



Appeal Decision

Site visit made on 4 November 2024

by T Bennett BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th December 2024

Appeal Ref: APP/R0660/W/24/3348049

Middle Moss Farm, Lowes Lane, Gawsworth SK11 9QR

- 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 & Mrs Austin against the decision of Cheshire East Council.
 - The application Ref is 23/3994M.
 - The development proposed is the erection of replacement dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in the appeal are:

- whether the proposed development would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (NPPF) and any relevant development plan policies;
- whether the proposed development would have an adverse impact on protected species with particular regard to bats; and
- if the development would be inappropriate, whether the harm to the Green Belt by way 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 proposal.

Reasons

Background

3. The site is a large plot within the Green Belt, located to the east of Lowes Lane, separated from the village of Gawsworth. A detached bungalow lies opposite the appeal site, there is open countryside to the south and east with former agricultural buildings to the north that have extant permission for conversion into two residential properties. The proposal is to demolish the existing two storey dwelling and two brick-built outbuildings to the rear, replacing them with a new dwelling.

Inappropriate development

4. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Certain forms of development are, however, not inappropriate.

One such exception is for the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces, as set out at paragraph 154 d). Policy PG3 of the Cheshire East Local Plan Strategy 2017 (LP) reflects the provisions of paragraph 154 of the Framework.

5. The new building would be in the same use as what it seeks to replace and this part of the exception test would be met. The issue turns on whether the proposed building would be materially larger than the existing building.
6. The phrase 'materially larger' is not defined within the Framework. Policy RUR13 of the Site Allocations and Development Policies Document 2022 (SADPD) deals with replacement buildings outside of the settlement boundaries, including those in the Green Belt. The policy, amongst other things, considers height, bulk, form, siting, design, floorspace and footprint as some factors which can be taken into account when considering whether a replacement building is materially larger. The supporting text of the policy states that determining what is 'materially larger' will depend upon the circumstances of each case. It is therefore ultimately a matter for the decision maker.
7. The appellant has directed me towards a previous approved planning permission (Ref: 22/3709M) and officer report for a replacement dwelling at a different site but within the same Council area, which was assessed against the same policies as this appeal in relation to the Green Belt. The officer report recognises that materially larger is not explicitly defined in the development plan, but states that the Council has considered the interpretation of the policy many times and a 30% increase is considered acceptable. In that case the replacement dwelling had a 33% increase in floorspace and 19% increase in height. Based on the above, the officer considered that it was not materially larger than what it was replacing and thus found it would not be inappropriate development. Whilst recognising each case is determined on its own merits, consistency in decision-making is important, thus whilst the 30% set out in the officer report is not policy, it provides a useful indication as to what the Council have considered acceptable previously.
8. The main parties have set out various mathematical comparisons between the existing dwelling and the proposed dwelling. The majority of the Council's calculations are based on the existing dwelling only. The reason given for not including the outbuildings is that they are detached. Although, the report does go on to recognise they are domestic outbuildings and consider their floor area in conjunction with the existing dwelling.
9. The detached outbuildings are in domestic use, located very close to the dwelling and are viewed in association with it, having a functional relationship. I find it is reasonable and appropriate to consider the outbuildings as part of the existing dwelling for the purpose of determining whether the appeal proposal would be inappropriate development.
10. The Council's and appellant's measurements of the proposed dwelling differ, but not to a significant degree. Therefore, I am satisfied that I can make an informed assessment based on the information before me.

11. The increase in footprint would be marginal and the increase in floor area and volume would not be substantial, falling below 30% which the Council have used as a benchmark previously. However, the assessment cannot be just based on mathematical numbers alone.
12. The replacement dwelling would be largely sited on the footprint of the existing dwelling, predominantly two storeys with no part of the roof higher than the dwelling it would replace, with the bulk of the roof height set even lower.
13. The Council consider the proposal would appear materially larger because of the increased depth at two storeys compared to the single storey form of the outbuildings. However, whilst it would protrude deeper into the plot compared to the original main dwelling, it would not extend into the footprints of the existing outbuildings and would consolidate existing built form. The protrusion would also be partially offset by the reduced width. When factoring in the existing outbuildings and excluding the gaps that exist between them and the existing dwelling, the replacement dwelling would result in a reduced depth of built form.
14. Furthermore, a large section at the rear of the replacement dwelling would be single storey, reducing the massing and bulk of the building at first floor, with large amounts of glazing.
15. Taking into consideration the above and the replacement dwellings overall design, height, size, scale and form, I consider the replacement dwelling as a whole would not be materially larger than the buildings it replaces. Thus, the proposal would not represent inappropriate development within the Green Belt and falls within the exception set out at paragraph 154 d) of the Framework. For this reason, it would also comply with Policy PG3 of the LP. As there is no Green Belt harm, there is no need to assess the effect of the development on the openness of the Green Belt or consider if any very special circumstances exist.

