



Appeal Decision

Site visit made on 27 February 2024

by G Sibley MPLAN MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th May 2024

Appeal Ref: APP/P4605/W/23/3328540

Land to the rear of 318-326 Brook Lane, Billesley, Birmingham, West Midlands B13 0TH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Haliya Ltd against the decision of Birmingham City Council.
 - The application Ref is 2023/04011/PA.
 - The development proposed is described as 'we propose one four-bedroom residential dwelling (double storey) with associated car parking to accommodate 2no vehicles.'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application was submitted in outline with all matters reserved. I have had regard to the submitted plans but have treated each element of the drawings as indicative when considering the likely effect of the proposal on the matters set out in the main issue below.
3. The appellant originally described the address of the site as 1 Malton Grove, Birmingham B13 0TH. However, I have taken the address from the Appeal Form as this more accurately describes its location, and is similar to that used on the Decision Notice
4. Since the Council issued its decision the National Planning Policy Framework (the Framework) was revised in December 2023. The parties were given the opportunity to comment on the revisions to the Framework in relation to this appeal and these comments have been taken into consideration in my decision.

Main Issue

5. The main issue is the effect of the proposed development on the ecology and biodiversity of the site and its surroundings.

Reasons

6. The Council's records indicate that there are a variety of protected/notable species within 1 kilometre (km) of the site, including bats. Furthermore, the appellant's Bat Transact Survey ¹ identified that within a 2km radius there were several bat records including United Kingdom Biodiversity Action Plan (UKBAP) protected species. UKBAP species are those that were defined as being the most threatened and requiring conservation action under the UKBAP. There

¹ Dated May 2019 but including Activity Surveys dated 19 August and 20 September 2019, and 27 April 2020.

were also several non-BAP species recorded in the search. The Survey also identified that there were around 34 protected and designated bird species within a 2km radius of the site.

7. While the Survey identified features adjacent to the site that potentially contained bat roosts and one bat was observed foraging on the site, it did not find any bat roosts on the appeal site. Due to the low incidences of recorded foraging activity, it determined re-development of the site would have a 'low' effect on potential foraging and commuting habitat. Nevertheless, it required mitigation measures, including bat boxes and bat access tiles on properties.
8. Despite this, 'The Notice to Readers: Conditions of this Report' section of both the Preliminary Ecological Appraisal which predated the Survey, and the Survey itself, are both clear that the report is only valid for two years and subsequent inspection of the site would be required to ascertain whether it remains in the same condition. There is no evidence before me a further updated inspection having occurred.
9. Based on the information before me, since the last survey visit, the site has undergone significant changes with several trees cut down. At the time of my visit rubbish was strewn across the site and overgrown with brambles. It is possible that the site's suitability to provide foraging for bats has been diminished by the changes to it, and I have established that the appellant's Survey is no longer valid. The appellant's ecologist did advise that revised reports would be abortive on the basis of the trees being removed. However, the professional advice provided by the Council and within the appellant's Survey demonstrates there is a reasonable likelihood of the presence of protected species within a relatively close distance of the site, and there is no substantive evidence before me to the contrary.
10. The Council has referred to Regulation 9 of 'The Conservation of Habitats and Species Regulations 2010' which states "*the competent authority must exercise their functions which are relevant to nature conservation...so as to secure compliance with the requirements of the Directives*". Accordingly, competent authorities must consider the Directives in making decisions relating to any of their planning functions. Bats are protected species, and as the competent authority in this appeal, I cannot give approval without adequate evidence to be satisfied that the Regulations will not be breached and subsequently being able to establish if works may be licensed.
11. I have been referred to several sites that have been granted planning permission. In each of the appeals as well as the application to the rear of 6 Gate Lane the effect of the proposal upon ecology and biodiversity was not in dispute². The site that is located a short distance from this appeal site to the rear of houses on Brook Lane, is in a similar location to this proposal, however I am unaware of the ecological condition of that site or the surveys that were provided for that application. Given the issues in dispute are not the same as that before me the conclusions reached in those cases are not necessarily relevant to this main issue. The sites were generally on brownfield land located to the rear of dwellings, similar to this scheme and the benefits of developing such sites is considered later in this decision. I have therefore assessed the

² Appeal References: APP/H1840/W/3233895, APP/P4605/W/19/3231439 and APP/N1350/W/21/3288824 and Application Reference: 2015/03806/PA

appeal on its own merits based on the evidence before me and my own observations.

