



Appeal Decision

Site visit made on 22 February 2022

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 March 2022

Appeal Ref: APP/Q3305/W/21/3285436

**Land at Thorner Way, Naish's Cross, Chilcompton, Radstock, Somerset
BA3 4WU**

- 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 R Thorner of Flower and Hayes Ltd against Mendip District Council.
 - The application Ref 2021/0980/FUL, is dated 29 April 2021.
 - The development proposed is a single storey detached garage block incorporating 6No. garages with additional 6No. parking spaces and turning head.
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Decision

1. The appeal is allowed and planning permission is granted for a single storey detached garage block incorporating 6No. garages with additional 6No. parking spaces and turning head at Land at Thorner Way, Naish's Cross, Chilcompton, Radstock, Somerset BA3 4WU in accordance with the terms of the application, Ref 2021/0980/FUL, dated 29 April 2021, subject to the conditions in the attached schedule.

Background and Main Issue

2. The appeal proposal concerns a development whereby the Council failed to give notice of its decision within the prescribed period. However, a similar development was previously the subject of a recent planning application¹ and subsequent appeal². Given the recent timing and direct comparability between that scheme and the one before me, the findings made in the appeal decision will be highly material to my determination. Moreover, the content of the appeal decision in that case, in part provided the impetus behind the resubmission that is the subject of the appeal.
3. In broad terms, it was found in the appeal decision that the proposal was acceptable in terms of its location, design and impact on living conditions of the occupants of dwellings along Thorner Way. Nevertheless, the appeal was dismissed due to the effect of the proposal on biodiversity as it was stated that there was insufficient information to demonstrate that protected species, with particular reference to reptiles, would not be adversely affected by the proposed development. The appellant considers that the appeal proposal provides a more comprehensive Ecology Appraisal but that in other respects the proposed development is the same.

¹ Planning application 2020/0547/FUL dated 17.6.20, Appendix 2, Appellant's Statement of Case

² Appeal reference APP/Q3305/W/20/3256202 dated 18.12.20, Appendix 3, Appellant's Statement of Case

4. The Council have indicated that had they been in a position to make the decision, they would have granted conditional permission. Nevertheless, I am mindful of the general duty in the Natural Environment and Rural Communities Act 2006 which requires a public authority to have regard to the purpose of conserving biodiversity, as well as the requirements contained in the Conservation of Habitats and Species Regulations 2017 (the Regulations).
5. Accordingly, the main issue in this case is the effect of the proposal on biodiversity including protected species and the Mells Valley Special Area of Conservation (SAC).

Reasons

Biodiversity

6. The appeal site is a relatively small parcel of land situated to the south-west of a recently built residential cul-de-sac. It is separated from Thorners Way by a high wall and gates and is close to belts of mature trees and agricultural land. The evidence shows that the land itself has been used for the storage of various building and other materials but that over time ruderal vegetation has heavily encroached. As such, the site has potential to provide habitat for wildlife.
7. Policy DP5 of the Mendip District Local Plan Part 1, Strategy and Policies 2006-2029, December 2014 states, amongst other things, that all development proposals must ensure the protection, conservation and, where possible, enhancement of internationally, nationally or locally designated natural habitat areas and species. Furthermore, proposals with the potential to cause adverse impacts on protected species are unlikely to be sustainable and will be resisted. This is generally consistent with the objectives and principles to protect and enhance habitats and biodiversity set out in paragraphs 179 and 180 of the National Planning Policy Framework (the Framework).
8. The submitted Ecological Appraisal (EA)³ found the appeal site has local value. It states that no protected or notable species of flora were noted during the survey of the site but that the range of plant species is likely to support a correspondingly diverse invertebrate assemblage. It also would provide a limited nesting resource for garden birds.
9. However, it is unlikely that the site provides a significant resource for protected species. Due to the lack of known areas of standing water or ponds in the vicinity the site is unsuited to support great crested newts. No signs of badger were found on the site and there are no building or trees on site that are suitable for roosting bats, although it may provide some foraging for badger and minor foraging for commuting bats. The systematic search for gnawed hazel nuts did not reveal any attributable to dormice. This would be consistent with the proximity of the site to dwellings and domestic pets.
10. The EA also details a reptile survey carried out in March and April 2021 whereby 50 artificial refuges were laid out across the site with seven subsequent visits during suitable weather conditions to check for signs of reptile presence. No reptiles were found.

³ Prepared by Crossman Associates, dated 23 April 2021

11. The EA goes on to include recommendations that would protect and conserve wildlife using the site. This includes the avoidance of vegetation removal within the bird nesting season and the provision of bird boxes, ecologically sensitive exterior lighting and the incorporation of tree protection measures for trees near to the site. In addition, an opportunity to increase the biodiversity of the site is identified by forming new hedgerows.
12. Although some concerns are expressed in the representations received that the ecological information provided is inadequate, I have no reason to doubt the competence of the consultancy that conducted the appraisal and little technical evidence is provided that would undermine its findings. Moreover, the Council's ecologist has provided detailed comments⁴ and does not question the findings of the EA provided. Subject to conditions no objection is raised. Given the particular expertise of the Council's ecologist, his comments attract considerable weight.
13. Based on the evidence before me, I am satisfied that subject to the imposition of appropriate conditions to secure the recommendations contained in the EA the proposal would ensure the protection, conservation and limited biodiversity enhancement of a site with local habitat value. In addition, it would avoid adverse impacts on protected species. Consequently, I find no conflict with policy DP5 of the LP in these regards.

