



Appeal Decision

Site visit made on 31 August 2021

by Colin Cresswell BSc (Hons) MA MBA MRTPI

an Inspector appointed by the Secretary of State ~~for Communities and Local Government~~

Decision date: **24 September 2021**

Appeal Ref: APP/W3330/W/19/3229997RD

Land to the rear of Yonderdown and 3 Curdleigh Lane, Blagdon Hill, Taunton TA3 7SH

- 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 Hoskins & Mr Cosens against the decision of Somerset West and Taunton Council.
 - The application Ref 30/18/0035, dated 22 October 2018, was refused by notice dated 14 March 2019.
 - The development proposed is erection of 2 single storey dwellings with associated works and landscaping.
 - This decision supersedes that issued on 31 January 2020. That decision on the appeal was quashed by order of the High Court.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr & Mrs Hoskins and Mr Cosens against Somerset West and Taunton Council. This application is the subject of a separate Decision.

Background and Main Issues

3. The proposal was the subject of an appeal decision¹ dated 31 January 2020 which was subsequently quashed by the High Court. The main issue identified by the Inspector in that decision was the effect of the proposed dwellings on the character and appearance of the area. This reflects the single reason for refusal listed in the Council's Decision Notice.
4. However, attention has since been drawn to the high levels of phosphates within the Somerset Levels and Moors Ramsar Site. Natural England wrote to the Council on 17 April 2020 to advise that further residential units within the catchment may be harmful to the conservation objectives of the site by adding to waste water effluent. This is of direct relevance to the appeal as the proposed dwellings would be situated within the surface water catchment area of the Ramsar Site. That being the case, I have a statutory duty to address the matter and have therefore made the effect on the Ramsar Site a main issue in the appeal even though it is not listed as a reason for refusal. Both parties have been given an opportunity to comment.

¹ Appeal Decision: APP/W3330/W/19/3229997 (quashed by order of the High Court).

5. The main issues in this case are therefore:

- the effect of the proposal on the Somerset Levels and Moors Ramsar Site having particular regard to phosphate levels.
- the effect of the proposal on the character and appearance of the area.

Reasons

Effect on Ramsar Site

6. The Ramsar Site is designated for its internationally important wetland features, including the diversity of its flora and fauna. In its letter to the Council, Natural England says that the interest features of the Ramsar Site are unfavourable, or at risk, from the effects of eutrophication caused by excessive phosphates. It is stated that additional residential units within the catchment are likely to add phosphate to the designated site via waste water treatment effluent, thus contributing to the existing unfavourable condition and further preventing the site from achieving its conservation objectives.
7. I have little reason to doubt the accuracy of the advice from Natural England and, consequently, it seems to me that the proposed development would be likely to have a significant effect on the interest features of the Ramsar Site. In these circumstances, the Habitat Regulations² require me to carry out an Appropriate Assessment. This is to determine whether or not the proposal would affect the integrity of the site.
8. Recent caselaw³ requires the decision maker, when considering the effect that a proposal would have on European Sites, to consider mitigation within an Appropriate Assessment. In this particular case, the appellants indicate that they did not wish to incur further costs in seeking to establish a scheme of mitigation. Brief reference is made to potentially installing an on-site mitigation scheme, or alternatively, pursuing a strategic mitigation option. However, no specific details are provided and little more is said. Indeed, the appellants instead suggest that these matters could be addressed as part of a fresh planning application. Therefore, based on the evidence provided in this appeal and, adopting a precautionary approach, in the absence of mitigation, it is reasonable to suppose that the proposal both individually and in combination with other projects would have the potential to increase phosphate levels in the designated wetlands.
9. This leads me to conclude that there is an unacceptable risk that the proposed development would have a significantly adverse effect on the internationally important features and integrity of the Ramsar Site. It would be in conflict with the aim of Policy DM1 of the Core Strategy⁴ to protect wildlife habitats. There would also be conflict with provisions of the Framework⁵ in this regard.

² Conservation of Habitats and Species Regulations 2017 as amended.

³ People over Wind and Sweetman v Collite Teoranta ECLI:EU:C:2018:244

⁴ Taunton Deane Borough Council Adopted Core Strategy 2011-2028.

