



Appeal Decision

Site visit made on 24 February 2021

by L Page BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 August 2021

Appeal Ref: APP/D0121/W/20/3263649

Land to the West of Rowington, Bridgwater Road, Winscombe BS25 1NA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Adam Phelps of Crown Developments against North Somerset Council.
 - The application Ref 19/P/3180/FUL, is dated 20 December 2019.
 - The development proposed is erection of 4 dwellings, associated works including access road, parking, and landscaping.
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Decision

1. The appeal is dismissed, and planning permission refused.

Procedural Matters

2. The Council failed to issue a decision within the prescribed period but has confirmed it would have refused planning permission, subsequently outlining the main areas in dispute.
3. The description of development has been taken from the appeal forms because an amendment was agreed between parties during the application process.
4. Biodiversity evidence not part of the original planning application has been submitted by the appellant under the appeal. The Council and other interested parties will have had an opportunity to comment on this evidence under normal appeal procedures. The evidence has therefore been accepted and the appeal has been dealt with accordingly.
5. The site is functionally linked land associated with North Somerset and Mendip Bats Special Area of Conservation (SAC) and there is potential for likely significant effects. As the competent authority under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations), I am required to conduct an appropriate assessment as part of my decision.
6. I am also required to consult Natural England and have regard to any representations that they make. In this context, Natural England were consulted, and their subsequent response has been subject to further comments from both the appellant and the Council.
7. The revised National Planning Policy Framework (the Framework) was published 20 July 2021 and introduced a number of revisions that may be pertinent to the proposal. Consequently, the main parties were given an opportunity to comment on the revised Framework and any subsequent implications that may have emerged.

Main Issues

8. The main issues are:

- (a) the effect of the proposal on biodiversity and likely significant effects on the North Somerset and Mendip Horseshoe Bat SAC; and
- (b) whether the proposal is in an appropriate location for housing in relation to the settlement strategy for the area including effects on character and appearance.

Reasons

Biodiversity

- 9. The site is functionally linked land associated with North Somerset and Mendip Horseshoe Bat SAC. This is on the basis that there is evidence of qualifying features of the SAC, namely greater and lesser horseshoe bats, using the site for commuting and foraging.
- 10. Greater horseshoe bats were recorded in very low numbers along all of the site boundaries apart from the northern boundary. Out of 55 nights of static recordings, greater horseshoe bats were recorded on 8 nights only, with an incident rate of around 15%.
- 11. Lesser horseshoe bats were recorded by the static detectors in low numbers along all of the site boundaries. Out of 55 nights of static recordings, lesser horseshoe bats were recorded on 27 nights, with an incident rate of around 50%. They were observed possibly foraging during the activity surveys.
- 12. Consequently, in developing the site, there is potential for habitat loss and likely significant effects on the qualifying features of the SAC. Therefore, it is necessary to undertake an appropriate assessment to consider the conservation objectives of the affected SAC and the effect the proposed development would have on the delivery of those objectives, and whether there would be an adverse effect on the integrity of the SAC or its ability to maintain the favourable conservation status of its qualifying features.
- 13. The conservation objectives include, among other things, the structure and function of the qualifying features' habitats, supporting processes on which they rely, their population numbers and distribution.
- 14. Habitat at the site comprises grassland which can give rise to invertebrate prey for foraging. Without compelling evidence to the contrary, this appears to be irrespective of whether it is grazed or how it is currently managed. Furthermore, strong linear boundary features comprising broadleaved woodland and hedgerows provide well established commuting opportunities. There is also potential for these boundary features to act as catchments for invertebrate prey carried by the prevailing winds from the grassland adjacent.
- 15. The proposal would develop a large proportion of the available grassland habitat, and therefore at a fundamental level has the potential to negatively impact foraging opportunities. Importantly, it has been contended that 90% of invertebrates found at hedgerows do not originate there but are brought there from the grassland via prevailing winds.

