



Appeal Decision

Site visit made on 29 July 2024

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 August 2024

Appeal Ref: APP/H1840/W/24/3338816

Boxbush House, Frogger Lane, Stoulton, Worcestershire, WR7 4RQ

- 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 D Ball against the decision of Wychavon District Council.
 - The application Ref is W/23/02398/FUL.
 - The development proposed is the erection of a replacement dwelling following demolition of the existing house.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a replacement dwelling following demolition of the existing house at Boxbush House, Frogger Lane, Stoulton, Worcestershire WR7 4RQ in accordance with the terms of the application, Ref W/23/02398/FUL, subject to the conditions in the attached schedule.

Main Issues

2. The main issues are the effect of the proposal on:
 - The character and appearance of the area, including having special regard to the significance of the Old Forge, a Grade II listed building, and;
 - Bats.

Reasons

Character and appearance

3. The appeal site lies off Frogger Lane at the western periphery of Stoulton, a village set within an agricultural landscape. Most of the buildings within the village comprise housing. They exhibit a range of architectural styles encompassing traditional and more modern forms that reflect different ages of construction, with some having been converted from former agricultural buildings. Nevertheless, the prevalent use of brick and clay tiles provides visual homogeneity and adds to the local distinctiveness of the village.
4. Along Frogger Lane there is a somewhat loose arrangement of mostly two storey detached dwellings set within irregularly shaped plots. Whilst most are orientated to face the lane, this is not always the case. This gives an informality to the settlement pattern, and the established gardens and associated planting convey a sense of greenery and spaciousness. Combined with the proximity of fields to the north and west this results in a pleasant rural character to this part of the village.

5. The appeal site is one such detached two storey dwelling probably dating from the mid 20th century. It sits in large grounds at the end of Frogger Lane abutting fields. The dwelling has undergone multiple extensions and adaptations. These include extensions flanking the main body of the house, which link to the garage. This results in disproportionately elongated front and rear elevations, and an overly complex form. Combined with the orientation of its principal elevation southwards, the building has a somewhat weak relationship to the lane and nearby buildings. Consequently, it appears architecturally incoherent, and a little adrift from the village.
6. Therefore, whilst inoffensive, the built form at the appeal site adds little to the pleasant character and appearance of the area other than broadly reinforcing the informal settlement pattern. Instead, it is the spaciousness and greenery of the plot that make the most valuable contribution by maintaining separation between buildings and softening their appearance at the edge of the village. These aspects of the appeal site assist in the transition from open countryside into the village and can be experienced from several nearby public rights of way. I observed this at my site visit, and it is further illustrated in the Design and Access Statement¹.
7. The listed Old Forge (the listed building) lies some distance to the east of the appeal site. It comprises a two storey cottage dating from the 16th century. The list entry refers to its cruck construction, painted brick front, casements and thatched roof with eyebrow dormer. I have a statutory duty² to have special regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses.
8. The significance and special interest of the listed building stems from several factors. Firstly, it possesses architectural and aesthetic interest owing to its traditional construction and appearance. Furthermore, its surviving historic fabric is a tangible connection with the past. In addition, historic interest comes from what the former uses of the building reveal about how people lived and worked in Stoulton in the past. In that respect, the broadly rural surroundings of the listed building reinforce a likely close association with an agricultural community. Hence, the rural nature of the wider setting makes a small contribution towards its significance.
9. Based on the evidence provided, it is not shown that there is any specific historic connection between the appeal site and the listed building. Given the separation distance and intervening property at Homefield, the mid-twentieth century Bodbush House plays a neutral role. However, the green and broadly rural character of the grounds of the appeal site make a small positive contribution to the generic wider setting of the listed building. Overall, I judge the appeal site to play a minor role in the special interest and significance of the listed building.
10. The proposals seek to demolish the existing dwelling and replace it with a larger two storey detached house and separate garage. The footprint, height and therefore, volume of the replacement house would be noticeably increased in scale when compared to the existing dwelling. However, it does not follow that of itself, this would be harmful. My findings and observations are that the

¹ Page 6 - photograph

² Section 66, Planning (Listed Buildings and Conservation Areas) Act 1990

proposal, notwithstanding its larger size, would integrate well into its surroundings. I say this for the following reasons.

