



Appeal Decision

Site visit made on 7 May 2024

by **O Marigold BSc DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 June 2024

Appeal Ref: APP/P1615/W/23/3335637

Ty Lydia, Land adjacent to Rosewood, Belmont Road, Hewelsfield Common, Gloucestershire GL15 6UX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Neil Bishop against the decision of Forest of Dean District Council.
 - The application Ref is P1724/22/FUL.
The development proposed is the restoration of a stone building to form a 1-bed holiday let and associated works including the creation of a new access, drainage works and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for the restoration of a stone building to form a 1-bed holiday let and associated works including the creation of a new access, drainage works and landscaping at Ty Lydia, Land adjacent to Rosewood, Belmont Road, Hewelsfield Common, Gloucestershire GL15 6UX in accordance with the terms of the application, Ref P1724/22/FUL, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by Mr Neil Bishop against Forest of Dean District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The site lies within the Wye Valley Area of Outstanding Natural Beauty (AONB) a designation which has been re-named a 'National Landscape'. I have therefore used this term where relevant in my decision. However, the legal and planning policy status of the designation is unchanged and so I am satisfied that no party would be prejudiced because of this.
4. A revised version of the National Planning Policy Framework (the Framework) was published after the appeal was lodged. The parties have been able to comment on these matters and I have determined the appeal accordingly.

Main Issues

5. The main issues are:
 - whether the site is suitable for the proposal, having regard to the effect of the proposal on the character and appearance of the area and access to services and facilities, and

- the effect of the proposal on protected species, namely bats.

Reasons

Suitability of the site

6. The site lies in a rural area and the proposal would introduce a residential use, albeit for holiday purposes, together with associated paraphernalia such as a driveway, bin and bike stores and timber decking. The proposed extension would have a shallow pitch and a contemporary appearance. The proposal would adjoin both the highway and a public footpath, and so the roof would be visible in the public realm, particularly in winter months when the foliage surrounding the site is reduced.
7. However, the local area consists of sporadic housing of varied designs. Most are broadly traditional in appearance but there is little uniformity of roof form, with some examples of shallow-pitched and flat roofs. In this context, the proposal would not have a jarring appearance. Furthermore, the sedum finish of the roof of the extension would help to integrate the proposal with its green and natural surroundings. The building would have a relatively small size and, despite the creation of new windows, it would not appear particularly incongruous.
8. As such, although the proposed extension would be modern in appearance, the proposal would not appear harmfully out of place in this part of the National Landscape. It would therefore further the purposes of conserving and enhancing the characteristics of the area, including its natural beauty, to which I give great weight.
9. The site is located outside of a settlement defined in the Core Strategy (CS), adopted February 2012. There is a shop and community centre not too far away but there are few other services or facilities locally, with little if any public transport available nearby. Consequently, occupiers of the accommodation are likely to be reliant on private vehicles for many of their day-to-day activities. However, many attractions are local and so would not necessitate lengthy car journeys.
10. In any case, the explanatory text to CS Policy CSP.4 accepts that some tourist development is appropriate in locations away from settlements, whilst CS Paragraph 6.49 strongly supports economic development in rural areas. The proposal may well generate additional movements such as from those cleaning and servicing the holiday let. However, implicit in this policy support is an acceptance of some additional traffic movements and a degree of visual domesticity associated with such uses including in rural areas.
11. The CS is consistent with Framework Paragraph 88, which seeks the sustainable growth and expansion of all types of business in rural areas, both through conversion and well-designed new buildings. For the reasons already given, even if the proposal goes beyond a conversion, I consider that it would accord with these requirements.
12. CS Policy CSP.1 does not require submission of a Business Plan to justify the likely success of the proposal, but this has nevertheless been provided. Elements of it have been questioned, including its projected low initial rates. Concerns have also been raised regarding the amount of tourist accommodation already in the area. However, the CS identifies that growth in

employment in tourism in the District has been lower than the regional average. As such, I have little substantive reason to believe that the proposal would not be successful as holiday accommodation. Furthermore, a planning condition can be imposed securing this use.

