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# Appeal Decision

Site visit made on 1 July 2020

**by Jillian Rann BA (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 22 July 2020**

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**Appeal Ref: APP/Z4718/W/20/3244665**

**1A Heaton Road, Gledholt, Huddersfield HD1 4HX**

- 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 Jag Sodhi against the decision of Kirklees Metropolitan Borough Council.
  - The application Ref 2019/62/93111/W, dated 24 September 2019, was refused by notice dated 19 December 2019.
  - The development proposed is the erection of extensions and alterations to coach house to form one dwelling and alteration to highway entrance.
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## Decision

1. The appeal is dismissed.

## Preliminary Matter

2. The development is described on the application form as a dwelling and it is evident from the Council's report and the description on its decision notice that it considered the proposal as a separate dwelling. Therefore, notwithstanding references elsewhere in the submissions to the development forming an 'annexe' to one of the apartments in the main building, I have also considered the proposal as a self-contained dwelling, and not as a residential annexe to the existing property.

## Main Issue

3. The Council's reason for refusal refers to the effect of the development on the character of its surroundings. However, in the light of the evidence before me regarding the potential for the appeal building to be used by bats, a protected species, I also consider that matter pertinent to my decision and I have given the main parties the opportunity to provide further comments on the matter accordingly.
4. Therefore, the main issues in this case are the effects of the proposed development on:
  - the character and appearance of the appeal site and its surroundings; and
  - biodiversity, with regard to a protected species (bats).

## Reasons

### *Character and appearance*

5. The appeal relates to a relatively large, two storey stone outbuilding, currently used for garaging and storage, located to the rear of a substantial stone-built residential property which is divided into two apartments. The immediate street scene is characterised mainly by other large detached stone houses of varying sizes and designs.
6. The proposed extensions would replace an existing front extension which is of timber construction and has a felt roof and side wall. That existing front projection has a solid form and volume, and consequently it appears, and is read, as part of the overall significant volume and massing of the present extended outbuilding structure, despite it having an open front and differing from it in its materials.
7. The proposed extensions would not have a significantly greater footprint than that of the existing front extension. The pitched roofed section would be lower than that existing front projection. The corner 'tower' feature would also be lower than the eaves of the main part of the existing building and would not extend the building's footprint significantly further into the site. Taking those factors together, the proposed extensions would not result in a significant increase in the overall extent, scale or massing of the building compared with the existing extended outbuilding.
8. Therefore, the proposed dwelling would not have a notably greater visual presence than the existing extended outbuilding. It would thus retain its visual subservience to the large main house building, in a similar manner to other large outbuildings evident within the grounds of nearby properties. The use of the building as a dwelling would not notably affect its physical presence or visual subservience to that main building. Consequently, the development would not result in the building appearing more 'cramped' within the site or have additional implications for the character or appearance of the site or its surroundings compared with the existing structure. Rather, in replacing the existing extension with ones built in materials which would more closely match the existing building, the development would take the opportunity to enhance the character and appearance of the appeal building and its surroundings.
9. The proposed dwelling's garden may itself be relatively small compared with the gardens of some of the larger houses around the site. However, the overall volume and extent of buildings within the wider site would not significantly increase and the amount of undeveloped garden space would not significantly reduce as a result of the development. The visual relationship between the buildings on the site and their surrounding garden areas would therefore not notably change. Nor would the use of that garden space by three properties instead of two be readily discernible in views of the site or have significant implications for its character or appearance.
10. The Council has not indicated that the overall amount of amenity space or parking within the site would be insufficient for occupants of the existing flats and the proposed dwelling, or that the proposed dwelling would have significant implications for the living conditions of future or neighbouring occupants in terms of privacy, light or outlook. From the evidence before me and my own observations I have no reason to conclude that the development

would give rise to adverse implications in those respects. Consequently, the scheme would not represent an overdevelopment of the site.

11. The proposed development would not have an adverse effect on the character or appearance of the appeal site or its surroundings. It would therefore accord with Policy LP24(a) of the Kirklees Local Plan Strategy and Policies, which requires proposals to promote good design by ensuring development respects and enhances the character of the townscape, and with the National Planning Policy Framework (the Framework), which requires that developments are visually attractive and sympathetic to local character.