16. In this context and without evidence to the contrary and applying the precautionary principle established in the 'Waddenzee' case (ECJ [2004] C-127/02), there appears to be an inseverable relationship between the grassland and the boundary features, and the site functions as a whole rather than as disaggregated foraging and commuting components.
17. The proposal would also introduce an appreciable number of additional dwellings, which have the potential to generate light pollution and disrupt commuting and foraging along the boundary features of the site.
18. The incident rate of around 50% for lesser horseshoe bats appears to be consistent with optimal habitat present at site, in that the prey generated by the grassland habitat is more suitable to the smaller species of bat. Even without acknowledging disputes over survey methodology requirements for the relevant consultation zone, this incident rate is appreciable in and of itself.
19. Consequently, the loss of grassland foraging habitat, in conjunction with potential disruption of commuting and foraging opportunities through light pollution, would give rise to adverse effects on the structure and function of their habitat, supporting processes on which they rely, their population numbers and distribution.
20. In terms of potential mitigation, if the habitat that would be lost is 'functionally linked land' (land regularly used by species which are designated features but outside of the boundaries of the European site) then replacement of this habitat, provided it occurs outside the boundaries of the European site, can still be viewed as mitigation rather than compensation.
21. In this context, a reduction in the number of dwellings would likely give rise to opportunities to introduce a species-rich grassland mix in the south east corner of the site, which could be managed as a long sward to offset the loss of the wider site. However, I am not able to limit the quantum of development or fundamentally change the nature of the proposal through the use of planning conditions.
22. In terms of a scheme for the mitigation of light pollution, there is no evidence before me demonstrating that light spill from both external and internal sources can be adequately controlled as a matter of principle. Furthermore, in cases where it is unclear whether mitigation would be effective, there is no evidence that a negatively worded Grampian style condition is acceptable in the context of securing such mitigation for European sites.
23. In responding to Natural England's representations, the appellant has provided evidence that the appropriate calculation for habitat loss and habitat replacement required in relation to SAC bat populations has been carried out in accordance with the relevant supplementary planning document.
24. However, it would appear to be reliant on appropriate management of non-domestic areas. In this context, it is not clear what details the management scheme would entail, whether these details are robust and whether there is a suitable mechanism, such as a planning obligation, securing the mitigation in perpetuity.

25. Consequently, insofar as what is currently put forward, there are no mechanisms to secure adequate mitigation to offset the adverse effects on the structure and function of lesser horseshoe bat habitat, supporting processes on which they rely, their population numbers and distribution.
26. The incident rate of around 15% for greater horseshoe bats appears to be consistent with the sub-optimal habitat present on site, in that the prey generated by the grassland habitat is more suited to lesser horseshoe bats due to their smaller size, among other things. This evidence suggests that greater horseshoe bats may be far less reliant on the site by comparison and are commuting and foraging on functionally linked land elsewhere in the locality. This is a view endorsed by Natural England.
27. Consequently, despite the effects of the proposed development on the habitat at the site, because of its limited value, even without mitigation there would not be an adverse effect on the structure and function of greater horseshoe bat habitat, supporting processes on which they rely, their population numbers and distribution.
28. Altogether, notwithstanding my findings in relation to greater horseshoe bats, there is a prevailing and appreciable population of lesser horseshoe bats using the site for commuting and foraging, and the proposed development would have adverse effects on the structure and function of their habitat, supporting processes on which they rely, their population numbers and distribution.
29. There is insufficient evidence that these effects would be adequately mitigated and consequently the proposed development would have an adverse effect on the integrity of the SAC and its ability to maintain the favourable conservation status of its qualifying features.
30. There is no evidence that there are alternative solutions, imperative reasons of overriding public interest or that compensatory measures would be provided which maintain the ecological coherence of the Natura 2000 network. Accordingly, the proposal conflicts with the requirements of the Habitats Regulations.
31. An adverse effect on the integrity of a SAC is the principal consideration in the decision making hierarchy in this case. Consequently, even if there is net gain in biodiversity terms more broadly, which does not appear to be disputed in the Council's latest position, this would not overcome my preceding findings.
32. Overall, the conservation objectives and the wider integrity of the North Somerset and Mendip Bats SAC would be adversely affected as a result of the proposal. This would conflict with the Habitats Regulations, Policy CS4 of the North Somerset Core Strategy 2017 (CS) and Policy DM8 of the North Somerset Development Management Policies Sites and Policies Plan Part 1 2016 (DMP), and Paragraph 180 and 181 of the Framework. Among other things, these seek to protect, connect, and enhance important habitats, particularly designated sites.

