



Appeal Decision

Site visit made on 3 May 2022

by Alison Fish BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 October 2022

Appeal Ref: APP/X1165/W/21/3288977

8 Langley Avenue, Brixham TQ5 9JF

- 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 Messrs P and M Minchinton and Cook against Torbay Council.
 - The application Ref P/2021/0654, is dated 10 May 2021.
 - The development proposed is described as 'proposed dwelling in curtilage of No.8 all as drawings'.
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Decision

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

Main Issue

2. The appeal follows the Council's failure to determine the respective planning application. The Council has provided a written statement and a draft officer report which indicate that had it been in a position to do so, it would have refused the proposal due to concerns relating to the effect on the South Hams Special Area of Conservation. Thus the main issue in this appeal is:
 - The effect of the proposed development on the integrity of the South Hams Special Area of Conservation.

Reasons

3. The Council have identified that the appeal site lies within the Sustenance Zone and Landscape Connectivity Zone of the designated greater horseshoe bat roost in the Berry Head to Sharkham Point Site of Special Scientific Interest. This is one of five roosts which together comprise the South Hams Special Area of Conservation (SAC) designated to protect habitats and to ensure the favourable conservation status of its population of greater horseshoe bats. The Sustenance Zone is an area within 4km of the roost which provides foraging habitats for the bats and the Landscape Connectivity Zone is a complex network of commuting routes used by the bats to provide connectivity between the designated roosts. Therefore, although the appeal site lies outside the SAC, it is necessary for me, as the competent authority, to consider whether the proposal is likely to have a significant effect on the designated features of the SAC either alone or in combination with other plans and projects.
4. I have had sight of the South Hams Special Area of Conservation (SAC) Greater Horseshoe Bats Habitats Regulations Assessment Guidance dated October 2019 (the Guidance) produced in conjunction with Natural England. This indicates that proposals impacting on foraging habitat and commuting routes in

Sustenance Zones may have a likely significant effect on the SAC greater horseshoe bat population. This can include the loss of habitat and increased illumination through internal, external and vehicular lighting sources.

5. The application was not accompanied by any form of ecological assessment of the appeal site, nor mitigation strategy (by way of a planning obligation or otherwise). Paragraph 99 of Government Circular 06/2005 'Biodiversity and Geological Conservation – Statutory obligations and their impact within the planning system', explains how 'it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted...'
6. Whilst I note the appellants' concern that an assessment was not requested of them during the Council's determination, the 'Wildlife and Geology Trigger Table' found at Appendix 4 of the appellant's submission clearly indicates that in instances where the proposal involves demolition of a building, a 'wildlife report' produced by a consultant with suitable qualifications and experience must be included with an application for planning permission. In this instance, the appeal proposal includes the demolition of the existing garage.
7. The proposed dwelling would be located on the site of the existing garage and the appellant advises that no foraging habitat by way of trees or hedges would need to be removed to accommodate the dwelling. However, without an objective assessment by way of an up-to-date bat survey, ecological impact assessment of the appeal site and its contribution to the Sustenance Zone or a lighting report, I cannot rule out the potential for increased disturbance to foraging and commuting routes used by bats and the potential impact that internal and external lighting of the proposed dwelling may have on these. The Guidance advises that the Sustenance Zones in urban areas may provide less suitable conditions for greater horseshoe bats but it does not rule out potential impacts.
8. Whilst the individual effect of a single new dwelling may be modest, the cumulative effects of multiple smaller schemes may be far more significant. Adopting a precautionary principle in respect of my findings above, I find that there is a risk of a likely significant effect and as such, I am required to conduct an Appropriate Assessment (AA) in relation to the effect of the development on the integrity of the SAC.
9. The Planning Practice Guidance (PPG) states that an AA 'must contain complete, precise and definitive findings and conclusions to ensure that there is no reasonable scientific doubt as to the effects of the proposed plan or project.' In the absence of any such document indicating the effect of the appeal proposal in relation to sustaining the habitats and the levels of population of greater horseshoe bats, and measures that would assist in avoiding or reducing those effects, I cannot rule out an adverse effect to the integrity of the South Hams SAC. I have considered whether there are any imperative reasons of overriding public interest but the provision of a single dwelling is not sufficient to amount to overriding public interest. Consequently, having regard to the Habitat Regulations, and to the duty on me to have regard to conserving biodiversity, permission must not be granted.
10. I conclude that the proposed development would fail to maintain the integrity of the SAC, contrary to Policy NC1 of the Torbay Local Plan 2012-2030 (LP) and Policy E8 of the Brixham Peninsula Neighbourhood Plan 2012-2030, made June

2019 (NP) together with Paragraphs 174 and 180 of the National Planning Policy Framework (the Framework) which seek to safeguard, conserve and enhance protected sites, species and habitats.

Planning Balance and Other Matters

11. The Council cannot currently demonstrate a five year housing land supply as required by the Framework. Nevertheless, Paragraph 182 of the Framework states that the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site.
12. The benefits of the proposal advanced by the appellant include the site's urban location, the economic benefits of additional housing and the availability of alternative means of transport. However, the benefits from a single dwelling would be limited and would not outweigh the harm identified.
13. The Council have indicated that in the event of the appeal being allowed, a planning obligation under the provisions of section 106 of the Town and Country Planning Act 1990 (as amended) would be required to secure a financial contribution towards the Berry Head Grassland. I note that Natural England are satisfied that this would ensure that an adverse impact on the integrity of the SAC calcareous grassland from increase visitor pressure could be avoided. I would need to see further evidence before I was satisfied on this matter but as no planning obligation has been submitted and the appeal has failed for other reasons, I have not considered this point further.
14. The Council have also made reference to the appeal site being in a potential overwintering location for cirl bunting. Cirl bunting are a protected species under the Wildlife and Countryside Act 1981 (as amended). Again, I would need to see further evidence with regards to the effect of the proposal on cirl bunting before I was satisfied on this matter but as the appeal has failed for other reasons, I have not considered this point further.
15. I have considered other matters raised by interested parties including, but not limited to, highway safety and living conditions but given that the proposal fails on the main issue, these are not matters I need to consider further.

Conclusion

16. The proposed development would be contrary to the development plan and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal has failed.

Alison Fish

INSPECTOR