



Appeal Decision

Site visit made on 19 November 2019

by S Edwards MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 February 2020

Appeal Ref: APP/P2114/W/19/3234483

Isle of Wight Self Catering Ltd, Salterns Road, Seaview PO34 5AQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) 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 Self-Catering Holidays Limited) against the decision of Isle of Wight Council.
 - The application Ref 19/00113/RVC, dated 17 April 2019, was refused by notice dated 13 June 2019.
 - The application sought planning permission for the erection of 52 bungalows and chalets and the formation of a 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 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.

Procedural Matter

2. The appellant has submitted a signed Unilateral Undertaking (UU) dated 14 November 2019 pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended), which I shall return to later in this decision.

Application for costs

3. An application for costs was made by Mr Steve Catton (Seaview Self-Catering Holidays Limited) against Isle of Wight Council. This application is the subject of a separate Decision.

Main Issue

4. The main issue is whether the condition remains reasonable and necessary to protect the integrity of Ryde Sands and Wootton Creek Site of Special Scientific Interest (SSSI), Solent and Southampton Water Special Protection Areas (SPAs) and RAMSAR.

Reasons

5. The appeal site lies directly adjacent to Hersey Nature Reserve, which was created in 2002 and is leased and managed by the Council. The Nature Reserve forms part of the Ryde Sands and Wootton Creek SSSI, which is protected

under the Wildlife and Countryside Act 1981 for its wintering bird interest and is also designated as a RAMSAR site. Additionally, the appeal site is located within proximity to the Solent and Southampton Water SPAs.

6. The Solent Recreation Mitigation Strategy¹ (SRMS) aims to prevent bird disturbance arising from recreational activities, through a series of measures which seek to mitigate against the impacts from additional development. In particular, it requires development proposals located within 5.6km of these protected areas to make a financial contribution towards mitigation measures, which are normally secured through the completion of a planning obligation.
7. The condition which was attached to the original permission currently restricts the occupancy of the site for tourism to 8 months of the year. A previous application² seeking the variation of condition 2 to allow year round occupancy of the site for tourism use was refused in February 2019 and subsequently dismissed on appeal³ in October 2019. The revised application aimed to overcome the Council's reasons for refusal by submitting additional supporting information, and sought consent for year round occupancy of the site solely for the owners and occupiers of the self-catering properties. The revised proposal is intended as a 'controlled opening' of the site, which would therefore not be fully open to the public all year round, and it is asserted that this would significantly limit the increase in the overall number of additional users who would access or use the site in the winter months.
8. The Council, in consultation with Natural England, consider that the proposed development could have, in combination with other plans and projects, likely significant effects on the internationally important features of the protected sites, by reason of the increased recreational pressure which additional development places on these sensitive areas. In such circumstances, I am required, as the competent authority, to consider avoidance and reduction measures within the framework of an Appropriate Assessment (AA), as it is not permissible to take account of measures intended to avoid or reduce the harmful effects of the plan or project on a European site at the screening stage.
9. Both parties accept that the use of the site throughout the winter months would result in an increased annual occupancy and use during a sensitive time of year for over-wintering birds. In particular, the appellant's Statement to Inform Appropriate Assessment⁴ (SIAA) identifies a number of specific impacts resulting from increased visitor numbers, which include human movement and proximity disturbance, lighting, dog walking, hydrological disruption and a requirement for an increased management of the designated site.
10. The appellant's submissions however suggest a number of mitigation measures to address these impacts. These would notably include the installation of screening between the holiday cottages and the SSSI/Ramsar site in the form of an artificial barrier or high hedge and the introduction of a buffer area along the boundary shared with this sensitive area during the winter months, within the grassed area often used by visitors for dog walking. Additionally, separate financial contributions towards the SRMS, but also the management and

¹ December 2017.

² Local Planning Authority Ref.P01078/18.

³ APP/P2114/W/19/3227628.

⁴ Project No.858225, dated April 2019, and undertaken by RSK Environment Ltd.

enhancement of Hersey Nature Reserve, would be provided, as detailed within the UU submitted by the appellant.