Location

33. Located to the south east of the settlement of Winscombe, the site is outside and detached from the settlement boundary as defined within the development plan. Accordingly, in fundamental policy terms, the site falls within the countryside and the relevant policy to consider in this context is Policy CS33 of the CS. It would not fall to be considered under Policy CS32 of the CS, because it would need to sit within the settlement boundary or directly adjoining it.
34. There is no evidence before me demonstrating that a settlement boundary in the development plan cannot be a rigid policy tool, or that it needs to be applied flexibly in and of itself. The application¹ referenced by the appellant is an isolated example, and there is not a compelling body of evidence to this effect.
35. The defined settlement boundary functions to provide a clear demarcation of the settlement to protect the countryside from urbanising effects. I have therefore applied it in this context. Moreover, the defined settlement boundary has been devised through a statutory process which has considered the qualities of the settlement, in terms of its pattern of development and its setting. This has been endorsed through examination and it is therefore important to uphold.
36. I can appreciate that through the passage of time, patterns of development around settlements change on the ground. As such, the context within which a proposal's relationship with defined settlement boundaries may need to be assessed in a flexible manner, especially if things have changed markedly since it was first established. However, there is no evidence that things have changed on the ground or that the defined settlement boundary should be applied differently or is out of date in this case.
37. In this context, Policy CS33 places significant restrictions on new residential development, unless specific exceptions are met, including for replacement dwellings, residential subdivision, and rural workers dwellings, among other things. The proposal does not encapsulate any of these exceptions and therefore is fundamentally in conflict with Policy CS33 of the CS. This is because in spatial terms it would erode the rural character and appearance of the countryside with urban development as a matter of principle.
38. Notwithstanding the policy position on the defined settlement boundary, the site is located in reasonable proximity to the settlement of Winscombe, to the extent where it is not completely detached from the services on offer there. Indeed, the Council does not appear to dispute its relationship with the settlement in this regard.
39. Although small and medium sized sites can make an important contribution to meeting the housing requirement of an area the context within which they are delivered is an important consideration. Paragraph 69 of the Framework makes clear that great weight should be given to the benefits of using suitable sites within existing settlements for homes.

