



Appeal Decision

Site Visit made on 20 August 2021

by L J O'Brien BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 November 2021

Appeal Ref: APP/Q3305/W/21/3269669

Stratton Farm, High Street, Stoney Stratton, Shepton Mallet BA4 6DY

- 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 Thomas Olunloyo against the decision of Mendip District Council.
 - The application Ref 2020/1326/FUL, dated 29 July 2020, was refused by notice dated 13 November 2020.
 - The development proposed is erection of a dwelling and annex.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - the effect of the proposal on the Somerset Levels and Moors Ramsar site with particular regard to the discharge of phosphates; and
 - whether or not the proposed development would occupy an acceptable location for a permanent residential dwelling.

Reasons

3. The appeal site is an open field with an existing access onto Westcombe Road. The site previously contained several barns which have now been demolished. The site is outside of the development limit of Stoney Stratton.
4. The proposal is for the construction of a two storey dwelling with a single storey annex.

Ramsar site

5. The appeal site falls within the catchment flowing into the Somerset Levels and Moors Ramsar Site which is listed under the Ramsar Convention. The Ramsar Site is designated for its internationally important wetland features including the floristic and invertebrate diversity and species of its ditches. At present, the interest features of the Somerset Levels and Moors Ramsar Site are considered unfavourable, or at risk, from the effects of eutrophication caused by excessive phosphates.
6. Due to the location of the site, the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) requires the decision maker to undertake an Appropriate Assessment (AA) where there are likely significant

effects from the proposal, either alone or in combination with other plans or projects. This responsibility falls to me in the context of this appeal.

7. Furthermore, following recent caselaw following the *Coöperatie Mobilisation for the Environment UA and Others v College van gedeputeerde staten van Limburg and Others* (Joined Cases C-293/17 and C-294/17 – referred to as the ‘Dutch Case’) Natural England have issued advice making it clear that where a designated European site is considered to be in an ‘unfavourable’ condition the scope for permitting further development that would add additional phosphate either directly or indirectly to the site is necessarily limited.
8. The proposed development would introduce an additional residential unit and an associated annex to the area. In my view, and taking a precautionary approach, the proposal may have an effect on the levels of phosphate reaching the designated site thus contributing to the existing unfavourable condition and further preventing the site in achieving its conservation objectives. The advice provided by Natural England supports this. For this reason, I consider that the proposal would be likely, alone and in combination with other plans and projects in the area, to have a significant effect on the Somerset Levels and Moors Ramsar Site.
9. I have not been provided with sufficient detail regarding any potential mitigation. Consequently, I am of the view that the proposal would have a detrimental effect on the Somerset Levels and Moors Ramsar site.
10. As I am not assured that the proposal would not adversely affect the integrity of the European site, the Habitats Regulations require consideration as to whether there are any alternative solutions that would have a lesser effect, or avoid an adverse effect, on the integrity of the site. In this instance I have nothing before me to categorically rule out the availability of other solutions. However, I have also been presented with no compelling information to suggest the opposite is true.
11. In any event, even were I to conclude that no alternatives exist, the Habitats regulations state that, where adverse effects would occur, imperative reasons of overriding public interest relating to human health, public safety or benefits of primary importance to the environment must exist to warrant the grant of planning permission. I do not consider that the provision of one additional dwelling and an annex would amount to an imperative reason of overriding public interest in this case. In these circumstances the Habitats Regulations are clear that planning permission must not be granted.
12. I acknowledge the existing planning permission granted in October 2019¹ for the demolition of existing building and erection of a dwelling with annex on the site. I accept, on the basis of the evidence before me, that the approved scheme represents a strong and realistic fallback position. Notwithstanding this, following the aforementioned caselaw and advice from Natural England the situation in respect of the Ramsar site has changed since the grant of planning permission for the approved scheme and the circumstances in this case are different. Furthermore, the appeal scheme is notably larger than that previously approved and I have not been provided with any compelling evidence to satisfy me that the appeal scheme would not lead to further

¹ 2019/1687/FUL

adverse effects on the Ramsar site as a result of its increased size and amended design.

