



Appeal Decision

Site visit made on 31 July 2019

by **E Griffin LLB Hons**

an Inspector appointed by the Secretary of State

Decision date: 05 September 2019

Appeal Ref: APP/J3720/W/19/3227257

Chasers Cottage, 8 Crimscote Road, Crimscote CV37 8UE

- The appeal is made under section 78 of Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mrs Ruth McKeown against the decision of Stratford on Avon District Council.
 - The application ref 19/00031/VARY dated 5 January 2019 was refused by notice dated 28 March 2019.
 - The application sought to vary condition 1 of planning permission granted on appeal for the outbuilding without complying with a condition attached to planning permission granted on appeal Ref APP/J3720/C/16/3159980 dated 20 January 2017.
 - The condition in dispute is No 1 which states that: *'The outbuilding hereby permitted shall be for a limited period of 2 years from the date of this decision. The outbuilding hereby permitted shall be removed and the land restored to its former condition on or before the expiry of the 2 year period in accordance with a scheme of work that shall have first been submitted to and approve in writing by the local planning authority.'*
 - The reason given for the condition is *'as a permanent structure, it would be harmful.'*
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Decision

1. The appeal is allowed and planning permission is granted for the outbuilding and timber clad retaining wall at Chasers Cottage, 8 Crimscote Road, Crimscote CV37 8UE in accordance with application 19/00031/VARY without compliance with condition number 1 previously imposed on planning permission reference APP/J3720/C/16/3159980 dated the 20 January 2017 and subject to the following conditions:
 - 1) The outbuilding is hereby permitted for a limited period up to the 2 December 2019. On or before the 2 December 2019, the outbuilding shall be removed and the land restored to its former condition in accordance with the scheme of work previously approved in writing by the Local Planning Authority under reference DISC/1900001 on the 19th February 2019.
 - 2) The scheme for planting identified on plan reference 183-C-002 dated the 3.11.17 and called "Timber Clad Retaining Wall Planting" shall be

implemented by the end of the first planting from the date of this decision. Any plants that form part of the agreed scheme that die or are removed within 5 years after the planting scheme is implemented shall be replaced with plants of a similar type and size.

Background and Main Issue

2. The outbuilding erected at the rear of Chasers Cottage (the Cottage) was the subject of an enforcement notice issued on the 7 September 2016. The Cottage is a Grade II listed building. As part of the subsequent enforcement notice appeal¹, the Inspector granted planning permission for the outbuilding for a limited period of 2 years from the date of the planning permission with the land to be restored in accordance with a scheme to be approved. The two year period expired on the 20 January 2019.
3. Bats and their roosts receive European protection under the Conservation of Habitats and Species Regulations 2017. They receive further protection under the Wildlife and Countryside Act 1981 which means that a person commits a criminal offence if they deliberately disturb bats or damage or destroy a bat roost. A bat licence to permit the removal of a bat roost was therefore obtained by the appellant in 2016 to enable mitigation measures to be installed in the temporary outbuilding whilst work was carried out at the Cottage.
4. The appellant applied to the Council to extend the period of compliance by 6 months to the 20th July 2019 to enable the appellant to apply for a variation of the bat licence that was issued by Natural England on 28 November 2016 for a period of five years for the Cottage and the outbuilding. The variation is needed as the three bat boxes on the outbuilding will be removed when the outbuilding is demolished.
5. However, during the later stages of the appeal process, I was informed by the appellant that the Council proposed to serve a breach of condition notice with a compliance date of 2 December 2019. The appellant had previously indicated to the Council that a compliance date of 2 December 2019 would enable the appropriate consents from Natural England to be obtained after bat surveys are conducted and the outbuilding can then be removed on or before the 2 December 2019. Although the original request was to extend to the 20 July 2019, I do consider that my powers enable me to consider the later date without any unfairness to either party in view of the exchanges between the parties.
6. The main issue is whether it is appropriate to allow the outbuilding to remain for a further period until the 2 December 2019 having regard to the degree of harm caused to the setting of the Grade II listed Cottage by the outbuilding.

Reasons

7. The previous Inspector referred to the outbuilding which is at the highest point of the site as being hugely out of scale and dominating the Cottage in a most harmful manner. Having viewed the site, I see no reason to disagree with that view.

