

Appeal Decision

Site visit made on 15th May 2017

by Alison Roland BSc DipTP MRTPI

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

Decision date: 08 June 2017

Appeal Ref: APP/A0665/D/17/3171352

The Ridings, Sherrington Lane, Broxton, Chester, CH3 9LA.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr and Mrs Stamer against the decision of Cheshire West and Chester Council.
 - The application Ref: 16/03367/FUL, dated 3 August 2016, was refused by notice dated 6 February 2017.
 - The development proposed is erection of two storey front and side extension, raised roof and eaves to provide second floor and external alterations to existing house and garage (re-submission of 15/04502/FUL).
-

Decision

1. The appeal is allowed and planning permission is granted for erection of two storey front and side extension, raised roof and eaves to provide second floor and external alterations to existing house and garage (re-submission of 15/04502/FUL), at The Ridings, Sherrington Lane, Broxton, Chester, CH3 9LA, in accordance with the terms of the application Ref: 16/03367/FUL, dated 3 August 2016, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing No: 01: Existing Floor Plans and Elevations; Drawing No: 02 Rev G: Proposed Floor Plans; Drawing No: 03 Rev G: Proposed Elevations; Drawing No: 04 Rev F: Existing and Proposed Site Plans.
 - 3) No development above slab level shall commence until samples of the materials to be used in the construction of external surfaces of the development hereby approved have been submitted to and approved in writing by the local planning authority. Development shall be carried out in complete accordance with the approved materials.
 - 4) The development hereby approved shall be carried out in accordance with the United Environmental Services Ltd Bat Method Statement (ref UES01762/03 dated 13 January 2016), including the provision of the bat box referenced therein.
-

- 5) No development shall be carried out on the site between the 1st March and 31st August inclusive, unless the site is surveyed for breeding birds, and a scheme to protect breeding birds is first submitted to and approved in writing by the local planning authority. The development shall thereafter only be carried out in accordance with the approved scheme.
- 6) Prior to the first occupation of the development hereby approved, replacement house sparrow nesting features shall have been installed in accordance with details that have first been submitted to and approved in writing by the local planning authority. The nesting features shall then be retained in the approved (or equivalent) condition thereafter.
- 7) Notwithstanding the approved drawings, the first and second floor side facing windows in the north facing elevation of the development hereby approved, shall be obscurely glazed to a minimum Pilkington Privacy Level 3 or equivalent and any part of the window(s) that is less than 1.7 metres above the floor of the room in which it is installed shall be non-opening. The windows shall be permanently retained in that condition thereafter.

Main Issues

2. The main issues in this appeal are (1) the implications of the proposal for the character and appearance of the area and (2) its effects on bats.

Reasons

Character and Appearance

3. The appeal site comprises a detached chalet style dormer bungalow sitting within an extensive landscaped plot. The wider setting is comprised of a loose scattering of dwellings in a variety of styles, but predominantly traditional Cheshire cottages with a mix of brick, render and stone finishes.
4. The proposal would see additions and extensive remodelling to the existing bungalow to form a larger two storey dwelling with rooms in the roof space, although the footprint would remain similar to existing. The resultant dwelling would be in the classical style with a formal front façade with central projecting two storey bay and symmetrically placed windows to either side.
5. There is no doubt that the resultant dwelling would have a more commanding appearance than the existing bungalow due to its greater height and massing. It would also be appreciably larger than most surrounding properties, but would not look out of place on this substantial, well landscaped plot. The projecting front bay would echo the projecting front gables of Philora and Homleigh across the opposite side of the road and likewise with the symmetrical disposition of windows, which are also echoed on other properties in the vicinity. Whilst arguably a little more formal than some of the smaller cottages, its design would nonetheless reflect the prevalent local styles and distinctive architecture as required by Policy RC4 of the Broxton and District Neighbourhood Plan 2015-2030 (2016) (NP).
6. Moreover, it would occupy a restrained siting set back from the road frontage at a slightly lower level relative thereto, to the extent it would not impose itself on its surroundings. The presence of mature trees around the site, would also soften views (although some are to be removed) and the substantial detached

garage which occupies a position in front of the existing dwelling, would break up its massing on the approach from the North.

7. In particular, I consider the proposal would represent a significant visual improvement compared to the existing chalet bungalow, which with its wide timber clad roof dormer, concrete roof tiles and bland front elevation, sits uneasily amidst the rather more charming properties around it. The lack of ground floor windows along the front elevation and discrete point of entry also disengages with the street, in marked contrast to the surrounding properties which have a more formal presentation thereto.
8. The proposed additions would not appear as a subordinate addition to the existing dwelling, nor reflect its character. However, given the shortcomings in its design, I consider the remodelling approach adopted is entirely appropriate and the resultant dwelling would with the more formal front façade, engage with and address the street scene in a way that the present dwelling does not.
9. For these reasons, I conclude on the first main issue that the proposal would integrate comfortably with the prevailing character and appearance of the area. Accordingly, I find no conflict with the advice in the Framework, Policy ENV 6 of the Cheshire West and Chester Council Local Plan (Part One) Strategic Policies (2015) (LP), or Policy RC4 of the NP. These seek to secure a high standard of design in new development that respects local character and achieves a sense of place through appropriate layout and design. There would be a partial conflict with Policy HO 8 of the Chester District Local Plan (2006) in that the proposal would not be in keeping with the scale and character of the existing dwelling, but for the reasons given, I nonetheless consider it is acceptable.