¹ 17/P/0140/F

40. However, it has been determined in this case that the site is not suitable for housing due to its countryside location. Similarly, it cannot be concluded that the site would be an optimal or effective use of land pursuant to sustainable forms of rural housing.
41. In terms of character and appearance, the site comprises an undeveloped parcel of land, comprising grassland amongst a secluded setting of mature boundary features and other low density and sparse pattern of residential development, mainly comprising large, detached dwellings on spacious plots.
42. It is also situated at the boundary between two landscape character areas J1 Lox Yeo Rolling Valley Farmland and E1 Mendips Ridges and Combes. Among other things these are described as comprising peaceful and remote pastoral valleys and seek to protect against urbanisation of small rural roads.
43. Notwithstanding, the secluded nature of the site and the nature of boundary features means that the built form would be largely obscured, and the proposal would be well screened from surrounding views within the landscape character areas and the setting of Mendip Hills Area of Outstanding Natural Beauty.
44. During my site visit, even as someone actively assessing views, it proved very difficult to achieve such views of the site from public vantage points. Consequently, the general public are unlikely to notice the site in passing. Even in the worst case scenario such as in the winter period where boundary features are not in leaf, glimpses, or oblique views from the adjacent public rights of way or other receptors could potentially be mitigated by strengthening landscaping. This could be secured by planning condition.
45. The limited widening of the shared access is such that only a small amount of additional land and vegetation loss would occur. Consequently, the general character and appearance of the access would be consistent with what is existing. Furthermore, the appellant has evidenced a number of other similar shared access arrangements in the vicinity, which would not look dissimilar to the shared access in this case. Altogether, the limited access works would not be urbanising in and of themselves or look discordant in comparison to the local context.
46. The more modern design materials of the dwellings, including the use of slate, would appear couched in the context of other development in the locality. Including buildings at Sidcot School, the Quaker Meeting House and Oakridge House on Oakridge Lane, and 'Westlands' to the south of the site. Even if there was a degree of discordance, there is potential for further flexibility and control of materials through the use of planning condition to make the development acceptable in planning terms.
47. The scale and layout of the proposal may be somewhat different to other dwellings in the locality but in general terms they are comparable at around two storeys in height and around 8 dwellings per hectare in density. Furthermore, there did not appear to be any strong sense of uniformity between existing dwellings during my site visit. Consequently, a degree of design divergence would appear acceptable in principle.

48. Altogether, the design of the dwellings would not be discordant to an unacceptable degree and the appellant has demonstrated general conformity with the National Design Guide. In this context, Paragraph 134 of the Framework is clear that significant weight should be given to development which reflects local design policies and government guidance on design.
49. Notwithstanding, I place significantly more weight on the need to preserve the countryside because it is a finite resource. Consequently, in this case, the design direction of the proposal would not overcome the in principle conflict with the application of defined settlement boundaries or the protections afforded to the countryside in spatial terms.
50. Overall, the proposal would not be in an appropriate location for market housing as it is outside of defined settlement boundaries. This would create in principle harm to the spatial rural character and appearance of the area. Therefore, it does not accord with Policies CS14, CS32 or CS33 of the CS. Among other things, these policies control development in the countryside.

Planning Balance

51. The appellant places significant weight on the application of policies within the Framework and the presumption in favour of sustainable development. Indeed, at 6.1 of their statement, they concede that the proposal does not accord with Policies CS14, CS32 and CS33 of the CS, which among other things control development beyond defined settlement limits.
52. Consequently, their case is presented on the basis of these policies being out of date. Even if these policies are out of date, through a lack of housing land supply to the extent argued by the appellant or otherwise, my findings relating to the North Somerset and Mendip Horseshoe Bat SAC provides me with a clear reason for refusing the development proposed in accordance with Paragraph 11 d) i. and Footnote 7 of the Framework.

Other Matters

53. The relevant appeals cited by the Council are noted, but the full details of them have not been submitted in this case and therefore I am unable to be conclusive as to their relevance. They have carried limited weight under the appeal accordingly.
54. The Council's administration of the application is not a matter for me to deal with under this appeal, which has been decided in relation to the evidence presented, accordance with the development plan and other material considerations.
55. The proposal is for a limited number of dwellings. Consequently, the potential socio-economic and energy related sustainability benefits derived from the proposal would also be limited.
56. There are a number of other matters raised by the appellant, many of which (including arboriculture and highways) do not appear in dispute between the parties and do not appear to generate substantive benefits. Consequently, these matters have been neutral under the appeal.

Conclusion

57. The proposal is in conflict with the development plan in relation to its effect on the North Somerset and Mendip Horseshoe Bat SAC and non-conformity with the settlement strategy for the area. Even if policies within the development plan were out of date, the effects on North Somerset and Mendip Horseshoe Bat SAC gives me a clear reason to refuse the development proposed. Consequently, the appeal is dismissed, and planning permission refused.

Liam Page

INSPECTOR