
Appeal Decision

Site visit made on 14 October 2020

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 21 October 2020

Appeal Ref: APP/Q3305/W/20/3251805

The Mermaid Inn, 1-2 Tucker Street, Wells BA5 2DZ

- 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 Sam James against the decision of Mendip District Council.
 - The application Ref 2019/1461/FUL, dated 03 June 2019, was refused by notice dated 5 November 2019.
 - The development proposed is described as erection of 4no 2 bedroom duplex dwellings.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. An application for costs was made by Mr Sam James against Mendip District Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues are the effects of the development on:
 - the Somerset Levels and Moors Ramsar Site (the Ramsar site); and
 - the living conditions of future occupants of the proposed dwellings with regard to noise.

Reasons

Ramsar site

4. The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) states that before deciding to grant planning permission for a project which is likely to have a significant effect on a European site, either alone, or in combination with other plans or projects, and which is not directly connected with or necessary to the management of that site, a competent authority must make an Appropriate Assessment of the implications of the plan or project for that site in view of that site's conservation objectives. In this context, paragraph 176 of the National Planning Policy Framework (the Framework) states that listed Ramsar sites should be given the same protection as habitats sites.
5. Following the Council's refusal of planning permission, Natural England (NE) issued advice highlighting the unfavourable condition of the Ramsar site. In this context, the potential for the development to have a likely significant effect on

the integrity of the Ramsar site, both alone, or in combination with other plans or projects, arises due to the increase in population that it would support, and the related generation of wastewater. The latter could be ecologically harmful. Though an extant planning permission (the approved scheme) permits construction of 3 2-bed dwellings on the site, the appeal scheme is for 4 2-bed dwellings. In the absence of any evidence to the contrary, the appeal scheme would thus have the potential to support a larger number of occupants, who would, in turn, have the potential to generate a larger volume of wastewater. An Appropriate Assessment is therefore required.

6. Wastewater from the development would be discharged via sewage treatment works into rivers. This water would be enriched by nutrients, including phosphates. These nutrients could be directly or indirectly transmitted into the wetlands covered by the Ramsar site via the catchment.
7. I have been provided with 2 maps; one showing the river catchment of the Ramsar site, the other, the much larger surface water catchment of the Somerset Levels and Moors Special Protection Area (SPA). As the SPA covers broadly the same area as the Ramsar site, the surface water catchment is also broadly the same. Whichever map is used, the site lies within the catchment. It is therefore likely that nutrients from the development would, both alone, and in combination with those derived from other developments, contribute towards eutrophication within the Ramsar site. Likely significant effects on its integrity cannot therefore be ruled out.
8. The designation of the Ramsar site relates to its internationally important wetland features, including the floristic and invertebrate diversity and species of its ditches. Generic conservation objectives for the Ramsar site focus on the maintenance and restoration of its integrity, including that of its qualifying features. As increased eutrophication would worsen the unfavourable condition of the Ramsar site, it would be at odds with these objectives.
9. No means of strategic mitigation currently exists, and no site-specific measures have been proposed. In the absence of any other mechanism by which mitigation could be secured, the likely significant effects of the development on the Ramsar site would not be mitigated.
10. Alternative solutions which would have lesser impact on the integrity of the Ramsar site clearly exist. Indeed, NE has suggested ways in which nutrient neutrality can be achieved for new development. As such, and given the failure of the appeal scheme in this regard, allowing the appeal would be contrary to the Habitats Regulations. It would also be contrary to paragraph 175(a) of the Framework, which states that planning permission should be refused if significant harm to biodiversity cannot be avoided, mitigated, or as a last resort, compensated for.
11. In view of my findings above, I conclude that the development would have a likely adverse effect on the integrity of the Ramsar site due to the additional discharge of nutrients, and absence of mitigation. No development plan policies have been cited. Nonetheless, as outlined above, policies within the Framework provide a clear reason for refusing planning permission.