11. The footprint of the house would be consolidated in the southern section of the appeal site, with the garage discreetly sited to the edge between the proposed dwelling and the built form at Homefield. This would mean that despite the footprint being larger, the coverage within the generously sized plot would not be disproportionate. Rather, most of the extensive grounds would remain as garden or open land thereby retaining the sense of spaciousness that contributes to the character and appearance of the area.
12. In turn, this would mean that considerable space would be retained between the proposed dwelling and those nearby, including the listed building. Furthermore, sufficient space would remain to allow for the retention of most established planting, and further landscaping would add to it. Consequently, the important qualities of greenery and spaciousness provided by the appeal site would be preserved. On that basis, it would have a neutral impact upon the setting of the listed building. Neither would it interfere with the architectural importance or historic fabric of the listed building. Overall, it would not undermine its special interest or significance as a designated heritage asset. On that basis, it would align with the expectations of the statutory duty, and policies to protect the historic environment contained in the National Planning Policy Framework (the Framework).
13. In addition, the orientation of the proposed dwelling would be such that it would address Frogger Lane more directly and have a stronger, more legible connection with the village. The architecture of the replacement building would provide a more rational, well-proportioned and broadly symmetrical dwelling. The increased massing would be articulated by the use of architectural features including gables, bay windows and the use of hanging tiles, and the proposed hipped roofs would reduce the impression of bulk. The careful choice of brick and clay tiles would further visually integrate the structure into the settlement.
14. In combination, these factors would mean that views from the surrounding countryside, although altered, would not be harmfully affected. Glimpses and views of the proposed dwelling would be seen from nearby public rights of way, but the nature of the appeal site would fundamentally remain the same, as a large house set within ample grounds on the edge of the village. It would continue to read as such to users of the nearby public rights of way. The evidence does not show it would cause harm to any primary landscape features, and the replacement house would remain within a similar plot. Whilst reference is made to interconnecting views between the site and the surrounding natural landscape, no specific important viewpoints have been identified or shown to be adversely interrupted by the proposal.
15. The Council does not consider that the existing dwelling at the appeal site merits retention, and I concur for the reasons described above. It is asserted that the proposed dwelling would be larger than others in the village, but it is not convincingly articulated why that, of itself, would result in harm.
16. The Council also contends that the design does not draw upon the local vernacular. Nevertheless, the context is not one that is so uniform in scale or form that the proposals would appear out of keeping. For the reasons outlined, the proposal would be of a higher design quality than the existing dwelling, thereby adding to local distinctiveness. Neither is it shown how the proposal

would fall short of the overarching design principles set out in the South Worcestershire Design Guide Supplementary Planning Document, March 2018.

17. Accordingly, I find that the proposal would be a positive response to the context suitable to the character and appearance of the area and would have a neutral impact on the special interest and significance of the listed building. It follows that I find no conflict with policies SWDP6, SWDP21, SWDP24 and SWDP25 of the South Worcestershire Development Plan, February 2016 (SWDP). Amongst other things, and in combination, these policies require development to be of a high design quality, that integrates with its surroundings and landscape setting whilst also conserving the historic environment.

Bats

18. Amongst other things, policy SWDP22 of the SWDP seeks to prevent development that would compromise protected species. PPG³ reinforces that planning authorities need to consider the potential impacts of development on protected and priority species, and the scope to avoid or mitigate any impacts when considering planning applications.
19. The application was accompanied by ecological information and surveys that showed the appeal site supports bat roosts for three species of bat. In addition, foraging and commuting activity was detected. All bat species are protected in the UK. Natural England (NE) has issued standing advice in relation to bats as well as guidance⁴ concerning development and protected species to which I have had regard.
20. The demolition of the existing house would destroy the bat roosts, which in the absence of mitigation or compensation measures would clearly be detrimental to a protected species. Paragraph 186 of the Framework sets out a mitigation hierarchy which firstly seeks to avoid such harm. If it cannot be avoided then adequate mitigation should be provided, or as a last resort compensated for.
21. Moreover, having regard to the duties in the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations) the parties agree that it would be separately necessary for the developer to obtain a European Protected Species Licence.
22. The NE guidance explains that such licencing requirements are in addition to the requirement for planning permission, but that before granting any planning permission the decision maker should be confident that such a licence would be forthcoming. Hence, the three derogation tests relevant to the licencing procedure hold some relevance.
23. These are firstly, that the activity is for a certain purpose, for example it's in the public interest to build a new residential development. Secondly, there is no other satisfactory solution that will cause less harm to the species. Finally, that the development does not harm the long-term conservation or survival of any population of the licensed species.

³ Paragraph 016 Reference ID: 8-016-20190721

⁴ Protected species and development: advice for local planning authorities from Natural England and Department for Environment, Food and Rural Affairs. Last updated 25.10.23.

24. There is a consensus between the parties that the proposed development would be in the overriding public interest as it would deliver a more energy efficient dwelling which would have associated environmental benefits⁵. Having regard to the submitted Energy Statement, it includes reference to insulation values for the roof, walls and floor, and I have little basis to find otherwise. It is also broadly agreed that suitable mitigation measures have been identified within the Bat Survey and Impact Assessment⁶ (the bat survey), which could be secured by planning conditions. I have not seen substantive evidence that undermines those findings.
25. The area of disagreement concerns whether another satisfactory solution exists that would cause less harm to the bats. The Council consider that a suitable alternative to the demolition proposed would be to retain and extend the existing dwelling. They assert this would avoid harm to the bat roosts and point to previous, albeit unimplemented, grants of planning permission⁷ to extend the dwelling.
26. Ostensibly, such an approach would align with the mitigation hierarchy in the Framework to avoid harm in the first instance. However, on the limited information before me on this matter, it is not convincingly shown that such an approach would ultimately avoid harm to the bat roosts. It is highly likely that to achieve a similar standard of residential accommodation and energy efficiency, significant alterations would be necessary that would disturb the bat roosts in the roof space. On the evidence provided, it is not demonstrated how previous grants of planning permission would provide a similar standard of accommodation nor how associated construction works would avoid disturbance to the bats.
27. As such, it is not convincingly shown that the activity would be unlikely to be licensed on that basis. This is reinforced by the analysis of the derogation tests in the bat survey⁸ provided, which concludes that the proposals would more than likely meet the derogation tests. Therefore, having regard to the duties under the Habitats Regulations and subject to conditions securing the mitigation measures specified in section 5 of the bat survey, I have little reason to find that a mitigation licence would not be forthcoming.
28. Accordingly, I am satisfied that the development would align with the mitigation hierarchy set out in the Framework and would contain suitable mitigation provisions such that it would not unjustifiably compromise protected bats. Therefore, it would avoid conflict with policy SWDP22 of the SWDP.

