
Appeal Decision

Site visit made on 27 May 2020

by K Savage BA MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 June 2020

Appeal Ref: APP/B2355/W/20/3245150

3 Greenfold Cottages, Goodshaw Lane, Crawshawbooth BB4 8DP

- 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 Chris Gill against the decision of Rossendale Borough Council.
 - The application Ref 2019/0551, dated 21 November 2019, was refused by notice dated 17 January 2020.
 - The development proposed is conversion of detached, single storey outbuilding to a dwelling including an extension.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - whether the proposal would represent an acceptable location for a dwelling, having regard to local and national policy and accessibility to local services and facilities, and;
 - the effect of the proposal on protected species, specifically bats.

Reasons

Location for housing

3. The appeal relates to an existing outbuilding within the grounds of a cottage, located outside the village of Crawshawbooth which would be converted and extended to form a two bedroom dwelling. The cottage is one of three standing aside a former pumping station converted to a dwelling at the end of an access track leading from Goodshaw Lane. It is common ground that the site lies outside of the development limits of the village and within the open countryside for planning purposes.
4. Crawshawbooth provides a good range of shops and other services, including a primary school located opposite the entrance to the access lane. An appeal in 2016¹ for the same site found the proposed dwelling would not be accessible to these facilities, citing the steep, partly unmade and largely unlit route into Crawshawbooth which would not lend itself to safe use by pedestrians. In contrast, the Inspector in another appeal from May 2019², relating to a site

¹ Appeal Ref APP/B2355/W/15/3132812 – Dismissed 8 April 2016

² Appeal Ref APP/B2355/W/18/3213102 – Dismissed 2 May 2019

accessed by the same unsurfaced track, and indicated by the present appellant to be as little as 50 metres closer to the village centre, found that the site would be in an accessible location, noting the lane is a public footpath, has lighting and provides access to other dwellings. A third decision³ from September 2019, relating to a site on Goodshaw Lane a short distance uphill from the access track, also determined that the proposal, being between 300 and 600 metres from facilities in Crawshawbooth, would be accessible by means other than the private car.

5. I have had regard to these decisions as material considerations. I also recognise that consistency in the planning process is important and like cases should be decided in a like manner. However, it is also important that each case is determined on its own merits and on the basis of the evidence before the Inspector at the time, including observations made on site.
6. In this respect, I saw that the route from the appeal site to the centre of the village includes some steep sections and parts of Goodshaw Lane are without footpaths where pedestrians would have to share the road with vehicles. However, in a valley settlement such as Crawshawbooth, narrow, steep roads are common and the status of the access road as a public footpath indicates that the route is travelled on foot. Therefore, whilst I agree with the Inspector in the 2016 decision that the length, gradient and terrain are such that some occupants would be dissuaded from walking or cycling the route, this would be no different to the situation faced by occupants of the existing dwellings next to the site, and not demonstrably different from those sites considered at appeal in 2019. Moreover, the overall distance to the village centre is within a reasonable walking time and certain facilities such as the primary school and play area, which would be regularly accessed by occupants with children, are among the closest to the appeal site, increasing the likelihood they would be accessed on foot.
7. I also note that in the 2016 appeal, the Inspector concluded that the proposal would amount to an 'isolated' home in the countryside, in the language⁴ of the National Planning Policy Framework (the Framework). This decision predates the judgement in *Braintree*⁵ which established that 'isolated' in the context of the Framework refers to physical proximity to other dwellings and settlements. I acknowledge the Council's point that the Inspector's considerations in 2016 of the location of the site relative to facilities in Crawshawbooth are not rendered null by the *Braintree* judgement. However, in physical terms, there are existing dwellings immediately adjacent to the appeal site and along the access track, and the closest dwellings on Goodshaw Lane form part of the built-up area of Crawshawbooth. Therefore, having regard to all of the evidence before me, I find the physical location of the dwelling would not amount to an 'isolated home' for the purposes of the Framework and none of the exceptions at Paragraph 79 are therefore required to be met.
8. The Framework at Paragraph 78 states that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. The Framework also recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Whilst the proposal would generate additional journeys

³ Appeal Ref APP/B2355/W/19/3232309 – Allowed 19 September 2019

⁴ Paragraph 55, as it was in 2016 – now Paragraph 79 of the revised Framework (July 2018/February 2019)

⁵ *Braintree District Council v SSCLG & Ors* [2017] EWHC 2743 (Admin)

by private car, they would be limited in number given the small size of the proposed dwelling, and the potential to access services and facilities in Crawshawbooth on foot or cycle. The proposal would also make use of an existing outbuilding, within a secluded setting screened by mature trees. It would not amount to a wholly new building in the countryside, and future residents would contribute to the vitality of the rural community.

9. Taking these considerations together, I conclude that the proposal would not amount to an isolated dwelling in the countryside, but would be suitably located to access services and facilities in Crawshawbooth by means other than the private car and to support the vitality of the rural community. Accordingly, the proposal would accord with Policies 1 and 9 of the CS which together set out development principles for the district, including maximising access by public transport, walking and cycling in a manner that promotes safe and inclusive communities and promotes co-location of services and facilities; enhancing and protecting the countryside and contributing to maintaining and creating sustainable and inclusive communities. The proposal would further accord with the aforementioned aims of the Framework.

