
Appeal Decision

Site visit made on 13 August 2019

by L J O'Brien BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th October 2019.

Appeal Ref: APP/R3650/W/19/3228152

Fairhaven, Ewhurst Road, Cranleigh GU6 7EB

- 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 Savage of Kingswear Homes Ltd against the decision of Waverley Borough Council.
 - The application Ref WA/2018/1415, dated 22 June 2018, was refused by notice dated 28 February 2019.
 - The development proposed is the demolition of the existing detached house and outbuildings and construction of two new buildings creating 8 new dwellings.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The original application form lists the applicant as Mr Savage of Kingswear Homes Ltd. However, the subsequent appeal form and application for costs are under the name of Kingswear Properties Limited. As the named individual within the company appears to be the same on each form I have determined the appeal on this basis.

Application for costs

3. An application for costs was made by R. Savage Esq. of Kingswear Properties Limited against Waverley Borough Council. This application is the subject of a separate Decision.

Main Issue

4. The main issue is the effect of the proposal on protected species.

Reasons

5. Fairhaven is a large detached, 2 storey dwelling with a substantial, mature private garden area and a number of outbuildings. Overall the appeal site measures approximately 0.15 hectares. The site is a large corner plot at the junction of Ewhurst Road and Nuthurst Avenue.
6. The proposal is to demolish the existing buildings on site and replace them with two new 2.5 storey buildings. Building A would be sited close to the boundary with Nuthurst Avenue and would comprise three 2-bedroom flats. Building B, the larger of the two, would be adjacent to Ewhurst Road and would contain four 2-bedroom flats and one 1-bedroom flat.

7. The proposed scheme also includes a communal garden area, three private garden areas belonging to individual flats, parking, bin stores and pedestrian access from Ewhurst Road.
8. The existing buildings on site are of an age and design, with features such as hanging tiles and extensive roof tiles, likely to provide suitable roosting locations for bats.
9. Following an initial bat scoping report in December 2018, a Bat Survey Report, dated 21st June 2019, was undertaken. This report was based on the results of three bat emergence survey visits carried out between May and June 2019. These surveys indicated that, whilst roosting bats do not appear to routinely use the property, it is used as an occasional day roost by several common pipistrelle bats. Other species of bat were also detected passing and occasionally foraging within the garden space.
10. The proposal involves the complete demolition of the existing buildings and, as such, the identified day roosts would be destroyed should this proposal be permitted. The June 2019 Bat Survey Report outlines a number of actions which could be taken to mitigate the impacts of this proposal. However, I have no evidence or suggestions from the parties as to how such mitigation would be provided and secured.
11. In the absence of appropriate mitigation the proposal would result in harm to bats which are a European Protected Species. Accordingly, the proposed development would conflict with Policy NE1 of the Waverley Borough Local Plan Part 1: Strategic Policies and Sites, February 2018. Amongst other things, this policy states that development will be permitted provided that it retains, protects and enhances features of biodiversity and ensures any adverse impacts are avoided, or if unavoidable, are appropriately mitigated.
12. The proposal would also fail to comply with Schedule 5 of the Wildlife and Countryside Act 1981 (as amended) and the Conservation of Habitats and Species Regulations 2017.
13. Furthermore, in order for there to be a reasonable prospect of the License, which is required from Natural England to allow the works to proceed, being granted, three tests must be met; (a) the action is required in the interests of preserving public health or public safety or other imperative reasons of overriding public interest; (b) there is no satisfactory alternative; and (c) the action will not be detrimental to maintaining the population of the species concerned at a favourable conservation status in its natural range. In this instance, I have no evidence to suggest that any of these tests would be met. As such, I do not consider that a License is likely to be granted based on the information available at present.

Other Matters

14. A number of concerns around the handling of the planning application by the Council have been raised by the appellant. However, issues such as this are outside of the remit of this appeal and must be pursued through the Council's own complaints process. I acknowledge the appellant's frustration that they considered initial discussions with the Council to be positive and believed that Council Officers were likely to recommend approval. However, such advice and discussion is generally given without prejudice and the Council was required to

take the necessary steps in order to ensure the protection of a European Protected Species.

15. I have noted a number of issues raised by neighbouring residents; including the effect on the character and appearance of the area, highway safety and the effect on living conditions at neighbouring properties amongst others. However, as this proposal is going to be dismissed for other reasons and the other concerns expressed do not have a direct bearing on the main issue, it is not necessary for these to be explored further as part of this appeal.

Conclusion

16. For the reasons set out above, I conclude that the proposal would cause harm to a protected species and any potential adverse impacts have not been appropriately mitigated. I have no evidence to suggest that the need for the proposal, or any associated benefits, would clearly outweigh that harm. Therefore, I dismiss the appeal.

L J O'Brien

INSPECTOR