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## Appeal Decision

Site visit made on 3 July 2017

**by Richard Aston BSc (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 28<sup>th</sup> July 2017**

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**Appeal Ref: APP/B9506/W/17/3171773**

**Cotton Cool, Forest Lane, Hightown Hill, Ringwood, BH24 3HF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr and Mrs Walker against the decision of New Forest National Park Authority.
  - The application Ref 16/00955, dated 11 November 2016, was refused by notice dated 30 January 2017.
  - The development proposed is replacement dwelling.
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### Decision

1. The appeal is allowed and planning permission is granted for replacement dwelling at Cotton Cool, Forest Lane, Hightown Hill, Ringwood, BH24 3HF in accordance with the terms of the application, Ref 16/00955, dated 11 November 2016, 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 the following approved plans: DS/27516, FL3 EX 00 P1, FL3 EX 10 P1, FL3 EX 11 P1, FL3 EX 20 P1, FL3 EX 21 P1, FL3 01 P1, FL3 02 P1, FL3 10 P1, FL3 11 P1, FL3 20 P1, FL3 21 P1, FL3 22 P1 and FL3 23 P1.
  - 3) No development shall take place above slab level until details of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
  - 4) No development shall take place until full details showing the existing and proposed ground levels of the site together with the slab and ridge levels of the proposed development, relative to a fixed datum point on adjoining land outside of the application site, shall be submitted to and approved in writing by the local planning authority. Thereafter the development shall be carried out in accordance with the approved details.
  - 5) The development hereby approved shall be carried out in accordance with the Abbas Ecology Phase 1 & Phase 2 bat survey report November 2016, updated June 2017 including the provision of the bat boxes referenced therein.

- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no addition or alteration to the roof of the dwellinghouse hereby permitted shall be erected, constructed or take place other than those expressly authorised by this permission, no windows or roof lights shall be inserted into the roof (including the gable ends of the dwellinghouse) and the roof space shall not be used as habitable living accommodation.

### **Applications for costs**

2. Applications for costs have been made by Mr and Mrs Walker against New Forest National Park Authority and by New Forest National Park Authority against Mr and Mrs Walker. These applications are the subject of separate Decisions.

### **Procedural Matter**

3. The appellant submitted a Phase 2 protected species survey in response to the Council's second reason for refusal at the final comments stage. Due to the timing restraints of such work it was not submitted with the appeal. I gave the Council the opportunity to respond and having taken their comments into account, I do not believe that any party would be unfairly prejudiced by my determining the appeal taking into account that additional information. I have done so on that basis.

### **Main Issues**

4. The main issues are:
- The effect of the proposal on the housing stock in the area and the countryside.
  - The effect of the proposal on protected species.

### **Reasons**

#### *Effect on housing stock and countryside*

5. The existing house is a detached two storey dwelling set in a large curtilage. The property is located in an area of large, detached and secluded residential properties of a variety of styles and design set within spacious and wooded grounds.
6. Saved Policy DP10 of the New Forest National Park Core Strategy and Development Management Policies 2010 ('DMP') aims to control replacement dwellings. The principle of replacing a dwelling is acceptable unless two criteria fail to be met, one of which is that the existing dwelling makes a positive contribution to the historic character and appearance of the locality. There is no indication from the Council that this is such a dwelling.
7. Policy DP10 also places restrictions on the size of replacement dwellings. The Council state that the existing dwelling measures approximately 175sqm<sup>1</sup>, with the proposed replacement being approximately 350sqm. In any reasonable

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<sup>1</sup> Paragraph 11.4 Council's Delegated Report.