¹ APP/J3720/C/16/3159980

8. The Annex to the bat licence refers to the provision of an alternative roost site and provided for 3 bat boxes to be installed on the outbuilding. The licence refers to the temporary outbuilding as a summer house and does not therefore allow for the temporary nature of the outbuilding or the subsequent removal of the bat boxes upon the completion of the works at the Cottage and the demolition of the outbuilding. The Annex attached to the licence refers to the process whereby the bat roost within the original extension at the Cottage was allowed to be destroyed subject to a careful process supervised by a suitably qualified ecologist. With the consent of Natural England, it would therefore appear appropriate for that process to now apply in reverse as mitigation measures including raised tile access points and habitat access points have already been provided in the new extension to the Cottage.
9. A copy of an ecology report dated August 2018 conducted on behalf of the appellant has been provided. The survey refers to the provision of three bat boxes on the outbuilding forming part of the original mitigation required by Natural England licence.
10. A July 2018 inspection indicated that the boxes on the outbuilding had been used occasionally for roosting in 2018 and bats are using the site for foraging and commuting. The author of the report refers to the construction works being complete and says that monitoring surveys will be carried out in the summer of 2020. The report does not therefore address the temporary nature of the outbuilding or whether the other mitigation carried out as part of the licence requirements would be adequate in the event of the removal of the outbuilding.
11. A timetable has been proposed by the appellant which involved a preliminary survey on the 14 June 2019 followed by further surveys in July and August. An amendment to the Licence would then be submitted with Natural England requiring 5 working days to register the amendment and a further 30 working days to determine the application to amend. The appellant proposed the 2 December 2019 as a compliance date which would allow around 4 weeks to remove the outbuilding after determination of the application by Natural England.
12. Although the appellant has referred to investigating other options such as applying for consent to relocate bat boxes if the amendment is not forthcoming, there are already bat mitigation features on the other buildings that were not being used at the time of the last survey.
13. An extension to the 2 December 2019 would, in my view, allow ample time to work with Natural England to resolve this issue particularly when Natural England are made aware that the outbuilding was permitted for a limited period of two years only and that the bat boxes were installed as mitigation whilst building work was undertaken to the Cottage and that work has now been completed.

Planning Balance

14. The key issue is whether the harm arising to the setting of the listed building from allowing the outbuilding to remain in place until the 2 December 2019 is outweighed by the harm to bats who are a protected European species which would arise if the outbuilding and attached bat boxes were removed.

15. The previous Inspector found that the outbuilding gave rise to less than substantial harm towards the more serious end of the scale with no public benefits to outweigh the harm. I share that view and the removal of the temporary outbuilding needs to take place sooner rather than later. However, it does now appear that progress is being made.
16. In relation to the main issue, I find that in these particular circumstances, it is appropriate to allow the outbuilding to remain for a further short limited period until the 2 December 2019.
17. For the reasons outlined above, I therefore conclude that to allow a further short period to secure bat mitigation would not be in breach of Policy CS.8 of the Stratford-on-Avon Core Strategy 2011 to 2031 which refers to protecting and enhancing the historic environment of the District including Listed Buildings.
18. The short extension would ultimately secure the removal of the outbuilding, thereby ensuring that the setting of the listed building is preserved, whilst at the same time ensuring that appropriate bat mitigation measures are in place. I have had regard to paragraphs 193, 194 and 196 of the National Planning Policy Framework in reaching my decision.

Conditions

19. The original condition 1 provided for the submission of a scheme of works to be approved and then subsequently implemented. I understand that the scheme has been approved and I have therefore worded the condition to ensure that the approved scheme is carried out.
20. The original condition 2 required submission for approval of a planting scheme for the retaining wall and subsequent implementation. The parties agree that a planting scheme was approved but the appellant indicates that the plants have failed and will be replanted in the next planting season. As the original condition 2 required the scheme to be submitted within 3 months of the original appeal decision and the scheme appears to have been submitted later, I have included the requirement for the sake of clarity.

Conclusion

21. For all the reasons given, I conclude that the appeal should succeed and grant a new planning permission with conditions.

E Griffin

INSPECTOR