

# Heyford Manor, 18 Church Lane, Lower Heyford

12/01628/LB

**Ward:** The Astons and Heyfords

**District Councillor:** Cllr Kerford-Byrnes  
Cllr Macnamara

**Case Officer:** Paul Ihringer

**Recommendation:** Approval

**Applicant:** Mr Macnamara

**Application Description:** two storey extension to the north wing, single storey side extension and increase in the height of an existing single storey extension. Remove existing chimneystack, insert two rooflights, block up two entrances and replace one of them with a window. Insert replacement window in dormer on the eastern elevation. Reposition stud walling and raise section of floor at ground and first floor levels.

**Committee Referral:** Member Application

## 1. Site Description and Proposed Development

- 1.1 Heyford Manor is a grade II listed stone property, parts of which date back to the 16<sup>th</sup> Century. It is positioned at the end of Church Lane and in relatively close proximity, but not within the setting, of the grade II\* listed St Mary's Church. There are a number of other listed structures and houses within the vicinity. The site lies inside the Rousham Conservation Area and abuts the Oxford Canal Conservation Area (the Canal is to the immediate north and east).
- 1.2 Listed building consent is being sought for a single/two storey side extension. The modest two storey element is an extension to a gable ended wing protruding off the original northern elevation. Positioned between this extension and an existing single storey extension on the opposite side of the northern wing the applicant is proposing to erect a flat roofed extension which will require the removal of an external staircase (first floor entrance that it serves will be blocked up) and an increase in the height of the aforementioned single storey wing.
- 1.3 Consent is also required for: replacing an existing doorway with a window; inserting two new conservation grade roof lights; removing an existing chimneystack; the reconfiguration of some of the rooms through the repositioning of stud walling; a new dormer window; the raising of part of the first floor floorboards; and insertion of a floating floor at ground floor level. This proposal represents a revision to a previously approved scheme (see 08/00067/LB and 08/00068/F).
- 1.4 This application was submitted in conjunction with 12/01627/F.

## **2. Application Publicity**

- 2.1 The application has been advertised by way of neighbour letter, site notice and press notice. The final date for comment was the 18<sup>th</sup> January 2012. No correspondence has been received as a result of this consultation process.

## **3. Consultations**

- 3.1 **Lower Heyford Parish Council:** No comments received

### **Cherwell District Council Consultees**

- 3.2 **Conservation Officer:** No objections following receipt of amended plans which resulted from discussions on site.
- 3.3 **Ecology Officer:** "I have read through the Phase 1 Bat and Nesting Bird Survey Report (Ridegeway, 7th December 2012) and concur with its findings. As no evidence of bats was found and the works proposed are such that disturbance to bats using gaps under tiles etc.. would be minimised I do not think further surveys are required for these specific proposals if a precautionary approach is followed. There are records of Swifts at this property and evidence of nesting birds within the survey therefore in order to avoid restrictions in timing of works the precautions below must be adhered to."

## **4. Relevant National and Local Policy and Guidance**

### **4.1 Development Plan Policy**

Adopted Cherwell Local Plan (Saved Policies)  
C2: Development Affecting Protected Species  
C18: Development Proposals Affecting a Listed Building

South East Plan 2009  
BE6: Management of the Historic Environment  
NRM5: Conservation and Improvement of Biodiversity

### **4.2 Other Material Policy and Guidance**

National Planning Policy Framework

Cherwell Local Plan - Proposed Submission (August 2012)

The Local Plan (August 2012) is currently out for public consultation. Although this plan does not have Development Plan status, it can be considered as a material planning consideration. The plan sets out the Council's strategy for the District to 2031. The policies listed below are considered to be material to this case and are not replicated by saved Development Plan policy:

