
Appeal Decision

Site visit made on 21 February 2017

by Debbie Moore BSc (HONS) MCD MRTPI PGDip

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 24 February 2017.

Appeal Ref: APP/F0114/W/16/3163717

Former Rockery Tea Gardens, North Road, Combe Down, Bath BA2 5DN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with a condition subject to which a previous planning permission was granted.
 - The appeal is made by Freemantle Capital (Gainsborough) Ltd against the decision of Bath & North East Somerset Council.
 - The application Ref 16/02658/REM, dated 25 May 2016, was refused by notice dated 21 October 2016.
 - The application sought planning permission for a detached single storey dwelling without complying with a condition attached to planning permission reference APP/F0114/A/14/2229416, dated 20 April 2015.
 - The condition in dispute is No 11 which states that: "No development shall take place until a technical specification has been submitted to and approved in writing by the local planning authority to demonstrate that the glazing to all the windows to the dwellinghouse hereby permitted will limit any light spill to a minimum and acceptable level. The development shall be carried out in accordance with the approved details and permanently retained".
 - The reason given for the condition is: "In the interests of ecology and the living conditions of the occupants of neighbouring properties".
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Details pursuant to condition No 11 of decision ref. APP/F0114/A/14/2229416 were approved by the Council on 17 November 2015. This confirmed the use of 'SPD-Smart Glass' which, the appellant explains, is a type of glass that can be tuned to control the amount of light, glare and heat perforating the glass. The development has commenced and windows have been installed which do not comply with the approved specification. Therefore, the appellant seeks to vary condition No 11 through an alternative scheme. This would introduce bespoke internal lighting together with a 1.2m boundary fence along the south-western, south-eastern and eastern boundaries.
3. Since the details were refused, the Council's draft Placemaking Plan¹ has progressed further through the examination process. The Council advises that Policy D8, which relates to lighting, now carries significant weight. I have taken the policy into account in my consideration of this appeal.

¹ Bath and North East Somerset Placemaking Plan, December 2015

Application for costs

4. An application for costs was made by Freemantle Capital (Gainsborough) Ltd against Bath and North East Somerset Council. This application is the subject of a separate Decision.

Main Issue

5. The main issue is the effect that varying the condition would have on protected species and the living conditions of the occupants of neighbouring properties.

Reasons

6. The appeal site comprises a former quarry and tea garden, part of which has been redeveloped to accommodate three houses and nine apartments. The site is located close to the 'Combe Down and Bathampton Down Mines' Site of Special Scientific Interest (SSSI), and within 0.5km of the 'Bath and Bradford on Avon Bats' Special Area of Conservation (SAC). There are a number of protected trees in and around the site. The site is known to be used by bats from both the SSSI and the SAC.
7. The appellant has submitted a Technical Report² which provides an analysis of the predicted light spill for the development. It is identified that the south-west facing windows present the greatest potential for contributing obtrusive light, and consequently, the lighting design strategy focusses on the lounge and bedroom two. It is advised that a standard down-lighting scheme must be used in both rooms. The lighting design requirements have been expanded from the earlier Report³ to include specifications for all rooms. This includes imposing a limit on the maximum permitted average illuminance for each room, and recessed ceilings to reduce the potential for direct light beams to spill through the windows. The Report makes it clear that the lighting design requirements must be fully adhered to. However, it is unclear how this would be achieved in the event that future occupants wish to alter the illuminance.
8. Modelling has been undertaken to establish the light spill associated with the development at various heights and intervals. In addition, two scenarios were modelled with window light transmission values of 0.7 and 0.82. The Report states that the light spill calculation includes the installation of a 2.5m solid panel fence to serve as a light barrier. However, a 1.2m boundary fence along the south-western, south-eastern and eastern boundaries is proposed. It is not clear from the Report what effect the reduced fence height would have on the results analysis.
9. Moreover, the Report states that it is not uncommon for occupants to use layered lighting within living spaces. This could involve the use of table lamps and free standing portable lighting. The report has not considered these elements in the calculation, therefore, it is not certain that the use of layered lighting would reduce potential light spill, as the Report suggests.
10. The Report concludes that smart glass can be omitted from the development subject to conditions. However, from the evidence before me I am not satisfied that compliance the recommended conditions can be secured. The first

² Ref 0435-DFL-TR-001_B dated 01/08/2016

³ Ref 0435-DFL-TR-001_A dated 23/05/2016

condition is that the lighting design should not deviate from the lighting strategy in section 3 of the Report. However, if additional portable lighting were to be used by future occupants, or if the illuminance within individual rooms were altered, deviation would occur. Also, the conditions require a solid panel fence of up to 2.5 m in height. I note that this recommendation has been slightly amended from the previous Report with the insertion of "up to" 2.5m, but there is very little analysis of the effect of a lower fence.

11. I appreciate that the Council's ecologist was satisfied with the details submitted and considered that the proposal would not pose a risk of likely significant effect on the SAC, and that Natural England's Advisor was satisfied with the 1.2m fence. Nonetheless, the advice is based on the assumption that the lighting design requirements would be fully adhered to. It is unclear whether the effects of portable lighting were considered. I note that a compliance condition was suggested by the Council's ecologist. However I am not satisfied that an assessment after 12 months of occupation would achieve the condition's aim, which is to avoid harm to bats and wildlife.
12. The approach seeks to reduce the potential for light spill by applying mitigation measures to the source, rather than a secondary barrier to light. However, on the basis of the evidence before me, I am not satisfied that the submitted scheme demonstrates that it will limit any light spill to a minimum and acceptable level. In particular, bats are a species which are particularly sensitive to light and it has not been demonstrated that the harm to the surrounding bat population and their habitats would be minimised. Consequently, the proposal would not accord with Policies NE10 and NE11 of the Local Plan,⁴ which seek to protect nationally protected or locally important species and their habitats, Policy ES9 of the Local Plan, which seeks to control pollution, and Policy D8 of the Placemaking Plan, which seeks to protect European protected species.
13. For the reasons given above, the appeal is dismissed.

Debbie Moore

Inspector

⁴ Bath and North East Somerset Local Plan (including minerals and waste policies) , adopted October 2007