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## Appeal Decision

Site visit made on 26 January 2022

**by G Roberts BA (Hons) MRTPI**

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

**Decision date: 15<sup>TH</sup> February 2022**

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**Appeal Ref: APP/W1715/D/21/3287494**

**Swan House & Swan Cottage, 1,2 Oyster Quay, High Street, Hamble-Le-Rice, SO31 4BQ**

- 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 David de Krester against the decision of Eastleigh Borough Council.
  - The application Ref H/21/90418, dated 20 April 2021, was refused by notice dated 28 September 2021.
  - The development proposed is new second floor extension to access existing roof terrace after removal of existing second floor terrace access structure.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues are: (a) the effect of the proposed development on the character and appearance of the area, with particular regard to the sites location within the Hamble Conservation Area; and (b) whether the proposed development would have an adverse effect on protected species.

### Reasons

#### *Character and appearance*

3. The appeal site lies within the Hamble Conservation Area (HCA). Section 72(1) of the Planning (Listed Buildings and Conservation Area) Act 1990 requires, therefore, that special attention be paid to the desirability of preserving or enhancing the character or appearance of that area. Similar advice is to be found in the National Planning Policy Framework (July 2021) (Framework) and in saved policy 169.LB of the Eastleigh Borough Local Plan Review 2001-2011 (ELPR).
4. The Council's Delegated Report states that the appeal property forms part of a residential development of 14 units that was granted planning permission in February 2004. The Report continues by referring to the committee report and development brief for that development, which highlighted the importance of the roofscape of the development and the need to maintain an informal and haphazard roofscape. Whilst I have not been provided with a copy of either document, these references are consistent with those set out in the Conservation Area Appraisal (2008) (CAA) for the HCA, which I understand has been adopted as a Supplementary Planning Document.

5. As the CAA confirms and as I observed on my site visit, the appeal site forms an intrinsic and important part of the HCA and specifically the area around The Quay, foreshore (including the public car park) and River Hamble. I concur with the Council that this is a sensitive part of the HCA, the importance of which is underlined by the presence, to the north of the appeal site, of The Bugle Public House (The Bugle), a designated Grade II Listed Building.
6. Whilst the appeal site forms part of a modern development, its design replicates some of the prevailing architectural detailing and features that are found on the older properties within the surrounding area, which combined contribute to the historic importance of the conservation area. These features and detailing are referred to in the 'Architectural Appraisal' section of the CAA. The latter states that the majority of buildings within the HCA are domestic in scale, often found in terraced form of 2 -3 storeys in height with pitched roofs of clay tiles and roof accommodation served by small hipped or gable dormers subservient to the overall roof. It continues by stating that chimney stacks and pots make a significant contribution to the roofscape, which together with the roofs are an important part of the character of the area especially when viewed from the river.
7. All of the above factors contribute, in my judgement, to the significance of the HCA as a whole.
8. The appeal proposal would involve the demolition of the existing second floor access structure and its replacement with a new extension to provide access to the existing roof terrace. Whereas the existing access structure is sited close to the common boundary with The Bugle, to the north, the proposed structure would be located towards the southern end of the existing roof terrace emerging from the existing ridged pitched roof. The proposal would entail the removal of an existing chimney and the replacement of the existing metal balustrading with a frameless glass balustrade. Whilst the existing access structure houses a staircase, the proposed structure would include a staircase as well as a room that would serve as new living space.
9. Within the above context, the scale, massing, design and siting of the proposed extension would, in my judgement, be overly dominant within the existing roofscape to the host property and streetscene. It would introduce a large discordant feature that would overwhelm this part of the roofscape, harming the important role it plays within the streetscene and HCA. It would also introduce an awkward juxtaposition between the proposed extension and the existing ridged pitched roof, giving the impression of an extension that does not harmonise well with the roofscape and is not subservient to it. The result is a development that does not sit comfortably within the existing roofscape or the streetscene.
10. The harm that results is accentuated by the removal of the existing chimney. Notwithstanding that the latter may be redundant, it is feature that, combined with similar chimneys on this new development and on the older properties nearby, provides a certain built rhythm, and which together form an important part of the character of the existing roofscape. As I observed on site, this roofscape is highly visible from a number of public vantage points within the HCA, specifically the river, foreshore (including the public car park) and The Quay.

