



Appeal Decision

Site visit made on 16 October 2023

by A Wright BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th November 2023

Appeal Ref: APP/L5240/W/23/3317139

2A Addiscombe Avenue, Croydon CR0 6LH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 11, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mr Qasim Gulamhusein, Marlpark 2a CR0 Ltd, against the decision of the Council of the London Borough of Croydon.
 - The application Ref 23/00203/PAD, dated 18 January 2023, was refused by notice dated 15 February 2023.
 - The development proposed is the demolition of a detached house and a detached garage.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Qasim Gulamhusein against the decision of the Council of the London Borough of Croydon. This application is the subject of a separate decision.

Preliminary Matters

3. The parties refer to ecological information submitted for previous planning applications for the site. These were not submitted with the current proposal, but I have had regard to them insofar as they are referred to in the appeal documents.
4. The appellant refers to soft stripping of tiles, but the proposal is for demolition. There are also references to previous Council decisions to refuse applications for development of the site, some of which lacked a response from the Council's ecological consultant or did not include ecological reasons for refusal. The appellant is concerned about the lack of a consistent approach, but I must determine the proposal on its merits based on the information before me.
5. The appellant says they are willing to withdraw the appeal but wishes to proceed with the application for costs. However, the appeal has not been withdrawn.

Background and Main Issue

6. Under Article 3(1) and Schedule 2, Part 11, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO), planning permission is granted for any building operation

consisting of the demolition of a building, subject to the conditions set out in Paragraph B.2.

7. The condition in paragraph B.2(b)(i) requires the developer to apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to the method of demolition and any proposed restoration of the site before beginning the development. The Council has determined that prior approval is required and has refused the application as the proposed method of demolition fails to give adequate certainty of its impacts on bats, a legally protected species, and does not secure appropriate mitigation, if required. Accordingly, the main issue is whether the method of demolition adequately addresses the risks of the impacts of the proposal on protected species.

Reasons

8. Bats are a European Protected Species protected by law¹ and public authorities have a statutory duty to conserve biodiversity². ODPM Circular 06/2005 states that the presence of a protected species is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. It further states 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 the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.
9. The Council's ecological consultant states that a preliminary ecological appraisal undertaken in 2021 (the 2021 report) which accompanied a previous planning application assessed the building to be of low potential for roosting bats. The consultant advises that this is a trigger for a bat activity survey as there is a reasonable likelihood that a protected species could be present and affected. Such a survey would provide greater certainty on whether a bat roost is present.
10. The demolition method statement does not include any ecological information nor has a bat activity survey been provided. The appellant quotes from the 2021 report that the overall suitability of the buildings to support bats is rated as low. The appellant also cites a 2022 update to the 2021 report which refers to the site context and its very low potential to support roosting bats. The 2022 update states that no further surveys are recommended but, as a precautionary measure, a licensed bat ecologist should be present to inspect and oversee certain works, so that in the highly unlikely event a bat is present, the risk of harm to a roost is avoided. These conclusions followed a physical assessment of the site by the appellant's ecologist.
11. There is limited evidence of bat activity surveys for the adjoining Site of Importance for Nature Conservation. However, in the absence of a bat activity survey for this site, and on the basis of the information before me, the presence of bats cannot be ruled out and I cannot be certain as to the extent to which they may be affected. Furthermore, if protected species were affected, I cannot be certain as to what mitigation, if appropriate, may be required. There

¹ Conservation of Habitats and Species Regulations 2017 and the Wildlife and Countryside Act 1981

² Section 40 of the Natural Environment and Rural Communities Act 2000

is no evidence before me, including from the Council's ecological consultant or the appellant, that would lead me to take a different view.

12. The appellant states that the legislation does not allow prior approval to be refused on the basis that there could be bats present, that the development qualifies in principle for demolition under the GPDO and that consideration should be limited to an assessment of the demolition method statement. The appellant also refers to the soft stripping of tiles. However, as the proposal relates to the demolition of a building where statutorily protected species could be present and given the decision maker's legal duties regarding the conservation of biodiversity, it is relevant to consider the potential impacts of the proposal on bats.
13. The appellant suggests that a condition could have been imposed mandating the supervision of an ecologist during certain works and requiring any works to be temporarily halted should protected species be discovered. However, this would not have been appropriate given the lack of information, the legal protection given to bats, and the statutory duty of public authorities to conserve biodiversity. Given the credible evidence of a reasonable likelihood of a European Protected Species being affected by the demolition, and the lack of survey information and suitable mitigation, I conclude that the method of demolition does not adequately address the risk of the impacts of the proposal on protected species.

Other Matters

14. As set out above, I have considered the appellant's cost application in relation to the appeal separately. Nevertheless, the appellant's general dissatisfaction with the Council, including its approach towards validating applications, is a matter between those parties and it cannot have any bearing on my determination of this appeal.

Conclusion

15. For the reasons given above, I conclude that the appeal should be dismissed.

A Wright

INSPECTOR