13. Though I note the appellant's argument that the approved scheme could be extended using permitted development rights I have not been provided with any substantive evidence to suggest that this would definitely be the case. As such, though I note the possibility of future extension I afford little weight to this argument.
14. Consequently, I find that the proposal would cause harm to the Somerset Levels and Moors Ramsar site with particular regard to the discharge of phosphates. The proposal would, therefore, conflict with Policies DP5 and DP8 of the Mendip District Council Local Plan Part 1: Strategy & Policies 2006-2029, adopted 2014 (LP). Amongst other things Policy DP5 states that all development proposals must ensure the protection, conservation and, where possible, enhancement of internationally, nationally, or locally designated natural habitat areas and species. Policy DP8 goes on to say that all development proposals should minimise, and where possible reduce, all emissions and other forms of pollution and must include an assessment appropriate to the type and extent of impact and any associated risks to the satisfaction of the relevant environmental body.
15. The proposal would also fail to meet the expectation set out in the National Planning Policy Framework (The Framework) which seeks to conserve and enhance the natural environment and states that if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.

Location

16. The appeal site is situated within the open countryside where under Policy CP1 of the LP development will be strictly controlled but may exceptionally be permitted in line with the provisions set out in Policy CP4. The proposal before me does not accord with any of the criteria set out within Policy CP4.
17. Notwithstanding the above, planning permission has been granted for a residential dwelling and annex on the site as set out above. I have no compelling evidence before me to suggest that the circumstances in terms of the location of the site have changed since the grant of the extant permission. I have seen no substantive evidence to suggest that the 2019 permission would not be implemented. The proposal before me would, consequently, not result in the net gain of a dwelling in the location.
18. As such, in respect of this particular issue I consider that the 2019 permission is a strong and realistic fallback position and I afford this significant weight in my assessment of the appeal before me. I therefore consider that the principle of a residential dwelling on the site has been established and thus the appeal site would occupy an acceptable location for a permanent residential dwelling.
19. Consequently, though the proposal would indeed conflict with Policy CP1 and CP4 of the LP, in my view, material considerations are such so as to indicate that, in respect of this issue, no harm would be caused.

Other Matters and Planning Balance

20. There is no dispute that the Council does not currently have a five year housing land supply. A presumption therefore exists in favour of granting planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. The addition of new homes which would contribute towards the housing supply in the area would undoubtedly be a benefit of the scheme. However, I am mindful that due to the existing planning permission, allowing this appeal would not result in a net gain of dwellings. I also acknowledge the economic benefits of engaging local professionals, trades and suppliers and the ongoing benefit of the occupiers of the proposed dwellings utilising local facilities. These benefits are, however, limited by the small scale of the proposal and must be considered in that context. Therefore, the cumulative benefits associated with the additional dwelling, would not outweigh the harm I have identified above.
21. I acknowledge the existence of a strong fallback position. However, for the reasons set out above in respect of the Ramsar site, the approved scheme would be notably different to that which is before me and does not in itself indicate that the appeal should be allowed. I also recognise the findings I have set out above in respect of the location of the proposed property. However, the lack of harm in this regard is a neutral consideration and not a factor which weighs in favour of the scheme.
22. I have noted a number of other issues raised. However, as this proposal is going to be dismissed for other reasons and the other concerns expressed do not have a direct bearing on the main issues, it is not necessary for these to be explored further as part of this appeal.
23. I have given careful regard to all of the above considerations. However, none are sufficient to dissuade me from the conclusion I have reached that the proposal would cause harm to the Somerset Levels and Moors Ramsar site.

Conclusion

24. The proposal would not accord with the development plan when it is considered as a whole and the adverse impacts would significantly and demonstrably outweigh the benefits. I have not identified any material considerations which indicate that the appeal should be allowed. For the reasons given above I conclude that the appeal should be dismissed.

L J O'Brien

INSPECTOR