



Appeal Decision

by Jonathon Parsons MSc BSc(Hons) DipTP Cert(Urb) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 June 2020

Appeal Ref: APP/X0360/W/19/3243419

Three Gables, The Devils Highway, Riseley RG7 1XR

- 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 Mrs Merelina Martinez against the decision of Wokingham Borough Council.
 - The application Ref 192909, dated 4 November 2019, was refused by notice dated 29 November 2019.
 - The development proposed is an extension over an existing garage and alterations to an existing roof.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. For the sake of accuracy, the proposal's description has been amended to include alterations to an existing roof. Based on the appeal documentation, it is clear that the appellant's name is as set out in the header above. The declaration part of the application form is absent and thus, the date of 4 November 2019, detailed above, has been taken from the letter accompanying the application.
3. An Updated Preliminary Bat Roost Assessment (UPBRA) dated December 2019 was submitted with the appeal. It includes 'worse case scenario' mitigation measures and seeks to address bat biodiversity issues in the Council's reason for refusal. No third party comments have been received on the proposal and the Council has been able to address the UPBRA in its statement. Thus, there would be no prejudice caused to the interests of other parties in accepting the UPBRA in this appeal.
4. In response to travel restrictions currently in place due to the COVID-19 pandemic, I consider that this appeal can be determined without the need for a physical site visit. This is because I have been able to reach a decision based on the information already available. There have been no objections raised to this approach by the appellant and the Council.

Application for costs

5. An application for costs was made by Wokingham Borough Council against Mrs Merelina Martinez. This application is the subject of a separate Decision.

Main Issue

6. The main issue is the effect of the proposal on biodiversity, having regard to bats as a protected species.

Reasons

7. The appeal site comprises a detached single storey house with accommodation in the roof above and a side flat-roofed garage. It is sited at the corner of two roads, The Devils Highway and School Lane, within a landscaped spacious plot. The property is located in a rural setting with neighbouring residential properties possessing similar landscaped gardens. There is a nearby industrialised area but this is still within a predominately rural context. The close surroundings also include an area of trees with a pond to the north of the property, and a country park comprising broadleaved woodland and lakes to the southwest.
8. A Preliminary Bat Roost Assessment (PBRA) dated October 2019 concluded that the house hosted at least one bat roost which were likely to be Brown Long-eared bats (*Plecotus auritus*). In addition, it identified several external features of the building that could be used by other bat species.
9. The proposed first floor extension above the existing garage and roof alteration, namely a rear dormer re-configuration, would be sited outside of the bat roosting area. However, the works necessary to facilitate the extensions would be significant given their coverage and closeness to the roosting area. In addition, the PBRA found potential for bat roosting in the rear dormer and a small section of the main dwelling wrapping around part of the flat roof of the garage which would be close to the proposed works.
10. Both the PBRA and UPBRA identified the requirement for further surveys, including three evening emergence and/or dawn re-entry surveys, to be undertaken between May and September. There is no evidence of these surveys having been carried out and a planning condition is proposed to secure them.
11. A full European Protected Species Licence or registration of the site under a Bat Mitigation Licence would also be required to allow the planned works to go ahead lawfully, subject to the findings of the further surveys. The additional surveys will influence when licensable work can take place by identifying the types of roost found and therefore, the time of year when building works can take place. Before development commences, a toolbox talk to the building contractors would be given and a 'soft strip' approach to licensable work would be undertaken. If bats were discovered during the course of the work, the licensed ecologist or Registered Consultant would capture the bat(s) and transfer it/them directly to one of the bat boxes erected in advance of the works.
12. As part of the building work, bat access and/or roosting opportunities would be maintained, and enhanced roosting opportunities would be included in the extension. On the dwelling, there would be an integral bat box on the new eastern gable, access and crevice roosting opportunities would be created by installing bat access roof and hanging tiles in five locations on the rear elevation. There would also be replacement bat roost opportunities for those lost, namely bat boxes, which would be available during, before and after