- assessment the proposal would be substantially greater and exceed that of the original dwelling.
8. I also have no evidence before me that such a larger dwelling would be essential to meet the genuine family needs of an occupier who works in the immediate locality. Consequently there would be some conflict with Policy DP10 of the DMP insofar as it requires replacement dwellings to be of no greater floorspace than the existing dwelling. Nor would the proposal comply with the 30% increase allowed under Policy DP11 of the DMP which the Council appears to use as a benchmark for assessing the acceptability of such development, albeit that it is not an extension.
  9. However, in May 2015 planning permission was granted for a single storey extension and detached car port with office above<sup>2</sup>. Furthermore, on 25 October 2016 a Lawful Development Certificate<sup>3</sup> for the 'proposed completion of extension' was also granted by the Council. This related to a substantial two storey extension to the principal elevation of the property and I have been provided with the relevant plans and details.
  10. The Council state that these schemes would result in approximately 185sqm of extensions giving a total of 360sqm of floor area once implemented<sup>4</sup>. To my mind and regardless of the outcome of this appeal, a substantial extension to the host property could therefore be built without further permission and were those schemes to be implemented then the appeal proposal before me could not be carried out and vice versa.
  11. The appellant has expressed the firm intention of building extensions in accordance with that certificate if this appeal is dismissed and I have no persuasive evidence from the Council to the contrary. Consequently, I am satisfied that the prospects of previously approved schemes being implemented are more than theoretical.
  12. The plans also show that the existing dwelling has 4 bedrooms and with the additional extensions this would increase to 6. The plans before me show the appeal scheme would contain 5 bedrooms. Although the proposal would be taller than these approved schemes by 2.6m, overall, the schemes are of a comparable scale and size and on the evidence before me, the floor area of those extant schemes would be slightly greater than the proposal before me. Consequently, the fall-back position is a material consideration and I afford it significant weight. It indicates to me that a decision should be made other than in accordance with part of Policy DP10 of the DMP.
  13. Furthermore, in an area of such architectural variety with individually designed, large detached dwellings set within spacious plots, the proposal would not be out of keeping with the character and appearance of this part of the countryside. It would also be more energy efficient than the existing dwelling and is sited so as to maximise natural heating and lighting, a clear environmental benefit which would assist in further minimising the impact of buildings in this part of the countryside.
  14. Taking everything together, I am not persuaded that the proposal would lead to a harmful reduction in the range and mix of housing sizes and it would not

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<sup>2</sup> LPA ref: 16/00404

<sup>3</sup> 16/00747

<sup>4</sup> Paragraph 11.6 Council's Delegated Officer Report.

unbalance the existing housing stock. It would also provide environmental benefits whilst not eroding the local character of the countryside. Although there would be conflict with part of Policy DP10, in this particular case I find that this conflict is outweighed by other considerations.

### *Protected species*

15. The Abbas Ecology Phase 1 Bat Survey was carried out on 23 November 2016. A number of indicators of the likely presence of bats were found, including the hanging tiles of the dormer window to the rear, with clear potential access points and sating around these access points is characteristic of a bat roost. This included droppings from a Pipistrelle. The survey recommended further surveys to be carried out including 2 evening dusk emergence surveys and one pre-dawn re-entry survey on the building.
16. The appellant's statement contends that there is no reason why the Council could not have requested these details by conditions. In my view, such conditions should only be considered in exceptional circumstances. Where surveys have been conducted and the presence of protected species has been confirmed, it is the responsibility of the developer to include proposals for appropriate mitigation measures in their evidence. Given the findings of the survey and the lack of clear mitigation in light of the need for further surveys, I share the Council's view that such a condition would be inappropriate.
17. The appellant has submitted a Phase 2 Survey carried out in May. Given such a survey could not have been carried out until recently it would be unreasonable to not take it into account and no party would be prejudiced by my doing so. I now must determine whether the proposal would have an adverse effect on any protected species and, if so, whether such an adverse effect could be overcome by any proposed mitigation measures. Only at this stage, in this particular case would it be necessary to consider securing implementation of the mitigation measures through the use of conditions.
18. The 3 phase 2 emergence surveys concluded that no bats were recorded entering or re-entering the roost. The evidence suggests that it is an occasionally used summer roost for individual soprano pipistrelle bats. The proposed mitigation includes a Schwegler bat box or Habitat bat boxes to be installed on a large tree at the southern part of the site, pre-work surveys and the dismantling of the dormer by hand.
19. The proposal, through the demolition of the existing building and because it has a known roost would require a licence from Natural England ('NE'). The need for a licence for the disturbance that would arise to the species means that the derogation tests from European Directives transposed into the Habitat Regulations<sup>5</sup> need to be considered. The decision maker must be satisfied that there is a reasonable prospect that a licence would be granted having regard to the requirements of the Habitats Directive, before planning permission is granted.
20. In relation to the first test, paragraph 22 of the NE advice refers to the interpretation of this test in relation to whether developments are required to meet or provide a contribution to meeting a specific need such as; *complying with planning policies and guidance at a national, regional and local level*. As I