Conditions

29. The Council have suggested ten conditions which I have assessed against the tests in paragraph 56 of the Framework, and advice in PPG that encourages keeping the number of conditions to a minimum, and the careful use of pre-commencement conditions.
30. A time commencement condition and the identification of approved plans are necessary in the interests of certainty.

⁵ Page 6, Council's delegated decision report

⁶ Prepared by Countryside Consultants Ltd, section 5

⁷ Referenced W/07/2397/PP & W/10/02226/HET

⁸ Section 5.7

31. The development plan contains policies that promote careful water management, sustainable drainage and energy efficiency. On that basis conditions are imposed to ensure the development proceeds in accordance with the measures provided by the appellant in relation to those matters.
32. In the interests of high design quality, and given the generic references on the plans, a condition is imposed to agree the specific external materials to be used. Moreover, a landscaping scheme to specify retained and proposed planting would assist in assimilating new development into its surroundings and would reinforce important qualities of greenery and spaciousness. Appropriate planting would also support bat foraging in the area. However, this need not be a pre-commencement condition and so I have adjusted the wording accordingly. I have also simplified the requirements to make them more proportionate to the established nature of the domestic plot.
33. As outlined in the second main issue, it is necessary to ensure that the mitigation measures set out in the bat survey are secured, although the wording of the condition need not replicate those requirements in detail. The condition imposed also secures the habitat replacement and enhancement measures contained in the same document in the interests of biodiversity net gain. In addition, to mitigate the impact upon bats, a condition is imposed preventing external lighting save where it has been agreed with the Council.
34. The proposal would replace an existing dwelling and there is little before me to suggest that there have been drainage or flooding concerns in the past. The Council's delegated decision report states it lies in Flood Zone 1 and in an area at low risk of surface water flooding. In these circumstances, I am not convinced that it is necessary to have a condition to require the further agreement of foul or surface water drainage details. Reference to sustainable drainage measures is made in the water management statement that is the subject of a separate condition.
35. The Council also suggested a condition to restrict permitted development rights that are normally afforded to householders. Paragraph 54 of the Framework stipulates that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. The reasons put forward are broadly generic relating to the character of the landscape and nearby heritage asset. However, it is not unusual for dwellings to be close to heritage assets or the wider countryside, so the reasoning lacks precision such that it falls short of the clear justification necessary. As such, I have not imposed such a condition.

Conclusion

36. For the reasons given above the appeal should be allowed.

Helen O'Connor

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawing nos: Location Plan L046-001(B); Proposed Site Plan L046-040(C); Proposed Floor Plans L046-041(B); Proposed Elevations L046-042(A); Proposed Site Sections L046-043(C) and Garage L046-044(B).
- 3) Prior to the first occupation of the development hereby permitted the details set out in the submitted Water Management Statement (contained in the Planning Statement prepared by Greenaway Planning) shall be implemented and retained thereafter.
- 4) The development shall be carried out in accordance with the submitted Energy Statement.
- 5) The materials used in the construction of the external surfaces of the dwelling and garage permitted shall accord with details previously agreed in writing with the local planning authority.
- 6) Prior to the first occupation of the dwelling hereby permitted a scheme of landscaping shall be submitted to and approved in writing by the local planning authority. The scheme shall include details of all existing trees and hedgerows retained, a schedule of proposed planting, a schedule of maintenance and timetable for implementation. The development shall proceed in accordance with the approved details.
- 7) The development shall be carried out in accordance with the recommendations and mitigation measures detailed in section 5, and the habitat replacement and enhancement plans contained in appendices 4a and 4b of the Bat Survey and Impact Assessment prepared by Countryside Consultants Ltd, dated 3 November 2023. On completion of the works, and prior to first occupation of the dwelling, the development shall be inspected by a suitably qualified ecologist to confirm that the mitigation and enhancement measures have been implemented to a satisfactory standard. A statement of conformity and a copy of any bat licenses shall be submitted in writing to the local planning authority.
- 8) Prior to the first occupation of the dwelling hereby permitted details of any external lighting associated with the development shall be submitted to and approved in writing by the local planning authority, including times of operation. The lighting installation shall then be carried out and operated in accordance with the approved details and no other external lighting shall be installed.