



Appeal Decision

Site visit made on 14 January 2022

by Geoff Underwood BA(Hons) PGDip(Urb Cons) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 21 March 2022

Appeal Ref: APP/P2935/W/21/3285427

Bayview, Beachway, Blyth NE24 3PG

- 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 Barry Elliott against Northumberland County Council.
 - The application Ref 21/03224/FUL, is dated 13 August 2021.
 - The development proposed is the change of use of private dwelling into 4no. holiday lets & separate holiday home to rent, and erection of 4no. holiday homes to rent with associated carparking.
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Decision

1. The appeal is dismissed and planning permission is refused.

Application for costs

2. An application for costs was made by Mr Barry Elliott against Northumberland County Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The description of development in the heading above is taken from the application form albeit that the number of holiday lets has been reduced to reflect the amendment made to the application while it was under consideration by the Council. I have determined the appeal on the basis of the revised scheme.
4. In accordance with Regulation 14(2) of the Environmental Impact Assessment (EIA) Regulations¹, had I been minded to allow the appeal and grant planning permission for the development, the question as to whether the appeal proposal is an EIA application as set out in the Regulations would have been referred to the Secretary of State. No decision would have been determined until a screening direction was made. However, as I intend to dismiss the appeal and refuse planning permission it is not necessary for such a screening direction to be sought.
5. The Council did not make a decision on the application. However, they indicated that had they done so they would have refused planning permission. Their reasons were that: insufficient car parking within the site would lead to obstructing access to the beach and reducing capacity in a nearby public car park; direct and indirect impacts on adjacent designated habitats sites would

¹ The Town and Country Planning (Environmental Impact Assessment) Regulations 2017.

be unacceptable; there is insufficient information to show that effects in respect of coastal erosion, drainage and surface water would be acceptable, and; there is insufficient information to demonstrate that designated and non-designated heritage assets would not be harmed.

Main Issues

6. Therefore, in light of the Council's notional refusal reasons, the main issues raised by this appeal are the effect of the development on:
- i) biodiversity, with particular reference to any direct effects on the Northumberland Shore Site of Special Scientific Interest (SSSI) and designated habitat sites on the Northumberland coast;
 - ii) drainage, surface water flooding and coastal erosion;
 - iii) the significance of the Coastal Artillery Battery on Blyth Links scheduled monument and WWII pillbox non-designated heritage asset, and;
 - iv) Parking conditions in the vicinity with particular regard to effect on access to the beach and the provision of public visitor parking.

Reasons

Biodiversity

7. The site boundary immediately abuts that of the SSSI which includes the beach and shore. The SSSI provides important wintering grounds for shore birds, and it is of international or national significance for six specified bird species. The site lies about a kilometre away from the Northumbria Coast Special Protection Area (NCSPA) and RAMSAR site. This also provides important wintering grounds for shore birds, and it is also of significance for the same six bird species as the SSSI. The appeal site falls within the zone of influence of the NCSPA and RAMSAR site.
8. It is therefore highly likely that those bird species will also use areas outside the NCSPA boundary and the adjacent shore would be functionally linked land, which in any event is part of the SSSI. The site's beachside situation means it is in a particularly sensitive location in respect of biodiversity and ecological designations. There could be effects arising from both the building work to construct the development and its ongoing operation as a complex of holiday accommodation.

Biodiversity – direct effects of construction phase

9. The construction work for the conversion and new building proposed is likely to have an effect on the adjoining SSSI given the extent of works necessary and how close the site and the proposed works would be to the SSSI. In an attempt to address the Council's notional refusal reason, the appellant has submitted an Ecological Impact Assessment (EcIA). This concludes that the construction phase of work could lead to disturbance of nearby foraging birds, including those in the SSSI and which may lead to a significant impact.
10. Although the EcIA goes on to give examples of mitigation measures this is not supported by any detailed information or any actual proposals. Neither has a Construction Environmental Management Plan (CEMP), as required by Natural England in their responses to both the application and this appeal, been provided. In particular, Natural England noted potential impacts in respect of

pollution to air and water, and disturbance to qualifying species by increased light and noise.

