



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: 25 November 2021

Appeal Ref: APP/Q3305/W/21/3270797

Knapp Hill Farm, Bath Road, WELLS, BA5 3LN

- 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 Flower and Hayes Ltd against the decision of Mendip District Council.
 - The application Ref 2020/1123/FUL, dated 15 June 2020, was refused by notice dated 9 October 2020.
 - The development proposed is described as 'Proposed DP22 application for the conversion and change of use including a small extension of a redundant agricultural building into a 2 bedroom residence'.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposal on the Somerset Levels and Moors Ramsar site with particular regard to the discharge of phosphates.

Reasons

3. The appeal site comprises a redundant single storey agricultural building which is tucked against the slope of the land behind intervening agricultural land and a low stone wall and access gate. The site is opposite the junction of Old Frome Road and Bath Road and is set back from the road by a grass verge.
4. The proposal is for a small single storey extension and the conversion and change of use of the building into a two bedroom dwelling with associated works.
5. The appeal site is within the Mendip Hills Area of Outstanding Natural Beauty (AONB). As the property is within the AONB, I have a duty to ensure that the proposal would not undermine the statutory purpose of the AONB to conserve and enhance the natural beauty of the area. In this instance neither party has raised an issue in this respect and, in my view, the circumstances of the proposal are such that I consider the natural beauty of the area would not be harmed.
6. The 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.
7. 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.
 8. 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.
 9. The proposed development would introduce an additional residential unit to the area. In my view, and taking a precautionary approach, the additional unit 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.
 10. As part of the appeal before me, the appellant has submitted a completed ‘Phosphorous Budget Calculator’ (PBC) relating to a previously approved scheme for a one bedroom dwelling on the site. The PBC is a tool which the Council have implemented to establish the additional phosphate output of a proposed development which should then be used to form the basis of a detailed scheme of mitigation.
 11. The appellant holds that the PBC indicates that the sum total of constructed wetland which the development would need to create as mitigation would be 0.009 hectares. However, the Council dispute this figure and state that the mitigation should be 0.019ha as the reduced figure cited by the appellant will only be applicable after improvements to the Wastewater Treatment Works have been made. These improvements should be implemented within the next five years.
 12. Irrespective of which figure is correct, I have been provided with little detail regarding the proposed mitigation. The appellant states that the required wetland could be provided off site on other land within the appellant’s ownership. However, the Council hold that this land may not be suitable and believe that the mitigation could have its own implications for the AONB. Furthermore, the detail provided is extremely limited and I am not persuaded that the proposed mitigation could be secured, implemented and maintained in such a way so as to overcome any adverse effects associated with the proposal. Consequently, given the dispute between the parties regarding the PBC and the lack of detail provided I am of the view that the proposal would have a detrimental effect on the Somerset Levels and Moors Ramsar site.
 13. I note the appellant’s view that full details regarding the drainage details and proposed mitigation could be secured by condition. However, on the basis of

the evidence before me I do not have certainty that there is a reasonable basis that such conditions could be successfully implemented. The Council are clear in their position on the suitability of such conditions which follows their own legal advice. The Council hold that 'pre-commencement' conditions relating to affected developments within the catchment area cannot be discharged until it has been confirmed either; that a Habitats Regulation Assessment (HRA) is not required for the development, or the development would not have a likely significant effect and sufficient information to demonstrate this has been provided and found to be acceptable, or that an HRA is required and sufficient information to demonstrate that the development would not adversely affect the integrity of the European site has been provided and the HRA has been submitted and found to be acceptable. As such, without the further details the Council have requested any such conditions would not be discharged. Thus, given the degree of uncertainty in this case, I consider that these matters cannot be left to be dealt with via conditions as they go to the principle of the development.

14. 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.
15. 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 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.
16. 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.
17. 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.

Other Matters

18. I note the existing planning permission granted on appeal in April 2020¹ for the conversion and change of use of a redundant agricultural building into a one bedroom residence on the site. The appeal Inspector imposed a number of conditions which include a condition relating to surface water drainage. This condition has yet to be discharged. I note that the original application to discharge the condition was recommended for approval by the Land Drainage Engineer and eventually refused due to an issue with the red/blue line boundary. However, I have limited information before me regarding the evidence which was taken into account at that time and the circumstances now are such that the Council state that they will not discharge the condition without further details and the completion of the relevant assessments. As such, in my view, the implementation of this permission is currently not a strong and realistic fallback position and I afford this limited weight in my assessment of the appeal before me.
19. I acknowledge that the dwelling would be in a location well served by existing facilities and infrastructure. I also recognise that the proposal would provide some, limited, benefits for example by providing a new home. I also acknowledge the economic benefits of engaging local professionals, trades and suppliers and the ongoing benefit of the occupiers of the proposed dwelling utilising local facilities. These benefits are, however, limited by the small scale of the proposal and must be considered in that context.
20. 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 issue, it is not necessary for these to be explored further as part of this appeal.
21. 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

22. The proposal would not accord with the development plan when it is considered as a whole and 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

¹ APP/Q3305/W/19/3242239