



Appeal Decision

Site visit made on 17 June 2025

by **J Hills MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11 July 2025

Appeal Ref: APP/W1145/W/24/3356115

Park Vale Cottage, South Hole, Bideford, Devon EX39 6HW

- 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 Mrs Sarnia McGoun against the decision of Torridge District Council.
 - The application Ref is 1/1273/2023/FUL.
 - The development proposed is demolition of existing dwelling and replaced with proposed 4 bed, two storey dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing dwelling and replaced with 4 bed, two storey dwelling at Park Vale Cottage, South Hole, Bideford, Devon EX39 6HW in accordance with the terms of the application, Ref 1/1273/2023/FUL, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with drawings: 2313_P_01 A dated 13/12/2023; 2313_P_05 A; 2131_P-06; 2313_P_07 A; 2313_P_09; 2313_P_10 A; 2313_P_11 A; 2313_P_12 A; 2313_P_13 A; 2313_P_14 A; 2313_P_15 A; 2313_P_16; and 2313_P_17 A dated 05/09/2023.
 - 3) The development hereby permitted shall be undertaken in accordance with the recommendations of the Ecological Impact Assessment prepared by Lakeway Ecological Consultancy dated December 2023; the precise details of which shall be agreed in writing by the local planning authority prior to any development commencing.
 - 4) No development shall take place until a detailed construction environmental management plan has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
 - 5) No development above ground floor level shall take place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the local planning authority.

The submitted details shall:

- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged

from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;

- ii) include a timetable for its implementation; and,
- iii) provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

The development shall be carried out in accordance with the approved details. The sustainable drainage system shall be managed and maintained thereafter in accordance with the approved management and maintenance plan.

Main Issue

2. The main issue is the effect of the proposed development on protected species.

Reasons

3. Regulation 9(3) of the Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations) requires a competent authority to have regard to the requirements of the associated Directive so far as it may be affected by the exercise of its functions. This includes any proposal that might lead to the deterioration or destruction of the breeding sites and resting places of European Protected Species (EPS) under Article 12(1). This includes bats and the places that they roost, irrespective of whether or not they are present at the time the development is carried out.
4. It has been established that planning permission should ordinarily be granted save only in cases where a proposed development would either be likely to offend Article 12(1) or unlikely to be licensed pursuant to the derogation powers. The duty to have regard to the requirements of the Directive, as set out in Regulation 9(1), remains but the judgement establishes that there is no need to carry out a detailed assessment as to whether there would be a breach of Article 12(1) or whether derogation from that article would be permitted and a licence granted.
5. Nevertheless, I am still required to ensure that any potential harm to an EPS would be adequately mitigated and whether or not the proposed development is unlikely to be licensed. Bearing in mind the suggested mitigation measures I find that the proposal would not offend Article 12(1). I am satisfied that the mitigation hierarchy has been followed and that there would be no significant harm to the long-term conservation status of the bat species that are present.
6. I am satisfied that an appropriately worded condition would provide the necessary detail and certainty to secure the required mitigation. As the Planning Practice Guidance makes clear, conditions should be used to enable development to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects. Having carefully reviewed the related condition, and in the light of my own professional expertise, I have no reason to doubt that it would be ineffectual in this instance.
7. Turning to licensing matters, the views of NE are determinative and carry great weight. In this respect, there is little to show NE has been involved in any consultation. That said, the Council sought expert advice from an ecologist who

has reviewed the likelihood of gaining a licence from NE, referencing the 3 derogation tests. The collection of their responses pull in different directions rather, where earlier comments state that the public interest test would be likely to be accepted by NE. This is due to the claim that the dwelling is poorly constructed, and that no satisfactory alternative exists, given the proposal would replace a dwelling. Later remarks suggest the design is not acceptable, and that the aforementioned tests would not necessarily be passed. It is of note however that the Council did not refuse the scheme on design grounds.

8. Based on the evidence before me and my own site observations, even though the dwelling would be substantially larger than its predecessor, it would be positioned over its footprint, meaning a satisfactory alternative would be unlikely. Moreover, the dwelling and the cabin in particular are in a very poor state of repair, to the extent that renovation would be an unrealistic option. There would consequently be public health and safety reasons for replacing the dwelling and cabin. Additionally, if the cabin were to be left, its condition would be likely to deteriorate to the point where the existing roost would almost certainly be compromised. There is consequently a sound justification for the roost's removal and relocation to a new bat house, which relates to the 3rd test of maintaining a favourable conservation status.
9. Additionally, even though a planning condition to control internal light would be unlikely to pass the tests of enforceability, the proposed dwelling would be positioned some considerable distance from the new bat house. Moreover, the proposed orientation and louvred design would concentrate internal light spill away from the proposed bat house. Having walked within the appeal site to the point where the roost would be located, it was evident that this spot is densely vegetated and particularly dark, even at around 11:30 in the middle of June on a bright, sunny day. As such, the bat house that has been designed in a way that would not encourage interaction, would be adequately set back and screened from the dwelling and its garden.
10. Notwithstanding assertions to the contrary, it would be possible to condition the proposed low level external lighting to minimise light spill at night. However, the appeal site is already in a residential use, where any amount of external lighting could conceivably be installed. There is also little evidence that external lighting is currently restricted in any way. In any case, for these reasons given above, light spill from the development is not likely to compromise the favourable conservation status of bats. Therefore, the use of such a condition to limit any external lighting would not be reasonable or necessary.
11. Accordingly, there is no reason to doubt that a mitigation license would not be issued on the basis of the evidence that is before me and my own observations. Furthermore, it is not for me to determine whether the legal tests for a license would be met as this would duplicate the function of another regulatory body and would be contrary to the well-established principle that non-planning regimes are assumed to operate effectively.
12. For the reasons given, I agree that, subject to condition, no significant harm to protected species would be caused. Consequently, the proposal would not conflict with Policy DM08 of the North Devon and Torridge Local Plan (LP). This requires, among other things, that development affecting protected species should avoid adverse impacts on European and UK protected species and Biodiversity Action