11. The appellant considers that this could be addressed by way of a condition. However, very little information of possible construction effects have been provided. Mitigation measures in respect of noise and light have only been suggested as examples with no mention of air and water pollution. Requiring a CEMP by way of a planning condition with such limited information available runs the risk that methods and mitigation may not be acceptable, effective or achievable and consequently that such a condition would not be reasonable, particularly given the identified potential for a significant impact.
12. Therefore, it cannot be certain that harmful effects arising from the construction stage could be adequately avoided or mitigated against and consequently that the SSSI or NCSPA would not be adversely affected. I note that the Council advise that in sensitive situations such as the appeal site a CEMP is normally agreed before a decision is made.
13. The appellant incorrectly states that a financial contribution to the Coastal Mitigation Service would control direct impacts from the development whereas, from the information before me, this would only seek to address mitigation of recreational disturbance from occupiers rather than direct impacts themselves.

Biodiversity - direct effects of development

14. The EcIA concludes that there would be no lasting effects or significant impacts from the proposal when the development is operational. However, the proposed development would result in four new build holiday dwellings facing the beach with extensive glazing at ground, first and second floor along with balconies. Furthermore, small front yards, each with a hot tub, would be located immediately adjacent to the site boundary with the beach and consequently the SSSI. This is very likely to result in light spilling out of the site from both inside the buildings and the outdoor spaces, along with noise of occupiers relaxing outside. Any disturbance from light and noise into evenings and nights has the potential to affect wading birds that are still active and feeding at those times.
15. Car parking spaces would be adjacent to the site boundary on two sides and there is no detailed information how this area, or the yards with hot tubs, might be drained other than surface water being dealt with by a soakaway. Given the elevated level of the site relative to the beach and shore this does not provide any substantive evidence that any potential water borne pollution would be avoided nor that any surface water from the site would avoid changes from flooding to ecosystems through movement or deposition of sand and shingle.
16. Such effects arising from the development would be permanent and there is insufficient information with the EcIA, or indeed other supporting documentation, that they have been effectively considered. The EcIA's conclusion is not supported by any substantive evidence nor is any mitigation proposed. This lack of robust evidence means that it has not been satisfactorily demonstrated that harm to the SSSI or NCSPA would be avoided.

Biodiversity - effects on internationally designated habitats

17. In light of the above, and in the absence of any evidence to the contrary, I have adopted the precautionary principle of assuming that Likely Significant Effects would result to designated habitats from the development itself and in combination with other developments.
18. As Likely Significant Effects cannot be excluded the Habitat Regulations² require me to undertake an appropriate assessment of the implications the development would have in view of the designated habitats' conservation objectives.
19. Therefore, irrespective of whether any significant adverse effects that might arise in terms of recreational disturbance might be capable of being mitigated through the mechanism of the submitted planning obligation, I cannot conclude that the proposal would not have an adverse effect on the integrity of designated habitat sites as a direct result of the construction and consequent use of the development. I have had regard to the views of Natural England in these respects.
20. There is no mitigation proposed for the permanent effects of the development and insufficient information or detail in respect of any mitigation in respect of construction impact.
21. The Habitats Regulations require me to consider whether there are any alternative solutions. However, no such solutions have been put to me. I must also assess whether there are any imperative reasons of overriding public interest. The provision of the holiday accommodation, taking into account the merits of the case, is not sufficient to amount to such overriding public interest. Consequently, having regard to the Habitat Regulations, permission must not be granted. I therefore find that the proposed development would result in harm to the integrity of the NCSPA.
22. This would be contrary to Core Strategy³ Policy SS3 which requires, amongst other criteria, that there would be no unacceptable adverse impact on the natural environment. It would also be contrary to Development Control Policies⁴ DC14 and DC16 which together resist development that would have adverse effects on an SSSI and potential negative impacts on biodiversity.
23. The development would be contrary to the principles set out in the National Planning Policy Framework (the Framework) at paragraph 180. This 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 and that development on land within or outside a SSSI, and which is likely to have an adverse effect on it, should not normally be permitted.
24. Although the appellant advised that they would continue to work with the Council to address some matters there is no information before me that the matters have been resolved.

² The Conservation of Habitats and Species Regulations 2017.

³ 'A Future for Blyth Valley' Core Strategy, 2007.