Mells Valley SAC

14. The Mells Valley SAC has been designated for its value as habitat for horseshoe bats and is recognised under the Regulations as being of international importance. Horseshoe bats rely on a number of environmental features in order to maintain their populations, including hedgerows and buildings used as night roosts. The loss or alteration to these features by removal, change in habitat, alteration to structures and the introduction of lighting may result in permanent reductions in the amount of habitat required to maintain the population.
15. Policy DP6 of the LP requires a 'test of significance' under the Regulations to be carried out for development on sites within the Bat Consultation Zone (BCZ). The BCZ reflects areas in which horseshoe bats are known to be and are likely to regularly use for commuting and/or foraging and in night roosting. The BCZ is graded from A-C in accordance with its likely importance. The appeal site lies within Band C of the BCZ for the SAC and is therefore, outside of the main foraging and commuting areas but is likely to be sometimes used by horseshoe bats.
16. Although the appeal site is relatively small, it is unlit and is close to established trees. Whilst there are no buildings or trees on the site itself that are suitable for roosting bats, the EA indicates that the site could provide minor foraging for commuting bats. However, it further describes the characteristics of the site as inconsistent with both the sheltered valleys, woodland edge, pasture and wetlands preferred by lesser horseshoe bats and the deciduous woodland, grazing pasture on steep south-facing slopes, preferred by greater horseshoe bats. The Council's Ecologist concurs with these findings.

⁴ Dated 15.9.21

17. Nevertheless, in the absence of a specific bat survey, the evidence suggests that the site is likely to be sometimes used for commuting or foraging by these species. Recent caselaw⁵ requires the decision maker, when considering the effect that a proposal may have on such a European Site, to consider mitigation within an Appropriate Assessment rather than at screening stage. In the absence of mitigation measures and using a precautionary approach, the introduction of additional built form would result in the loss of some habitat, and the potential for artificial lighting could affect the commuting and foraging routes of horseshoe bats. As such, the risk of a significant effect on the internationally important interest features of the SAC cannot be ruled out.
18. The EA⁶ outlines specific mitigation measures including that exterior lighting should minimise light spill. This would be assisted by the proposed design that shows solid doors and no windows that would prevent spill from internal lights. In addition, it contains a landscape recommendation to form new boundary hedgerows which would help to link adjacent natural features and would provide wildlife, including bats, with commuting and foraging corridors. It is clear from the site boundary shown on the habitat map contained in Appendix 1 of the EA that the reference to new boundary hedgerows would involve land contained within the blue line rather than being confined to the red line shown on the location plan⁷. I am satisfied that based on these mitigation measures the development would avoid a harmful impact on the SAC and the approach broadly accords with the technical guidance⁸ produced by the Council in association with Natural England.
19. Furthermore, in response to consultation under Regulation 63(3) of the Regulations, Natural England have confirmed that the mitigation measures proposed in this case would be sufficient to avoid an adverse impact to the integrity of the SAC and would be appropriately secured through planning conditions. In light of their expertise, I have attributed considerable weight to their comments. Therefore, I am satisfied that the mitigation measures identified are sufficient to avoid the likely impact of the development on the SAC and can be secured.
20. I therefore conclude that it has been demonstrated that the proposed development would not adversely affect the integrity of the SAC and would not cause harm to protected horseshoe bats. On that basis, the proposal would accord with policy DP6 of the LP.

Other Matters

21. I have had regard to the representations received in response to the application. Some of the matters raised have been covered when dealing with the main issues. However, concerns were also raised in relation to the need for and location of the development, the impact on the character of the area, consequences arising from an increase in traffic and the potential for the site to be used for housing in the future. Most of these issues were considered and addressed as part of the previous appeal decision, whereupon it was found that the appeal site is a suitable location for the proposal and would not lead to

⁵ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

⁶ Paragraphs 4.9-4.12

⁷ Drawing number F1517/001

⁸ Mendip District Council, Mells Valley Bat Special Area of Conservation, Guidance on Development, Version 2.1, May 2019

unacceptable urban encroachment, nor would it lead to unacceptable impact on the living conditions of the occupiers of the dwellings along Thorner Way.

22. Given the similarities with the appeal proposal, this recent decision is a material consideration of considerable weight and little substantive evidence has been provided to show that circumstances have changed in the meantime that would justify an alternative finding in these regards. Therefore, I have little basis to find otherwise in relation to these matters.
23. Concerns regarding the potential future residential use of the site carry little weight as I am required to consider the merits of the proposal before me. In any event, it is likely that any such proposals would need to obtain specific permission in their own right.