13. For the above reasons, I conclude that the site is suitable for the proposal, having regard to its effect on the character and appearance of the area and access to services and facilities. It would therefore accord with CS Policy CSP.1 and Policy AP.4 of the Council's Allocations Plan (AP), adopted June 2018. These require good design, consideration of the means of travel and that the surrounding characteristics of the National Landscape should be maintained. For the same reasons, it would comply with the Framework. No specific conflict has been identified with the Council's Residential Design Guide, dated August 1998, or the Forest of Dean Landscape Character Assessment, November 2002, and so these have not been central to my conclusions.

Bats

14. The site is less than a mile from the Sylvan House Barn Site of Special Scientific Interest (SSSI), the closest part of the Wye Valley and Forest of Dean Special Area of Conservation (SAC). The SAC is protected pursuant to the Conservation of Habitats Regulations 2017 as amended (the Habitats Regulations). The qualifying features of the SAC are populations of Greater and Lesser Horseshoe bats. The conservation objectives include maintaining or restoring the extent, distribution, structure, population and function of the qualifying species and their habitats.
15. Internal and external lighting from the proposal could affect the foraging and commuting behaviours of the bats. Furthermore, additional lighting on boundary linear features could also deter their foraging or commuting, potentially increasing their mortality. Consequently, alone and in combination with other development, a likely significant effect to the SAC resulting from the proposal cannot be ruled out. As such, in accordance with the Habitats Regulations and as competent authority in the context of this appeal, I must undertake an Appropriate Assessment (AA).
16. The Ecological Report recommends that there shall be no light spill on the site boundaries, but no specific lighting strategy has been submitted. However, a planning condition could require the submission of lighting details to prevent excessive light pollution or disturbance to bats and other species, as well as preventing the installation of any other internal or external lighting.
17. The Council's Sustainability consultee and Natural England (NE) have confirmed that mitigation by such a condition would be sufficient. In undertaking the AA, the information before me indicates that this would reduce the impact of the proposal on the integrity of the SAC to a de minimis level. It would therefore accord with the Habitats Regulations in this respect.
18. Regulation 55 of the Habitats Regulations sets out the circumstances where NE can issue a licence for an otherwise unlawful activity in respect of European Protected Species such as bats. The licencing tests include imperative reasons of overriding public interest, whether there are satisfactory alternatives and where the derogation would not be detrimental to the maintenance of the populations of bats at a favourable conservation status in their natural range.

19. However, the *Morge* judgement¹ has established that planning permission should ordinarily be granted, except where the proposal is unlikely to be licensed. The licencing requirements are in addition to the need for planning permission and are subject to a separate process. Furthermore, NE has commented and not objected to the proposal, to which I give great weight. I have had regard to my duties under Habitat Regulations 9(1) and 9(3) and considered the three tests. In light of my findings above and the mitigation proposed, I have little reason to believe that the development is unlikely to be licensed.
20. For the reasons given above, the proposal would not harm protected species, specifically bats. It would therefore comply with CS Policy CSP.1, and AP policies AP.7 and AP.8 which require an acceptable impact on the environment and that protected species and green infrastructure are considered. It follows that the proposal would also comply with AP Policy AP1, as well as the requirement in the Framework that biodiversity should be protected and enhanced. Similarly, the proposal would also accord with the similar advice in the Planning Practice Guidance (PPG) and the National Design Guide.

Other Matters

21. The proposal would include a first-floor mezzanine level and new windows and rooflights, but it would be sufficient distance from neighbouring properties to ensure that they would experience no undue loss of privacy. No on-site management of the accommodation is proposed. However, given the small size of the proposal, I have little reason to believe that it would attract large groups of people or generate anti-social behaviour or unacceptable levels of noise or disturbance.
22. The road is single-track and also serves other properties. Nevertheless, because of the modest nature of the proposal, it would be unlikely to generate significant amounts of traffic. Highway visibility is adequate given the lightly trafficked nature of the road. The proposal includes on-site car parking sufficient for its size. Neither the Council nor the Highway Authority objected to the proposal on traffic or highway safety grounds, and I see little reason to disagree.
23. A planning condition can require details of foul and surface water drainage, to ensure that there would be no adverse effects on neighbouring properties or highway safety. I note that the Council's Land Drainage consultee raised no objection on this basis. I have little substantive evidence to suggest that any additional insulation necessary would undermine the usability of the proposal.

