



Appeal Decision

Site visit made on 4 August 2020

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 August 2020

Appeal Ref: APP/W4325/W/20/3245271

10 Anthonys Way, Gayton, Wirral CH60 0BP

- 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 J Bassett against the decision of Wirral Metropolitan Borough Council.
 - The application Ref APP/18/01271, dated 26 September 2018, was refused by notice dated 30 August 2019.
 - The development proposed is described as: 'Revised planning application to erect a detached dwelling house following refusal of OUT/16/01554'.
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Decision

1. The appeal is allowed, and planning permission is granted for the erection of a detached dwelling house at 10 Anthonys Way, Gayton, Wirral CH60 0BP in accordance with the terms of the application, Ref APP/18/01271 dated 26 September 2018, subject to the conditions set out in the attached Schedule.

Procedural Matters

2. For clarity, I have taken the description in the banner heading above from the application form. However, in my decision, I have taken the description of the development from the Council's decision notice, since this accurately and more succinctly describes the proposal.
3. The appellant has updated his Badger Mitigation Strategy since the determination of the planning application by the Council, taking into account the comments received from Merseyside Environmental Advisory Service (MEAS) and Wirral and Cheshire Badger Group (WCBG). Additionally, the appellant also sought advice from Natural England following the refusal of his planning application through its Pre-Submission Screening Service (PSSS). As these documents have been submitted with the appeal submission and the Council and other interested parties have had the opportunity to comment on these documents, I will not prejudice any party by taking these documents into consideration during the determination of this appeal.

Main Issue

4. It is common ground between the main parties that the only matter in dispute is regarding the effect of the appeal scheme on protected species, particularly badgers. On the evidence before me, there is little reason to reach a different conclusion to the Council on this issue. Accordingly, I have dealt with the appeal on this basis.

5. Therefore, the main issue of this appeal is the effect of the proposed development upon protected species, with specific regard to badgers.

Reasons

6. Badgers and their setts are protected by law¹ and their presence is a material consideration in a proposal where there is a reasonable likelihood of a protected species being present and affected.
7. The appeal site is adjacent to an active badger sett (the sett) located within The Beacons, Heswall Sites of Biological Importance (SBI). Residential development generally surrounds the SBI and the sett would be located approximately 8 metres away from the construction zone of the proposed development. Currently a stone wall is sited on the shared boundary between the site and the SBI. The stone wall extends along the majority of this shared boundary. However, there is a gap between this wall and another stone wall on the site, where a metal gate (the gate) is present. It is acknowledged by the main parties that the gate allows badgers to access the site from the SBI.
8. Policies NC6 of the Wirral Unitary Development Plan 2000 (UDP) identifies numerous sites as areas of special local importance for nature conservation in the Council area, including the SBI adjacent to the site. UDP Policy NC7 seeks the protection of wildlife species protected by law. Given its age, the UDP was adopted some time ago, before the introduction of the National Planning Policy Framework (the Framework). Nonetheless, I find that the above policies are broadly consistent with the requirements of the Framework.
9. The appellant's ecologist concludes in his statement² that the anticipated impacts on badgers can be mitigated and managed to an acceptable level such that they would not pose a significant impact on the sett, any individual badgers or indeed the local population as a whole. These findings are disputed by the Council and interested parties. I also acknowledge the comments from the Council and interested parties, in particular MEAS and the WCBG in respect of the PSSS. I accept that Natural England are likely to have less local knowledge than MEAS and the WCBG. However, Natural England are the government's adviser for the natural environment in England and consequently, I find the PSSS response to represent a significant material consideration in the determination of this appeal.
10. The PSSS response from Natural England indicates that it would issue a licence to disturb badgers for the purpose of the proposed development. Whilst WCBG assert that the appellant has not provided all of the information requested by Natural England, there is little before me to question the PSSS response by Natural England. Additionally, I note the comments from WCBG regarding the Badger Activity Map (the map) submitted with the PSSS, with particular regard to it not indicating any badger activity on the site or at No's 10 and 12 Anthonys Way. This corresponds with the response received from the occupiers of No 12, who reference such badger activity at their property.
11. Nonetheless, in respect of the site and No's 10 and 12, I find that the Badger Survey Report and Mitigation Method Statement accompanying the PSSS application does refer to a loss of a small area of low value foraging, a minor disruption to an existing dispersal/foraging route and to the gate linking the