Conditions

24. The Council suggested 11 conditions which I have considered against the Framework and Planning Practice Guidance and in particular the Government's intention that planning conditions should be kept to a minimum and that pre-commencement conditions should be avoided unless there is clear justification.
25. Conditions setting out the time limits, and securing compliance with the approved plans, are necessary to provide certainty.
26. It will be seen from my findings on the main issues that conditions are necessary to secure the protection, conservation and biodiversity enhancement of a site with local habitat value, as well as mitigation measures to avoid harm to the SAC. However, there is no need to duplicate the protection for nesting birds that is already contained in the Wildlife and Countryside Act 1981. Furthermore, the conditions imposed are specific to the circumstances and evidence relating to the appeal site rather than requiring a general wildlife protection and enhancement plan as suggested by the Council.
27. Therefore, a condition is imposed to require the submission and agreement of an ecologically sensitive lighting scheme to prevent harm to bats. I have adjusted the suggested wording to remove detail that is unnecessary to include in the body of the condition. In addition, a landscaping scheme is required to address the new hedgerow planting recommended in the EA. This would involve planting on the adjacent 'blue land' given that the red edge given for the appeal site is fairly tight to the proposed building and parking. Section 72 of the Town and Country Planning Act 1990 makes provision for conditions to be imposed on land under the control of the applicant whether or not it is land in respect of which the application was made. In this case it is justified that the landscaping scheme and timetable should be agreed prior to the commencement of development to ensure appropriate mitigation to avoid any adverse impact on the SAC.
28. The submitted arboricultural information contains a tree protection plan and an appropriate method statement to protect the established trees near to the site during construction. Even though it appears to have been prepared in relation to a different development⁹, the measures detailed would generally be effective in this case to prevent harm to the trees.

⁹ Paragraph 2.1 refers to a 2 storey block of 3 flats

29. In addition, a condition is imposed regarding the method of vegetation clearance to avoid harming or killing reptiles that may be present. Finally, as compensation for the loss of a small area of scrub habitat and to enhance biodiversity, the provision of bird boxes, a bat box and a bee brick should be incorporated into the development.
30. The Council have suggested a pre-commencement condition to agree details for surface water drainage. Based on the evidence before me and the modest nature of the proposal, I am not convinced that such a condition is necessary to make the proposal acceptable in planning terms. It follows that it would not meet the deliberately high threshold for pre-commencement conditions. Neither is it shown why it is necessary to condition the use of the garages to prevent commercial or residential uses, as a change of use amounting to development would be likely to need planning permission making such a condition superfluous. Hence, I have not imposed these conditions.

Conclusion

31. For the reasons given above I conclude that the appeal should be allowed and planning permission granted.

Helen O'Connor

Inspector

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Survey Site Plan and Location Plan, drawing number F1517/001 and Proposed Plans and Elevations, drawing number F1517/200A.
- 3) Prior to construction above damp-proof course level, a lighting design for bats, following Guidance Note 08/18 Bats and artificial lighting in the UK (ILP and BCT 2018) shall be submitted to and approved in writing by the local planning authority. All external lighting shall be installed in accordance with the agreed details and maintained as such thereafter. No other external lighting shall be installed.
- 4) No development shall commence until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping and associated timetable which shall include the formation of new hedgerows in line with the recommendation in paragraph 4.12 of the Ecological Appraisal prepared by Crossman Associates, dated 23 April 2021. Thereafter, the development shall proceed in accordance with the landscaping details and timetable approved.
- 5) The protective fencing shown on tree protection plan drawing 190531-TW-TPP-AM shall be erected before any equipment, machinery or materials are brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Development shall proceed in accordance with the Arboricultural Method Statement in Appendix B of the Arboricultural Impact Assessment, Arboricultural Method Statement and Tree Protection Plan prepared by Hillside Trees Ltd dated June 2019.
- 6) Following written notification to the local planning authority of the date of works, any vegetation in the construction area should be reduced to a height of 10cm above ground level by hand, brushings and cuttings removed, and the remainder left for a minimum period of 48 hours of fine warm weather before further clearance. The works should be overseen by a competent ecologist.
- 7) Prior to the first occupation of the development hereby permitted, the following shall be provided and thereafter retained as such:
 - a) Three Vivara Pro Woodstone House Martin nests (or similar) mounted directly under the eaves of the north west elevation of the garage block.
 - b) One Vivara Pro Woodstone nest box 32mm hole version (or similar) and One Vivara Pro Barcelona Woodstone bird box open front design (or similar) mounted between 1.5m-3m high on the northerly facing aspect of trees situated on the blue land on drawing number F1517/001.
 - c) One bee brick built into the wall approximately 1 metre above ground level on the south east elevation of the garage block.

- d) One Schwegler 2F bat box (or similar) mounted at least 4m above ground level on the south or east facing aspects of trees situated on the blue land on drawing number F1517/001.