Conditions

24. The Council has provided a list of conditions, which I have assessed and where necessary amended, having regard to the advice in the PPG. A condition requiring adherence to the approved plans is necessary for certainty. To ensure adequate living conditions for nearby properties and highway safety, conditions are required securing details of the management of surface and foul water. These must be pre-commencement conditions, because they may affect how works take place at an early stage.

¹ R (Morge) v Hampshire CC [2011] Env. L.R. 19

25. In the interests of ecology including bats, submission of a Construction Ecological Management Plan and of tree protection during construction is necessary. As they affect works at an early stage of construction, they must also be pre-commencement conditions. Conditions are required to control internal and external lighting, and to ensure biodiversity enhancement for the same reason. In the interests of the character and appearance of the area, a condition requiring details of landscaping is necessary. Given the sensitive location of the site, details and samples of the external materials are necessary.
26. To ensure highway safety, it is necessary that the vehicular access is constructed as shown on the plans, including in respect of visibility splays, with bound material for the driveway and gates set back and opening away from the edge of the road. For the same reason, provision of the vehicular parking and turning facilities is necessary. However, I see little need for the visibility splays to be provided until the proposal is occupied. Details of cycle storage and an electric vehicle charging point are required, to promote sustainable transport.
27. Details of bin storage are necessary in the interests of the living conditions of occupiers and neighbours. To ensure the privacy of future occupiers from footpath users, a condition is required securing that the ground floor window on the east elevation is obscure glazed and fixed shut.
28. Control over further extensions, outbuildings, or hard surfacing is necessary in the interests of the character and appearance of the area. A condition is therefore necessary to remove the relevant rights under the General Permitted Development Order (GPDO). Nevertheless, given the location of the site within a National Landscape, GPDO Class B, Part 1, Schedule 2 does not apply. Nor do I see a particular reason to control the normal rights for exterior painting.
29. Permission has been granted on the merits of the proposal as holiday accommodation. As a result, I have imposed a condition requiring it to be occupied and enforceable as such. However, as the proposal is for permanent development, partially using an existing building, I see no reason to require its removal if no longer required as holiday accommodation, as was suggested by the Council.

Conclusion

30. For the reasons given above, I conclude that the appeal should be allowed.

O Marigold

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin no later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 2221/02, 2221/03C.
- 3) No development shall take place until a full surface water drainage scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of the size, position

and construction of the drainage scheme, the results of soakage tests and details of the maintenance of the drainage asset. The development hereby approved shall not be occupied until the approved details have been carried out and it shall be maintained in accordance with these details thereafter.

- 4) No development shall take place until a full foul water drainage scheme, including plans detailing the location of pipe work, inspection chambers, holding tanks and methods for disposal, has been submitted to and be approved in writing by the Local Planning Authority. Thereafter the approved details shall be fully implemented and be ready for use prior to the first use of the development hereby permitted and be maintained as approved for the duration of the development.
- 5) Notwithstanding the submitted details, no development shall commence until a Construction Ecological Management Plan (CEcMP) has been submitted to and approved in writing by the Local Planning Authority. The approved CEcMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.
- 6) The trees proposed for retention, as shown on the Revised Tree Protection Fencing Plan (8 June 2023), shall be protected during construction of the approved development in accordance with section 6.2 of BS5937:2012. No development shall commence until the protective barrier fencing, as shown on the Revised Tree Protection Fencing Plan, has been installed, and it shall remain in situ until completion of the development. Storage of materials, landfill, excavation, mixing of concrete/mortar, burning of materials, movement of vehicles or other such harmful activities identified in BS5837:2012 will be strictly prohibited in these areas.
- 7) No above-ground works shall commence until details and samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details and samples.
- 8) Notwithstanding the submitted details, no above-ground works shall commence until details of external and internal lighting have been submitted to and approved in writing by the Local Planning Authority. The details shall demonstrate that lighting will not cause excessive light pollution or disturb or prevent bats or other species using key corridors, foraging habitat features or accessing roost sites during both the construction and operational phase. The details shall include, but not be limited to:
 - i. A drawing showing sensitive areas and/or dark corridor safeguarding areas;
 - ii. Technical description, design or specification of external lighting to be installed including shields, cowls or blinds where appropriate;
 - iii. A description of the luminosity of lights and their light colour;
 - iv. Plans showing the location and where appropriate the elevation and height of the light fixings;
 - v. Methods of lighting control; and

vi. Lighting contour plans both horizontal and vertical, taking into account landscaping features.

