



Appeal Decision

Site visit made on 13 September 2019

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 31st October 2019

Appeal Ref: APP/P2114/W/19/3227628

Seaview Holidays, Salterns Road, Seaview, Isle of Wight PO34 5AQ

- 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 Steve Catton (Seaview Holidays Ltd) against the decision of Isle of Wight Council.
 - The application Ref P/01078/18, dated 18 September 2018, was refused by notice dated 11 February 2019.
 - The application sought planning permission for the erection of 52 bungalows and chalets and the formation of means of vehicular access without complying with a condition attached to planning permission Ref TCP/5981/C, dated 4 October 1960.
 - The condition in dispute is No 2 which states that: *The beach huts and holiday bungalows referred to herein shall only be occupied and used between 1st March and 31st October in every year unless the Council previously agreed in writing to the occupation of those buildings at other times of the year.*
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Steve Catton (Seaview Holidays Ltd) against Isle of Wight Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue in this appeal is the effect of removing the condition on nearby designated habitats sites.

Reasons

4. The Solent and Southampton Water Special Protection Area (SPA) and Ramsar site support internationally important numbers of overwintering waterfowl. The appeal site lies within 5.6km of SPA, which is the relevant distance within which the Solent Recreation Mitigation Strategy (SRMS) considers that residential developments would result in an adverse impact on its integrity either alone or in combination through human disturbance of birds.
5. The appeal site is adjacent to the Hersey Nature Reserve (the Reserve) which is a Biodiversity Action Plan (BAP) habitat area for the protection of priority habitat and species. It forms part of the Ramsar site and Ryde Sands and Wootton Creek Site of Special Scientific Interest (SSSI).

6. The Reserve is managed by the Council. It has a single point of public access, and possesses a bird hide and bird screen behind which visitors might observe waterfowl.
7. A report¹ submitted by the appellant states that an additional four months of winter occupancy is proposed for the accommodation units to maximise the appeal to holiday makers (bird enthusiasts in particular), compete with other holiday accommodation and facilitate the sale of the site. The appellant's Planning and Design Statement identifies that "tourists might be bird watchers, attracted to stay on the site because of the existence of the designated areas."
8. On determination of the application, the Council was the competent authority under the Conservation of Habitats and Species Regulations 2017. It consulted Natural England in its consideration of the proposal, and it undertook an Appropriate Assessment (AA) taking into account the representations made. Natural England has calculated that the proposal would result in 1037 extra visitors to the Reserve per year during the winter months, and this figure has been agreed as sensible by the appellant.
9. The AA carried out by the Council found that levels of disturbance to birds within the Nature Reserve was limited due to relatively low levels of public access and visitation, and that the increased numbers of visitors under the proposal would cause adverse impacts. While Natural England advised that a financial contribution might be sought from the developer to mitigate against those impacts through suggested measures at the Reserve, it is for the competent authority to be satisfied that such contributions could be put to use which would achieve effective and satisfactory mitigation.
10. Natural England suggested any contribution secured from the developer could be used in respect to management of the Reserve's circular path and access, and an installation of a bird hide. I consider however that, given the agreed appeal of the proposal to birdwatchers and the predicted number of extra winter visitors to the Reserve, there would be a significant increase in numbers of visitors to the habitat site during sensitive periods of the year when birds are overwintering and this would cause increased human disturbance of them. Further, in my judgement, Natural England's suggested measures could in themselves lead to the attraction of greater numbers of visitors due to improved access and facilities at the Reserve. Additionally, the Reserve is reasonably modest in size and already possesses a bird hide. The erection of another bird hide would reduce habitat opportunities for waterfowl in the location in which it is constructed, which would be significant taking into account the total available size of the Reserve for birds.
11. The above harm caused by increased visitors to the Reserve would not be effectively mitigated by measures proposed at the appeal site itself, including the proposed buffer area between the holiday units and Reserve, on-site screening, sensitive lighting measures and waste water management.
12. Paragraph 175 of the National Planning Policy Framework (the Framework) says that development on land within or outside a SSSI, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where

¹ Salterns Holiday Cottages Habitat Regulations Assessment Report – REV01 Project No. 858225 1.2 Scheme Description

the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of SSSIs. While I accept that there would be economic, employment and tourism benefits of the appeal proposal, these would not outweigh the harm I have identified for the reasons above.

13. Notwithstanding my finding that adequate mitigation would not be achieved for the Reserve through a financial contribution, a Unilateral Undertaking (UU) has been provided by the appellant with a view to providing a financial contribution towards the Solent Bird Aware Initiative under the SRMS to mitigate impact on the integrity of the SPA, together with a contribution suggested by Natural England in respect to suggested measures in the Reserve. However, Together Commercial Finance Limited is the proprietor of a registered charge on the land and has not signed the deed as a relevant party. Consequently the UU carries no weight, and I find that the associated mitigation has not been secured.
14. The proposal would cause significant harm to the SPA, Ramsar site and SSSI. As such it is contrary to Policy DM12 of the Isle of Wight Core Strategy (including Waste and Minerals) and Development Management Development Plan Document (2012), known as the Island Plan, which amongst other objectives seeks to protect the integrity of international, national and local designations relating to biodiversity. It would also be in conflict with paragraph 175 of the Framework, for the reasons given above and since significant harm to biodiversity 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.

Conclusion

15. For the above reasons, condition No 2 is necessary to prevent significant harm being caused to the SPA, Ramsar site and SSSI. Therefore the appeal is dismissed.

Andrew Walker

INSPECTOR