### *Biodiversity*

12. Although the site is in a residential area, it is close to mature woodland at Gledholt Woods and connected to it by a network of residential gardens containing hedgerows and trees. The site's surroundings are therefore likely to provide suitable habitat for commuting and foraging bats. Based on the appeal building's condition and characteristics, a Preliminary Ecological Appraisal in September 2017<sup>1</sup> (the 2017 PEA) concluded that it had a low potential for roosting bats. On that basis, it recommended a single dusk emergence or dawn re-entry survey between May and August to determine the likely presence or absence of bats in the building and inform any necessary mitigation. From the evidence before me, no such survey appears to have been undertaken.
13. The appellant's Basic Bats Report Statement, dated September 2019 (the 2019 Statement) makes some reference to characteristics of the building which the 2017 PEA identified as potential roost features. However, the detail in the 2019 Statement is somewhat limited with regard to the current condition of the building, and it does not provide me with certainty as to whether those features identified in 2017 remain as potential roost features or whether new ones have been created, a realistic possibility given the time that has passed since the 2017 PEA. Consequently, I am unable to conclude from the evidence before me that the roost potential of the building has changed since 2017.
14. Although the 2017 PEA identified the bat roost potential of the building as low, that nonetheless indicates that it has some potential for use by roosting bats. In the absence of compelling evidence to indicate that the building's bat roost potential has reduced since the 2017 PEA, and given the nature of the proposal, I consider there is a reasonable likelihood of bats being present and affected by the development.
15. The 2019 Statement refers to there being no sign of bats roosting or bat droppings within or around the building based on visual inspections. However, those inspections referred to therein appear to have been conducted in September 2019 and thus outside the May to August survey period. I have also been referred anecdotally to an apparent absence of bats around the building or signs of bats within the building. However, I cannot be certain of the times when those observations were made or the nature of those inspections which took place. The weight I can afford to those statements as an indication of the building's use by roosting bats is therefore limited. I have noted references to human activity and security lighting within the site. However, in the absence of the further recommended emergence or re-entry survey, undertaken during the May to August period, or details of any necessary mitigation, I cannot be

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<sup>1</sup> Preliminary Ecological Appraisal: Heaton Road, Huddersfield – Report Reference: BG17.281. September 2017

certain that the development could be undertaken without harm to bats or that any mitigation could be incorporated within the scope of the specific proposal before me. Therefore, on the evidence before me, I consider there to be an unacceptable risk of harm to a protected species.

16. I have had due regard to the Public Sector Equality Duty contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination and to advance equality of opportunity between people who share a protected characteristic and people who do not share it. The development would provide an accessible dwelling, close to other family members, for a member of the appellant's family who has health conditions. It would thus be of benefit to the appellant and his family. These are personal circumstances to which I afford weight in favour of the appeal. However, they do not alter or outweigh my conclusion that, in the absence of certainty that any effect on bats could be satisfactorily mitigated, there is an unacceptable risk of harm to biodiversity, and that the further recommended survey is thus required.
17. It has been suggested that the further survey and mitigation proposals could be dealt with by condition, and I note the appellant's willingness to provide a further survey in that event. However, Circular 06/2005<sup>2</sup> (the Circular) states 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 planning permission is granted, and that the need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances.
18. I recognise the appellant's desire to proceed with the development. However, even if the matter were to be dealt with by condition, the further survey would have to be undertaken and any necessary mitigation measures submitted for approval before any further works took place. From the evidence before me I have no reason to believe that significant further delay would arise from that survey being submitted as part of a new planning application – allowing the presence of any bats and the extent that they may be affected to be established and any necessary mitigation considered before any permission was granted, as set out in the Circular – rather than via a planning condition. Therefore, exceptional circumstances do not exist to justify dealing with the matter by condition in this case.
19. In the absence of certainty regarding the likely effect of the proposal on bats or whether appropriate mitigation could be incorporated within the appeal scheme, the proposed development would give rise to an unacceptable risk of harm to biodiversity, with specific regard to a protected species (bats). It would therefore not accord with the Framework which requires planning decisions to minimise impacts on biodiversity, or the terms of the Circular as set out above.

### **Planning Balance and Conclusion**

20. The development would not harm character or appearance and would incorporate some improvements to the building. It would provide a new dwelling close to local amenities and public transport links, contributing to local housing supply. It would also provide some economic benefits in terms of construction employment and the purchase of building materials, and I note the appellant's intention to incorporate Secured by Design principles and that it

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<sup>2</sup> Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System.

could incorporate solar panels. However, those benefits arising from a single dwelling would be very modest. I therefore afford them only limited weight, particularly as I have no substantive evidence to indicate that the Council is unable to demonstrate a 5 year supply of deliverable housing land.

21. I have also given weight to the appellant's personal circumstances in favour of the proposal as set out above. However, the benefits in that regard, and those other modest benefits cited, do not alter or outweigh my conclusion regarding the potential harm to biodiversity in this case.

22. Therefore, the appeal is dismissed.

*Jillian Rann*

INSPECTOR