



Appeal Decision

Site visit made on 1 September 2023

by Robert Fallon B.Sc. (Hons) PGDipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th September 2023

Appeal Ref: APP/X0415/D/22/3310320

Longmead, Cholesbury Lane, Hawridge Common, Hawridge, Chesham, Buckinghamshire, HP5 2UH

- 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 R. Smith against the decision of Buckinghamshire Council.
 - The application Ref PL/22/2010/FA dated 6 June 2022, was refused by notice dated 13 September 2022.
 - The development proposed is described on the appeal form and decision notice as "Loft conversion to living space, 1 new front and 2 new rear dormer windows and 1 front and 2 side skylights."
-

Decision

1. The appeal is allowed and planning permission is granted for a loft conversion to living space, 1 new front and 2 new rear dormer windows and 1 front and 2 side skylights at Longmead, Cholesbury Lane, Hawridge Common, Hawridge, Chesham, Buckinghamshire, HP5 2UH in accordance with the terms of the application, Ref PL/22/2010/FA, dated 6 June 2022, subject to the conditions set out in the attached schedule.

Procedural matter

2. The revised National Planning Policy Framework ('the Framework') was published on 5 September 2023. Having reviewed this document, I am satisfied that the policy applicable to the scheme before me remains unchanged from the previous Framework¹. As a consequence, I did not consider there to be a need to reconsult the parties and have determined the appeal in light of the new Framework document, which is a material consideration that should be taken into account.

Background information

3. The Council has confirmed that Class A permitted development rights² (the enlargement, improvement or other alteration of a dwellinghouse) were removed from the bungalow when planning permission was granted and that Class B permitted development rights do not apply as the dwellinghouse is sited on Article 2(3) land (in this case, an AONB). It has also clarified that the skylights would be permitted development under Class C. I see no reason to dispute these findings, the consequence of which means that the existing loft could be converted to habitable living accommodation with skylights (but not

¹ National Planning Policy Framework, Ministry of Housing, Communities and Local Government, 20 July 2021.

² The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

dormer windows) without the need for planning permission from the local planning authority.

Main issues

4. The main issue is the effect of the proposed development on biodiversity and protected species, with particular regard to Bats and Great Crested Newts.

Reasons

Appeal site context

5. The appeal site contains a modern detached bungalow set on a spacious plot enclosed by timber fencing, mature trees and hedging. It falls within the Green Belt, Cholesbury & Hawridge Conservation Area and Chilterns Area of Outstanding Natural Beauty (AONB).
6. The southern side of Cholesbury Lane is characterised by dwellings of varying architectural styles, maturity, scale and height (single, 1.5 and 2-storey), set back from the road on spacious plots. Hawridge Common lies on the northern side of the road and is characterised by informal open grassland areas with natural pathways set amongst mature woodland areas and hedgerows. Overall, I found the area to have a verdant, loose-knit and attractive countryside character.

The effect of the proposed development on biodiversity and protected species, with particular regard to Bats and Great Crested Newts

7. The Habitats Directive³ requires member states to establish a system of strict protection for European Protected Species (of which Bats and Great Crested Newts are categorised). The Conservation of Habitats and Species Regulations⁴ require at Regulation 9(3) that a competent authority must have regard to the requirements of the Habitats Directive in exercising their functions. Further protection is given to a range of animals under Schedule 5 of the Wildlife and Countryside Act 1981, which include Bats and Great Crested Newts.
8. Section 40 of the Natural Environment and Rural Communities Act 2006 states that any public authority, in exercising its functions, must have regard to the purpose of conserving biodiversity. Circular 06/2005⁵ also states that the presence or otherwise of protected species, and the extent that they may be affected by a proposed development, must be established before planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.
9. The Council's Newt Officer states that the appeal site falls within a green impact risk zone for Great Crested Newts, which indicates a moderate habitat and low likelihood of Great Crested Newt presence. In particular, there are 2 ponds within 500m of the site and records of Great Crested Newts within 300m of the site, with connectivity between these locations and the appeal site. As a consequence, a preliminary ecological appraisal was requested to establish the ecological value of the site and its potential to support protected or priority

³ Council Directive 92/43/EEC dated 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, The Council of European Communities.