11. The SIAA and subsequent Addendum⁵ conclude that the implementation of these measures, in addition to the recommendations and financial contributions towards the SRMS, would be suitable to mitigate for the likely adverse impacts. However, the Council has confirmed that the SRMS delivers a strategic approach to mitigating impacts in-combination with other projects. Subsequently, these particular financial contributions could not be relied upon as mitigation measures to directly address the likely alone impacts which the development could cause to Hersey Nature Reserve.
12. The disputed condition currently provides means of avoidance, by preventing an intensification of activity or use on site, which could otherwise cause disturbance to over-wintering birds. Significant harm is therefore being avoided, by reason of the site's restricted occupancy condition. In that regard, the mechanism in place accords with the mitigation hierarchy set within the Planning Practice Guidance⁶, which advises that in the first instance effort should be made to avoid an adverse effect on site integrity altogether.
13. Additionally, having regard to the submitted evidence, I am unable to ascertain whether the proposed mitigation measures would be effective. In fact, it seems that the Public Right of Way proposed through the site, along its westernmost perimeter, could increase recreational disturbance within close proximity to this sensitive area, despite the suggested use of fencing and hedging.
14. Whilst I have considered the proposed mitigation measures and the conditions suggested by the Council, as well as the comments made by the appellant, limited information has been notably provided in respect of the maintenance and management of the proposed buffer area, or how the restricted access during the winter months would be secured and enforced. I therefore consider that outstanding matters could not be satisfactorily addressed through the imposition of a planning condition, as the additional information is required in order to establish the significance of the impacts, the scope and effectiveness of the mitigation.
15. Furthermore, the appellant suggests that a condition could be imposed to restrict the occupancy and use of the site to owners of the holiday homes between November and February solely for maintenance and upkeep of the properties. However, I am not convinced that such a condition would accord with paragraph 55 of the National Planning Policy Framework (the Framework). In particular, limited information is before me to explain how such a controlled access would work in practice, and the suggested condition therefore raises questions in terms of its enforceability.
16. As noted above, the appellant has submitted a duly dated and signed UU, which would provide financial contributions towards the SRMS and Hersey Nature Reserve. Nevertheless, I am concerned that the submitted undertaking would not bind the Council since they are not a party to it, and it remains unclear how the monies collected through the UU would be spent in respect of the SRMS and the nature reserve. Whilst it is suggested that the contribution could be used towards the management of the circular path and access and the

⁵ Dated 30 May 2019.

⁶ Appropriate Assessment, Paragraph: 004 Reference ID: 65-004-20190722.

installation of a bird hide, I share the concerns raised by the previous Inspector, who stated that these 'measures could in themselves lead to the attraction of greater numbers of visitors due to improved access and facilities at the Reserve'. On this basis, I am unable to conclude with certainty that the financial contributions would be spent on measures which could prevent harm to the SSSI/Ramsar site and the SPAs.

17. Paragraph 175 of the Framework states 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, unless the benefits 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 SSSI.
18. I accept that by enabling the holiday units to be occupied all year round, the proposal would support the objectives of Policy SP4 of the Isle of Wight Core Strategy⁷ (CS) and the Isle of Wight Tourism Development Plan. It is also suggested that the proposal would not significantly increase the number of tourists using the site, would improve the ability to employ personnel for a full year and the site's viability, although this has not been substantiated by detailed evidence. Having regard to the information before me, I consider that these benefits would not clearly outweigh the likely adverse impacts on the SSSI/Ramsar Site, which would be derived from the proposal.
19. My attention has been drawn to a letter signed with the authority of the Secretary of State in respect of the Environmental Impact Assessment (EIA) screening carried out as part of the previous appeal. It states that 'there would be temporary effects during construction, but no significant environmental impacts have been identified in terms of noise, air and water pollution, waste, contamination, archaeology, ecology, flooding or traffic'. However, EIA relates to different statutory provisions to SPA, SSSI and Ramsar protection and in that regard, the letter explains that the screening direction does not affect any duties of the appellant under other legislation, including the Conservation of Habitats and Species Regulations 2017. Therefore, whilst the proposed development may not require assessment under the EIA Regulations, this does not automatically mean that likely significant effects on internationally important sites can be ruled out, or that an AA under the Habitats Regulations is not required.
20. For the foregoing reasons, I conclude that the disputed condition, by restricting the site's occupancy, remains reasonable and necessary to protect the integrity of the Ryde Sands and Wootton Creek SSSI, Solent and Southampton Water SPAs and RAMSAR site. In the absence of the condition, the development would be contrary to CS Policy DM12 which, amongst other things, expects development proposals to protect the integrity of international, national and local designations relating to landscape, seascape, biodiversity and geodiversity and the reasons for these designations.

Conclusion

21. For the reasons detailed above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

⁷ March 2012.

S Edwards

INSPECTOR