



Appeal Decision

Site visit made on 13 September 2022

by J J Evans BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 November 2022

Appeal Ref: APP/V3310/W/22/3296237

Elm View, Middle Street, Brent Knoll, Highbridge TA9 4BT

- 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 Mark Warren against the decision of Sedgemoor District Council.
 - The application Ref 07/21/00009, dated 7 May 2021, was refused by notice dated 31 March 2022.
 - The development proposed is described as the "Change of use of two fields to the north of Middle Street to provide 12 glamping pitches, solar table of 80-100 panels, relocate an earth bund, creation of car parking area and compacted nature/sculpture trail, bird watching hide, wild flower meadow, Black Poplar plantation, planting of natural hedgerows and some native trees. Planting of some rare type apple trees."
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The original application described the applicant as being Mr Mark Warren of Jenner Design and Planning, with the appeal being submitted by Mr Warren of Strategic Trading Limited. The appellant has confirmed in writing that as the landowner Mr Warren has submitted the appeal, and I have referred to him as the appellant above.
3. Although the appellant submitted the appeal on the basis of the Council having failed to give notice of its decision, the Council did issue a decision notice and the appellant has commented upon it in the appeal submission. The appellant has subsequently confirmed in writing that the appeal is to proceed against the refusal of consent.
4. In August 2022 the Planning Practice Guidance was updated with regard to flood risk and coastal change. The main parties were provided with an opportunity to comment on these changes, and I have had regard to the responses received.
5. During the consideration of the application and the appeal the appellant sought to amend the scheme, proposing amongst other things, to reduce the number of glamping pitches to 6. However, the Council considered the proposal with regard to 12 pitches, as described in the application,

and this is also the description of development as cited in the appellant's appeal form. Furthermore, the drawings submitted for the appeal show 12 pitches, not 6. The appeal process should not be used to evolve a scheme, and it is important that the facts before me are essentially those considered by the Council and other parties. In the interests of openness and fairness the proper course of action would be to make a further application to ensure all interested parties were aware of all the relevant information. In this case, the Council dealt with the proposal on the basis of it being for 12 pitches, and for the avoidance of doubt, so shall I.

Main Issues

6. The main issues in this case are firstly, the effect of the proposal upon users of Middle Street, having particular regard to safety; secondly, the effect of the proposal upon protected species within the area; and thirdly, whether the proposal would comply with national planning policy which seeks to steer new development away from areas at the highest risk of flooding, and to ensure that the development is flood resilient and will not increase flood risk overall.

Reasons

Access & Highway Safety

7. Positioned to the northern side of Middle Street, the appeal site is bounded by the railway line to the west, and Middle Street Rhyne to the north and east. There is an existing vehicular access in the southern corner, with a track extending into the site between two bunds. Miscellaneous storage of materials is occurring within the site, with building materials, garage doors, vehicle trailers and two caravans present. Bounded in part by the road embankment and the railway line is a pond, near to which there are trees and hedges of a variety of mostly mixed native species, and much of the rest of the site is mown grass.
8. In addition to the 12 glamping units, the scheme would also provide a solar array, bund, nature / sculpture trails, a bird watching hide, and a yurt to provide a communal area for exercise classes and an exhibition centre. In addition to those staying on the site, there would be the potential for visits to occur from schools and groups, with a large parking area provided of over 45 spaces.
9. The daily movements generated just by those staying on the site would be significantly greater than that which arises from the current use. Given the range and extent of the other proposed uses, including as an educational facility and for exercise classes, there would be multiple other trips occurring in addition to those staying at the site. The appellant anticipates that the majority of guests would travel by private motor vehicle, but this in itself would be of concern as accessing the site would necessitate the use of a narrow, single carriageway lane that has

no formal passing places. There would only be a few opportunities for users of the highway to manoeuvre off the carriageway so as to avoid conflict, and the extensive distances between these opportunities would necessitate drivers having to reverse for what could be long distances so as to be able to pass. There are also a number of sharp bends along the lane, the effect of which is to significantly reduce visibility and thereby increase the potential for conflict. The nature of the road is such that anyone using it, including those that are familiar with it, would need to be highly alert at all times to the presence of other users so as to avoid conflict.