## 5. Appraisal

### Design

- 5.1 The proposed two storey element which shows subservience to the existing northern wing is considered to be an appropriate addition to the house. The single storey addition is more contentious as the Council's design guidance discourages flat roofed extensions. In this instance however, there is no obvious alternative solution and its impact on the wider built environment will be very limited. Furthermore, the design has been carefully thought through and the applicant is proposing to use good quality materials. Whatever the design flaws, the extension, including the works to the existing single storey extension, will improve the appearance of this side of the property as, amongst other things, it will require the removal of a rather unsympathetic external staircase. It should also be noted that the application approved in 2008 also had a flat roofed section. The proposed extensions are not considered to be disproportionately large.
- 5.2 The justification for the removal of the chimneystack was accepted by the Conservation Officer (it was a late addition that served the now redundant heating system). The proposed conservation grade roof lights were also considered appropriate (there are already roof lights in the building) as is the replacement dormer window which is of better design than the existing. The blocking up of the two external entrances, which are of little significance, will not compromise the appearance of the building providing that the stone used matches the surrounding stonework.
- 5.3 The internal alterations, the majority of which relate to the repositioning of stud walls, have limited implications for the historic fabric and could be easily removed in the future, as could the works to raise the floor levels. The development is therefore considered to comply with Policy C18 of the adopted Cherwell Local Plan.

### Ecology

- 5.4 NPPF – *Conserving and enhancing the natural environment* requires that “the planning system should contribute to and enhance the natural and local environment by minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government's commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures” (para 109).
- 5.5 Paragraphs 192 and 193 further add that “The right information is crucial to good decision-taking, particularly where formal assessments are required (such as Habitats Regulations Assessment) and that Local Planning Authorities should publish a list of their information requirements for applications, which should be proportionate to the nature and scale of development proposals. Local planning authorities should only request supporting information that is relevant, necessary and material to the application in question”. One of these requirements is the submission of appropriate protected species surveys which shall be undertaken prior to determination of a planning application. The presence of a protected species is a material consideration when a planning

authority is considering a development proposal. It is essential that the presence or otherwise of a protected species, and the extent to 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. This is a requirement under Policy EN23 of the Non-Statutory Cherwell Local Plan 2011.

- 5.6 Paragraph 18 states that “When determining planning applications, local planning authorities should aim to conserve and enhance biodiversity by applying the following principles:
- if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused”.
- 5.7 Paragraph 98 of Circular 06/05: Biodiversity and Geological Conservation – statutory obligations and their impact within the planning system states that, “local planning authorities should consult Natural England before granting planning permission” and paragraph 99 goes on to advise that “it is essential that the presence or otherwise of protected species, and the extent to 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.”
- 5.8 Section 40 of the Natural Environment and Rural Communities Act 2006 (NERC 2006) states that “every public authority must in exercising its functions, must have regard ... to the purpose of conserving (including restoring / enhancing) biodiversity” and;
- 5.9 Local planning authorities must also have regards to the requirements of the EC Habitats Directive when determining a planning application where European Protected Species (EPS) are affected, as prescribed in Regulation 9(5) of Conservation Regulations 2010, which states that “a competent authority, in exercising any of their functions, must have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions”.
- 5.10 Articles 12 and 16 of the EC Habitats Directive are aimed at the establishment and implementation of a strict protection regime for animal species listed in Annex IV(a) of the Habitats Directive within the whole territory of Member States to prohibit the deterioration or destruction of their breeding sites or resting places.
- 5.11 Under Regulation 41 of Conservation Regulations 2010 it is a criminal offence to damage or destroy a breeding site or resting place, but under Regulation 53 of Conservation Regulations 2010, licenses from Natural England for certain purposes can be granted to allow otherwise unlawful activities to proceed when offences are likely to be committed, but only if 3 strict legal derogation tests are met which include:

- a. Is the development needed for **public health or public safety** or **other imperative reasons of overriding public interest including those of a social or economic nature** (development).
  - b. Is there any **satisfactory alternative**?
  - c. Is there **adequate mitigation** being provided to maintain the favourable conservation status of the population of the species?
- 5.12 Therefore where planning permission is required and protected species are found to be present at the site or surrounding area, Regulation 9(5) of Conservation Regulations 2010 provides that local planning authorities must have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions and also the derogation requirements (the 3 tests) might be met. Consequently a protected species survey must be undertaken and it is for the applicant to demonstrate to the Local planning authority that the 3 strict derogation tests can be met prior to the determination of the application. Following the consultation with Natural England and the Council's Ecologist advice given (or using their standing advice) must therefore be duly considered and recommendations followed, prior to the determination of the application.
- 5.13 In respect of planning applications and the Council discharging of its legal duties, case law has shown that:
- 1) if it is clear/perhaps very likely that **Natural England will not grant a licence** then the Council should refuse planning permission
  - 2) if it is likely that **Natural England will grant the licence** then the Council may grant planning permission
  - 3) if it is **unclear/uncertain** whether Natural England will grant a licence then the Council must refuse planning permission (Morge has clarified Woolley)
- [R (Morge) v Hampshire County Council – June 2010 Court of Appeal case]*  
*[R (Woolley) v Cheshire East Borough Council – May 2009 High Court case]*

**NB: Natural England will not consider a licence application until planning permission has been granted on a site, therefore if a criminal offence is likely to be committed; it is in the applicant's interest to deal with the 3 derogation tests at the planning application stage.**

- 5.14 In respect to the application site, a bat and nesting bird survey report was undertaken by Ridgeway Ecology (dated 7 December 2012), which found that there was no evidence of bats roosting in the house. The Council's Ecologist largely agreed with the conclusions reached in the report which recommended conditions (see conditions 12 and 13) to ensure that should bats be found they are properly protected and that any birds living in the building are not unduly affected.
- 5.15 Consequently it is considered that art.12(1) of the EC Habitats Directive has been duly considered in that the welfare of any protected species found to be

present at the site and surrounding land will continue and be safeguarded notwithstanding the proposed development. The proposal therefore accords with Government guidance contained within the NPPF and Policy C2 of the adopted Cherwell Local Plan.

#### **Consultation with applicant**

- 5.16 Officers met the applicant on site to discuss the merits of the scheme. The subsequent revisions to the proposal are a reflection of these negotiations.

#### **Conclusion**

- 5.17 Based on the assessment above and subject to condition it is concluded that the development is acceptable and therefore complies with Policies BE6 and NRM5 of the South East Plan 2009 and Policies C2 and C18 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

## **6. Recommendation**

**Approval**, subject to the following conditions:

- 1 That the works to which this consent relates shall be begun not later than the expiration of three years beginning with the date of this consent.

Reason - To comply with the provisions of Section 18 of the Planning (Listed Buildings and Conservation Areas) Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 2 Except where otherwise stipulated by conditions attached to this consent, the development shall be carried out strictly in accordance with the bat and nesting bird survey report produced by Ridgeway Ecology and dated 7 December 2012 and the following approved plans: 648 01; and 648 02 F.

Reason - For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority, and in accordance with Government guidance contained within the National Planning Policy Framework.

- 3 That the external walls of the extensions and the openings to be fronted up shall be constructed in natural weathered limestone and marlstone which shall be laid, dressed, coursed and pointed in accordance with a sample panel (minimum 1metre square in size) which shall be constructed on site to be inspected and approved in writing by the Local Planning Authority prior to the construction of the development hereby permitted.

Reason - To ensure appropriate materials are used which preserve the listed building and to comply Policy BE6 of the South East Plan 2009 and Policy C18 of the adopted Cherwell Local Plan.

- 4 That samples of the Stonefield Slate to be used in the covering of the roof of the two storey extension shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development.

The development shall be carried out in accordance with the samples so approved.

Reason - To ensure appropriate materials are used which preserve the listed building and to comply Policy BE6 of the South East Plan 2009 and Policy C18 of the adopted Cherwell Local Plan.

- 5 The slate covering on the existing extension which will be raised in height shall be reused on the new roof unless otherwise agreed in writing by the Local Planning Authority prior to the commencement of development.

Reason - To ensure appropriate materials are used which preserve the listed building and to comply Policy BE6 of the South East Plan 2009 and Policy C18 of the adopted Cherwell Local Plan.