Noise

12. The appeal scheme would entail the construction of 4 dwellings immediately to the rear of the Mermaid Inn. This is currently closed, but the appellant has indicated that the appeal scheme should be considered on the basis that the pub use will be retained.
13. Mitigation of the noise likely to be generated by the pub would consist of sound insulation of the dwellings, and the installation of a mechanical ventilation heat recovery system (MVHR). Whilst the MVHR would enable the windows of the dwellings to be kept shut, there would be no requirement for this. Occupants could therefore exercise choice in response to external conditions. In this regard, the decision notice is incorrect in its reference to the requirement for permanent closure of the windows.
14. The noise report lists 3 assumptions which have been made in calculating the noise impact, and the level of mitigation specified. These assumptions relate to the construction of a boundary wall, and the way in which the pub will be used. In the context of the appeal scheme, both matters fall outside the scope of control. As such, and in absence of any other identified means by which these measures might be secured, the scenario envisaged within the noise report could not be achieved.
15. The noise report nonetheless identifies scope for the achievement of higher levels of sound insulation than those specified. Therefore, additional improvements to the building fabric could be secured. This could help to compensate for the fact that other measures within the noise report could not be delivered in full.
16. I have also taken into account the fact that the 3 dwellings permitted as part of the approved scheme could be built to the rear of the pub, whether or not the appeal was allowed. This would involve partial implementation of the approved scheme, given that this also allows for the residential conversion of the pub. In this regard, given the envisaged conversion, measures to mitigate pub noise would not have been required within the design of the 3 permitted dwellings. It follows that the 3 permitted dwellings would be much less well protected from the effects of noise than would the 4 proposed dwellings. The fact that the 3 permitted dwellings would be located slightly further from the boundary of the pub would make little difference.
17. In view of the above, I consider that the appeal scheme provides scope to provide far more acceptable living conditions for future occupants of dwellings on the site in relation to noise, than does the approved scheme. I attach significant weight to this consideration. Reasonable control over noise would otherwise exist through other legislation.
18. The decision notice also references the fact that the dwellings would be single aspect. However, this is only insofar as it is given as the reason why the permanent closure of the windows would be unacceptable. Whilst the nature of the connection between aspect and closure of the windows is unclear, as outlined above, the windows would not in any case be permanently closed.
19. Though the decision notice does not include any other objections relating to living conditions, at appeal the Council has raised additional objections on grounds that the dwellings would have a limited outlook, and lack outdoor

amenity space. The exact nature of the harm that would be caused in each case is again not clearly stated.

20. In this regard, all 3 dwellings in the approved scheme would be single aspect on the first floor. One would also be single aspect on the ground floor, and have no outdoor amenity space. Therefore, despite the current objection, and notwithstanding the larger number of units involved, the arrangement has, in effect, already been deemed as acceptable by the Council. This being so, and in the absence of any further explanation, I see no reason to reach a different view.
21. For the reasons outlined above I conclude that the development would provide acceptable living conditions for its future occupants in relation to noise. The development would therefore comply with Policy DP8 of the Mendip District Local Plan Part 1: Strategy and Policies 2006-2029 adopted 2014 (the LP) which states that development adjacent to existing sources of noise will need to demonstrate that measures can be taken effectively to mitigate the impacts on amenity; and Policy DP7 of the LP, which states that developments should demonstrate that they would provide a satisfactory environment for future occupants.

Other Matters

22. The site is located within Wells Conservation Area (the Conservation Area). Insofar as it relates this appeal, the significance of the Conservation Area resides in the historic layout of the town, and the collection and interrelationship of historic buildings and spaces it contains. One such building is the Mermaid Inn, which the Council has identified as a non-designated heritage asset.
23. The Council raised no objection to the scheme in relation to its design and setting within the Conservation Area. I agree that the design of the proposed building would integrate well, both with the townscape at large, and with the Mermaid Inn closer at hand. As such, the Conservation Area would be preserved.
24. Interested parties have also raised a number of concerns, including flood risk, highways safety, insufficient parking, shading, and an adverse effect on existing dwellings from noise and smoke from the pub. Whilst the latter concern does not relate to the appeal scheme, no grounds for objection in relation to either highways safety, flood risk or shading have been identified by the Council. As the site is in Flood Zone 1, the access is existing, the site is sustainably located, and the development would be of a similar scale and mass to the buildings previously on site, I again see no reason to find otherwise.

Conclusion

25. The development would have an unacceptable likely effect on the Ramsar site. For this reason, as set out above, I conclude that the appeal should be dismissed.

Benjamin Webb

INSPECTOR