



Appeal Decision

Site visit made on 28 May 2025

by **C Skelly BA (Hons) MSc MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 21 July 2025

Appeal Ref: APP/E2001/W/25/3359600

Builders Yard North of The Gables, Main Street, Asselby, East Riding of Yorkshire DN14 7HB

- 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 Ben Dimmack of Dimmack Bros Ltd against the decision of East Riding of Yorkshire Council.
 - The application Ref is 24/02945/PLF.
 - The development proposed is proposed replacement builders yard storage building for existing plant and materials (including demolition of existing building).
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Mr Ben Dimmack against East Riding of Yorkshire Council. That application is the subject of a separate Decision.

Preliminary Matter

3. The Council adopted the East Riding Local Plan Update 2025 – 2039 (LP) in April 2025 after its refusal of planning permission. This supersedes the previous East Riding Local Plan that was adopted in 2016. In these circumstances, I am required to determine the appeal against the current development plan for the area at the time of my decision. The Council have confirmed which policies are therefore relevant to this decision and the appellant was invited to comment. The appeal has therefore been determined in accordance with Policy ENV4 of the LP.

Main Issue

4. The main issue is the effect of the proposed development on a European Protected Species (bats).

Reasons

5. The appeal site is located to the north of the village of Asselby, which is accessed via a single track. The site comprises a large agricultural building clad with corrugated sheeting. In 2021 a Certificate of Lawfulness was granted for the change of use of the agricultural land to a builders' yard for storage of tools, machinery and spoil.
6. I observed that a significant area of the building is covered by ivy and other vegetation. The hardstanding area to the rear of the building is used for the

storage of equipment and machinery associated with the existing business. The site is well contained visually by well-established trees and hedges, with countryside to the north. The proposal involves the demolition of the existing building and construction of a replacement building of slightly smaller footprint sited further to the north of the site. There are two existing bat boxes located on the south and east elevations of the building.

7. As the proposal involves the demolition of an existing building there is potential for the proposed development to impact bats which are a protected species under the Conservation of Habitats and Species Regulations 2017 (the Regulations). As such, they are afforded protection under UK and EU-derived legislation.
8. As part of the planning application the appellant submitted a Preliminary Ecology Report¹ (PER) with the assessment undertaken on 10 September 2024. No evidence of bat activity was found during the inspection of the building. During the hour and a half survey one common *Pipistrellus pipistrellus* bat was recorded foraging from the west side of the barn. However, the building was only monitored from the north and east corners of the building, despite there being a bat box on the south elevation. Whilst the bat survey was undertaken using licensable techniques it was done outside of the optimal survey period and was not carried out by an appropriately accredited individual.
9. The report concluded that the site has 'low' habitat features likely to be used as a roosting habitat. However, it also recommended that a further, more detailed survey of the existing building and the bat boxes should be undertaken at the start of the optimum survey period and an emergent survey is undertaken.
10. Given my concerns regarding the PER, and that it concluded that a further survey is required to determine if development is likely to affect European Protected Species, I cannot be satisfied that there would not be harm as a result of the proposed development. In these circumstances, Circular 06/2005 (which remains extant) 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 material considerations may not have been addressed in making the decision*" (Paragraph 99). The Circular further advises that surveys should only be required by condition in "exceptional circumstances". British Standard BS 42020:2013 echoes this guidance and identifies 'exceptional circumstances' that may apply – none of which are relevant to this case. Accordingly, 'exceptional circumstances' do not exist here and dealing with this matter by condition would not be appropriate.
11. For the above reasons, there is insufficient information before me to conclude that the development would not significantly harm European Protected Species (bats) within the site. It therefore conflicts with Policy ENV4 of the LP which seeks amongst other things to ensure that development conserves and enhances biodiversity.

¹ Prepared by Hugh Roberts dated January 2025

Other Matters

12. Whilst I note the appellants comments with regards to lack of communication prior to determination, this falls outside of the remit of my Decision.

Conclusion

13. For the reasons given above I conclude that the appeal should be dismissed.

C Skelly

INSPECTOR