Effect on Protected Species

10. Bats are protected under the Wildlife and Countryside Act 1981, and are a European Protected Species under the Conservation of Habitats and Species Regulations 2017 (the Regulations). Policy 1 of the CS seeks to ensure that all developments enhance and protect the countryside, geodiversity and biodiversity resources including habitats and species. Policy 18 seeks to avoid any harmful impacts of development on all aspects of Rossendale's natural environment, including protected species. Development that would affect a protected species will not be permitted unless it is demonstrated that there would be no adverse impact on the species concerned. The Framework further sets out that planning decisions should minimise impacts on and provide net gains for biodiversity⁶.
11. Circular 06/2005 advises 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. It goes on to state that surveys should be carried out before planning permission is granted.
12. A Bat Report was submitted with the application, which indicates the building to be well maintained with no gaps within the external walls, eaves or roof which might enable access for bats, that the building is visited regularly, and there is no likelihood of bats being present. The Council's ecologist raises issue with the report being undated; unsigned by, or unattributed to, a qualified ecologist; and not being undertaken in line with industry guidelines.⁷ Based on the date stamp of photos in the Bat Report, it was prepared some time in 2015, and it may have accompanied the previous application at the site. The CIEEM guidelines indicate that reports over 3 years old are unlikely to still be valid and most, if not all, of the surveys are likely to need to be updated.

⁶ Paragraph 170

⁷ CIEEM Guidelines for Ecological Report Writing (Second Edition, December 2017)

13. There is limited detailed evidence before me of the presence of bats within or around the site, but the Council's ecologist refers to good bat foraging habitat within the local area. I also note the appellant's Bat Report includes a 'trigger list' of development types that require a bat survey due to there being a reasonable likelihood of the presence of bats. Although the appellant suggests the appeal building is not one of the types listed, the list includes any building within or immediately adjacent to woodland, and I saw considerable areas of woodland to the front and rear of the site. Therefore, I cannot rule out the possibility that bats are present in the area and may be affected by the development.
14. In the absence of an updated and appropriately conducted survey by a qualified ecologist, it is simply not known whether protected species are present and, if there are, whether or what mitigation measures would be appropriate. There is a further question of the implementation of any such measures. Given this degree of uncertainty, and the clear guidance of Circular 06/2005 that the effect on protected species is established before planning permission is granted, the use of conditions to require a survey to be undertaken would not be reasonable in this case.
15. For the reasons outlined above I conclude that it has not been demonstrated that the appeal scheme would avoid or adequately mitigate unacceptable harm to bats. The development would therefore conflict with the aforementioned aims of Policies 1 and 18 of the CS, and with the Framework which indicates that where 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.⁸

Other material considerations

16. The Council raised concern with respect to the potential domestic appearance of the site from its conversion to a dwelling, though this was not sustained as a reason for refusal. The existing building has the appearance and function of a domestic outbuilding, already with a driveway and the immediate surroundings are consistent with a garden. As such, a domestic character already exists and would not change significantly as a result of the proposal. Moreover, the dwelling and its grounds would be well screened by existing trees. I therefore find no harm would be caused to the character and appearance of the area.
17. The Council did not find harm with respect to the effect of the proposal on the living conditions of neighbouring occupants, or on highway safety. On the evidence before me, I have no reasons to find otherwise. An interested party raises the issues of overuse of, and damage to, the access lane and the need to create a passing place. I note Lancashire County Council (LCC) as the local highway authority commented that conditions could be used to ensure the land is not damaged by construction traffic, but I have little evidence to indicate that the traffic generated by one additional dwelling would directly lead to overuse of the lane and require a passing place. LCC's recommendation that the applicant enter into a maintenance agreement with the owner of the lane to ensure that the maintenance liability of the road is shared by all who use it appears to be a civil matter outside of the planning process.

⁸ Paragraph 175

Planning Balance

18. The Council concedes that it is unable to demonstrate a five year supply of deliverable housing land. Therefore, per Paragraph 11(d) and Footnote 7 of the Framework, the 'tilted balance' is engaged which indicates that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
19. The proposed dwelling on the site would be located where it would make a contribution toward sustaining rural communities and toward the shortfall in the Council's housing supply position. However, given the small scale of the proposal, these contributions would be very modest, and would carry only limited weight in favour of the proposal. Economic benefits from construction and use of local services by future occupants of the dwelling would be similarly limited given its small scale.
20. Set against this, and having regard to the aforementioned Regulations and guidance of the Framework, the failure to demonstrate that adverse effects on species protected by law would be avoided or adequately mitigated is a planning harm to which I attribute significant weight.
21. I therefore find that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Consequently, Paragraph 11 of the Framework does not support the granting of planning permission in this instance.
22. The proposal would result in conflict with the development plan, and the material considerations in this case do not indicate that a decision should be made other than in accordance with the development plan.

Conclusion

23. Therefore, for the reasons given, the appeal is dismissed.

K Savage

INSPECTOR