



Appeal Decision

Site visit made on 17 March 2020

by R E Walker BA Hons DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 May 2020

Appeal Ref: APP/N0410/W/19/3243164

White Plains Nursing Home, Tilehouse Lane, Denham UB9 5DE

- 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 Ian Sloan (B&M Care) against the decision of South Bucks District Council.
 - The application Ref PL/19/2540/FA, dated 18 July 2019, was refused by notice dated 15 November 2019.
 - The development proposed is a two storey extension to existing care home for the elderly to provide 2nd passenger lift and 6 additional bedrooms for dementia and residential care.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. On 1 April 2020 the name of the decision-making authority changed from South Bucks District Council to Buckinghamshire Council.

Main Issue

3. The main issue is the effect of the proposal on bats as a protected species.

Reasons

4. The Habitats Regulations¹ transposed into UK law, the Habitats Directive². The Habitats Regulations include a strict system of protection for European Protected Species (EPS) which includes bats. Amongst other things, they place a duty on decision-makers to have regard to the requirements of the Habitats Directive in the exercise of their functions. Also of relevance is the Wildlife and Countryside Act 1981 and the National Planning Policy Framework (the Framework).
5. The Framework says (paragraph 175) that if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused. Policy CP9 of the South Bucks Local Development Framework Core Strategy Development Plan Document (CS) (adopted 2011) says, amongst other things, that new development will not be permitted that would harm nature conservation interests. Several exceptions are listed including, amongst other things, where the Council is satisfied that the development cannot reasonably

¹ The Conservation of Habitats and Species Regulations 2017

² the European Union Directive 92/43/EEC

- be located on an alternative site that would result in less or no harm and appropriate mitigation or compensation is provided resulting in a net gain in biodiversity.
6. The appellant's White Plains Care Home Bat Survey Report (BSR) followed a Preliminary Roost Assessment. This identifies that the spaces between hanging tiles and walls on part of the building affected by the proposal provide suitable roosting locations for bats. Moreover, 7-10 bat droppings were found and identified as belonging to Common Pipistrelle bats which are an EPS. The BSR suggests that this is evidence of individual/low numbers of Common Pipistrelle bats using the roost on an infrequent basis. This roost would be lost as a result of the proposal.
 7. Circular 06/2005³ (the Circular) states that the presence of protected species is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. It goes on to say that it '*...is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision*' (paragraph 99). Consequently, it advises that surveys should only be required by a condition on a planning permission in exceptional circumstances. This is reinforced in advice within the Planning Practice Guidance.
 8. Although the BSR is reasonably detailed with proposed mitigation measures, it does recommend further bat surveys be undertaken as part of the process to apply for an EPS licence. However, none have been undertaken as part of the planning application or appeal process. Instead the BSR requests that surveys are conditioned were I minded to allow the appeal. This approach appears not to fully accord with the advice of the Circular.
 9. The BSR puts forward several mitigation measures including, amongst other things, the installation of a bat box on a nearby mature tree, improved roosting provision within the extended building through like for like hanging tiles, a bat tube and lifted hanging tiles. The BSR states that it is extremely unlikely that there would be any change to the mitigation proposed as a result of the further surveys. To this end, the mitigation measures seek, as far as is possible given the evidence available, a 'worst-case' scenario.
 10. I also recognise that in the event of planning permission being granted, Natural England would need to be satisfied that suitable measures were in place before a licence was granted. Without such a licence, development could not proceed.
 11. I note that discussions took place between the main parties regarding case law in relation to the EPS tests. To this end, the Circular requires that when effects on EPS are being considered in appeals, decision-makers should 'have regard' to the 3 tests that are used when licences are being determined. These tests are whether the development is necessary for preserving public health or public safety or other imperative reasons of overriding public interest; there is no satisfactory alternative; and, the action will not be detrimental to maintaining the population of the species concerned at a favourable conservation status in its natural range.

³ Biodiversity and Geological Conservation – Statutory Obligations and Their Impact Within the Planning System

12. Although the mitigation offered in the BSR appears extensive, I cannot be certain of the accurate level of bat activity at the appeal site without further up to date surveys. Without precise mitigation based on up to date surveys I cannot therefore be certain all 3 tests would be met. Moreover, I am not convinced that the circumstances in this instance are of such an extraordinary nature as to warrant a different course of action to that suggested in national policies and advice.
13. In considering the evidence, I have taken account of the appellant's personal circumstances. The lift, which forms part of the proposal, would act as a fire evacuation lift and I recognise the demand for this. Moreover, I recognise that applying to discharge a pre-commencement condition is likely to be quicker than a fresh planning application. There would also be additional social and economic benefits with the provision of a further 6 bedrooms. However, the benefits in this regard, along with the certainty it brings for future preparations for the building work do not, in my view, warrant an exceptional approach or outweigh my findings on the main issue.
14. The appeal site is located within the Green Belt. However, the main parties agree that the proposal would not be inappropriate development and I have no reason to disagree. Moreover, the Council did not make findings of harm with respect to any other matters including, amongst other things, the effects on the character and appearance of the surrounding area and neighbour amenity issues. I have no reason to disagree with these findings. However, the absence of harm in these respects is a neutral matter weighing neither for nor against the proposal.
15. I have also had regard to representations made by a third party including, amongst other things, references to requirements of a previous planning permission on site. However, as I am dismissing the appeal on other grounds, I have not pursued these matters further.
16. Taking account of the above considerations, I therefore conclude that there is insufficient information to demonstrate that the proposed development would not have harmful effects on bats as a protected species. The proposal would therefore conflict with the requirements of Policy CP9 of the CS, the Framework and the Circular in this regard.

Other Matters

17. Concerns regarding the processing of the application are not issues that I can assess as part of this appeal. The validity or not of such matters do not affect the planning merits of the proposals before me.

Conclusion

18. I have taken account of all the other matters raised including the benefits of the proposal. However, none changes the balance of these findings and my conclusion on the main issue. I therefore conclude that the appeal should be dismissed.

Robert Walker

INSPECTOR