10. In addition, the lane is neither lit, nor does it have any footways, with narrow verges, hedges, drainage ditches, and Middle Street Rhyne bounding the highway. Whilst the appellant would make guests aware of the nature of the road, and would also encourage walking, cycling, and provide a collection service, the propensity to walk and cycle to nearby facilities would be influenced not only by distance, but also by the quality of the experience. It might be the case that the appellant could maintain the verge along Middle Street, but even if such works could be undertaken, the narrow verges would not provide cyclists nor those using mobility scooters and push chairs an opportunity to move safely away from the carriageway. The physical constraints to either side of the highway, and particularly the close proximity of users to the rhyne with its absence of fencing or barriers, would not afford a safe opportunity to avoid oncoming traffic. The absence of any footways, along with the unlit, narrow and constrained nature of the road would not encourage walking or cycling, and particularly so during hours of darkness, and in the winter during adverse weather.
11. The junction of Middle Street with Burton Row has restricted visibility splays, particularly when exiting Middle Street, and the constrained nature of the lane and the presence of the rhyne would create conflict at the junction, with users unable to pass. Given the nature of the junction, motorists would approach with a degree of caution, and the appellant has pointed out that the only road traffic accidents have been on Burton Row. Nevertheless, even with cautious behaviour, the substantial increase in the number of movements arising from the proposal would be of concern given the nature of the junction and its constraints.
12. The appellant's traffic survey of the lane recorded use for a single day and having regard to the limitations of the survey, I can afford it limited weight. Middle Street is a popular route for pedestrians, cyclists and dog walkers, and there used to be a caravan facility near to the railway line, albeit from the evidence before me this use has ceased. Given the nature of the appeal scheme and the variety of uses proposed in addition to the glamping units, it does not follow that this former business predetermines allowing the appeal.

13. Given my findings, the proposal would have an adverse impact upon the safety of users of Middle Street, and the suggested conditions would not overcome this harm. The scheme would be contrary to the requirements of Policies D13 and D14 of the Sedgemoor Local Plan (2019) (LP), which seek, amongst other things, that proposals should enhance road and personal safety, and do not compromise the safety and function of the road network. Nor would the proposal accord with objectives of the National Planning Policy Framework (the Framework), that amongst other things, requires safe and suitable access, and that development should create places that are safe and secure, minimising the scope for conflict between pedestrians, cyclists and vehicles.

Protected Species

14. The appellant has and seeks to increase the biodiversity of the site. Works to the pond have occurred, and native species hedgerows have been planted, with further planting proposed with the appeal scheme. Contrary to the evidence provided in the Preliminary Ecological Appraisal (August 2018) (PEA) and the Ecological Appraisal (November 2021), the appellant refers to the presence of various protected species on and near the site, including water voles, badgers, grass snakes and slow worms.
15. Whilst noting the conservation experience of the appellant, Circular 06/2005 – Biodiversity and Geological Conservation makes it clear that the presence of a protected species is a material consideration when a development is being considered. 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 planning permission is granted, so as to ensure that all relevant material considerations have been addressed. In addition, not only is the PEA several years old, but the appellant disagrees with many of its findings with regard to the presence of protected species. The PEA also recommends further survey work, as does the Ecological Appraisal.
16. The proposal would necessitate extensive ground and earthworks, including earth bunds and the installation of the solar panels. Notwithstanding this, no assessment of the impact of these works upon protected species has been provided, nor have any mitigation measures been considered. In the absence of any accurate, up-to-date survey of the site, the impact of the proposal upon protected species cannot be ascertained.
17. The Framework requires that the planning system should contribute to and enhance the natural environment, minimising impacts on biodiversity. In this case the scheme has failed to demonstrate whether the development would have an impact upon protected species, nor has it been demonstrated that any impacts could be minimised and mitigated. The requirements of Circular 06/2005 make it clear that in such circumstances conditions would not be appropriate. The proposal would be contrary to the requirements of LP Policy D20, which seeks

amongst other things, to maintain and enhance biodiversity, seeking to avoid significant harm, including from direct or indirect impact.