12. Therefore, in light of the strict protection afforded to bats and because the survey information is no longer valid, I am not satisfied that sufficient information has been provided to enable me to determine that there would not be a harmful effect on the ecology and biodiversity of the site and its surroundings. Consequently, the proposal would not accord with Policies PG3 and TP8 of the Birmingham Development Plan (BDP)³ or Policy DM4 of the Development Management in Birmingham Development Plan Document (DMB)⁴. These state that development proposals which are likely to affect any designated site or important habitat, species or geological feature must be supported by adequate information to ensure that the likely impacts of the proposal can be fully assessed. Also, there is insufficient information before me to carry out my regulatory duty to consider whether protected species would be harmed by the development and if so, whether mitigation measures would be effective.
13. The Framework also indicates that in the absence of avoidance or adequate mitigation of harm to biodiversity, planning permission should be refused.

Other Matter

14. I acknowledge the appellant's comments and concerns with the previous planning applications on the site, the pre-application advice received and the Council's handling of this case, including whether a site visit occurred and if it has been partly responsible for the timeframe since the Survey was undertaken. However, in reaching my decision I have been concerned only with the planning merits of this case.

Planning Balance and Conclusion

15. The Council accepts that it can only identify a 4.24 years supply of deliverable housing sites. Accordingly, paragraph 11d) of the Framework states that in these circumstances, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
16. The proposed development would deliver a single dwelling on a windfall site within a residential area where the principle of such development is encouraged by Policy TP28 of the BDP. This supports new residential development that is accessible to jobs, shops and services by other modes of transport other than the car. The proposal would also redevelop brownfield land and its urban location is supported by paragraph 124d) of the Framework which encourages the development of under-utilised land and buildings especially where this would help to meet identified needs for housing where land supply is constrained. Whilst the proposal would only deliver a single four-bedroom dwelling, in light of the Council's shortfall in housing supply, this would still make a modest contribution to addressing this shortfall and positively contribute towards the housing mix for the area.

³ Adopted 2017

⁴ Adopted 2021

17. The proposal is made in outline; however, it is noted that photovoltaic systems alongside a solar battery system, electric vehicle charging points and Passivhaus principles are proposed to be incorporated into the development which would support the transition to a low carbon future which paragraph 157 of the Framework supports. Whilst that this would relate to a single dwelling the benefits associated with this would still be given moderate weight.
18. A biodiversity net gain calculation has not been provided to establish whether the proposal in its current guise would deliver biodiversity net gain. However, the application was made in outline with all matters reserved and substantial planting and landscaping is proposed by the appellant to improve long-term retention and survival which may provide biodiversity benefits but until this can be established the weight I can attribute to this is limited.
19. The development of this site could lead to a more controlled management of it which could reduce anti-social behaviour that may occur on the site as well as creating a privacy barrier for the surrounding occupiers. These would be a limited social benefit of the scheme. However, such matters could be addressed outside of the scope of this appeal.
20. The occupiers of the proposed dwelling would contribute both economically and socially towards services and facilities in the local area. There would also be economic benefits to the area during construction. Given the limited scale of the proposal these benefits attract limited weight.
21. In general, and subject to control by appropriate planning conditions the proposal could be made acceptable with regard to character and appearance, the living conditions of neighbouring occupiers and highway safety. However, these would be neutral matters in the balance.
22. The Framework states that if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused. There is insufficient information before me to determine that significant harm to biodiversity cannot be avoided. This would lead to a conflict with policies in the development plan that seek to protect protected species, and this is a matter that counts significantly against allowing the appeal.
23. Therefore, the adverse impacts of the proposal significantly and demonstrably outweigh the stated benefits when assessed against the policies in the Framework taken as a whole.
24. The proposal conflicts with the development plan and the material considerations, including the provisions of the Framework, do not indicate that the appeal should be decided other than in accordance with it. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

G Sibley

INSPECTOR