⁵ National Planning Policy Framework.

Character and appearance

10. Blagdon Hill is a small village surrounded by open countryside. Most housing is situated along the frontage of the main road which runs in a north to south direction through the village. As such, much of Blagdon Hill is based around a generally linear pattern of development. However, not all development in the village is evenly distributed on either side of the main north to south route. There are also a number of adjoining roads which contain housing and, in places where these roads merge, the prevailing pattern of development becomes somewhat less linear in nature.
11. One of these adjoining roads is Curdleigh Lane, which runs in a west to east direction towards the open countryside. The lane is characterised by large detached dwellings which are well set back from the street frontage behind hedges and mature vegetation. Alongside the nearby agricultural fields, these features give Curdleigh Lane a distinctly spacious, leafy and rural appearance consistent with its location on the edge of the village.
12. The proposed dwellings would be situated in the rear gardens of Yonderdown and No 3 Curdleigh Lane. As the dwellings would be positioned behind existing properties and would be well set back from the road frontage, they would not be very conspicuous from within the lane. Although a new access drive would be constructed next to Yonderton, this would be in keeping with the existing driveways which access Curdleigh Lane at this point. The visual impact on the lane would therefore be minimal and its open, leafy and spacious characteristics would be maintained.
13. The rear gardens of Yonderdown and No 3 adjoin open paddocks which, in turn, adjoin a wider expanse of agricultural fields. From some vantage points within these gardens, it is possible to look across these open areas towards dwellings in more distant parts of Blagdon Hill. However, due to the topography of the area and the prevalence of trees and hedgerows in the landscape, the visual exposure of the site within the wider surroundings is limited. The proposed dwellings would be very low in height and, together with the additional planting being proposed along the northern boundary, they would not be easily discernible from public vantage points within the village or surrounding countryside, including from the public footpath network.
14. While the dwellings would be visible from the rear of some nearby properties in Curdleigh Lane (particularly Yonderdown and No 3) they would remain well enough separated from existing development to maintain the sense of spaciousness which characterises these rear gardens. The presence of hedges and mature vegetation within the local setting would further reduce the visual prominence of the dwellings from adjoining properties.
15. Although my attention has been drawn to another example⁶ of housing being permitted to the rear of an existing property, I nonetheless recognise that such developments are not commonplace within Blagdon Hill. However, in this particular case, I have found that the proposed dwellings would not be very noticeable features and so would not undermine the distinctive characteristics of the village, including its pattern of development.

⁶ Council Reference: 30/18/0001 (Nutbeam Farm)

16. I have considered the Council's argument that allowing this appeal would set a precedent for other similar developments. However, each proposal must be determined on its own merits and a generalised concern of this nature does not convince me that the development would be harmful in this case. Differing circumstances and the potential for cumulative harm would represent matters to be considered were other similar proposals to be advanced.
17. I therefore conclude on this issue that the proposal would have an acceptable effect on the character and appearance of the area. There would be no conflict with the design objectives of Policies CP1, CP8 or DM1 of the Core Strategy. Nor would the proposal conflict with Policy D7 of the Site Allocations Development Management Plan⁷ or the Draft Design Guide⁸, which seek appropriate standards of design.

Conclusion

18. The development would make a positive contribution to local housing supply and, due to the design of the units being proposed, may be particularly well suited to some elderly residents. However, given the small scale of the development, these benefits would be relatively minor and so I do not assign them a great deal of weight in this appeal. For similar reasons, I do not assign the ecological benefits of the proposed planting much weight either.
19. I have found that the development would be acceptable in terms of its effect on the character and appearance of the area. I also note that it would comply with a number of other planning policies, including those which permit new housing within the village. However, the lack of harm with regard to these matters does not outweigh the potential harm to the Ramsar Site that has been identified. Considering the international importance of such habitats, this harm carries substantial weight. Hence, the benefits of the proposal do not outweigh the harm. This is not the sustainable development for which the Framework says that there is a presumption in favour.
20. I therefore conclude that the appeal should be dismissed.

Colin Cresswell

INSPECTOR

⁷ Taunton Deane Adopted Site Allocations and Development Management Plan 2016.

⁸ Somerset West & Taunton Design Guide Draft SPD, 2021.