



Appeal Decision

Site visit made on 8 October 2024

by Richard S Jones BA (Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 November 2024

Appeal Ref: APP/A3655/W/24/3347090

Beech Rise, Lock Lane, Pyrford, Surrey GU22 8UX

- 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 Ms Lewis against the decision of Woking Borough Council.
 - The application Ref is PLAN/2024/0016.
 - The development proposed is a planning application for two large horse stables, hay, feed, bedding, rug storage and secure tack room for six horses within one equine use structure following the demolition of an existing two stable block and store.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal site lies within the Green Belt. Subject to exceptions, paragraph 154 of the National Planning Policy Framework (the Framework) explains that the construction of new buildings should be regarded as inappropriate in the Green Belt. In that regard, I note the objection received from Pyrford Neighbourhood Forum that the proposed development would not meet the exception in paragraph 154(d)¹ on the basis that the building would be materially larger than that proposed to be replaced. The Council's delegated report also refers to representation similarly made by Byfleet, West Byfleet and Pyrford Residents' Association.
3. However, the Council has found that the proposed equine structure would provide appropriate facilities (in connection with the existing use of land or a change of use) for outdoor recreation and would preserve the openness of the Green Belt and would not conflict with the purposes of including land within it. Consequently, the Council concluded that the proposal would meet the exception in paragraph 154(b) of the Framework and would not amount to inappropriate development in the Green Belt. Given the proposed siting of the proposed equine structure and based on the evidence before me, I find no reason to disagree.

Main Issues

4. The main issues are the effect of the proposed development on protected species and habitat, and whether there would be a net loss of biodiversity.

¹ The replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces

Reasons

5. Bats are a protected species under the Wildlife and Countryside Act 1981, and a European Protected Species under the Conservation of Habitats and Species Regulations 2017. Circular 06/2005: Biodiversity and Geological Conservation (the Circular) 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 planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.
6. The plans for the appeal proposal show a single equine structure positioned adjacent to the southern boundary of the site. Its provision would follow the demolition of the existing stables and store located in the north-west corner of the site, which is described as a field shelter in much of the related evidence. Although it is more substantial than that term suggests, being a permanent stable block with timber walls, a corrugated cement roof and a paved floor, for consistency purposes and for the avoidance of doubt, I shall also refer to the building hereafter as the field shelter.
7. The Council's reason for refusal is that it has not been demonstrated that the proposed development would not cause harm to protected species or habitats and would not result in a net loss of biodiversity on the proposal site. Two previous applications (PLAN/2022/1174 and PLAN/2023/0679) involving the demolition of the field shelter were similarly refused².
8. Application PLAN/2023/0679 was supported by a Preliminary Ecological Appraisal and Bat Scoping Report dated 3 October 2022 (PEA), which had been prepared for a different application, but which also proposed to remove the field shelter. I note that the Council indicates that it was unable to consider the PEA as it was not submitted with the current appeal application. Nevertheless, the Council would have been aware of it and Surrey Wildlife Trust (SWT) confirm that they have reviewed the PEA as part of its consultation response. Extracts and quotes from the PEA are also provided in support of the appeal.
9. The appellant argues that the single skinned field shelter offers no suitable roosting places for bats, being low, open and generally vulnerable for bat use. That is partly consistent with the PEA insofar as it states that the external ship lap material on all elevations is intact and does not contain any features suitable for utilisation by roosting bats. However, the PEA goes on to state that the internal areas hold potential to be utilised as a night-time feeding perch by bats, but do not provide suitable areas for any other roost type. The assessment found a low bat roost suitability.
10. Nevertheless, the PEA states that "*Further surveys are required for bats on the stable block and the field shelter*" and that "*A repeat inspection of both buildings and one further bat emergence survey is required on the stable block*"³ but that "*No further emergence or re-entry surveys are required for the field shelter*".

² I have also been appointed to determine the appeals against those decisions. Appeal References: APP/A3655/W/23/3332357 and APP/A3655/W/23/3335791

³ The stable block is a separate building, unaffected by the appeal proposal

11. In response to the current appeal proposal, SWT note the PEA was carried out on 8 April 2022, so, in line with CIEEM⁴ guidelines, a validation assessment of the survey data would be required after 18 months. Therefore, the validity of the assessment expired in November 2023. However, the appeal proposal is supported by an email from the author of the appraisal⁵, which refers to an update inspection carried out on 8 December 2023, and which maintained the conclusions of the PEA, in that the field shelter has low bat roost suitability and no potential for crevice roost features.
12. However, neither the PEA nor the email from 8 December 2023 state that the field shelter has a negligible suitability as stated by the appellant. Negligible and low are not the same categorisations of potential suitability; the latter, which is applicable to the field shelter, retains the potential for individual bat roosts.
13. That categorisation therefore differentiates that before me from the application referred to by the appellant, which includes the erection of a replacement stables and storage building⁶. The 'Bat Scoping and Preliminary Ecological Appraisal' submitted in support of that application found that the overall potential for the affected stable buildings to support potential for roosting bats to be negligible. In those circumstances it is understandable to proceed with a precautionary approach through the imposition of a condition.
14. For this appeal, although SWT confirm that the December site visit provides an update assessment to support the planning application, it rightly goes on to highlight that the email does not provide recommendations or a conclusion on how to proceed, although it is understood that the recommendations detailed in the PEA are maintained. That is, that a further survey be carried out and that *"All further surveys must be conducted during the peak activity period between May and August"*. That is a clear recommendation and SWT interpret it as including an update inspection of the field shelter.
15. Therefore, whilst a repeat inspection was carried out, SWT highlight the limitations of doing so in December within the bat hibernation season when there is a low likelihood of recording feeding evidence.
16. I do not disagree, not least because the PEA refers to the internal areas potential to be utilised as a night-time feeding perch, rather than for hibernation, so there would not have been such a roost in December when bats are in hibernation, rather than actively feeding.
17. Moreover, I am mindful that the PEA itself was carried out towards the beginning of April (2022), also outside the optimal period of May-August and after the winter when any feeding remains from the year before may have been long gone. Even so, its conclusions are clear that a further internal inspection is necessary, and that should take place during the main bat active season, to establish whether or not bat roosts are present. Carrying out an inspection in the month of December does not answer that question and does not meet the recommendations of the appellant's own PEA.
18. The appellant refers to a supporting 'Additional Equine Justification Statement' (March 2024) which states that at the time of the consultant's site visit, there