⁴ 'A Future for Blyth Valley', Blyth Valley Local Development Framework – Development Control Policies Development Plan Document, 2007.

Biodiversity - effects of recreational disturbance

25. The development is also likely by itself and in combination with other developments to have a significant effect on the SSSI and NCSPA as a result of increased holiday or residential development and tourism activities including occupiers visiting the beach which would lead to recreational disturbance. This would result in an adverse effect on the integrity of the designated sites.
26. I have had regard to the views of Natural England who did not object subject to their being appropriate mitigation for potential impacts from increased recreational disturbance. The appellant has provided a planning obligation which would secure a financial contribution to the Coastal Mitigation Service which would help support warden provision and associated activity to mitigate the impact of recreational disturbance on designated sites on the coast.
27. However, for the reasons set out above, any recreational disturbance would not be the only effect of the development on designated habitats. Even if I were to find that there could be satisfactory mitigation against any adverse effects on integrity from recreational disturbance alone, this would not address any direct effects.

Drainage, flooding and erosion

28. The site's situation immediately adjacent to the beach and shore, very close to the sea and partly enclosed and supported by sea defences means that the development is potentially vulnerable to the effects of coastal erosion, could itself have an effect on coastal erosion elsewhere and could also affect measures already in place to make land and development safe from erosion. From the information available the site is in an area susceptible to coastal erosion and in close proximity to a coastal erosion line. There is the potential that the safety of occupiers of the development and nearby properties could be harmed given the development's sensitive location if risks from coastal erosion are not properly understood and managed.
29. Although the appellant intended to provide an Erosion Vulnerability Assessment (EVA) none is before me. There is no substantive evidence that the development, including how it is proposed to be drained and serviced, would ensure that the development would be safe for its lifetime from the effects of coastal erosion, nor that it would be designed in such a way as to ensure the integrity of coastal protection measures from drainage and other effects.
30. The application form notes that surface water would be disposed of by a soakaway. The proposal would see much of the site outside the building footprint given over to car parking or outdoor space for the holiday units and is raised up in relation to the beach. It is not clear either how a soakaway would function in these circumstances nor whether any water disposed of in this way would have any effect on the integrity of the sea defences around the site. Neither is there any indication of what effect that water flowing from the site may have on the condition and disposition of sand and shingle on the beach.
31. I note the appellant points out that the sea wall partly enclosing the site was approved under a separate planning permission, and I observed a substantial structure in situ. However, this in itself does not clearly demonstrate that the development would be safe nor that adverse effects of, or on, erosion, nor of water would be avoided.

32. The Council point out that the site is within a proposed Coastal Change Management Area (CCMA) in the emerging Local Plan⁵. I note the Framework's requirement that Plans should identify such areas. Given its stage of preparation, although not part of the development plan, the plan does carry some weight in this respect particularly given that there is no indication that the designation of the CCMA would change in any adopted version of the Local Plan. Its approach in emerging Local Plan Policy WAT 5 is that development within the CCMA needs to demonstrate avoiding adverse changes to the coast including land stability and that an Erosion Vulnerability Assessment is required to demonstrate that development would be safe over its lifetime and avoid unacceptable impacts on coastal change processes elsewhere.
33. The requirement for an EVA is not presently a development plan requirement. Nevertheless, in the absence of any substantive evidence, in the form of an EVA or elsewhere, that there would not be harmful effects in terms of drainage, flooding or erosion, the development would be contrary to Core Strategy Policy SS3. This seeks to avoid physical and environmental constraints on the development of the land as a result of flood risk, and/or land stability.
34. Despite the lack of evidence that there would not be harm arising from drainage proposals, the site is located within Flood Zone 1 and therefore Development Control Policies Policy DC19's sequential approach is not pertinent in this case.