Effects on Bats

10. Developments that would result in a breach of the protection afforded to European Protected Species (EPS) require a derogation licence to avoid an offence under the Conservation of Habitats and Species Regulations 2010 (the Regulations). A licence can only be issued by Natural England (the licensing body) (NE) if three criteria are met namely that the proposal is;
 1. for the purpose of preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment; and
 2. that there is no satisfactory alternative; and
 3. that the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.
11. The decision maker must be satisfied that there is a reasonable prospect that a licence would be granted having regard to the requirements of the Habitats Directive, before planning permission is granted. In this respect, I have had regard to the guidance from NE on EPS and the Planning Process.¹ The Council

¹ Natural England Guidance Note: European Protected Species and the Planning Process. Natural England's Application of the "Three Tests" to Licence Applications (2010).

take no issue with the third test, but submit that the first two tests would not be met.

12. In relation to the first test, paragraph 22 of the NE advice refers to the interpretation of this test in relation to whether developments are required to meet or provide a contribution to meeting a specific need such as; *complying with planning policies and guidance at a national, regional and local level*. As I have found in relation to the first main issue that the proposal would enhance the character and appearance of the area through the alteration of the existing unattractive building which is markedly at odds with its surroundings, it seems to me entirely plausible that this test is capable of being met.
13. In relation to the no satisfactory alternative test, the appellant submits that the works are necessary to address the current leak on the flat roof. I have no reason to question the inadequacies in that structure and indeed, given the condition of the building, the general assertion that the accommodation is somewhat dated. I also have no doubt that the resultant building would be better insulated and constructed to a higher standard than the present building. Whilst it is maintained that alternatives have been explored, I have little details of these. Whilst the "do nothing" option has understandably been discounted as unfeasible, it is unclear what other options have been considered.
14. That said, I am not persuaded that this issue is likely to lead to the withholding of a licence and it may simply be the case that further information needs to be submitted. In coming to this view, I have had regard to the advice that NE applies the tests on a proportionate basis and also in considering the feasibility of alternative solutions (para 27), namely that the justification required increases with the severity of the impact on the species or population concerned. In this particular case, the development proposed would displace a day roost for a single bat and the Council's Ecologist was satisfied with the mitigation measures proposed, including the installation of a replacement roost in the form of a bat box on the adjoining garage. As the impact of the proposal is relatively minor and adequate mitigation is proposed, on the available evidence, I am not persuaded it is unlikely that NE would grant a licence.
15. Policy ENV 4 of the LP states that where there is unavoidable loss or damage to habitats, sites or features because of exceptional overriding circumstances, mitigation and compensation will be required to ensure there is no net loss of environmental value. The Policy does not define exceptional overriding circumstances and the Council's case on this issue seems to be based on their point concerning the three derogation tests, which I have addressed above. Moreover, as they are satisfied with the mitigation proposed, there would be no net loss of environmental value.
16. Overall on this issue, I conclude that the proposal is capable of meeting all three tests and there is a reasonable prospect of NE granting a licence. Accordingly, I find that it would not adversely affect the local bat population. The proposal would thus comply with the advice in the Framework, as well as Policy ENV 4 of the LP, which seek to conserve and enhance biodiversity and avoid any net loss of natural assets. In coming to this view, I have had regard to the recent court judgement² which concluded that *it is not to be expected or*

² Cheshire East Council v Secretary of State for Communities and Local Government, Rowland Homes Ltd (2014).

inferred that the need to have regard to the requirements of the Habitats Directive requires a planning inspector to make a detailed assessment of matters that are primarily the responsibility of another body. That case built on the findings of the Supreme Court in an earlier ruling ³ that the decision maker was not in fact expected to duplicate the licencing role of NE.

17. The Council suggest several conditions in addition to the standard time limit for the commencement of development. A condition confining the approval to submitted plans is necessary for clarity. A condition requiring the submission of materials to be approved is necessary to secure a satisfactory finish. A condition requiring development to be carried out in accordance with the Bat Method Statement is necessary to ensure the protection of EPS. A condition requiring obscure glazing and partial non-openers to the first and second floor side facing windows in the North facing elevation is necessary to protect the privacy of adjoining occupiers. Whilst the appellant queries the necessity for this condition, as the proposal would result in several windows in the side elevation facing Boxwood, in a more elevated and slightly closer position than is presently the case, I nonetheless consider it is necessary. Conditions are suggested requiring replacement house sparrow nesting features and prohibiting construction work between 1st March and 31st August inclusive unless a scheme to protect breeding birds is submitted to and approved in writing by the local planning authority. Given that the Bat Presence/Absence survey by United Environmental Services Ltd UES01762/02 (dated 13 January 2016) identified the presence of nesting birds in the building, these conditions are reasonable.

ALISON ROLAND

INSPECTOR

³ R (*Morge (FC)*) v Hampshire County Council [2011] UKSC 2