

Appeal Decision

Site visit made on 16 September 2024

by Ann Veevers BA(Hons) PGDipBCon MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th September 2024

Appeal Ref: APP/R0660/D/24/3341800

Fir Tree Farm, Whirley Lane, Henbury SK10 4RR

- 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 Stephen Maynard against the decision of Cheshire East Council.
 - The application Ref is 21/2305M.
 - The development proposed is described as 'extending rear roof to form first floor extension'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Policy NE11 of the Macclesfield Borough Local Plan (MBLP) has been referred to in the Council's decision notice in the second reason for refusal and in the delegated officer report. However, the Council have confirmed that the MBLP no longer forms part of the development plan. I have therefore disregarded the reference to this policy and the MBLP in my decision but have relied upon Policy SE3 of the Cheshire East Local Plan Strategy 2010 – 2030, adopted July 2017 (CELPS) which was also specified in the second reason for refusal.

Main Issues

3. 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 policy;
- the effect of the proposal on the openness of the Green Belt;
- whether the development would accord with local policies, national guidance and legislation with regard to protected species, namely bats; and,
- if found to be inappropriate development in the Green Belt, 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 required to justify the proposal.

Reasons

Whether inappropriate development in the Green Belt

4. Fir Tree Farm is located in the Green Belt and comprises a detached two storey dwelling within a spacious plot, surrounded by undulating open countryside. It is proposed to add a first floor extension to the property.
5. The Government's approach to protecting the Green Belt is set out in Section 13 of the Framework. It states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 154 makes it clear that new buildings are inappropriate in the Green Belt. However, an exception is made at paragraph 154 c) in the case of the extension or alteration of a building, provided that it does not result in disproportionate additions over and above the size of the original building. A similar approach is set out in Policy PG3 of the CELPS.
6. The Framework does not define what constitutes a disproportionate addition. However, Policy RUR 11 of the Council's Site Allocations and Development Policies Document, adopted December 2022 (SADPD) states that proposals will usually be considered to represent disproportionate additions where they increase the size of the original building by more than 30%.
7. Policy RUR 11 also advises that in assessing proposals, full account will be taken of any previous extensions or development to the original building or in its curtilage. It goes on to clarify that the original building means the building and outbuildings/structures as it was originally built, or as it existed on 1 July 1948 if constructed before this date, and that applicants must provide clear evidence of the original and proposed floorspace.
8. Limited information has been provided in terms of scaled plans of the original dwelling or subsequent extensions that have occurred, and it is clear that there is disagreement between the parties on this matter.
9. The Council assert that the proposed extension would equate to an approximate 200% increase in floorspace over and above the original dwelling. The appellant refers to a previous extension constructed between 2001-2003 of approximately 15% and a subsequent extension of 30%. From observations at my site visit, it was apparent that the original farmhouse has been significantly extended to include a single storey conservatory and a part two storey/part single storey side extension.
10. Even if I were to take the appellants own figures into account, although the footprint of the building would not be increased, and loft space has already been created, the proposal would clearly cumulatively increase the volume of the original building beyond the 30% policy threshold.
11. The appellant suggests that the proposed first floor would be built on what was once a separate building some distance from the dwelling and that the concept of disproportionate additions should be applied to the 'building' as it previously existed rather than the dwelling it now forms part of. The evidence provided in photographs presented by the appellant indicates that the previous Dutch barn which was located close to the farmhouse, as indicated, no longer exists. I do not disagree that the Dutch barn would have

been a substantial feature in the countryside, but it would be clearly agricultural and functional in its design and appearance and therefore not unexpected in the Green Belt.

12. The building that replaced the Dutch barn also does not exist in its original form, rather, it has been subsumed as part of the farmhouse. It is clearly physically connected internally and externally to the two storey extension of the farmhouse. Thus, it seems to me that the previous single storey outbuilding now forms part and parcel of the extended Fir Tree Farm. It is therefore this building (i.e. Fir Tree Farm) which I must assess in terms of the 'original building' in relation to Policy PG3 of the CELPS and the Framework and the previous outbuilding effectively forms an extension to it.
13. In purely quantitative terms, even if the former outbuilding was not taken into account, the proposed extension would still be a disproportionate addition over and above the original building of Fir Tree Farm. However, floorspace and quantitative measures cannot be used as the only measure of disproportionality, in part because proportionality is inherently context specific, I consider that it can be used as an approximation for disproportionality. In this regard, Policy RUR11 of the SADPD explains that matters including height, bulk, form, siting and design will also be taken into account in assessing whether an extension would be disproportionate.
14. The extent of physical built development is a question of fact and the proposed development would result in a significant uplift in the eaves and ridge height of the current single storey addition. The proposed visible upward extension would add bulk to the first floor of the building, further subsuming its original form. It would demonstrably increase its size from its original modest proportions as a former traditional farmhouse and result in an elongated two storey building. The extent to which the floorspace and volume of the building would increase is, in my view, such that the proposed development would form a disproportionate addition and would not fall within the exceptions outlined in Policy PG3 of the CELPS.
15. Consequently, I find that by reason of the resultant disproportionate addition, the appeal proposal would be inappropriate development in the Green Belt which is, by definition, harmful. It would therefore conflict with Policy PG3 of the CELPS, and Policy RU11 of the SADPD where they require, amongst other things, that development would not result in a disproportionate addition. There would also be conflict with paragraph 154 (c) of the Framework in this regard.