- 6 All new works and works of making good shall be carried out in materials and detailed to match the adjoining original fabric except where shown otherwise on the approved drawings.

Reason - To ensure appropriate materials are used which preserve the listed building and to comply Policy BE6 of the South East Plan 2009 and Policy C18 of the adopted Cherwell Local Plan.

- 7 Design details of all new joinery proposed shall be submitted to and approved by the Local Planning Authority prior to the commencement of works (scale > 1:20). The development shall be carried out in accordance with the approved details.

Reason - To ensure appropriate materials are used which preserve the listed building and to comply Policy BE6 of the South East Plan 2009 and Policy C18 of the adopted Cherwell Local Plan.

- 8 All stonework shall be laid using lime mortar (no gauging cement).

Reason - To ensure appropriate materials are used which preserve the listed building and to comply Policy BE6 of the South East Plan 2009 and Policy C18 of the adopted Cherwell Local Plan.

- 9 All new and replacement rainwater goods shall be constructed in cast iron or cast aluminium.

Reason - To ensure appropriate materials are used which preserve the listed building and to comply Policy BE6 of the South East Plan 2009 and Policy C18 of the adopted Cherwell Local Plan.

- 10 Original floorboards to be retained and repaired.

Reason - To ensure appropriate materials are used which preserve the listed building and to comply Policy BE6 of the South East Plan 2009 and

Policy C18 of the adopted Cherwell Local Plan.

- 11 New floorboards in the extension hereby approved to match the existing.

Reason - To ensure appropriate materials are used which preserve the listed building and to comply Policy BE6 of the South East Plan 2009 and Policy C18 of the adopted Cherwell Local Plan.

- 12 In order to ensure that protected species are not harmed during the construction process, the works shall be carried out in accordance with the following requirements:

- Immediately prior to work commencing, those areas of the house that will be directly affected by the proposed extension and the installation of new rooflights must be inspected by a suitably qualified ecologist to ensure that bats or nesting birds are not present, or if they are, they will not be disturbed by the proposed work.
- All destructive work must be carried out carefully with the expectation that bats may be present. All contractors on site should be briefed as to the possibility of bats and nesting birds being on site and their legal protection. Any roof tiles to be removed should be lifted by hand vertically and not slid off to avoid injury to any bats underneath. If bats or evidence of bats are found at any point, Natural England and the ecologist for this project must be contacted for advice and all work must cease immediately.
- If nesting birds are observed within the areas of the house that will be affected by the development work must immediately cease and the ecologist for the project must be contacted for advice.
- Any additional external lighting installed should be minimal, directional and responsive such that it is only on when needed.

Reason - To ensure that the development will not cause harm to any protected species or its habitat in accordance with Policy NRM5 of the South East Plan 2009 and Policy C2 of the adopted Cherwell Local Plan.

- 13 The suggested enhancements within Section 5 of the bat and nesting bird survey report produced by Ridgeway Ecology and dated 7 December 2012 (last three bullet points on page 14) shall be carried out as written.

Reason - To ensure that the development will not cause harm to any protected species or its habitat in accordance with Policy NRM5 of the South East Plan 2009 and Policy C2 of the adopted Cherwell Local Plan.

#### **Summary of Reasons for the Grant of Planning Permission and Relevant Development Plan Policies**

The Council, as local planning authority, has determined this application in accordance with the Planning (Listed Buildings and Conservation Areas) Act 1990, Government advice contained within the National Planning Policy Framework and



the development plan unless material considerations indicated otherwise. The development is considered to be acceptable on its merits as the proposal preserves the character and appearance of the listed building. The development will also not harm protected species. As such the proposal is in accordance with Policy NRM5 and BE6 of the South East Plan 2009 and Policies C2 and C18 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework

**Statement of Engagement**

In accordance with the Town and Country Planning (Development Management Procedure) (England) (Amendment No 2) Order 2012 and paragraphs 186 and 187 of the National Planning Policy Framework (March 2012), this decision has been taken by the Council having worked with the applicant/agent in a positive and proactive way as set out in the application report.