⁴ The Chartered Institute of Ecology and Environmental Management

⁵ The Ecology Co-op Environmental Consultants

⁶ PLAN/2023/0591

was no daytime visual evidence of any bat activity or any visual evidence of any night-time feeding activity in or within the field shelter. However, those observations are unsurprising given that the site visit took place in February 2024, again, outside the peak activity period when bats are in hibernation. Moreover, the appellant confirms that the author of the report is not an ecologist. I therefore attach only limited weight to those observations.

19. The appellant explains that taking a precautionary approach the whole structure has been wrapped in green meshing since December 2023, during the bat hibernating season, to prevent access by birds and bats (after checking that there were none in the structure). It is therefore argued that as there is no access, there is now no potential to nest/roost within the structure.
20. The Council refer to its site visit when it observed that the meshing did not go all the way down to the base of the field shelter and that there were other gaps. SWT similarly note that the mesh does not provide full coverage so it is feasible that bats (and/or birds) could enter the structure.
21. Nevertheless, although there is potential for bats to become meshed in, the meshing does significantly reduce the likelihood of bats accessing the field shelter and the appellant has evidenced the use of debris netting which is fit for the intended purpose of obstructing birds and bats.
22. However, meshing the field shelter does not address the question of whether or not it is (or would be, if bats were not excluded) used as a bat roost. If a feeding perch/roost was recorded as being present within the field shelter, then mitigation and compensation and a mitigation licence may be required prior to works commencing.
23. SWT state that there is insufficient information to determine that the building has negligible suitability to support a bat roost (or nesting birds) and that the Council should note the limitations highlighted. However, SWT also state that the Council may review that sufficient information is available to determine the presence/likely absence of bats using the field shelter.
24. In that context, the Circular states that bearing in mind the delay and cost that may be involved, developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by the development. In this case, it has not yet been determined that a feeding roost, or another type of bat roost is likely absent from the field shelter to a sufficient confidence level because there is a recommendation for a repeat inspection.
25. As per the Circular, the presence or absence of protected species and the extent to which they may be affected should be established in advance of determination, and any mitigation understood/secured as part of any permission granted. In this case, as the potential is for a roost of lower conservation status, there could be flexibility about mitigation, but I am unable to rule anything in or out in the absence of a robust survey/inspection. In the circumstances, it would not be appropriate to leave a survey at the correct time of year to be secured by condition.
26. I appreciate that if the field shelter is inspected during the forthcoming main bat active season, it is very unlikely that it will be found to have been used as a feeding roost given it has been meshed since December 2023, when it would

not have been used due to its unsuitability as a hibernation roost. Therefore, to properly answer the question of whether it is used as a feeding perch/roost, the mesh will need to be removed prior to the optimal period.

27. I understand that the appellant considers it unreasonable and unnecessary to incur the costs of additional surveys but that is the clear recommendation from her own PEA of how to move matters forward.
28. The appellant asserts that denying access for possible feeding purposes is not harmful, and that the bats/birds may be slightly miffed that access has been denied but being miffed is not harmful or contrary to legislation. However, if the field shelter was used as a bat roost, then the mesh could theoretically be construed as intentionally or recklessly obstructing access to a structure or place used for shelter or protection by bats (so potentially an offence under the Wildlife and Countryside Act).
29. It is proposed to build the equine structure on the sand and rubber menage, so in itself is unlikely to cause harm to protected species or habitats. The area of the existing stable would also be returned to pasture. To offset the impact of the proposed development and other site developments the appellant has installed two bat boxes, six small bird boxes, one large bird/small owl box and planted ten fruit trees, so there is no longer a grass monoculture. On that basis she asserts an obvious nett bio-diversity gain.
30. Nevertheless, for the reasons explained, I conclude that it has not been demonstrated that the scheme would avoid or adequately mitigate unacceptable harm to bats, which are a protected species. That is contrary to Woking Core Strategy (October 2012) Policy CS7 and the Framework, which state, amongst other things, that any development that will be anticipated to have a potentially harmful effect or lead to a loss of features of interest for biodiversity will be refused.

Other Matters

31. I note the appellant's concerns regarding the Council's handling of the application but for the avoidance of doubt, I have considered the appeal anew, having regard to all of the evidence before me as well as my own site visit. The appellant's concerns regarding the Council's handling of other applications are beyond the scope of this appeal and it would be clearly inappropriate for me to comment on the submissions made about the Council's case officer for the application.
32. I note the appellant's concerns over the Council's references to Twisted Stone Golf Course, but I am aware that the land does not form part of the same.

Conclusion

33. For the reasons given above, and having considered all other matters raised, I conclude that the proposal would be contrary to the development plan as a whole and material considerations do not indicate that the appeal should be determined otherwise than in accordance with the development plan. The appeal should be dismissed.

Richard S Jones

INSPECTOR