Openness

16. A fundamental aim of Green Belt policy, as set out by the Framework, is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. Openness in Green Belt terms, has both a spatial and visual dimension.
17. In relation to the spatial aspect to openness it is necessary to compare the mass of existing and proposed developments. I have found that the new building would be materially larger than the existing building. The upward expansion of built form on the site would spatially increase the form, volume and massing of development.

18. In relation to the visual aspect to openness, while the property is largely concealed from wider public views by the presence of trees and hedges, the driveway and dwelling are visible through the access gates on Whirley Lane when approaching the site from the south. Its greater mass compared with the existing dwelling would be glimpsed through vegetation when passing along Whirley Lane. It would be more apparent during many months of the year when trees would not be in leaf.
19. My findings are that there would be harm to both spatial and visual openness. Due to the overall modest scale of the proposal in the context of the existing building, I find the harm would be limited. This harm would be in addition to the inappropriateness of the development.

Bats

20. Regulation 9 (3) of the Conservation of Habitats and Species Regulations 2017 (the Regulations) imposes a duty on me to have regard to the likelihood of bats, a European Protected Species (EPS), being present and affected by the proposed development. Furthermore, Circular 06/2005, referred to in paragraph 185 of the Framework, states that the presence of a protected species is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. This is also reflected in Policy SE3 of the CELPS.
21. The application was supported by a day time bat survey¹ which identified potential presence of bats within the roof void of the part of the building to be extended. Therefore, a further bat emergence survey² was undertaken. The results suggested that the roof void of the building was in use as a day roost for small numbers of Brown long-eared bats. Other bat species were found foraging in the area. As a bat roost is present at the building, the appellant's ecologist recommended that a bat box be installed on the façade of the building following completion of construction works. The appellant was also advised that a bat mitigation licence would be required prior to commencement of works.
22. On review of the surveys, the Council's principal nature conservation officer advised that the loss of the roost, in the absence of mitigation, would be likely to have a low impact upon on bats at the local level and a low impact upon the conservation status of the species as a whole. He identified that, based upon the location of the bat roost in the building, it would be potentially feasible for the roost to be retained in its current location. Therefore, he advised that the retention of the roost in situ should be considered as a 'suitable alternative'. He then went on to clarify that in the event that the loss of the roost is considered unavoidable, the proposed mitigation and compensation would be sufficient to maintain the favourable conservation status of the species concerned.
23. However, activity which could lead to the destruction of a roost can only go ahead if Natural England (NE) has issued an EPS licence. Whilst it is not my duty as a decision maker in this appeal to apply the licensing tests to the

¹ Daytime Bat Survey, July 2022, Rachel Hacking Ecology

² Bat Emergence Surveys, August – September 2022, Rachel Hacking Ecology

proposal before me, I have had regard to them as I am required to consider whether there would be a reasonable prospect of a licence being granted.

24. There is no convincing evidence before me that the development is necessary for preserving public health or safety or for other imperative reasons of overriding public interest. In addition, whilst I acknowledge that an alternative scheme of mitigation has been submitted to the Council for consideration, and retention of the roost in situ would be acceptable, it is unclear whether this would be feasible having regard to the scale of the proposed roof alterations. In the event the retention of the roost would not be feasible, it seems to me that a replacement day roost would be unavailable until the new development was at least partially completed.
25. In order for NE to issue a licence, all three of the tests must be met. Even if there is a satisfactory alternative and the conservation status of the species would be maintained, the proposal would not meet the first test. I am therefore not convinced a licence would be granted by Natural England.
26. In that respect therefore, the proposal would not meet the requirements of Policy SE3 of the CELPS which requires in various ways that development should not have a significant adverse impact on biodiversity but should aim to positively contribute to its conservation and enhancement.
27. Even if the proposal did meet the terms of a licence, this factor would not alter my decision as I have found the proposal to be unacceptable on the other main issues above.
28. The Council's reason for refusal also refers to Great Crested Newts (GCNs) but there is nothing in the submissions to indicate the presence or otherwise of GCNs. Therefore, I do not consider this matter to be determinative in my consideration of the appeal.

Other considerations

29. There would be economic benefits arising from the construction activities associated with the appeal proposal. However, such benefits would be limited by the scale of the development and therefore attract limited weight in favour of the appeal scheme.
30. It is asserted that previous large agricultural buildings existed on and adjacent to the site which have been removed. I note the Council's officer report includes an aerial photograph dated 1999-2003 that indicates several buildings were previously present on what is now the garden associated with Fir Tree Farm and the adjacent field. The Council argue that these were originally agricultural buildings that were demolished to accommodate a two storey extension to Fir Tree Farm. The appellant's submission does not challenge this claim and I have no reason to disagree. Nonetheless, even if that was the case, those buildings are no longer on the site and therefore cannot be taken into consideration as mitigation for the proposed increase in floorspace. As such this matter carries little weight in favour of the appeal scheme.
31. The building would be sympathetically designed in terms of its materials and external appearance. However, any new development would be expected to

be well designed in order to comply with local and national planning policy. This is therefore not a benefit of the proposal.