All external and internal lighting shall be installed in accordance with the specifications and locations set out in the approved details. These shall be maintained thereafter in accordance with these details. No other lighting shall be installed.

- 9) Notwithstanding the submitted details, no above-ground works shall commence until a scheme for biodiversity enhancement, to include the incorporation of permanent bat roosting feature(s), hedgehog homes, hedgehog access points, insect boxes, hibernacula and nesting opportunities for birds (including swifts), shall be submitted to and agreed in writing with the Local Planning Authority. The approved details shall thereafter be implemented, retained and maintained for their designed purpose in accordance with the approved scheme.
- 10) Notwithstanding the submitted details, no above-ground works shall commence until a detailed landscaping scheme has been submitted to, and approved, in writing, by the Local Planning Authority. The scheme shall include species, size, density spacing, cultivation protection and methods of weed control and a phasing plan for implementation. Thereafter the development shall be carried out in accordance with the approved scheme. If at any time in the five years following planting any tree, shrub or hedge shall for any reason die, be removed or felled, it shall be replaced with another tree, shrub or hedge of the same species during the next planting season.
- 11) The development hereby approved shall not be occupied until visibility splays are provided from a point 0.6 metres above carriageway level at the centre of the access to the application site and 2.4 metres back from the nearside edge of the adjoining carriageway (measured perpendicularly), for 30 metres in each direction, measured a distance of 1 metre from the nearside edge of the adjoining carriageway. Nothing shall be planted, erected and/or allowed to grow on the triangular area of the land so formed which would obstruct the visibility described above.
- 12) The development hereby approved shall not be occupied until the vehicular access has been laid out and constructed in accordance with the submitted plan drawing 2221/03C. The area of driveway within 5 metres of the carriageway edge of the public road shall be surfaced in bound permeable material and shall be maintained as such thereafter. Any gates shall be situated at least 5 metres back from the carriageway edge of the public road and shall not open outwards towards the public highway.
- 13) The development hereby permitted shall not be occupied until the vehicular parking and turning facilities have been provided in accordance with the submitted plan drawing 2221/03C, and those facilities shall be maintained available for those purposes thereafter.
- 14) The development hereby approved shall not be occupied until the cycle and bin storage facilities have been made available for use in accordance with the submitted plan drawing 2221/03C, and those facilities shall be maintained for the duration of the development.
- 15) The development hereby approved shall not be occupied until a fully operational electric vehicle charging point has been fitted within the

application site that complies with BS EN 62196 Mode 3 or 4 charging and BS EN 61851 (as amended); has a minimum rated output of not less than 7 kW, measured or calculated at a nominal supply voltage of 230VAC; is fitted with a universal socket; and is fitted with a charging equipment status indicator. The electric vehicle charging point shall thereafter be retained or replaced with one of the same or higher specification.

- 16) The development hereby permitted shall not be occupied until the ground floor window on the eastern elevation of the building has been fitted with obscured glazing, and no part of that window that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. The window shall be retained on this basis thereafter.
- 17) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 as amended (or any order revoking and re-enacting that Order with or without modification), no development permitted by Classes A, C, D, E, F and G of Part 1 Schedule 2 of Article 3, and Class A of Part 2, Schedule 2 of Article 3 shall be carried out without the express consent of the Local Planning Authority.
- 18) The development hereby approved shall be occupied for holiday purposes only and shall not be occupied as the main or sole dwelling of any person. From first occupation, a register of all occupiers, detailing dates, names and main home addresses shall be maintained by the operator of the accommodation. This shall be kept up-to-date and shall be made available for inspection at all reasonable times to the Local Planning Authority.

End of Conditions