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<sup>5</sup> Conservation of Habitats and Species Regulations 2010

have found in relation to the first main issue that the proposal would be in accordance with the development plan, when taken as a whole it seems to me entirely plausible that this test is capable of being met.

21. In relation to the no satisfactory alternative test, the appellant submits that the works are necessary as the existing dwelling does not cater for their needs. I have no reason to question the inadequacies in that structure. Furthermore, I also have no doubt that the resultant building would be better insulated, constructed to a higher standard than the present building and of a more cohesive and suitable design than what is likely to be constructed if the appeal were dismissed.
22. In terms of whether the actions would be detrimental to maintaining the population of the species concerned at a favourable conservation status in their natural range, having regard to the proposed mitigation satisfied that this test would be met.
23. I have had regard to the advice that NE applies the tests on a proportionate basis and also in considering the feasibility of alternative solutions, namely that the justification required increases with the severity of the impact on the species or population concerned. In this particular case, the proposal would displace a day roost used by individual soprano pipistrelle bats and the Council has confirmed it is satisfied with the mitigation measures proposed. Because adequate mitigation is proposed, on the available evidence and notwithstanding the lack of a revised response from NE, I am not persuaded that a licence would not be granted.
24. For these reasons, the proposal is capable of meeting all three tests and there is a reasonable prospect of NE granting a licence. Accordingly, I find that it would not adversely affect the local bat population. The proposal, subject to conditions, would comply with Policy CP2 of the DMP which, amongst other things, requires proposals to protect, maintain and enhance species of biodiversity importance.

### **Other Matters**

25. I have had regard to the appeal decisions<sup>6</sup> brought to my attention by the Council. However, one relates to an enforcement notice appeal and in both cases I have not been provided with the full details. I cannot therefore be certain that the considerations and judgements are directly comparable to the proposal before me and in any event, each case must be determined on its own merits.

### **Conditions**

26. I have considered the conditions put forward by the Council and have amended the wording where necessary in the interests of clarity and simplicity. A condition is required to ensure compliance with the approved plans as this provides clarity. A condition requiring details of the external materials to be agreed is necessary, in order to protect the character and appearance of the area but that such details do not have to be submitted until slab level is reached.

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<sup>6</sup> APP/B9506/X/12/2171626 and APP/Y540/C/16/3162244.

27. A condition requiring details of existing and proposed ground and floor levels to be agreed is also necessary to avoid an excessive raising or lowering of levels to protect the character and appearance of the area. A condition securing the proposed mitigation set out in the revised Abbas Phase 1 and 2 bat survey is also necessary. Given the basis of my decision and to avoid effects on the local housing stock a condition is necessary to restrict the conversion of the roof space to habitable accommodation.
28. Conditions 3 and 4 are conditions precedent and I am satisfied that such conditions are fundamental to the development to ensure that development does not occur until such matters are resolved, in the interest of the effects on the character and appearance of the area.

### **Conclusion**

29. For the reasons set out above and having considered all other matters raised, I therefore conclude that the appeal should be allowed.

*Richard Aston*

INSPECTOR