¹ Protection of Badgers Act 1992 (the Act)

² Appeal Statement: Ecology, Etive Ecology Ltd 20 January 2020

site with the SBI. Therefore, whilst there appear to be omissions on the map, I do not find these misgivings to undermine the appellant's PSSS application or the response from Natural England. I note the concerns raised by MEAS and the WCBG regarding the below-ground spatial extent of the sett and the characterisation of the importance of the sett to the local badger population. During my visit I noted the lower land level at the SBI compared to the site and that outcrops of red sandstone bedrock forming the existing terraced garden were clearly visible.

12. Thus, from the evidence before me and in the absence of any evidence to the contrary, I consider that the badgers on the neighbouring SBI and sett chambers closest to the site will not be harmed from the proposed development. Overall, I find the mitigation measures proposed by the appellant, which include a daily monitoring proposal, installation of the acoustic fence, additional food and bedding provided to supplement foraging and confirmation that a badger access will be maintained from the SBI to the site following development, amongst other things, to be sufficient to avoid any harmful effects to a species protected by law. Furthermore, a strong likelihood exists that a licence would be granted if the appeal was to succeed.
13. For all of these reasons, I therefore conclude that the proposed development would not cause harm to a protected species, with specific regard to badgers. Consequently, this would accord with the natural environmental and biodiversity aims of UDP Policies NC6, NC7, the Act and the requirements of the Framework.

Other Matters

14. Local residents have also expressed a wide range of concerns including, but not limited to the following; highway safety, access arrangements, construction of the dwelling, general disturbance, amongst other things. However, I note that these matters were considered where relevant by the Council at the application stage and did not form part of the reason for refusal, which I have dealt with in the assessment above. Whilst I can understand the concerns of local residents, there is no compelling evidence before me that would lead me to come to a different conclusion to the Council on these matters. I have considered this appeal proposal on its own merits and concluded that it would not cause harm for the reasons set out above.

Conditions

15. The Council has suggested conditions which it considers would be appropriate in its submission. I have reviewed these in accordance with the tests set out in the Planning Practice Guidance (PPG) and have amended the wording where necessary in the interests of clarity and simplicity.
16. It is necessary to impose a condition relating to the approved plans in the interests of certainty. A condition securing the submission of external materials to the Council is reasonable and necessary to ensure the facing materials of the proposed development is acceptable to the character and appearance of the appeal site and surrounding area.
17. It is reasonable and necessary to attach a planning condition to ensure that the proposed passing place is provided before the occupation of the dwelling in the interest of highway safety. Additionally, it is reasonable and necessary that the

proposed development is constructed fully in accordance with the approved Badger Survey Report and Mitigation Method Statement, given the presence of badgers and their setts in the adjacent SBI.

Conclusion

18. Taking all matters into consideration, I conclude that the appeal should be allowed.

W Johnson

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans: PWH/AW/1; PWH/AW/2 and PWH/AW/3 REV A
- 3) Before any construction above ground level commences, samples of the materials to be used in the external construction of this development shall be submitted to and approved in writing by the Local Planning Authority. The approved materials shall then be used in the construction of the development.
- 4) Prior to first occupation of the dwelling hereby permitted, the passing place shown on drawing PWH/AW/3 REV A, shall be implemented in full and retained as such thereafter.
- 5) The proposed development shall be constructed fully in accordance with the submitted Ecology Statement by Etive Ecology Ltd, dated January 2020, including its Badger Survey Report and Mitigation Method Statement.

End of Schedule