Significance of heritage assets

35. The appeal site lies to the north of the Coastal Artillery Battery on Blyth Links scheduled monument (the Battery), a designated heritage asset of national importance. This comprises two dispersed groups of above and below ground structures from both world wars incorporating gun emplacements, searchlight housings, along with observation, magazine and support buildings. Its significance comes from being a well-preserved example of a first world war coastal battery with a full range of characteristic features of its type. This significance is enhanced by the survival of associated searchlight emplacements and the reuse and additions brought by the second world war as well as its relative rarity by surviving in a complete state.
36. It also derives significance from its setting on an exposed part of the coast where the various buildings and earthworks, and their original purpose can be appreciated and experienced from some distance. The main defensive purpose was to protect the port of Blyth and the North East coast and as such the battery is outward looking over the beach to the sea and the harbour entrance.
37. However, the schedule entry details also record that elements were designed for the landward defence of the battery as well, and that a number of buildings had rifle loops which would be for more short range defence of the buildings. This includes the searchlight buildings which were 'self-protecting' with machine gun loops. The Battery therefore derives significance from a wide area beyond its designation sites which would be covered by its defences and views to the north towards the piers of the harbour mouth. Although there is some distance between the buildings and the appeal site, the appeal site forms part

⁵ Northumberland Local Plan - Regulation 19 draft Plan showing proposed main modifications and additional changes, 2021.

of this wider setting within which the monument can be experienced and understood.

38. Whilst the site and the proposed development would be a relatively minor component within the context of the extensive setting of the Battery, it would nevertheless be the furthestmost built form projecting towards the sea in the nearest substantial row of buildings to the north of the searchlight complex. These are circumstances where an understanding of the effect that the development would have on the significance of the Battery is necessary.
39. Nevertheless, there has been no such assessment even though the Framework notes that an applicant's significance description need be no more than is sufficient to understand the potential impact of the proposal on the asset's significance. In the absence of one it is not possible to conclude that the development would avoid harm to the significance of the scheduled monument that it derives from its setting, nor the extent of any harm should any occur.
40. There has similarly been no assessment provided of the World War II pillbox which the Council advise is a non-designated heritage asset. This derives significance from its history, as an example of a defensive structure as well as its situation where it would have formed part of a wider network of coastal defence with other structures. From the information before me the pillbox would at least be partly within the site. Due to its relative height to the proposed surface level, it would be effectively underground from within the site although there is no information about how close to the proposed surface its roof would be. The drawings show that a parking space would be situated partly on top of it along with bicycle stands.
41. Although from its original purpose it would have been robustly constructed there is no information to assess whether the siting of parking on top would have any adverse effect on its condition or long term preservation, and consequently whether its significance may be harmed as a result of the development.
42. In the absence of convincing information that designated and non-designated heritage assets would not be harmed, the development would be contrary to Core Strategy Policy ENV2 and Development Control Policies Policy DC1 which together, and amongst other criteria, seek to protect, and avoid adverse impact on, the historic environment.
43. I note that on a previous application the County Archaeologist raised no concerns but that was under their understanding that the pillbox did not form part of that site so their conclusion at the time is unsurprising. This has limited relevance to the scheme before me where the location plan shows at least part of the pillbox would be within the site.

Parking conditions

44. The drawings show that twelve car parking spaces would be provided to serve the nine proposed holiday units. Given the location of the site it is likely that many guests staying in the units would arrive by car, even if they subsequently choose other modes of transport such as the bus or cycle whilst on holiday. All the units would be self-contained with kitchens and bathrooms and therefore effectively separate dwellings. Four units would be single bedroom and it is a reasonable assumption that holidaymakers staying in those units would on the

whole bring a single car. One unit would have three bedrooms and the other four units would be two bedroom. For these units it is possible that guests might arrive and use a single car or they may be occupied by friends or larger families with two cars.

