



Appeal Decision

Site visit made on 2 December 2021

by Mr A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)

an Inspector appointed by the Secretary of State

Decision date: 20 December 2021

Appeal Ref: APP/R3325/W/21/3280429

The Shrubbery Hotel, Station Road, Ilminster, Somerset TA19 9AR

- 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 Kevin Newton of Shrubbery Hotel 2013 Ltd against South Somerset District Council.
 - The application Ref 20/03158/FUL, is dated 28 October 2020.
 - The development proposed is the erection of 3 No. flats.
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Decision

1. The appeal is dismissed.

Main Issues

2. The Appellant has submitted this appeal on the basis of non-determination of the planning application. Following the submission of the appeal against non-determination, South Somerset District Council (the Council) has submitted a statement of case which provides information as to the reasons the Council would have given to refuse consent. The Appellant has had the opportunity to respond.
3. In light of the submissions in this appeal, the main issues are:
 - The effect of the proposed development on the integrity of the Somerset Levels and Moors habitat sites; and,
 - The effect of the proposed development on the living conditions of future residents.

Reasons

Habitat Sites

4. The appeal site is located within a residential area and comprises a hotel and associated land. The site is positioned to the rear of the hotel and set back from Station Road.
5. Planning history for the site confirms that planning permission for the erection of five holiday lets and alterations to car parking was granted by the Council in September 2019¹ (the Previous Permission). The Appellant maintains that the Previous Permission represents a fallback position and that the appeal scheme

¹ Local Planning Authority Reference: 18/02844/FUL

- would have less of an impact on Habitat Sites when compared to the Previous Permission.
6. However, the Council have put it to me that the Previous Permission does not represent a genuine or legitimate fallback position. In this respect, the Council contends that, by reason of the submission of the planning application which concerns a different use from that permitted under the Previous Permission, the fallback position is not considered to exist.
 7. Whilst I acknowledge the Council's contentions in this regard, in my view the submission of a further planning application for a different use would not necessarily result in the likelihood that the fallback position is not genuine. In light of the evidence and submissions before me, in my view there is a greater than theoretical possibility that the fallback position would be implemented in the event that this appeal was dismissed. As such, I consider that the Previous Permission represents a realistic fallback position.
 8. Notwithstanding the above, whilst acknowledging that the appeal proposal is comparable to the Previous Permission in terms of scale, height, character and appearance, the appeal scheme does concern a different use of the site. Consequently, it is necessary to compare the relative impacts of that use in the determination of the appeal.
 9. There does not appear to be any dispute between the main parties that the appeal site is located within the Somerset Levels and Moors Special Protection Area (the SPA) and Ramsar site catchment area. The evidence before me indicates that the SPA and Ramsar sites are designated for its internationally important wetland features and waterbird communities. Information provided by Natural England advises that the interest features of the Somerset Levels and Moors Ramsar site are considered to be in an unfavourable condition or at risk from the effects of eutrophication caused by excessive phosphates. Additional residential properties within the catchment area have the potential to add to phosphorous nutrient loads through sewage discharge.
 10. By reason of the location of the appeal scheme, the Conservation of Habitats and Species Regulations 2017 requires that the decision maker to undertake an Appropriate Assessment where there are likely significant effects from the proposed development, either alone or in combination with other developments. The appeal scheme would introduce three additional residential units to the area and, as such, has the potential to increase phosphorous loads.
 11. However, it is noted above that there is a realistic fallback position with regards to the provision of holiday lets at the site. In this respect, the Appellant has put it to me that the appeal scheme would result in the reduction of overnight stays when compared to the Previous Permission and therefore the appeal proposal can be considered to be nutrient neutral.
 12. Notwithstanding this, following the abovementioned advice from Natural England the position in respect of the habitat sites has changed since the Previous Permission. As noted above, the circumstances of the appeal scheme are different to those considered in relation to the Previous Permission and I have not been provided with any evidence or information to satisfy me that the appeal scheme would not lead to further adverse effects on the habitat sites as result of the proposed different use of the site for permanent residential accommodation. I have not been provided with any substantive information or

evidence as to how the appeal proposal would achieve nutrient neutrality nor any information concerning any proposed mitigation. Consequently, I consider that the appeal scheme would be likely, alone or in combination with other developments, to have a significant effect on the integrity of the habitat sites.

13. In light of the above, the appeal proposal would conflict with Policy EQ2 of the South Somerset Local Plan (March 2015) (the Local Plan) which, amongst other matters, requires that development must not risk the integrity of internationally, nationally or locally designed wildlife sites.
14. The Appellant has referred me to another development at Somerton which has been permitted by the Council, and which it is maintained demonstrates the Council's previous acceptance of the principle of the fallback position with regards to the abovementioned habitat sites and the reduction in overnight stays. However, I have only very limited information concerning that development and so cannot be certain that the circumstances of relevant cases are the same or comparable. I have therefore determined this appeal on its own merits and on the basis of the evidence before me.

Living Conditions

15. As described above, the appeal site is located to the rear of the hotel and would be accessed from the car parking area used in association with the hotel. The Council maintain that the living conditions of future residents of the appeal proposal would be adversely affected by guests at the hotel crossing over the car park to a garden area where outdoor events are held, and which would result in substantial inconvenience for future occupants to access the proposed residential units. However, in my view, any delays that would be caused by guests crossing over the car park would not be likely to be significant in terms of time or inconvenience. Consequently, I find no conflict with Policy EQ2 of the Local Plan in this regard.

Other Matters

16. Whilst not referred to within the Appellant's statement of case, the design and access statement submitted in support of the planning application indicates that the Appellant considers that the Council cannot currently demonstrate a five year supply of housing land and that policies of the Local Plan are therefore out of date. I have not been provided with any information as to the current housing land supply and, even in the event that the Council cannot currently demonstrate the required supply, Paragraph 11 (d) (i) of the National Planning Policy Framework (July 2021) (the Framework) advises that where the application of policies within the Framework provides a clear reason for refusing a development proposal, the presumption in favour of sustainable development does not apply. Habitat Sites are specifically protected within the associated Footnote 7. The harm identified above in relation to the Habitat Sites is therefore a sufficient reason to dismiss the appeal, regardless of whether or not the Council is able to demonstrate a five year supply of deliverable housing sites.
17. I note the Appellant's frustrations with the Council's communication and the way in which it handled the application. However, these matters do not impact on the planning merits of the proposal.

18. Interested parties raise additional objections to the proposal on the grounds of the effect of the appeal scheme on the character and appearance of the Ilminster Conservation Area, on the significance of listed buildings, overlooking, loss of privacy and drainage. These are important concerns and I have considered all the evidence and submissions before me. However, given my findings in relation to the main issue above, these are not matters which have been critical to my overall decision.

Conclusion

19. For the reasons given above I conclude that the appeal should be dismissed.

Mr A Spencer-Peet

INSPECTOR