



Appeal Decision

Site visit made on 1 September 2020

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 September 2020

Appeal Ref: APP/U1105/W/20/3248692

Ellergarth, Dalditch Lane, Budleigh Salterton, Devon EX9 7AH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr & Mrs D & A Huish against the decision of East Devon District Council.
 - The application Ref 18/2445/FUL, dated 22 October 2018, was refused by notice dated 12 September 2019.
 - The development proposed is conversion of existing barn with extension, plus associated works for holiday use only.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the development on the East Devon Pebblebed Heaths Site of Special Scientific Interest (SSSI), East Devon Pebblebed Heaths Special Area of Conservation (SAC) and East Devon Heaths Special Protection Area (SPA) (the protected sites).

Reasons

3. The development has potential to disturb features of interest for which the SSSI, SAC and SPA are notified. I have, therefore, undertaken my determination of the appeal within the framework of an Appropriate Assessment under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations).
4. The South-East Devon European Site Mitigation Strategy¹ (MS) describes how the Pebblebed Heaths cover some 1400 hectares and make up the largest block of lowland heath in Devon. Collectively, the sites are designated for a variety of interest features including the north Atlantic wet heaths with cross-leaved heath, European dry heaths, populations of southern damselfly, nightjar and Dartford warbler.
5. The overarching conservation objective for the SPA is to avoid the deterioration of the habitats of the qualifying features, and the significant disturbance of the qualifying features, ensuring the integrity of the site is maintained and the site makes a full contribution to achieving the aims of the Birds Directive. For the

¹ Liley, D., Hoskin, R., Lake, S., Underhill-Day, J. & Cruickshanks, K. (2014). South-east Devon European Site Mitigation Strategy. Footprint Ecology. Unpublished report for East Devon District Council, Exeter City Council and Teignbridge District Council.

SAC, the overarching objective is to avoid the deterioration of the qualifying natural habitats and the habitats of qualifying species, and the significant disturbance of those qualifying species, ensuring the integrity of the site is maintained and the site makes a full contribution to achieving Favourable Conservation Status of each of the qualifying features².

6. The MS sets out how the interest features of the protected sites are at risk from recreation through disturbance, wildfires, nutrient inputs, trampling, fly tipping, and other visitor impacts. The proposal would result in an increase in the number of dwellings that, in combination with other development has the potential to increase recreation use and the impacts associated with such a use. Although the proposal is for the accommodation to be restricted to holiday use only, there is no substantive evidence that the effects on the protected sites would be any different.
7. Although only a small part of the protected sites are within 400m of the appeal site, paragraph 18.47 of the East Devon Local Plan 2013-2031 (LP) indicates new dwellings will not be allowed in this 400m protected zone. I note that the paragraph indicates that this restriction is specifically on account of the impacts of domestic cats through bird predation, and the appellant has suggested that a planning condition could be used to prevent occupiers of the accommodation having pets.
8. Nevertheless, whilst they may not be expressly articulated in the LP, I have already noted that the MS points out other impacts associated with housing close to the heathland boundary. Furthermore, Natural England advice in respect of this proposal explains that the exclusion zone recognises that urban impacts relate to a combination of factors including increased fire incidence and increased recreational pressure. Therefore, avoiding an increase in pets at the property would not necessarily avoid an increase in adverse effects on the protected sites.
9. Various factors, including the need to cross a stream, extend the distance from the site to the protected sites to over 400m when measured on the ground. However, Natural England's response to the application was made in the knowledge that intervening features meant that access routes to the protected sites were in excess of 500m from the site. As the facts were placed before them, and as Statutory Nature Conservation Body under the Habitats Regulations, I attribute their objection considerable weight.
10. It may well be that the risks associated with recreational impacts would be no different for those visitors originating from within the 400m protected zone and those outside. However, even though the vast majority of people visiting the protected sites do so by car, the MS indicates that there are fewer opportunities to divert or limit the impacts associated with housing within the 400m zone, for example by providing alternative sites for recreation.
11. Given the established trip patterns, measures such as car park management may well be the most effective form of mitigation. However, that is not reason to allow new (occupancy restricted) dwellings close to the protected sites where such mitigation may not be effective. Therefore, whilst a Unilateral Undertaking has been provided to make a contribution to wider mitigation

² Ibid.

projects, there is no substantive evidence that this would be effective in mitigating adverse effects from this proposal.

12. My attention has been drawn to a number of guidance documents welcoming visitors to the Pebblebed Heaths. Produced by the Pebblebed Heaths Conservation Trust, their tone is generally one of encouragement to visitors. I also note the appellant's comments that an advisory report about heathland access management was said by Councillors to improve accessibility to the heath for more people. However, the guidance purporting to encourage visitors is not robust scientific evidence sufficient to dispel reasonable scientific doubt that adverse impacts are likely to arise as a consequence of development within 400m, as advised by Natural England.
13. It has been suggested that local residents may be more likely to care for their immediate environment and be less likely to camp illegally or light fires. However, this is not substantiated by evidence and, in any case, as the proposal is for holiday accommodation, it is of little relevance. I note that an extension and annex has been allowed at nearby Brookside Cottage, but the Council has confirmed that an increase in independent dwellings would not result. It is, not, therefore, directly comparable to the case before me.
14. For the above reasons, following appropriate assessment, I conclude that the proposal, in combination with other development, is likely to lead to significant adverse effects on the integrity of the protected sites that cannot be adequately mitigated.

Other matters

15. A previous Inspector considering an appeal for the conversion of the barn to a dwelling³ accepted that the barn is a non-designated heritage asset. It is of some considerable age and there is merit in its retention. I can understand that without a clear future use, there are unlikely to be funds available to carry out substantial maintenance work. Without this, it is likely to continue to decay.
16. In the above context, the previous Inspector found that the proposal would be beneficial to the non-designated heritage asset and attributed significant weight to those benefits. There is nothing to suggest that I should not reach the same conclusions in this regard. There would also be other benefits, including those related to increased tourism activity in the area.

Planning balance

17. The proposal is likely to lead to unmitigated harm to the protected sites. The National Planning Policy Framework, at paragraph 175 indicates that if significant harm to biodiversity resulting from a development cannot be avoided or adequately mitigated, then planning permission should be refused. Furthermore, as set out in Planning Practice Guidance, as competent authority under the Habitats Regulations, I may only allow the proposal to proceed having ruled out adverse effects on the integrity of the protected sites, or, having failed to rule them out where there are imperative reasons of overriding public interest.
18. I have attached significant weight to the preservation of this non-designated heritage asset and its setting. However, the evidence before me does not

³ Appeal Ref: APP/U1105/W/17/3172195

suggest that the building is so important that its retention could be regarded as an imperative reason of overriding public interest. Therefore, the benefits do not outweigh the harm to the protected sites and the proposal would conflict with LP Strategy 47 that seeks to ensure the conservation of biodiversity and habitats.

Conclusion

19. For the reasons given above, I conclude that the appeal should be dismissed.

M Bale

INSPECTOR