Flooding

18. The appeal site is within an area with a high probability of flooding (Flood Zone 3A), whereby the site is at risk from a variety of sources that include coastal and fluvial flooding. The Framework sets out strict tests to protect people and property, and when these tests are not met, new development should not be allowed. Flood risk has to be assessed, and the steps are designed to ensure that if lower risk sites are available, or a proposed development cannot be made safe through its lifetime without increasing flood risk elsewhere, it should not be permitted. Measures to avoid, control, manage and mitigate flood risk should not increase flood risk elsewhere.
19. Government policy and guidance makes it clear that development should be steered away from areas of high flood risk towards areas of low risk, and the Framework classifies sites that are to be used for holiday, short-let caravans and camping as more vulnerable uses. The appellant acknowledges that the site is in a flood risk area, albeit considers the risks to be exaggerated. Neither other buildings nor that the appellant owns the site negate the need to undertake a sequential test, which includes an assessment of whether any other sites are available as alternatives. An assessment of reasonably available land is not restricted to that which is owned by the appellant, and in this case the appellant has provided no assessment of other reasonable sites. Given this, the scheme fails to satisfy the sequential test.
20. The exception test should only be applied following the application of the sequential test where it has been demonstrated that it is not possible for development to be located in areas with a lower risk of flooding. Having regard to the failure of the scheme to comply with the sequential test, there is no need for me to consider the exception test, albeit in this instance the appellant considers there is little risk of flooding on the site and it would not cause flooding elsewhere, due to a variety of measures such as the ongoing management of the rhynes, the enlargement of the pond and tree planting which would increase the water capacity of the site. Nevertheless, climate change impacts as well as the impacts of the groundworks, bunds and solar array would all need to be assessed to demonstrate the use would not deflect flood water elsewhere, that the flood risk mitigation measures would be sufficient to reduce flood risk, and that the development would be safe for its lifetime. In this case, flood risk could occur from a variety of sources, and consequently any development proposal should have an integrated approach to flood risk management, and this should include surface water flooding, as well as consideration to the predicted impacts of climate change.
21. In addition to these concerns, a fundamental requirement of development within a high risk flood zone is to have an emergency plan

for those using the site, particularly as it is very difficult to predict and provide warning of any breach of coastal defences. The huts would be raised above ground level and there may be potential for guests to use the bunds if necessary or be taken to the appellant's home, but such strategies assume that guests could shelter in situ or be safely removed from the site. Even low levels of flooding can pose a risk to people in situ because of the presence of unseen hazards and contaminants in the floodwater or the risk that people remaining would need supplies and may require medical attention. The absence of an emergency plan that considers all eventualities is an omission that could put people's lives at risk.

22. Ultimately the decision maker needs to be satisfied that a development would be safe throughout its lifetime and would not lead to increased flood risk elsewhere. There would be some limited benefits to the local economy through job creation and guests using services and facilities. However, these benefits would not outweigh the substantial flood risk consequences that would arise. As the proposal would be for a more vulnerable use in an area with a high risk of flooding, it is imperative that the strict tests to protect people and property are observed, and when these tests are not met, development should not be allowed. In this case the sequential test has not been met through the lack of assessment of alternative sites, and it has not been demonstrated that the development would not put people and property at risk. Conditions would not overcome this significant risk, and such a risk would be contrary to the requirements of the Framework and to those of LP Policy D1, that seeks amongst other things, that development should be safe over its lifetime and not increase flood risk elsewhere.

Other Matters

23. Although not a reason for refusal, in the Council's officer report the principle of the site for holiday use in a countryside location was considered to be unacceptable with regard to LP Policies D17, S2 and CO1. These policies seek amongst other things, to control development in the countryside to that which enhances and maintains the vitality of rural communities and economies, and that tourism facilities should be sustainable, promoting education and interpretation. A requirement of LP Policy D17 is that any proposal is supported by a robust business case demonstrating that they are viable. The appellant has provided some assessment of the proposal with regard to these policy requirements, referring to potential benefits, that it would develop an already successful business, and that there is some support for the proposal, including from former guests. However, as I am dismissing the appeal for other reasons, I have not pursued this matter further.
24. Network Rail have concerns with regard to encroachment onto their land and management matters. Such issues would be for the relevant parties to resolve and have not had any bearing on my assessment of the planning issues in this appeal.

25. Local residents have raised a number of matters, including the visibility of the solar panels, construction traffic, noise nuisance, loss of privacy, litter, the current appearance of the site, and that the appellant has written much of the supporting evidence. Many of these concerns are not directly connected with the planning considerations of the proposal before me, and of those that are, following my findings on the main issues, I have no need to consider them further.
26. Finally, the appellant's concerns regarding the Council's handling of the application, including the consistency of decision making, relate to procedural matters and have no bearing on my consideration of the planning merits of the case.

Conclusion

27. For the above reasons the proposal would cause unacceptable harm to users of the local highway network. The scheme would also fail to protect any protected species on and near the site, nor would it comply with national and local policy that seeks to protect people and property from flooding. The adverse impacts arising from the proposal would significantly and demonstrably outweigh the aforementioned benefits, and the suggested conditions would not overcome these substantial harms. The proposal would conflict with the development plan and there are no material considerations that indicate the decision should be made other than in accordance with the development plan. Thus, for the reasons given above and having considered all other matters raised, the appeal is dismissed.

J J Evans

INSPECTOR