11. The existing metal balustrade currently provides some consistency with similar detailing found on the roof terrace to the property to the south of the appeal site. I do not agree that this balustrading is in any way incongruous and its replacement by a frameless glass balustrade would again harm the rhythm and appearance of the existing roofscape. Whilst I accept that frameless glass balustrading has been installed on the lower levels of the host property, the latter is viewed against the backdrop of the main elevation to the host and is not as visible or as prominent as the balustrading at roof level.
12. The Appellant considers that the proposed access would integrate better with the existing roofscape. For the reasons set out above, I do not agree. Whilst the existing roof access does occupy a central and visible position within the roofscape, its impact is mitigated by its small scale and massing and the fact that it is sited side-on to the rear elevation of the host. As a result, it is not an unduly dominant feature within the existing roofscape. In comparison, the scale, width and massing of the proposed extension, combined with its awkward relationship with the existing ridged pitched roof, the removal of the chimney and replacement of the metal balustrade with glass, results in a development that would cause significant harm to the roofscape of the host property and streetscene.
13. Reference has been made to the consultation response from the Council's Conservation Officer, who raised no objection to the proposal. As the Delegated Report states, the Case Officer had regard to those comments, but disagreed with the conclusion reached. It is not uncommon for officers to disagree, particularly in a case where the assessment of the acceptability of the proposal requires an element of judgement. Even so, I have also had regard to the Conservation Officers comments, but, as I confirmed above, reached a similar finding to the Case Officer.
14. The Appellant has also drawn attention to the modern extension with a glazed roof structure at Rope House in Rope Walk. However, I do not know the full planning circumstances of this case and it is not possible for me, therefore, to determine whether it is in any way relevant or comparable to the appeal proposal. Even so, I can only consider the proposal that is before me and determine it, as is required, on its individual merits having regard to the particular circumstances of this case. Neither this example nor the existence of other roof structures or extensions in the area, also referred to in the submitted evidence, affect the findings I have reached on this issue.
15. For the reasons set out above, I find that the appeal proposal would result in significant harm to the character and appearance of the area, and as such it would not preserve or enhance the HCA. In view of this finding and as is required, particularly by the Framework, considerable importance and weight must be attached to the harm to this designated heritage asset. The appeal proposal would, in my judgement, lead to less than substantial harm to the significance of the designated heritage asset. The level of harm would be high, and there are no public benefits, delivering either economic or social or environmental objectives, which would outweigh that harm.
16. Accordingly, I find that the proposed development would be contrary to saved policy 169.LB of the ELPR and paragraphs 189, 197, 199 - 200 and 202 of the Framework. The proposal would also be contrary to the corresponding provisions of saved policies 59.BE and 171.LB of the ELPR and policies DM1 and

DM12 of the emerging Eastleigh Borough Local Plan 2016 – 2036 (Emerging Plan).

*Protected species*

17. The Council contend that the proposal would involve works to the existing roof which has the potential to support bats due to the sites location close to the waterfront and the existence of two European Protected Species (EPS) mitigation licences within 2km of the site. The Council consider that there is a reasonable likelihood that bats would be affected by the appeal proposal. In the absence of any submitted survey work the Council state that they have, therefore, adopted a precautionary approach to a species that is protected under the Conservation of Habitats & Species Regulations 2019 (as amended). This finding is based on the consultation response received from the Council's Ecology Officer.
18. In response, the Appellant argues that as the roof is only 20 years old and unlikely to permit bat roosting, the requirement for a preliminary bat roost assessment is unjust and excessive. The Appellant continues by stating that they will ensure, if deemed necessary, compliance with all the relevant environmental legislation and the requirements of Natural England.
19. Circular 06/2005, Biodiversity and Geological Conservation, states that the presence or otherwise of protected species and the extent to which they might be affected by a development is a material consideration and must be established before planning permission is granted. In this particular case, the likelihood of a protected species (bats) being present is a matter of judgement based on the evidence that is before me.
20. The Appellant has not provided any specialist evidence to challenge the consultation response from the Ecology Officer. In addition, there is no indication that the Appellant has undertaken a desk top study or walk over survey of the appeal site to identify whether there are any features that are likely to be used by protected species. In view of this, I agree with the Council that, on balance, there is credible evidence of a reasonable likelihood of protected species being affected by the proposed development. In the absence of any survey information or substantive evidence to the contrary, even if the appeal proposal was otherwise acceptable, planning permission could not be granted.
21. The above finding is supported by saved policy 25.NC of the EBLP (policy DM1 of the Emerging Plan). This policy states that new development which adversely affects a habitat or feature of importance to wild fauna should not be permitted unless it can be demonstrated that the benefits outweigh the adverse impact; the impacts are unavoidable; and appropriate measures are taken to mitigate the adverse impact. There is insufficient evidence before me to conclude whether the appeal proposal would be compliant with that policy.
22. Accordingly, I find that the appeal proposal would not be compliant with saved policy 25.NC of the EBLP or with the corresponding provisions of policy DM1 of the Emerging Plan.

**Other Matters**

23. As I confirmed above, the appeal site lies within the setting of a designated Grade II Listed Building, namely The Bugle. Section 66 of the Planning (Listed

Buildings and Conservation Area) Act 1990 requires, therefore, that special regard must be had to the desirability of preserving this building's setting. Similar advice is to be found in the Framework. The removal of the existing access structure, abutting the common boundary with The Bugle, would improve the setting of this heritage asset. In relation to the new extension, this would be re-sited to the southern end of the existing roof terrace to the host property, further away from the common boundary with The Bugle. Given, therefore, the distance that would separate the two and based on my observations on site, I am satisfied, on balance, that the appeal proposal would not result in any harm to the setting of this listed building.

### **Conclusion**

24. For the reasons given above and having taken all other matters into account, I conclude that the appeal should be dismissed.

*G Roberts*

INSPECTOR