⁴ The Conservation of Habitats and Species Regulations 2017.

⁵ Government Circular: Biodiversity and Geological Conservation – statutory obligations and their impact within the planning system, ODPM Circular 06/2005, 16 August 2005.

- species. The same request was made by the Council's Ecology Officer who specified that this should also include a bat roost assessment of the building.
10. Set against the above context, the appellant states that the existing bungalow was designed to prevent Gliss Gliss⁶ invasion which meant that it was constructed in such a way to ensure no gaps, voids or apertures were present in the completed building, with the floor structure also sealed to prevent ingress. In addition, the loft floor and ceiling were completely boarded and the rafter spaces tightly packed to full thickness using insulation boards. As a consequence, the appellant states that the building became inaccessible to all bird, bat, insect and ground dwelling species.
 11. There is no evidence from the Council explaining why these construction measures would not prevent the creation of habitats for protected species within the roof space. Neither is there any explanation from the Council as to how the very limited works to the building's roof fabric could potentially impact on the wider ecological value of the site and surrounding area beyond that already incurred by the existing bungalow. Set against this context, I recognise that a preliminary ecological appraisal is necessary when there is a degree of uncertainty with regard to impact upon protected species & their habitats or where it has been established that there is the potential for harm, but where such professional judgements are made, they need to be clearly justified.
 12. There is no evidence of gaps or crevices between the bungalow's modern roof slates and I have noted that the eaves of the building was enclosed by soffits. It also does not possess an exposed open loft with clear gaps and entry points for ingress by protected species such as Bats. As a consequence I have given significant weight in my consideration to the bungalow's construction specifications and the fact that its existing loft floor and ceiling have already been completely boarded (and could be converted to living accommodation with skylights without planning permission).
 13. I have also given significant weight in my assessment to the absence of any evidence from the Council that explains; (1) which features on the building, despite its construction specifications and the boarded nature of its loft, are suitable for bats or other protected species and their habitats; (2) why it considers the construction of 3 modest dormer windows would have the potential to harm biodiversity and protected species & their habitats or commuting and foraging habits; and (3) how the use of the building and site would become even more intensive with 3 modest dormer windows (given the ability to use the already boarded up loft space for living accommodation with skylights without planning permission).
 14. Based on the above evidence, I conclude that there is no reasonable likelihood of protected species & their habitats or commuting and foraging habits being affected by the development or that there would be any adverse effect on biodiversity. The proposal would therefore accord with Policy CS24 of the Core Strategy⁷, which seeks, amongst other things, to ensure that protected species & habitats, biodiversity and ecological interests are protected and conserved from development proposals.

⁶ European edible dormouse.

⁷ Core Strategy for Chiltern District, adopted November 2011, Chiltern District Council.

15. I also find that the scheme does not conflict with the Conservation of Habitats and Species Regulations and Circular 06/2005, or Paragraph 180 of the Framework which states, amongst other things, that when determining planning applications local planning authorities should refuse planning permission if significant harm to biodiversity from a development cannot be avoided, adequately mitigated or as a last resort, compensated for.

Conditions

16. A condition has been imposed to ensure the scheme is carried out in accordance with the approved plans. I have also attached a condition regarding the materials to ensure that the appearance of the development is satisfactory.

Conclusion

17. In view of the above, having had regard to all other matters raised, I conclude that the appeal should be allowed.

Robert Fallon

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved details:- Drawing nos. 201707/Local Plan/02 (Location Plan); 201707/PL/502 (Block Plan Proposed); and 201707/PL/501A (Proposed Loft Conversion).
- 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.

End of Schedule