45. In these circumstances the Council's requirement of 1.5 spaces per dwelling set out in parking standards in its Development Control Policies appears sensible and would generate a requirement equivalent to a space per bedroom of fourteen spaces. The standards are expressed as a maximum, however, and the site is close to public transport, albeit it cannot be considered to be well served by public car parking for reasons explored below. The particular likely demands for parking from the scheme at full occupancy and its location mean that this is a situation where a lower provision than the maximum, anticipated in Development Control Policies⁶, would not be appropriate.
46. The standards in the emerging Local Plan would require a slightly higher level of parking. That being said, there is no suggestion that the caretaker or chambermaid's room would be for overnight accommodation. In the absence of information to the contrary, visitor accommodation is likely to be serviced when guests are not present such that it would be likely that there would be space on site for staff to park.
47. Should the accommodation be fully let and there were as many cars as bedrooms, two guests' vehicles would not be able to park on the site and any visitors' cars would also not find space within the site. Drivers who do not require them may well be unwilling to park in the two proposed disabled bays and this would also put pressure on the non-designated spaces within the site. For the above reasons, without an understanding of the implications of situating a car parking space on top of the pillbox it cannot be assumed that space 12 would necessarily be available either.
48. Should any vehicles not be able to park within the site they might find space within the small car park near the bandstand. This may well be popular with general visitors and the very generous maximum stay lengths may mean that turnover may not be as frequent as shorter stay car parks. Given its small size, parking restrictions nearby and the distance of other public car parks, loss of spaces to accommodation users could frustrate general visitors and have an incremental effect on the attractiveness of the area for visitors, albeit minor.
49. Were any cars to be parked on the access road outside the site, despite parking restrictions, they would run the risk of hampering or even blocking the vehicular access to the beach where a notice on the gate states it is required by emergency vehicles. Double yellow lines run along both side of Beachway but also along extensive stretches of Links Road such that there do not appear to be many legal alternatives for parking in the vicinity. This may make it more likely for those unable to park in a space to take a risk of parking illegally.
50. Whilst the visitor accommodation and its car park may not be at full capacity all the time, on occasions where there were a number of visitors or a few of the units were occupied by groups with more than one car, vehicles would be likely to either cause an inconvenience by taking up parking space in the small public car park, or in more extreme cases hinder public safety if they were to park inconsiderately in respect of the beach access. Although the appellant advises

⁶ Appendix A paragraph 1.1.7.

that overspill public parking is provided next to the public car park at certain times of the year, there is no guarantee that this would correspond with times when cars of guests and visitors at the site exceed the on-site car park's capacity.

51. The development would give rise to harm in respect of loss of public car parking and, albeit in extreme situations, harm to emergency access to the beach and sea. Whilst this harm would be limited it would nevertheless be contrary to Development Control Policies Policy DC11 which restricts development unless it provides an appropriate level of car parking in accordance with Council standards, amongst other criteria.

Other matters

52. The appellant has referred to a previous planning permission on the site for a substantial extension to the existing house. It would appear from the Council's statement that this scheme has been commenced and therefore there would be a more than hypothetical possibility of that 'fallback' scheme coming forward were the appeal scheme to fail.
53. However, from the limited information available this would have remained as a single dwelling and therefore effects on parking would be considerably different. Although there would be glazing and a balcony along the sea frontage, its ground floor elevation would largely be that of a garage. Both the building and outdoor space would be considerably less intensively used than by the multiple holiday units in the appeal scheme. The effects on the adjacent SSSI and other habitats would consequently be materially different.
54. I do not have information before me regarding the drainage and coastal erosion implications of that scheme and therefore cannot draw any conclusions in respect of whether as a fallback scheme it would be materially more harmful than the appeal proposal.
55. The previous scheme would have a broadly similar mass and scale to that proposed, albeit of different detailed appearance. This means that it has the potential to have a similar effect on the setting of the Battery in visual terms. Nevertheless, for the reasons set out above, I am not satisfied that there is sufficient information to properly assess the appeal scheme's effect on the significance of the Battery which is a designated heritage asset of great importance. I am not persuaded that this fallback scheme would be more harmful in this regard nor consequently carries sufficient weight to overcome the harm caused by a lack of evidence about significance.
56. In any event I have determined the appeal on its own merits and this previous permission does not lead me to consider that the appeal proposal would be acceptable in those respects.
57. The appellant makes reference to a continuing dialogue with the Council during the course of the appeal to resolve some of these issues. Nevertheless, I have determined the appeal on the evidence before me which despite the appellant's intentions does not include an EVA or demonstrate that other matters have been resolved between the main parties.

Conclusion

58. There would be benefits arising from the scheme particularly in terms of providing visitor accommodation which would in turn contribute to boosting the tourist economy in the town and farther afield. Nevertheless, the scheme's benefits would be significantly outweighed by the harm which would arise. For the above reasons it has not been demonstrated that the development would avoid harm to protected habitats, to heritage assets nor in respect of drainage and coastal erosion. This would conflict with the development plan taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, the appeal is dismissed.

Geoff Underwood

INSPECTOR