



Appeal Decision

Site visit made on 15 January 2025

by **J Hobbs MRTPI MCD BSc (hons)**

an Inspector appointed by the Secretary of State

Decision date: 05 February 2025

Appeal Ref: APP/M2840/W/24/3344309

2 Harbourough Road, Rushden, Northamptonshire NN10 0LT

- 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 James Morphett and Miss Abigail Griffiths against the decision of North Northamptonshire Council.
 - The application Ref NE/23/00523/FUL was approved on 20 February 2024 and planning permission was granted subject to conditions.
 - The development permitted is conversion of existing five bedroom dwelling to create 4 x flats; partial roof extension; addition of terrace and demolition of existing garage.
 - The conditions in dispute are Nos 6 and 7 which state that: *"Prior to the commencement of development above slab level, an ecologist report reviewing their findings and to assess any impacts on GCN potentially near the site, and any proposed mitigation shall be submitted and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details."* and *"Prior to the commencement of development above slab level, a Preliminary Bat Roost Assessment be carried out by a suitably qualified ecologist and any proposed mitigation, shall be submitted and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details."*
 - The reasons given for the conditions are: *"In order to ensure that adverse impacts on great crested newts are adequately mitigated and to ensure that site works are delivered in full compliance with the organisational licence (WML-OR112) if required."* and *"In order to safeguard biodiversity."*
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Decision

1. The appeal is allowed and the planning permission Ref NE/23/00523/FUL for conversion of existing five bedroom dwelling to create 4 x flats; partial roof extension; addition of terrace and demolition of existing garage at 2 Harbourough Road, Rushden, Northamptonshire NN10 0LT granted on 20 February 2024 by North Northamptonshire Council, is varied by deleting conditions 6 and 7.

Preliminary Matters

2. On 12 December 2024 the Government published a revised version of the National Planning Policy Framework (the Framework). The guidance on matters which are in dispute within this appeal has not materially changed. Therefore, I have not consulted the parties on the changes to the Framework.

Main Issue

3. The main issue is whether conditions 6 and 7 are necessary and reasonable to ensure that the proposal does not have a harmful effect on protected species.

Reasons

Condition 6

4. On 17 August 2023 the Council's ecologist noted that Great Crested Newt (GCN) survey and licence returns were found near the site. They asked for the appellant's ecologist to review these findings to assess any potential impacts on GCNs near the site. The appellant responded on 10 November 2023 indicating that the nearest pond where GCNs were recorded was approximately 1km away and that a licence application was issued in 2013 for an area approximately 700m from the appeal property. The appellant's ecologist advised that these distances were well beyond consideration for GCNs regardless of the size of development, unless GCNs had been recorded on site. Also, the appellant's ecologist advised that there is no habitat within the appeal site that would be suitable for GCNs, and that the area is an extremely inhospitable environment for GCNs for various reasons.
5. The Council's ecologist was consulted on these comments but did not provide a response. The application was determined over three months after the comments were provided. No evidence or extenuating circumstances have been provided to explain why the Council's ecologist could not respond within that timeframe.
6. The information was provided by a suitably qualified ecologist who works for a CIEEM¹ registered practice. It addressed the Council's concerns in full. Without evidence to the contrary, I cannot conclude that further information would be required to ensure that the proposal would not have a harmful effect on GCNs. It would also not be reasonable to attach a condition requesting information that has already been submitted, consulted upon, and where the consultee has had a significant amount of time to respond.
7. For these reasons, I conclude that Condition 6 is neither necessary nor reasonable and therefore, should be removed from the planning permission.

Condition 7

8. On 19 June 2023 the Council's ecologist commented that a Preliminary Bat Roost Assessment should be carried out to ensure that there are no material concerns regarding bats and their roosts. Subsequently the appellant submitted a Full Bat Survey Report² (Bat Report). The Bat Report concluded that the structure has low suitability for roosting bats and the habitat present within the site has negligible suitability for foraging and commuting bats. The Bat Report concluded that no further surveys would be required and did not recommend any mitigation measures.
9. The Council's ecologist was reconsulted on the planning application following the submission of the Bat Report. On 17 August they provided comments in relation to GCNs but did not make any comments on the Bat Report. 6 months passed between the ecologist's final comments and the determination of the application. No reason or extenuating circumstances have been put forward to explain why the Council's ecologist did not comment on the Bat Report prior to the determination of the planning application.

