
Appeal Decision

Site visit made on 12 October 2020

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 October 2020

Appeal Ref: APP/W2465/W/20/3254985

67 Gleneagles Avenue, Leicester LE4 7GD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Ms Barbara Walker, on behalf of Sturgess, Snow & Astill, against the decision of Leicester City Council.
 - The application Ref 20192000, dated 11 October 2019, was refused by notice dated 15 May 2020.
 - The development proposed is for the erection of one dwelling, conversion of existing outbuilding to a new dwelling and demolition of part of an existing outbuilding.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Ms Barbara Walker against Leicester City Council. This application is the subject of a separate Decision.

Procedural matter

3. The application has been made in outline form with all matters reserved. I shall deal with the appeal on the same basis.

Main Issue

4. The main issue is the effect of the proposed development on biodiversity with particular respect to the effect on badgers.

Reasons

5. The appeal site is a large parcel of garden land to the side of 67 Gleneagles Avenue. The plot is an irregular shape, which widens towards the rear. The area is not laid out as a formal garden and appears to be relatively unkempt with limited human intrusion. It has mature trees on its rear and side boundary. The plot includes rear and side boundaries that are adjacent to other private garden areas and the grounds of a care home. The site is enclosed by various boundaries, these include close boarded fencing, open post and rail fencing and a small brick outbuilding. The boundaries are semi-permeable enabling wildlife to move between plots with relative ease.
6. The site has been found to accommodate a badger sett. The most recent survey, undertaken by RammSanderson (June 2020), has identified that there are three active entrances within the appeal site. There is also a fourth

- entrance beyond the northwest boundary, within the grounds of the adjacent care home. The survey identified several signs of badger activity within the site including the presence of latrines, foraging runs and video surveillance captures. This determined that the site was either a main sett or an annex sett.
7. Paragraph 175 of the National Planning Policy Framework (The Framework) seeks to avoid significant harm to biodiversity. This describes a sequential approach where development should firstly be located on an alternative site with less harmful impacts, then mitigation measures considered and finally as a last resort to offer compensation.
 8. The badger survey report includes a mitigation strategy. This proposes to close the two entrance holes [1 and 2] nearest to the existing dwelling. It also proposes the temporary closure (for a period of 3-6 months) of two further entrance holes [3 and 4]. A badger proof fence would be installed parallel to the side boundary to deflect badgers onto adjacent land. The intention would be for badgers to be prevented access to holes 1 and 2 and could then instead use holes 3 and 4 as a main sett. The mitigation strategy assumes that the clan have setts elsewhere within their territory and therefore displacement would not be detrimental to the group. However, as the appellant could not gain access to gardens to the north, and has only found one entrance hole within the adjacent care home garden, this assertion has not been vindicated with survey findings. Consequently, the full extent of the sett and the availability of alternative setts has not been readily identified through the survey work.
 9. Natural England's (NE) Standing advice states that mitigation measures can include excluding badgers from an area on a temporary basis, provided that this would not exclude access to setts. Whether a licence can be granted is the responsibility of NE. However, planning authorities must give weight to the presence of protected species on a development site. There is therefore clearly an overlap with the consideration of planning matters and the requirements of a Badger Licence. Based on the evidence before me, it seems likely that the sett found on site is a main sett. Furthermore, the extent of closure and exclusion proposed would be likely to have a significantly harmful impact on the badger population.
 10. The adverse effect of the development would see the relocation of the badger population moved largely off site. As such, whilst the mitigation measure would achieve this objective its effect would be to deprive the badgers of a significant part of their core habitat. Accordingly, the proposal would have a significant impact on the badger population with inadequate mitigation measures. Therefore, the proposed mitigation would result in direct harm to the identified badger population. In these circumstances a condition would not provide the necessary certainty that mitigation measures could be provided to adequately address the harmful impact of development.
 11. The proposal has been made in outline form with all matters reserved. Consequently, the footprint of the proposed dwelling, and the extent of its formal garden area, is not disclosed beyond that shown on the illustrative diagrams. The entrance holes 1 and 2 are located in the rear half of this relatively large plot. I am therefore unconvinced that the closure of active entrance holes would be necessary for the development to proceed. Indeed, it seems to me that the badger population has remained active on this site despite the close proximity of human activity/development. The appeal site is

not so limited in scale that on-site mitigation and management could not be explored. For the same reason, the garden is not so small that it would be inevitable that future occupiers of the dwelling would return the entire garden to a formal lawn. Therefore, the proposed mitigation measures would result in substantial harm to the badger population without sufficient justification for the measures.

12. Accordingly, the proposal would fail to satisfy policy CS17 of the Core Strategy 2014. This requires development that would harm wildlife to provide adequate mitigation to be put in place if an alternative location for the development is not possible. This policy accords with the Framework that seeks development to avoid significant harm to biodiversity unless adequate mitigation can be provided.

Planning balance and conclusion

13. Parties agree that the Council does not have a 5-year housing land supply and that its policies most related to housing are out of date. However, the policy most relevant to the determining of this decision is not out of date and is in accordance with the Framework. As such the tilted balance does not apply.
14. The benefits of the delivery of a dwelling within this urban location are recognised, affording economic and social benefits. However, even when I attach substantial additional weight to the benefit of housing provision in the absence of the five-year supply, these combined benefits are relatively modest and would not outweigh the conflict with the development plan.
15. Even if I am wrong and the tilted balance were engaged the combined benefits of the scheme are significantly and demonstrably outweighed by the weight I attach to the harm to the identified badger population.
16. I therefore conclude that the proposal would conflict with the development plan when taken as a whole and does not represent the sustainable development for which the Framework advocates a presumption in favour. There are no other material considerations, including the Framework, that outweigh this conflict.
17. For the above reasons, the appeal is dismissed.

Ben Plenty

INSPECTOR