



Appeal Decision

Site visit made on 5 November 2024

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 November 2024

Appeal Ref: APP/U2235/W/24/3341332

16 Carisbrooke Drive, Maidstone, Kent ME16 0HY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
- The appeal is made by Mr Brian Geeves against the decision of Maidstone Borough Council.
- The application Ref 24/500257 was approved on 20 March 2024 and planning permission was granted subject to conditions.
- The development permitted is for the demolition of existing conservatory and erection of a single storey rear extension.
- The condition in dispute is No 4 which states that: *The extension/s hereby approved shall not commence above slab level until details of a scheme for the enhancement of biodiversity on the site have been submitted to and approved in writing by the Local Planning Authority. The scheme shall consist of the enhancement of biodiversity through at least one integrated method into the design and appearance of the extension by means such as swift bricks, bat tubes or bee bricks, and through the provision within the site curtilage such as bird boxes, bat boxes, bug hotels, log piles, wildflower planting and hedgehog corridors. The development shall be implemented in accordance with the approved details prior to first use of the extension/s and all features shall be retained and maintained thereafter.*
- The reason given for the condition is: *To enhance the ecology and biodiversity on the site in the future.*

Decision

1. The appeal is allowed and the planning permission Ref 24/500257 for the demolition of existing conservatory and erection of a single storey rear extension at 16 Carisbrooke Drive, Maidstone, Kent ME16 0HY granted on 20 March 2024 by Maidstone Borough Council, is varied by deleting condition 4 and substituting with the following condition:
 - 4) Within three months of the commencement of development hereby approved details of a scheme for biodiversity enhancement at the site shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include but not limited to measures such as providing bird boxes, bat boxes, bug hotels, log piles, wildflower planting, hedgehog corridors etc within the curtilage of the site. These shall be retained and maintained thereafter for the lifetime of the development.

Preliminary Matters

2. On 30 July 2024 the Government published a consultation on proposed reforms to the National Planning Policy Framework (the Framework) and other changes to the planning system. Whilst a direction of travel has been outlined within the Written Ministerial Statement, which is a material consideration, the changes to the Framework can only be given limited weight at this stage, given that no final document has been published.

3. In any event, the policies that are material to this decision are not subject to any fundamental changes, and I am satisfied that this has not prejudiced any party. Consequently, in reaching my decision I have therefore had regard to the Framework as published in December 2023, and any reference to paragraph numbers are to this version.

Background and Main Issue

4. Planning permission was granted for the demolition of the existing conservatory and erection of a single storey rear extension, subject to a condition to secure the enhancement of biodiversity on site. The appellant seeks to have this condition removed. Consequently, the main issue is whether the condition is reasonable or necessary in the interests of biodiversity.

Reasons

5. The Framework seeks to conserve and enhance the natural environment, with Government regulations¹ requiring biodiversity net gain (BNG) of 10% for new development. However, householder developments are specifically exempt² from these requirements.
6. Nevertheless, policies LPRSP15 and LPRQD1 of the Maidstone Borough Council Local Plan Review 2021 – 2038 (LPR), adopted March 2024, seeks to protect and enhance any on-site biodiversity features, and where appropriate, these shall be incorporated within the fabric of the building. The Councils Residential Extensions Supplementary Planning Document (SPD) adopted May 2009 further seeks to protect habitats where possible. However, the supporting text emphasises this is important where extensions are created from the conversion of existing buildings, unlike the complete removal as proposed here.
7. The permission pertains to the removal of an existing single storey conservatory at the rear of the property, and replacement with a full width single storey rear extension. The existing conservatory consists of a lightweight uPVC construction and is unlikely to support any significant ecological habitat. Furthermore, the Council identifies that the proposal would be built on already developed land and the site is considered to be within an area of low ecological value such that no further surveys were required.
8. The development plan requires the provision of biodiversity enhancements within the fabric of the new development, however, given the scale and nature of the development proposed, a proportionate response is required.
9. There are already some on-site biodiversity features in place³ and the appellant would be looking to incorporate further biodiversity enhancements in the future. In my view, these enhancements would be as effective within the curtilage of the site, rather than within the fabric of the development itself, given its modest size and residential usage. As such, I will vary the condition to require the submission of a scheme for biodiversity enhancement within the site curtilage to provide a degree of flexibility for both parties.

¹ The Biodiversity Gain (Town and Country Planning)(Modifications and Amendments)(England) Regulations 2024

² The Biodiversity Gain Requirements (Exemptions) Regulations 2024

³ Bird boxes, bug hotels and log piles.

10. Whilst the LPR policies are more specific regarding the application of biodiversity enhancement, they are broadly consistent with the Framework's objective to conserve and enhance the natural environment. Consequently, the condition is reasonable and necessary in the interests of biodiversity, although it should be varied to allow for greater flexibility.

Other Matters

11. The Council has drawn my attention to other appeal decisions⁴ within the borough, where householder planning permissions have been allowed subject to the same condition as proposed here. Based on the limited information before me, it is unclear whether there were any significant ecological concerns that warranted the provision of the biodiversity measures within the fabric of these structures. Nevertheless, the proposed variation to the condition would be consistent with the approach of these decisions, in securing ecology and biodiversity enhancements, albeit applied more flexibly.

Conditions

12. I have replaced the condition with an updated version which requires details of biodiversity enhancements to be submitted and approved by the Council within three months of the development commencing. This approach gives greater scope for enhancements and enables the parties to agree on the most suitable method of compliance based on the most practical, proportional, and appropriate practices available when the condition is to be discharged.

Conclusion

13. For the reasons given above I conclude that the appeal should succeed. I will vary the planning permission by deleting the disputed condition and substituting an alternative.

Robert Naylor

INSPECTOR

⁴ PINS Refs: APP/U2235/D/23/3335691 and APP/U2235/D/23/3328752