



Appeal Decision

Site visit made on 7 January 2025

by **C Harding BA (Hons) PGCert PGDip MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 31st January 2025

Appeal Ref: APP/M2840/W/24/3348593

16 Rockingham Hills, Oundle, North Northamptonshire PE8 4QA

- 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 Esther Kane against the decision of North Northamptonshire Council.
 - The application Ref is NE/24/00273/FUL.
 - The development proposed is conversion of existing garage to ground floor bedroom with accessible wet-room, construction of new garage to side with driveway alterations. Change of use of amenity land to residential curtilage to allow for driveway alterations. Flat roof extension to side of previous extension with new roof lanterns, canopy and roof finish.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The revised National Planning Policy Framework ('the Framework') was published on 12 December 2024. I have considered the changes and as they are not material to the proposal, further comments were not sought from the parties. I have, however, determined the appeal having regard to the revised Framework, and where I have referenced paragraph numbers, they relate to the revised version.

Main Issue

3. The main issues are:
 - the effect of the proposal upon biodiversity and protected species;
 - the effect of the proposal upon the character and appearance of the area, and;
 - if any harm is found, whether such harm is outweighed by the personal circumstances of the appellant.

Reasons

Protected species

4. Section 40 of the Natural Environment and Rural Communities Act 2006 requires me to have regard to the purpose of conserving biodiversity. Bats are protected under the Wildlife and Countryside Act 1981 and The Conservation of Habitats and Species Regulations 2017.
5. Circular 06/2005 advises 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. It goes on to state that surveys should be carried out before planning permission is granted.

6. The appeal property is a residential property located within a development of similar dwellings. The evidence indicates that a bat licence has previously been issued around 650 metres to the south of the site. This indicates that bats, which are protected species, have previously been active in the area.
7. There is limited detailed evidence before me in relation to the likelihood of bats being present within or around the site. I acknowledge that the appeal property is a relatively modern building, and appeared at the time of my visit to be in sound structural condition. However, this alone does not mean that the property would be unsuitable for use by bats and given the previous record of bat activity close to the site, I conclude that there is a reasonable likelihood of protected species being present on the site.
8. The appellant has referred to advice relating to when bat surveys should be requested, however the source of this advice is unclear. Moreover, the quoted advice relates to situations where a bat survey may be required, and it is possible that the need for a bat survey could be eliminated by means of a preliminary ecological appraisal, however no such appraisal has been provided. Ultimately, with no substantive evidence before me with regard to the ecological interest of the appeal site, it is simply not known whether protected species are present and, if there are, whether or what mitigation measures would be appropriate.
9. As a result of this uncertainty, and having regard to the advice within Circular 06/2005, this is not a matter which could be adequately addressed by means of a planning condition.
10. With regard to Biodiversity Net Gain ('BNG'), I note that the planning application was submitted prior to 2 April 2024, and therefore the provisions of The Biodiversity Gain Requirements (Exemptions) Regulations 2024 apply in this instance, and there is no statutory requirement for BNG to be delivered by the proposal.
11. Overall, it has not been shown that the proposal would avoid harm to biodiversity and protected species. It would be contrary to North Northamptonshire Joint Core Strategy Policy 4, as well as Chapter 15 of the Framework, which together state that development should seek to avoid, mitigate or compensate for any adverse impacts on biodiversity.

Character and appearance

12. The appeal property is a detached residential dwelling, with a single-storey attached garage. Adjacent to the property is an area of open space which is currently grass and contains a mature tree. The area is characterised by residential properties with open frontages and areas of green open space, and the area adjacent to the appeal property has wider value in combination with a larger area of green space to the south. Overall, the immediate surroundings are verdant in nature.
13. I understand that a small part of the open space is within the ownership of the appellant, although it falls outside of the fenceline of the property. Although in private ownership, this small area contributes to the amenity value of the wider area in visual terms.