Plan habitats wherever possible, subject to the legal tests afforded to them where applicable.

Other Matters

13. The appeal site is in a National Landscape (NL) where there is a duty under s245 of the Levelling-Up and Regeneration Act 2023 to seek to further the purpose of conserving and enhancing natural beauty in these protected areas. I note the concerns by the Council's AONB team and parish council in respect of the scale and design of the proposal. The Council has provided a well reason justification as to why it considers the scheme accords with its design and landscape policies. I agree that the proposed recessive design features and materials would deliver a high-quality building in a well-screened valley setting. Furthermore, the current built form is tired and does not make a positive contribution to the NL. This aligns with paragraph 135 of the Framework which says, amongst other things, that decisions should ensure developments add to the overall quality of the area and are visually attractive as a result of good architecture. Consequently, the scheme would further the purposes of the NL.
14. *Habitats* - The Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations) requires me as the competent authority in the context of this appeal to undertake a Habitat Regulation Assessment to establish whether there are likely significant effects from the proposal, either alone or in combination with other plans or projects upon the Tintagel-Marshland-Clovelly Coast Special Area of Conservation (SAC).
15. The conservation objectives for the SAC relate to ensuring that the integrity of the site is maintained or restored as appropriate and that it contributes to achieving the Favourable Conservation Status of its Qualifying Features, by maintaining or restoring the extent and distribution of qualifying natural habitats, the structure and function (including typical species) of qualifying natural habitats, and the supporting processes on which qualifying natural habitats rely.
16. There is no dispute that the appeal site with its verdant surroundings is rich in biodiversity and sensitive to change. In that context, it is within the impact risk zones of the SAC. This is primarily designated for its vegetated sea cliffs, european dry heaths and old sessile oak woods with *Ilex* and *Blechnum* in the British Isles; and Western acidic oak woodland. There is also a SSSI within the Marshland to Clovelly Coast.
17. It is not clear from the evidence whether or not the proposed bat house would be located with a section of priority woodland that contains some sessile oak, though it is not close to ancient woodland. Even if it was in a priority woodland, the scheme does not propose any tree removal here and the bat house would be a very small building. Nevertheless, it is an area of sessile oak where canopy cut back may be needed. I cannot therefore rule out a likely significant effect (LSE) on the SAC in this respect.
18. The evidence shows that a replacement dwelling is not listed under any of the threats or pressures on the SAC. In that context, a new and improved drainage scheme would be likely to reduce impacts on the nearby watercourse that might affect the SSSI in the longer term. However, the appellant's ecologist advises that there is a risk to waterborne pollution. Accordingly, and LSE cannot be ruled out.

Therefore, in the event I allow the appeal, I am required to undertake an appropriate assessment in accordance with the Habitats Regulations.

19. NE as the as the Statutory Nature Conservation Body has been consulted on this proposal and provided a site-specific response. It raises no objection and agrees that the suggested conditions are an acceptable form of mitigation. Additionally, it recommends a condition securing a construction environmental management plan to protect the watercourse during construction, which would be reasonably necessary.
20. For the reasons set out above, and taking account of the mitigation measures proposed, the proposal would not adversely affect the integrity of the SAC. Consequently, it would comply with LP Policy DM08, which amongst other things, require development to ensure that the importance of habitats and designated sites are taken into account.

Conditions

21. I have made some amendments and omissions to the Council's suggested conditions in the interests of clarity and to ensure compliance with the Framework.
22. For clarity, I have imposed a plans condition.
23. Mitigation for bats, tree protection, and landscaping measures are necessary in the interests of the character and appearance of the area and biodiversity. To attempt to include a condition that complied with the whole ecological impact assessment would be unlikely to be enforceable. Therefore, I have imposed a pre-commencement condition requiring precise details to be agreed. As set out in paragraph 10 above, this would not need to cover lighting.
24. In the interests of biodiversity and given the close proximity of the watercourse, I have included conditions requiring a detailed surface water drainage scheme and a construction environmental management plan.
25. The suggested construction works and delivery condition is not shown to be necessary as the nearest neighbour is some considerable distance away, as set out in the officer report. While the dwelling would be larger than the existing and within a sensitive landscape, there is no substantive evidence that indicates that Permitted Development rights should be removed. I have not, therefore, imposed these conditions.

Conclusion

26. For the reasons given, the appeals should be allowed.

J Hills

INSPECTOR