

Appeal Decision

Site visit made on 4 April 2022

by Matthew Jones BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 July 2022

Appeal Ref: APP/P1133/W/21/3285971
18 Dawlish Road, Teignmouth TQ14 8TE

- 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 R Salmon of Teign Leisure Ltd against the decision of Teignbridge District Council.
 - The application Ref 19/02462/MAJ, dated 6 December 2019, was refused by notice dated 5 August 2021.
 - The development proposed is the erection of 12 holiday lodges.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development on the planning application form refers to twelve holiday lodges, but the scheme was revised down to ten prior to the Council making its decision, as reflected in the revised development description within the decision notice and the appellant's appeal form. I have therefore assessed the appeal proposal as for the '*Erection of 10 holiday lodges*'.
3. The site is within influence of the Exe Estuary Special Protection Area (the SPA) and the Dawlish Warren Special Area of Conservation (the SAC). These are European Designated Sites afforded protection under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations).
4. Although not an issue raised by the Council, it is incumbent upon me as competent authority to consider whether the proposal would be likely to have significant effects on the respective integrity of the SPA and the SAC. As such, it has become necessary to consider this matter as a main issue.
5. The appeal was submitted with a completed Unilateral Undertaking (the UU) which seeks to secure a financial contribution as mitigation for the likely significant effects of the scheme on the integrity of the SPA and the SAC. I return to the matter of the UU in addressing the first main issue.

Main Issues

6. The main issues are therefore:
 - the effect of the proposal on the integrity of the SPA and the SAC; and,
 - the effect of the proposal on the character and appearance of the area, with reference to protected trees.

Reasons

European Designated Sites

7. The Habitats Regulations require that permission may only be granted for a development where the competent authority has ascertained that it will not adversely affect the integrity of the European Designated Site(s). The SPA is designated owing to its estuarine habitat and waterbird assemblage. The SAC qualifies owing to its habitats and non-avian species of European importance. Qualifying features are its dune habitats and population of liverwort petalwort.
8. These sites are also important recreational resources, and it is likely that users of the lodges would visit them. There is no dispute between the main parties, nor Natural England, that it cannot be ruled out that the proposal, when considered alone or cumulatively with other schemes, would therefore have likely significant effects on the features of interest of the SPA and the SAC due to increased recreational use. I have no reason to disagree.
9. It is also accepted that this could be mitigated by a financial contribution made pursuant to the South-east Devon European Site Mitigation Strategy, which is calculated through the Council's 'Joint Approach' with neighbouring authorities. The appellants have opted to do this through the submission of the UU. However, the contribution set out within the UU cannot be correct, as it has been calculated against the twelve unit scheme as initially submitted, not the ten unit scheme subject to the Council's decision and now this appeal.
10. Community Infrastructure Levy regulation 122(2) sets out three legal tests in order for an obligation to constitute a reason for granting planning permission. It must be: (a) necessary to make the development acceptable in planning terms; (b) directly related to the development; and (c) fairly and reasonably related in scale and kind to the development. Given that the UU would secure incorrect financial contributions calculated against a now superseded quantum of development, the tests set out within regulation 122(2) would not be met. Moreover, in referring to the twelve unit scheme, I am concerned that the way the UU is drafted is flawed and it would not therefore take legal effect.
11. For these reasons, there is no reliable mechanism with which I can ascertain that the necessary mitigation would be secured. As such, adopting the precautionary principle, I must conclude my Appropriate Assessment that the proposal would have adverse effects on the integrity of the SPA and SAC. It follows that the scheme would conflict with the biodiversity aims of Policy EN10 of the Teignbridge Local Plan 2013-2033 (adopted 2014) (TLP) and the National Planning Policy Framework (the Framework).

Character and appearance

12. The site is a narrow, curving parcel of disused land aside a public car park. Immediately to the north and south are trees which are protected by Tree Preservation Orders. Together, the trees offer public amenity value. The Council is concerned that the trees would impose practical constraints on the usability of the lodges which could, in turn, create the potential justification for future deleterious tree works.
13. The sea is to the south. However, the lodges would have a void at first floor level beyond which a modest porthole would face the water. It is therefore unlikely that elevated seaward views would be particularly desired or

achievable regardless of the trees. The crowns would allow privacy from the car park and would be more attractive to look at. Whilst the lodges and their decks would be shaded by the trees to the south, the transience of tourism use makes it doubtful that a justification for works on this basis could be sustained.

14. There is no clear evidence of honeydew at the site and, given the sea air and the tree species present, which I understand are not favoured by the aphids that produce honeydew, this is unlikely to change. The design of the soakaways, shallow with only limited encroachment into root protection areas, suggests that there is minimal risk of drainage works causing appreciable or substantive harm to the integrity of the root systems of the trees around the site. Having to deal with falling tree detritus would come within the realms of typical property management and is unlikely to justify tree works in my view.
15. Accordingly, I conclude on this issue that the proposal would have an acceptable effect on the character and appearance of the area, with reference to protected trees. It would accord with the relevant aims of Policy EN12 of the TLP and the Framework.

Other Matters

16. To the north is the Grade II listed building 'Cliffden', which was originally a house but is now a hotel. I therefore have a duty to consider the impact of the proposal on the special architectural and historic interest of the listed building. The significance of Cliffden is derived from its Georgian and Victorian detailing and its expansive grounds. However, historic mapping indicates that the appeal site and its north wall were unlikely to have formed part of the Cliffden estate. Rather, they belonged to East Cliffe, a similarly large house demolished in the 1960s to make way for the car park. Given such, and also the limited intervisibility between the site and the hotel itself, the proposal would not have a harmful effect on the significance that Cliffden draws from its setting.

Planning Balance

17. The scheme would provide suitably designed units offering a boost to the local tourism industry, with associated economic benefits. There would also be a modest environmental benefit by reopening an historic gateway into East Cliff. However, given the protection afforded to the integrity of the SPA and the SAC and my responsibilities as competent authority in this regard, the benefits of the scheme do not outweigh the harm identified. Consequently, the proposal would conflict with the development plan when read as a whole and there are no other considerations, including the Framework, that outweigh the conflict.

Conclusion

18. For the reasons given above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

Matthew Jones
INSPECTOR