14. The proposal would comprise the erection of a single storey extension to the existing garage, projecting to the rear, and the existing driveway would be extended. The additional hardstanding would include land which currently forms open space, and a very minor amount of open space would be occupied by the corner of the proposed extension.
15. Although no extensions to existing fencelines are proposed, the use of the extended hardstanding for the parking of vehicles would reduce the currently open character of this area, as would the slight encroachment of the garage extension. However, the area of open space which would be lost would not be of significant size, and given the size of the wider open space area and the larger area located on the other side of the road, this loss would be minor. The proposal would not be unacceptably harmful as the open character of the residential area would remain.
16. The proposed extensions would elongate the frontage of the property. However, they would be single storey in nature and would remain subservient to the host dwelling. The pitched roof, which would tie into an existing front porch canopy would result in a coherent frontage to the property.
17. The flat roof extension would increase the size of the house to a significant extent, but it would not be visually prominent and the existing garden is of sufficient size that it could accommodate the proposal without a sense of overdevelopment.
18. I therefore conclude that the proposal would not harm the character and appearance of the area. It would be in accordance with Policy EN11 of the East Northamptonshire Local Plan and Policy 8 of the North Northamptonshire Joint Core Strategy ('NNJCS'). Together, and amongst other factors, these policies state that development proposals should relate well to the surrounding environment, integrate positively with the surrounding area, and should not detract from the character of the existing building.
19. The Council has also cited conflict with NNJCS Policy 1 in relation to this issue. The policy states that where development conflicts with the development plan, that planning permission will be refused unless material considerations indicate otherwise. As I have found that the proposal otherwise accords with the development plan in relation to this main issue, there would be no conflict with NNJCS Policy 1 in this respect.
20. The Council's decision notice also makes reference to the East Northamptonshire Householder Extensions Supplementary Planning Document. However, although I have had regard to this document, I have not been directed to any particular text within it and it has not been determinative in my consideration of this main issue.

Personal circumstances

21. The appeal proposal would improve the accessibility of the property for a relative of the appellant who is a wheelchair user and visits the property. The proposed adaptations would include a ground floor bedroom and wet room and would simplify the internal layout of the property. I have therefore had regard to Article 8 of the Human Rights Act 1998 and the Public Sector Equality Duty ('PSED') set out at Section 149 of the Equality Act 2010. This sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it.

22. The wheelchair user would have a protected characteristic for the purposes of the PSED. I have therefore afforded greater weight to the needs of the individual as required by the PSED. The proposed alterations would allow an improved layout of the ground floor space, allowing improved manoeuvrability and a ground floor bedroom and wet room to accommodate the needs of a wheelchair user.
23. The proposed extensions would advance the equality of opportunity for a user with a protected characteristic. Accordingly, these benefits in assisting the needs of a person in a protected group, weigh in favour of the proposal.
24. I have found that the proposal would conflict with policies in the development plan that relate to matters of biodiversity and protected species. This conflict weighs heavily against the proposal, particularly in applying the precautionary principle, as there is no certainty in relation to whether protected species are present, what any effect may be or what mitigation may be required. Against that, I must balance the fact that the proposal would allow the property to be adapted such that it would meet the needs of a wheelchair user related to the appellant.
25. The PSED does not necessarily override other considerations. However, it is a factor which needs to be weighed in the planning balance. It is unclear how the appellant's relative could otherwise be accommodated within the property without the proposed alterations, and these circumstances mean that I attach considerable weight to the needs of the wheelchair user and the need to adapt the property. However, these needs do not outweigh the wider public interest in preventing harm to protected species.

Other matters

26. The appellant has expressed concerns in relation to the Council's handling of the planning application. However, these fall outside of the scope of this appeal, which I have considered on its merits.

Conclusion

27. The dismissal of the appeal would interfere with the rights afforded by Article 8 of the Human Rights Act 1998. However, these are qualified rights, and any interference must be justified where it is in accordance with the law and is necessary in a democratic society, applying the principle of proportionality.
28. In acknowledging the above, the harm that I have identified is such that the dismissal of the appeal would be a proportionate and necessary response that would not violate the rights of the appellant's relative under Article 8. Furthermore, the protection of the public interest cannot be achieved by means that are less interfering with these rights.
29. For the reasons given above, I conclude that the proposal would conflict with the development plan when read as a whole, and there are no material considerations, including the PSED and the Human Rights Act 1998, which would indicate taking a decision other than in accordance with it. I therefore conclude that the appeal should be dismissed.

C Harding

INSPECTOR