



Appeal Decision

Site visit made on 10 June 2019

by David Wyborn BSc(Hons), MPhil, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 August 2019

Appeal Ref: APP/P1133/W/19/3220392

Marine House, Coombe Road, Shaldon, Devon TQ14 0EX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant permission in principle.
 - The appeal is made by Mr & Mrs George Irvine against the decision of Teignbridge District Council.
 - The application Ref 18/02183/PIP, dated 1 October 2018, was refused by notice dated 5 December 2018.
 - The development proposed is permission in principle for the erection of 1 dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matters and Main Issues

2. The evidence indicates that the site falls within 10km of the Exe Estuary Special Protection Area (SPA) and the Dawlish Warren Special Area of Conservation (SAC). Under Article 5B of the Town and Country Planning (Permission in Principle) Order 2017 (as amended), permission in principle must not be granted for development which is habitats development. There is a specific process to deem what would constitute habitats development which I must assess.
3. In the light of the above and the reasons for refusal, the main issues are:
 - whether the proposal would be habitats development under Article 5B of the Town and Country Planning (Permission in Principle) Order 2017 (as amended) and if not,
 - whether the location of the development would accord with policies of the development plan.

Reasons

4. Planning Practice Guidance (PPG) states that permission in principle is an alternative way of obtaining planning consent for housing led development. The scope of the permission in principle stage is limited to location, land use and amount of development, with other matters being dealt with at the technical details consent stage. It is not possible for conditions to be attached to a grant of permission in principle. Planning obligations also cannot be secured at this stage.
5. As set out above, the appeal site falls within 10km of the Exe Estuary SPA and the Dawlish Warren SAC. The Council has worked with other bodies, including

Natural England, and determined that housing and tourist accommodation developments will have a likely significant effect on these habitats sites from recreational use, within this 10km area.

6. As set out in the PPG, habitats development is defined as:
 - i) Development which is likely to have a significant effect on a qualifying European site or a European offshore marine site, referred to as habitats sites in the National Planning Policy Framework (either alone or in combination with other plans or projects);
 - ii) is not directly connected with or necessary to the management of the site, and;
 - iii) the competent authority has not given consent, permission, or other authorisation in accordance with regulation 63 of the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations).
7. Following on from the People Over Wind judgment¹ and with specific regard to permission in principle, where development is likely to have a significant effect on a qualifying European site or a European offshore marine site without any mitigating measures in place, it is necessary that an Appropriate Assessment should be undertaken before consideration of the grant of permission in principle. After taking account of mitigation measures in the Appropriate Assessment and concluding that the development will not adversely affect the integrity of the protected site, then, subject to compliance with other statutory requirements, permission in principle can be granted.
8. I have no reason to disagree with the Council's view that there is a reasonable likelihood the Exe Estuary SPA and the Dawlish Warren SAC would be accessed for recreational purposes by future occupants of the proposed development. This additional activity would have the potential, either alone or in combination with other development in the area, to have a significant effect on the habitats sites.
9. As likely significant effects cannot be excluded, the Habitats Regulations require that an Appropriate Assessment is undertaken. Natural England were consulted and advise that the adverse effects on the integrity of the European sites cannot be ruled out and mitigation cannot be secured at this stage resulting in uncertainty under the Habitats Regulations.
10. In terms of mitigation the Council has advised that in the absence of bespoke mitigation they will accept a financial contribution per additional dwelling to offset in-combination recreational impacts on the SPA and SAC. This would normally be in the form of a planning obligation. However, as I have referenced above, planning obligations cannot be secured against a permission in principle. Accordingly, without such mitigation, I am unable, therefore, to conclude other than that the proposed development would have an adverse effect on the integrity of the SPA and SAC.
11. Therefore, I conclude that the proposal would constitute habitats development which is excluded from a grant of permission in principle under Article 5B of the Town and Country Planning (Permission in Principle) Order 2017 (as amended).

¹ The Court of Justice of the European Union judgement in the People over Wind and Peter Sweetman v Coillte Teoranta, case C-323/17

Consequently, it is development for which an application for planning permission is required. Such an application would be a matter for the local planning authority to consider in the first instance. As a consequence, I have not examined the matters in my second main issue because, procedurally, I am unable to consider the proposal that is before me because it is in the form of a permission in principle application.

Other Matters

12. The appellant responded to the information from Natural England to reiterate the case that there would not be any impact on the local environment. Furthermore, reference is also made to the screening direction² under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 that found that the development would not be of a scale and nature likely to result in significant environmental impact. However, this letter also says that the screening direction does not affect any duties under other legislation including the Habitats Regulations. This is a separate process that must be undertaken as explained above.
13. I note all the appellant's comments regarding how it is considered that the Council has processed the application, and the general comments about the impact of the proposal in the light of the surrounding development and the settlement boundary. I have also noted the support of the Parish Council and the comments of interested parties. However, for the procedural reasons set out above, I am unable to consider these matters further.

Conclusion

14. Having regard to the above matters, I conclude that the appeal should be dismissed.

David Wyborn

INSPECTOR

² Letter dated 17 May 2019