¹ Chartered Institute of Ecology and Environmental Management

² 2 Harborough Road, Rushden, Northamptonshire, Proposed Extension to Existing Dwelling, Full Bat Survey Report, EcoLine Environmental, August 2023

10. The Bat Report was produced by a suitably qualified ecologist who works for a CIEEM registered practice, and the survey was undertaken within the optimum period. The results are not yet two years old and were very recent when submitted to the Council. Without evidence to the contrary, I cannot come to a different conclusion to that stated within the Bat Report. Therefore, the submission of further evidence would not be necessary to ensure that the proposal would not have a harmful effect on bats.
11. The Council has indicated that they would be willing to change the wording of Condition 7 so that it would require the submission of a Full Bat Survey rather than a Preliminary Bat Roost Assessment. As above, it would not be reasonable to attach a condition requesting information that has already been submitted, consulted upon, and where the consultee has had a significant time to respond.
12. For these reasons, I conclude that Condition 7 is neither necessary nor reasonable and therefore, should be removed from the planning permission.

Other Matters

13. An interested party has indicated that the rights of neighbouring occupiers under Article 1 of the first protocol and Article 8 of the Human Rights Act 1998 would be violated if the appeal were allowed. The proposed roof terrace would be on the other side of the road from the neighbouring garden on Little Street. The separation and intervening boundary treatment would ensure that the neighbouring garden would not be overlooked such that neighbouring occupiers would suffer unacceptable harm to their living conditions. I am satisfied that a grant of planning permission would not unacceptably interfere with the neighbouring occupiers' rights to the peaceful enjoyment of their possessions and to a private and family life and home. It is proportionate in these circumstances to allow the appeal.
14. The Grade II listed 61 Little Street³ neighbours the appeal property. It dates to the late 18th Century/early 19th Century and contains several historical features including squared coursed limestone walls and a wooden columned porch. In accordance with Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the 1990 Act) I shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. The appeal proposal would not alter the listed building and would maintain the relationship between the two properties. The appeal property would continue to be in residential use and the modest external alterations would be on the far side of the property from the listed building. Therefore, the appeal proposal would preserve the setting of 61 Little Street.
15. Part of the appeal property is within Rushden Conservation Area (CA). In accordance with Section 72(1) of the 1990 Act, I shall pay special attention to the desirability of preserving or enhancing the character or appearance of the area. The significance of the CA partly derives from the historic pattern of development surrounding Rushden Town Centre. The appeal proposal would include sympathetically designed alterations to the appeal property which would maintain the prevailing pattern of development and design of nearby buildings. As such, the proposal would preserve both the character and appearance of the CA.

³ List Entry Number: 1266102

16. The appeal property is in proximity to Upper Nene Valley Gravel Pits Special Protection Area (SPA) which is designated as a protected site due to its international importance as wetland habitat for non-breeding waterbirds.
17. Recreational disturbance is one of the principal threats to the habitat and to the waterbirds themselves. The Upper Nene Gravel Pits Special Protection Area Supplementary Planning Document 2015 and the Upper Nene Gravel Pits Special Protection Area Supplementary Planning Document Addendum to the SPA SPD: Mitigation Strategy 2016 (Mitigation Strategy) identifies that a net increase in dwellings within 3km radius of the SPA would result in a likely significant effect on it, unless avoidance and mitigation measures are implemented.
18. As the appeal property is within 3km of the SPA, I conclude that by itself, and in combination with other development in the area, it would have a likely significant effect on the SPA due to increased recreational disturbance. As the competent authority, it is necessary for me to conduct an Appropriate Assessment in relation to the effect of the development on the integrity of the SPA.
19. Given the modest scale of the proposed development and site constraints, there is no scope for on-site mitigation. In this instance, it is appropriate to secure a financial contribution toward Strategic Access Management and Monitoring. This approach is advocated for within the Mitigation Strategy.
20. The Council has confirmed that a per dwelling contribution has been received from the appellant. I am satisfied that the Council as a responsible public body will transfer the funds to the organisation responsible for administering the mitigation. Moreover, the Mitigation Strategy has been endorsed by Natural England. I am therefore satisfied that a contribution toward mitigation has been secured and will be used for its intended purposes. In turn, I am satisfied that the mitigation measures would overcome the proposal's harmful effect on the SPA. Consequently, there is no clear reason to refuse planning permission on this basis.

Conclusion

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

J Hobbs

INSPECTOR