



Appeal Decision

Site visit made on 2 June 2025

by **P Terceiro BSc MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19 June 2025

Appeal Ref: APP/R3650/W/25/3358989

Land Adjacent to Stillington, Wykehurst Lane, Ewhurst GU6 7PE

- 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 and Mrs K Whyte against the decision of Waverley Borough Council.
 - The application Ref is WA/2023/01024.
 - The development proposed is the erection of a dwelling together with associated landscaping and access.
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposed development on protected species, with particular regard to great crested newts, roosting bats and hazel dormouse.

Reasons

3. The appeal site is a large parcel of land which accommodates a small outbuilding sited close to its front boundary. The site slopes downwards from the front elevation towards the middle section where there is a brook and small pond, after which the land slopes up towards the rear boundary. The site is covered by a significant number of trees with the majority being located along the boundaries and western half of the site. The front boundary of the site comprises hedging, in addition to mature trees. The site is accessed off Wykehurst Lane via a long and narrow access track.

Great Crested Newts (GCN)

4. The Preliminary Ecological Appraisal (PEA), dated 16 July 2024, confirms that the site provides sub-optimal terrestrial habitat for GCN, being dominated by modified grassland with an absence of refuge opportunities. However, the presence of GCN for transient periods cannot be discounted.
5. The PEA advises that the proposed development could result in the loss or significant disturbance of a portion of modified grassland, and it awards an amber risk score using the NE rapid risk assessment for GCN. It therefore recommends a further Environmental DNA (eDNA) survey of any ponds within 100m of the site to determine the presence or likely absence of GCN in the landscape surrounding the site.
6. Subsequently, the pond on site was subject to an eDNA survey which confirmed the presence of GCN. However, the submitted Drainage Strategy Report shows a

drainage channel entering the brook close to the pond. The PEA and the Ecological Addendum provide limited evidence regarding any potential implication of this drainage solution on GCN. Thus, I cannot be certain that the proposal would not harm this protected species.

7. In relation to nearby ponds, the PEA advises that recent studies carried out within the pond located in the adjacent garden found it to be unsuitable for GCN. While there is a pond that is connected to the pond on site via the brook and ancient woodland, brooks are generally unsuitable to support GCN as they cannot lay eggs in the fast water flow. As such, it is unlikely that there is connectivity between this neighbouring pond and the site. The remaining ponds are separated from the site by urban and agricultural infrastructure, and these landscape features are likely to represent a substantial barrier to dispersal, thereby minimising connectivity with the site.
8. However, the Council advises that there is evidence of two more ponds within 100m of the appeal site, which do not appear to have been included within the PEA. While I appreciate that access to third-party land may not be possible, it is unclear from the Ecological Addendum whether a desktop assessment of these ponds has been carried out. On this basis, their connectivity with the site is not known.
9. Current advice¹ 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 the planning permission is granted, otherwise all relevant considerations may not have been addressed in making the decision.
10. As the assessment has not considered all aspects of the proposed development, and in the absence of any certainty regarding whether all nearby ponds have been taken into account, I cannot rule out significant harm to GCN. As such, notwithstanding any European Protected Species Licence that may be granted by Natural England, I cannot be sure what measures would be necessary to avoid, adequately mitigate or, as a last resort, compensate for any significant harm to GCN, as required by paragraph 193 of the National Planning Policy Framework (the Framework); or whether such measures could be provided and secured. Therefore, the proposal would potentially cause unacceptable harm to GCN.

Roosting bats

11. The Arboricultural Impact Assessment (AIA), dated 18 April 2024, recommends removal of one tree (T24, cherry) and deadwood removal on two trees (T2 and T34, both ash), as a best management practice. However, the evidence confirms that these trees will be retained, since they do not require removal to facilitate the development. This is substantiated by the Landscape Strategy (drawing L90-200 rev E), which shows that these trees would be retained. Given this and noting the relationship and distance between these trees and the proposed dwelling, a ground-level tree roost assessment for bats would not be justified.
12. The dwelling would be within or close to the current branch spreads of a few trees, which will need facilitative crown pruning to provide clearance between the outer

¹ Paragraph 99 of Circular 06/2005: Biodiversity and Geological Conservation and 9.2.4 BS 42020:2013 Biodiversity Code of Practice.

branches and the new building, as well as sufficient clearance for construction works and for the new access.