Protected species - Bats

16. A bat survey report dated 4th October 2023 confirmed the presence of a common pipistrelle day roost within the dwelling to be demolished. Bats are a European Protected species (EPS). The Council's ecologist has considered the submitted bat reports and finds that in the absence of mitigation, the development would be likely to have a low impact upon bats at the local level and upon the conservation status of the species as a whole. The ecologist advised 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.
17. However, developments that would result in a breach of the protection afforded to European Protected Species require a mitigation licence to be obtained from Natural England under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations). Natural England make the decision whether or not to grant a license, but as decision maker I must be confident that there would be a reasonable prospect of the licence being granted by Natural England in order for me to grant planning permission.

18. A license can only be granted by Natural England if the development meets 3 derogation tests. In summary these are, that the development is necessary for imperative reasons of overriding public interest; that there is no satisfactory alternative that will cause less harm to the species; and thirdly that it will not be detrimental to maintaining the population of the species at a favourable conservation status in their natural range.
19. In relation to the first test, the Council have considered the proposal to be unacceptable in principle and thus deem there is no overriding reason for granting approval. The appellant considers this to be the reason why the proposal fails the tests for a bat license to be granted. In the appellant's view as they consider that the proposal would not represent inappropriate development they find that it would satisfy the tests. However, there are also a further two tests which I discuss below. On this first test, I have no substantive evidence or reasoning before me that the development is necessary for imperative reasons of overriding public interest and therefore I cannot be satisfied that this test would be met.
20. In relation to the second test, the alternatives would be to do nothing or renovate the existing building. However, doing nothing does not seem a likely or realistic option given the level of significant repairs needed. Likewise, any repairs to the existing property, particularly in the roof could adversely affect and displace any roosting bats. I consider based on the evidence before me that there is no satisfactory alternative, the second test would likely be met.
21. In terms of the third test, sufficient mitigation measures have been proposed. Therefore, the evidence suggests that the favourable status of the protected species would be maintained.
22. The Council consider that the proposal would conflict with Policy SE3 of the LP which, amongst other matters, requires development to not have a significant adverse impact on protected species and should positively contribute to its conservation and enhancement. They have also found conflict with Policy ENV2 of the SADP which has similar aims. However, based on my conclusions in respect of test 2 and test 3, I find that the proposal would not result in a significant adverse impact on protected species and consequently there would not be conflict with Policy SE3 of the LP or Policy ENV2 of the SADP.
23. Notwithstanding the lack of conflict with the development plan, given my consideration of the derogation tests and having had regard to my duties under the Regulations 9(1) and 9(3), based on the evidence before me, I am not satisfied that all three tests would be met. Therefore, I cannot be confident that there is a reasonable prospect of a mitigation license being granted by Natural England, as such I am unable to grant planning permission.
24. Policy ENV1 relates to ecological networks. From my reading of the policy and officer report it is not clear why this has been cited in the reason for refusal. This policy has therefore not been determinative in my decision making.

Conclusion

25. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission are determined in accordance with the development plan unless material considerations indicate otherwise.

26. In this case I have found no conflict with the development plan, but having regard to my duties required under the Regulations is an important material consideration in the determination of this appeal. As I cannot be satisfied that all derogation tests would be met, I am not confident there is a reasonable prospect of a mitigation license being granted by Natural England, consequently, I am unable to grant planning permission.
27. The proposed development would accord with the development plan but the material considerations in this case indicate that a decision should be made contrary to the development plan. For this reason, the appeal is dismissed.

T Bennett

INSPECTOR