32. Even if the appeal proposal would not have an undue impact upon the living conditions of existing or future occupiers or neighbouring occupants or the special qualities of local landscape designations, again, these are expectations of policy. As such they are neutral matters that do not weigh in favour of the appeal scheme.

Other Matters

33. To the north of the appeal site is a Grade II listed building known as Fir Tree Cottage. 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.
34. From the limited information available and what I saw at my site visit, the significance of the building is derived from its traditional rural local architecture, including three relatively prominent chimney stacks, along with its traditional materials and age.
35. Although, as the names suggest, there may have been some historical relationship between Fir Tree Farm and Fir Tree Cottage, the appeal site is physically and visually separate from the designated heritage asset and its setting. Views to or from Fir Tree Cottage and the appeal site and any previous association between the two buildings are already compromised by later intervening outbuildings, gardens and boundary treatment. Given the satisfactory design of the proposed extension and the distance between the buildings, it would not compromise the setting to Fir Tree Cottage. Accordingly, I agree with the Council's assessment that the proposal would preserve the setting of this listed building and its features of special architectural and historic interest. I am satisfied that the proposal complies with the heritage protection policies of the Framework in this regard.
36. In support of the proposal, the appellant has drawn my attention to development elsewhere in Cheshire East that has been granted permission in the Green Belt and where there was evidence of bat activity. The examples provided are at Fir Tree Cottage, Henbury; Broadheath Farm, Over Alderley and Rough Heys Farm, Henbury.
37. On the basis of the information provided in relation to these cases, it appears that the 2016 development at Rough Heys Farm did not involve the extension to a building but was for the redevelopment of previously developed land in the Green Belt for the erection of several dwellings. This also appears to be similar to the case at Broadheath Farm (21/1848M), which also involved the redevelopment of the site to include extensions to one dwelling, the conversion of a building to form a further dwelling and the erection of a new dwelling. These examples are materially different to the appeal proposal and would be assessed under a different local and national policy background.

38. The more recent development for a first floor extension to Rough Heys Farm (23/4834M) and single storey extensions to Fir Tree Cottage (17/1411M) are more relevant. However, the appeal proposal would, when taken cumulatively with previous extensions, amount to additions to the original Fir Tree Farm of greater scale than that either those at Rough Heys Farm or Fir Tree Cottage. As such the circumstances of these permissions are not sufficiently similar to the appeal before me to weigh in its favour.
39. In any event, although there appear to be some similarities between some of the above decisions and the proposal before me, the factors involved relating to whether a proposal represents inappropriate development are quintessentially matters of planning judgement. In this respect, it is likely that site-specific factors, such as previous extensions, the topography of the area and the exact proposed location of the proposals in the context of the building and surroundings would materially differentiate those appeals from the appeal proposal.
40. In terms of bat activity, the appellant argues that a different approach to the appeal proposal has been taken by the Council in relation to bat roosts found at Fir Tree Cottage. However, from the information before me, it appears that the development referred to related to the replacement of the roof of the property, rather than an extension. Because this building is a listed building, it would be incumbent on the owners to maintain the fabric of the building in the public interest of the preservation of the historic building. This example is therefore materially different to the appeal proposal. In the case of Broadheath Farm, that involved the creation of an additional dwelling, thus the considerations in relation to bats and the tests outlined in the third main issue above would be materially different to the appeal proposal.
41. While consistency in decision making is important, the existence of development elsewhere, whether it be adjacent to the appeal site or elsewhere, does not represent an appropriate reason to find in favour of a proposal that would cause harm in this case, a case I have considered on its own merits.
42. The appellant has raised concerns regarding how the planning application was dealt with by the Council and has referred to lengthy email correspondence between the parties, including formal complaints. The appellant asserts that the Council behaved unreasonably in several ways and I note the frustration caused in this regard. However, concerns about conduct during the processing of the planning application are not a matter for the appeal. I have only had regard to the planning merits of the proposal that is before me.

Planning Balance and Conclusion

43. The proposal would be inappropriate development in the Green Belt. I have also found that it would cause limited harm to its spatial and visual openness. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and that substantial weight should be given to that and any other harm to it. I have also found that the proposal would not accord with local policies, national guidance and legislation with regard to protected species, namely bats.

44. Having carefully examined the other considerations advanced in support of the appeal, I find, on the evidence provided in this case, that they do not clearly outweigh the harm I have identified. Consequently, other considerations amounting to very special circumstances sufficient to outweigh the harm to the Green Belt do not exist.
45. The proposal would conflict with the development plan taken as a whole, and there are no material considerations, including the Framework, that indicate a decision should be made other than in accordance with it. Therefore, for the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Ann Veevers

INSPECTOR