13. The Ecology Addendum submitted with this appeal assesses the trees proposed for crown pruning / lifting provide in terms of their value to support roosting bats. The Ecology Addendum confirms that because of their structural features and characteristics, these trees generally offer limited suitability to support roosting bats.
14. The Council provided limited evidence to dispute the findings of the Ecology Addendum and therefore the weight of the evidence leans in the direction of the appellant. As such, I find that requiring a bat roost emergence survey for trees that provide a negligible value to support roosting bats would not be justified.

Hazel dormouse

15. The AIA advises that approximately 13m of hedge on the site's front boundary would be removed to facilitate the site access. The PEA sets out that the section of hedge that would be removed comprises blackthorn, hawthorn and hazel, with some ash, bramble and ivy. The habitats recorded on site are considered to provide sub-optimal habitat for foraging, commuting and nest building dormice. The hedgerow may provide some good quality commuting habitat. As such, the presence of hazel dormouse cannot be discounted.
16. While the length of hedgerow proposed for removal would not be small, the Ecological Addendum explains that the loss of the existing hedgerow as proposed would not isolate or fragment access between habitats in the wider landscape, since better quality commuting routes for dormice are available via the vegetation on the west section of the site. Furthermore, the section of hedgerow proposed for removal has been punctured by a gate.
17. Whilst the Council has not commented on the Ecological Addendum or given clearance to its findings, it is unlikely that the proposal would give rise to an adverse effect on dormice. Therefore, in this case undertaking further survey work would not be proportionate. The development could reasonably progress under a precautionary method to be implemented during construction, and this could be secured by planning condition, were I minded allowing the appeal.

Conclusion on this main issue

18. Drawing all of the above together, while the proposal would not have an adverse effect on roosting bats and hazel dormouse, the proposal does not adequately demonstrate the effect on GCN. On this basis, it would be contrary to Policy NE1 of the Waverley Borough Local Plan Part 1: Strategic Policies and Sites 2018, which seeks to conserve and enhance biodiversity within Waverley.

Other Matters

19. Reference is made within the Officer Report to the Wealden Heaths and to the Thames Basin Heaths Special Protection Areas. Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017 (as amended) indicates that the requirement for an Appropriate Assessment is only necessary where the competent authority is minded giving consent for the proposal. As the appeal is being dismissed on other grounds it is not necessary for me to consider this matter further.

Planning Balance

20. It is common ground that the Council cannot demonstrate a five year supply of deliverable housing sites. The Council advises that this figure is 4.28 years, whereas the appellant directs me to an appeal decision² where the Inspector found this figure to be 4.01 years. I have considered the figure provided by the appellant for the purposes of this appeal. This engages paragraph 11 d) ii. of the Framework, which states that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
21. The appellant asserts that the proposal would be for a self-build dwelling. However, with no legal agreement to ensure the proposal would come forward as a self-build plot, this matter is a neutral factor in the determination of this appeal.
22. In terms of benefits, the proposal would meet the Framework's objectives of boosting the supply of housing in its proximity to the footpath network would maximise opportunities for walking and cycling. The proposal would not result in the loss of agricultural land and the dwelling would incorporate energy conservation characteristics resulting from efficient building layout, orientation and insulation. Future residents would contribute to the local economy and there would be some economic benefits accrued from the construction process. However, given that the proposal is for one single dwelling, these benefits would carry limited weight in favour of the scheme.
23. On the other hand, the submission has failed to demonstrate that the proposed development would have no harmful effect on protected species, specifically GCN. In this regard, the proposal would conflict with paragraph 193 of the Framework, which seeks to protect biodiversity. The magnitude of this harm would be significant.
24. Consequently, the adverse impacts of the proposal significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply.

Conclusion

25. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. For the reasons given above the appeal should be dismissed.

P Terceiro

INSPECTOR

² Appeal Ref APP/R3650/W/21/3278196