- construction. Bat boxes would be provided within the garden. New sections of the roof will not use membranes harmful to bats.
13. However, Circular 6/2005: Biodiversity and Geological Conservation - Statutory Obligations and Their Impact Within The Planning System indicates that where there is a reasonable likelihood of a protected species being present and affected, a survey should be carried out before planning permission is granted. It goes on to advise that surveys should only be required by condition in exceptional circumstances and that the presence of European protected species may potentially justify a refusal of planning permission.
 14. In terms of exceptional circumstances, the conservation importance of some bat species may be low but this depends upon species and type of roost. Maternity roosts, such as Long-eared bats, are normally considered to be important whilst the importance of smaller roosts of rarer bat species are of even greater importance. In this regard, it is not possible to assess importance in the absence of further survey work and consequent assessment of the effects of the proposal on the bats. A bat species has been identified to be present within the host building and there is identified potential for other bat species, especially given the distinctly rural context of the area. Therefore, it is not possible to conclude on the effectiveness of any mitigation, even if designed on a 'worst case scenario' basis, because bat numbers, species involved, and type of roosts is not known fully.
 15. The licensing process is separate and distinct from the planning permission process but nevertheless, there remain statutory duties under the relevant Habitat Regulations, also contained within Natural England's 'Standing Advice'. In this respect, an assessment has to be made at the planning stage as to whether the 'three tests' would be likely to be complied with. In this regard, improvements to housing can be an imperative reason of overriding public interest. However, there are again issues in the absence of survey work. Without further survey work, no assessment can be made to see whether any alternative designs are merited. It also cannot be ascertained whether the population of any bat species affected can be maintained at a favourable conservation status. Therefore, it has not been demonstrated that all of the three tests would be satisfied, and that planning permission could be granted.
 16. The appellant's ecologist has been responsible for developments elsewhere where further bat surveys have been conditioned in the granting of the planning permission. However, no details have been given on the circumstances, including results and assessment of bat surveys, in these cases. Inevitably, each proposal and its context will be different and therefore, the need for surveys at the application stage or via a planning condition will vary. In any case, this proposal has been considered on its particular planning merits.
 17. For all these reasons, it cannot be certain that the scheme would ensure no adverse effect on bats, a protected species, in the absence of evidence to the contrary. There are no exceptional circumstances to merit the imposition of a condition to secure further survey. The proposal would therefore conflict with policies CP3 and CP7 of the Wokingham Borough Local Development Framework Core Strategy (CS) Development Plan Document 2010 and policy TB23 of the Wokingham Borough Development Plan Managing Development Delivery (MDD) Local Plan 2014. Together, and amongst other matters, these

policies seek to maintain or enhance the ability of the site to support fauna and flora, including protected species, and to provide opportunities, including through design, layout and landscaping to incorporate new biodiversity features or enhance existing.

Other matters

18. The appellant has commented on the way that the Council handled the application. However, this is a matter of local government accountability that has little bearing on the planning merits of the appeal.
19. Additional accommodation is required for the appellant's family and the proposal would prevent the necessity to move within the local area where access to housing is indicated to be highly competitive and unaffordable. The extension would ensure that family members could continue to attend their current schools. The existing flat roof of the rear dormer is in a poor state of repair. However, personal circumstances will seldom outweigh the more general planning considerations as works of a permanent nature will remain long after the personal circumstances have ceased to be material. Here, there could be significant harm to biodiversity in the absence of further survey work. The National Planning Policy Framework states if significant harm to biodiversity cannot be avoided, adequately mitigated or as a last resort, compensated for, planning permission should be refused.

Conclusion

20. There would be harm to biodiversity, having regard to protected species, in conflict with the identified policies of the CS and MDD, and the development plan taken as a whole.
21. Refusal of the scheme would prevent the provision of additional living accommodation for a family with connections to the local area and this raises Human Rights issues. Having regard to Article 8 and Article 1 of the First Protocol, there would be interference with the occupier's rights in respect of private and family life, and the peaceful enjoyment of possessions respectively. However, there is a legitimate aim in protecting the environment, namely biodiversity, and it has not been demonstrated that further accommodation cannot be provided. The necessary bat surveys to show this have not been carried out. Given this, the personal circumstances are not sufficient to outweigh the harm and justify the grant of a planning permission. Such a conclusion is necessary and proportionate in the circumstances.
22. Material considerations would not be of sufficient weight or importance to determine that the decision should be taken otherwise than in accordance with the development plan and therefore planning permission should be refused.
23. For the reasons given above and having regard to all other matters raised, including support, I conclude that the appeal should be dismissed.

Jonathon Parsons

INSPECTOR