



Appeal Decision

Site visit made on 5 September 2023

by G Bayliss BA (Hons) MA MA MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 4th October 2023

Appeal Ref: APP/T3725/D/23/3320670

Rosedale, Main Street, Eathorpe, Warwickshire CV33 9DE

- 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 Richard Smith against the decision of Warwick District Council.
 - The application Ref W/22/1697, dated 25 October 2022, was refused by notice dated 27 January 2023.
 - The development proposed is the demolition of existing conservatory and workshops, extension to side and rear to create additional living space.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Whether the development would provide acceptable living conditions for the occupants of The Old Post Office with regard to light and outlook; and
 - The effect of the proposed development on protected species.

Reasons

Living conditions

3. The appeal property is a detached, two storey dwelling of traditional design located within the Eathorpe Conservation Area. It is set back from the road and to the rear has an extensive range of single storey attached outbuildings and a small, brick and tile two storey cottage. It is centrally located within the settlement with a relatively modern dwelling to its immediate north, known as The Old Post Office. The appeal proposal seeks to demolish the rear single storey outbuildings and replace them with a two storey extension with a ridged roof, incorporating a single storey lean-to element closest to The Old Post Office. The cottage would be retained and linked to the main dwelling.
4. Policy BE3 of the Warwick District Local Plan (2017) (WLP) states that new development will not be permitted where it would have an unacceptable adverse impact on the amenity of nearby uses and residents. The Council's Residential Design Guide Supplementary Planning Document (2018) (SPD) advocates using the 45-degree guideline to assess the potential impact of a development on windows in adjoining properties which provide the principal source of light to a habitable room. This aims to prevent any unreasonable effect on a neighbouring property by reason of loss of daylight or sunlight or by creating an unneighbourly and overbearing effect. The guidance states that the 45-degree guideline should be applied at both the front and back of adjoining

dwellings but not at the side, although individual site circumstances need to be considered.

5. The bedroom window in question is located in a cut-out section of The Old Post Office on a side elevation facing the appeal site. From what I could see from my visit and the plans submitted by the appellant, this bedroom window is located on the eastern side of the cut-out section. The bedroom also appears to be served by a rooflight.
6. The Neighbouring Daylight and Sunlight Study accompanying the appellant's appeal statement concludes that when assessed against the proposed development all neighbouring habitable windows would pass the BRE tests for diffuse daylight, direct sunlight and overshadowing. It considers that there would be no unacceptable loss of light to the bedroom window proposed to be affected, that the level of impact is considered to be 'very low, and that daylight and sunlight amenity would be safeguarded. The Council has not commented on this study, and I have no further evidence before me to disagree with the findings of it.
7. The main line of site from the bedroom window would be towards the window on the opposite side of the cut-out. However, I could see from my visit that it would be possible to obtain an angled view across the flat roof of the existing appeal property, but this would be to some extent constrained by an existing high screen wall on the boundary. Whilst the Council considers that for the purposes of interpreting the SPD this window should be treated as though it was a rear window and that the window serves as the main outlook for a bedroom it is important to consider the site circumstances that I have described. Only the limited angled view would be affected by the proposed development and therefore the outlook from this window would not be significantly compromised such that it would make it unacceptable from a planning perspective. Furthermore, the revision to the width of the proposed two storey wing during the application process has increased the separation distance so that some views from the bedroom window would more than likely be retained and this would lessen any overbearing effect.
8. The proposed development would therefore provide acceptable living conditions for the occupants of The Old Post Office with regard to light and outlook. It would comply with WLP Policy BE3 and the SPD. It would also comply with Paragraph 130 and 134 of the National Planning Policy Framework (the Framework) which seek a high standard of amenity for existing and future occupants.

Protected species

9. The Natural Environment and Rural Communities Act 2006 (the Act) places a duty on all public authorities to have regard, in the exercise of their functions, to the purpose of conserving biodiversity. In addition, Circular 06/2005 (the Circular) states that the presence of protected species is a material consideration when a development proposal would be likely to result in harm to the species or its habitat. It goes on to say 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, otherwise all relevant material considerations may not have been addressed in making the decision. It advises that surveys should only be required by condition in exceptional circumstances.

10. The site comprises trees, hedges and shrubs to the boundaries and in the immediate area are mature trees and the River Leam runs along the western boundary of the site. The proposed development would involve demolition of existing structures as well as renovation of the existing buildings on the site. The Preliminary Bat Roost Assessment and Bird Survey (2022) identified that Brown Long Eared bats were using the buildings. The County Ecologist has recommended additional activity surveys to establish how the bats are using the building to assess any likely impacts as a result of the proposal, and to ensure the conservation of protected species.
11. Whilst this additional survey could be conditioned, this approach is not supported by the Circular for the reasons given above, and I have not been presented with adequate exceptional circumstances to depart from this guidance. Furthermore, if protected species were affected, even with best practice measures, I cannot be certain as to what mitigation, if appropriate, may be required. There is no evidence before me that would lead me to take a different view.
12. In the absence of the further activity surveys and having viewed the nature of the proposal and the site context, I cannot conclude that the proposal would not adversely affect protected species. The development therefore would conflict with WLP Policy NE2 which states that the Council will protect species of national and local importance for biodiversity. It would also be contrary to the Act and the Circular, as well as Paragraph 174(d) of the Framework which amongst other things, seeks to minimise impacts on biodiversity.

Other Matters

13. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that in considering proposals for planning permission, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the Conservation Area. I have considered the effect of the proposal against this statutory duty and note that no objection has been raised by the Council in relation to the effect on this designated asset. Having carried out my own assessment and based on the evidence before me I also find that no harm would be caused to this asset.
14. The Council has concluded that the proposal would not be inappropriate development in the Green Belt and in this regard complies with its development plan policies. I have no reason to disagree with this assessment and have therefore not pursued this matter any further.

Conclusion

15. The lack of harm I have found in relation to living conditions does not outweigh the potential for the proposal to adversely affect protected species. Accordingly, for the reasons set out above, having regard to the development plan as a whole and all other material considerations, including the Framework, the appeal is dismissed.

G Bayliss

INSPECTOR