



Appeal Decision

by Mr A Thickett BA (Hons) BTP Dip RSA MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 19.12.2023

Appeal reference: CAS-02633-G3J5P6

Site address: 25 Beaulieu Barn, Kymin Road, The Kymin, Monmouthshire, NP25 3SD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr J Tuttle against the decision of Monmouthshire County Council.
 - The application Ref DM/2022/01819, dated 21 December 2022, was refused by notice dated 31 March 2023.
 - The application sought planning permission for retrospective application for amendment to previously approved planning application: DM/2020/00669 without complying with a condition attached to planning permission Ref DM/2020/01766, dated 29 October 2021.
 - The condition in dispute is No. 3 which states:
Notwithstanding the Town & Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting that Order with or without modification) no lighting or lighting fixtures shall be attached to or be positioned in the curtilage so as to illuminate the elevations of the building.
 - The reason given for the condition is:
To ensure retention of roosting/foraging opportunities for Species of Conservation Concern and to ensure compliance with LDP Policy NE1
 - A site visit was made on 7 December 2023.
-

Decision

1. The appeal is dismissed.

Application for costs

2. The application for costs made by Mr Tuttle against Monmouthshire County Council is the subject of a separate Decision.

Main Issue

3. The main issue is the removal of condition 3 of planning permission DM/2020/01766 on protected species.

Reasons

4. The appeal property is a converted barn in the open countryside. Planning permission to retain extensions and alterations to the dwelling was granted in 2021 subject to the disputed condition. At the time of my visit, the only light I saw in the curtilage of the building was on a post less than 1m high at the pedestrian gate to the front garden.
5. I saw lights on the north, south and west elevations of the building, angled so as to illuminate the gardens and patio area but not the building. The disputed condition prohibits lighting or lighting fixtures *'attached to or be positioned in the curtilage so as to illuminate the elevations of the building.'* It does not prohibit the fixing of lights to the building.
6. The appellant does not dispute the Council's assertion that there are a high number of bat records within one kilometre of the appeal site. At least eleven of the UK's seventeen breeding bat species recorded including lesser horseshoe, greater horseshoe and barbastelle bats which are known to be particularly light sensitive. Further, the appeal site is within 40m of a management unit of the Wye Valley Woodlands Special Area of Conservation (SAC). A qualifying feature of the SAC is the lesser horseshoe bat population supported by the woodlands.
7. That the building may not provide suitable habitat for bats does not mean they do not frequent the area. The records referred to above indicate it is highly likely bats are present around the appeal site. That bats (a protected species) are affected by light is long established and, in the absence of a survey demonstrating bats are not present, I consider the condition meets the test of necessity set out in Circular 16/14. The condition is precise and enforceable, there can be no doubt as to what the condition prohibits. Further it is relevant to the development permitted and serves a planning purpose.
8. The permission to convert the barn was subject to a condition requiring lighting attached to the building to be angled downwards and not be placed over 2.3m above ground level. The extension permitted in 2016 required lighting on, not of, the extension to be low level. Neither of these conditions conflict with the prohibition against illuminating the elevations of the building by lighting or lighting fixtures located within the curtilage. Nor does the condition subject to this appeal require the removal of lighting already installed, only its realignment to avoid illuminating the building.

Conclusion

9. For the reasons given above and having regard to all matters raised, I conclude that the appeal should be dismissed.
10. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well-Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards the Welsh Ministers' well-being objective to embed our response to the climate and nature emergency in everything we do.

A Thickett

Inspector