outbuilding which would be single storey and situated to the rear of the dwelling. I find that as a result of this large outbuilding the fallback position would have a greater negative impact upon the character and appearance of the surrounding area, including the CA, than the appeal proposal. However, for the reasons given earlier, there is no mechanism before me to prevent a similar sized outbuilding from being constructed before the appeal scheme is implemented. This outbuilding could then be retained thereafter alongside the replacement dwelling, thus negating any benefit of the appeal scheme in comparison to the fallback scheme

in terms of its impact on the character and appearance of the surrounding area and the CA.

33. In view of the above, I conclude that the fallback scheme would be no more harmful to the openness of the Green Belt than the appeal scheme. The fallback scheme, particularly the detached outbuilding, would be more harmful to the character and appearance of the surrounding area, and the CA, than the appeal proposal. However, there is no mechanism before me to prevent a similar sized outbuilding from being constructed before the appeal scheme is implemented, and thus this benefit of the appeal proposal in comparison to the fallback scheme is significantly reduced. Consequently, and overall, I therefore afford the fallback position limited weight.
34. The proposal includes the removal of the detached outbuilding from the northeast corner of the site and the submission states that there would be a reduction in hard surfacing. The removal of the detached single-storey outbuilding would not mitigate for the increase in floor area, volume and height arising from the replacement dwelling and I have not been provided with any figures of the differences between the existing and proposed areas of hardstanding. As such these matters have limited weight in favour of the appeal scheme.
35. The appellant has commented that the existing dwelling has an energy efficiency rating of G and the proposed dwelling would have an energy efficiency rating of A. However, there is no substantive evidence submitted to clarify these stated existing and proposed energy ratings. Notwithstanding this, I have limited evidence that the energy rating of the existing dwelling could not be improved, or that an alternative scheme could not be put forward that achieves an energy efficiency rating of A and also accords with the relevant local and national policies. In view of all the above, I attribute this benefit limited weight.
36. There would be economic benefits arising from the demolition and construction activities associated with the appeal proposal. However, such benefits would be limited by the scale of the development for one replacement dwelling and therefore attract limited weight in favour of the appeal scheme.
37. The appellant states that the appeal proposal would improve the local housing stock and would help to support local shops, services and facilities. However, I have limited information before me that the existing dwelling does not currently provide these benefits and would not continue to do so should the appeal be dismissed. I therefore attach limited weight to these matters.
38. I have taken into account the appeal decision⁴ and the decision⁵ 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 not directly comparable to the appeal scheme. Therefore, I attribute these decisions limited weight in my determination of this appeal proposal.

Other Matters

39. As detailed earlier the appeal site is within the CA and in accordance with the statutory duty set out in Section 72(1) of the Planning (Listed Buildings and

⁴ APP/R0660/W/22/3309363

⁵ LPA Ref: 21/1163M

Conservation Areas) Act 1990, I have paid special attention to the desirability of preserving or enhancing the character or appearance of the CA.

40. The significance of the CA in part derives from its character and appearance as a dispersed rural settlement containing a variety of vernacular buildings, many of which are large in size. The traditional rural character of the buildings and their relationship to each other amongst the surrounding fields, trees, open spaces and lanes adds to the significance of the CA.
41. The appeal building is a 19th century detached cottage which has been altered and extended and these alterations have somewhat diluted its original 19th century vernacular. The CA has recently been re-assessed and an appraisal adopted by the Council in September 2022. Within this document the appeal site is not identified to be of merit or a positive contributor to the CA, although neither was it identified as a negative contributor. As such, the loss of the existing building would not have an adverse impact upon the character or appearance of the CA.
42. The replacement dwelling has been designed to reflect 18th century vernacular with a symmetrical front elevation façade, vertical windows, a front canopy feature above the entrance door and chimney stacks at either end. To the rear the property would have a more modern appearance. Nevertheless, its overall design, along with the use of Cheshire facing brick and a slate roof, would ensure the replacement dwelling is appropriate within its rural surroundings and the CA.
43. In respect of the repositioning and re-orientation of the dwelling to face School Lane, this would result in the dwelling being more prominently viewed. However, this would not be harmful to the CA as School Lane is the main road serving the dispersed village of Ollerton and it is common for buildings within the CA to face this highway. As such and in view of the above, the appeal proposal would have a limited impact upon the significance of the heritage asset as a whole, and would not harm the character or appearance of the CA.
44. To the west of the appeal site, on the opposite side of School Lane, is the Grade II Listed Building known as Ollerton School House. In determining this appeal I also have a statutory duty, under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
45. According to the listing description this is the former school-teacher's house and schoolroom which dates from 1692, with late 18th century additions, and is an early example of an endowed small school, serving a single village or estate. Architecturally, the brick building has a relatively simple vernacular character, with mainly segmental-arched openings at ground floor and the black paint around these openings accentuates their appearance against the buildings white painted (or washed) finish.
46. As well as the historic significance resulting from its age and former use, these features of architectural interest within the front elevation also add to the significance of the listed building, especially when viewed from the public highway of School Lane.
47. The proposed dwelling would be visible from this listed building, and both the listed building and proposed dwelling would be visible in the same view from sections of School Lane, particularly wider views from the north. Nevertheless,

given the aforementioned design and appearance of the replacement dwelling, it would not compromise the setting of this listed building. As such, the appeal proposal would preserve the setting of this listed building and its features of special architectural and historic interest.

48. I note interested parties views in respect of some of the Parish Councillors comments, the service the appellant has received from the Council, as well as the appellant's profession and passion for the village. Nevertheless, these matters are not determinative in my consideration of the planning merits relating to this appeal.

Green Belt Balance

49. The proposal constitutes inappropriate development in the Green Belt and results in moderate harm to openness. By virtue of paragraph 153 of the Framework this harm attracts substantial weight.
50. The Framework makes it clear that the harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the development, must be clearly outweighed by other considerations for planning permission to be granted. In this case, I find that although there are matters which provide limited weight in favour of the appeal, the weight of these other considerations does not clearly outweigh the totality of the harm arising to the Green Belt.
51. Consequently, the very special circumstances that are necessary to justify inappropriate development in the Green Belt do not exist in this case.

Conclusion

52. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Therefore, for the reasons given, the appeal is dismissed.

R Major

INSPECTOR