



Appeal Decision

Hearing (Virtual) held on 1 December 2022

Site visit made on 2 December 2022

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 December 2022

Appeal Ref: APP/V3310/W/22/3292930

**OS Field No. 4793, Stone Allerton Drove, Stone Allerton, Axbridge,
Somerset BS26 2NR**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Ms Kate Isgar against the decision of Sedgemoor District Council.
 - The application Ref 15/21/00007, dated 22 March 2021, was refused by notice dated 17 August 2021.
 - The development proposed is to erect an agriculturally tied workers dwelling on the site adjacent to the farm buildings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was submitted in outline form with all matters reserved at this stage. There are no indicative drawings presented showing the dwelling's potential scale, layout or appearance.
3. The Council's statement of case indicates that waste water discharges from the site would drain into the catchment of the Somerset Levels and Moors Ramsar and Special Protection Area (SPA) (the protected sites). Although not forming part of the Council's reason for refusal, it is incumbent upon me as the competent authority to consider whether the proposal would be likely to have a significant effect on the ecological integrity of the protected sites in accordance with the Habitats Directive¹. For this reason, it is necessary to consider this matter as a main issue.
4. To inform my assessment of the appeal in relation to this issue the main parties and Natural England (NE) have provided details of the relevant protected site designation along with other relevant documents including a mitigation strategy and supporting evidence base for the avoidance of impacts on the SPA.

Main Issues

5. The main issues are:
 - whether there is sufficient justification for a permanent agricultural workers' dwelling at the site, having regard to policies which seek to restrict rural development;

¹ Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

- the effect of the proposed development on the character and appearance of the surrounding area; and
- the effect of the proposed dwelling on the integrity of the protected sites.

Reasons

Essential Need

6. The appeal site is a roughly rectangular area of land in the corner of a large agricultural field. Two agricultural sheds, grouped around a yard, are located to the south. The site has a frontage onto Stone Allerton Drove, a narrow road leading from the village of Stone Allerton, a short distance to the east.
7. The site relates to an agricultural holding operated by the appellant. It comprises around 102 acres of owned land, with a further 135 acres of rented land located a few miles away at Clewer. The farming activity largely relates to the rearing of cattle and sheep. The buildings close to the site have a more specialist purpose as a bovine tuberculosis (TB) isolation unit (TBIU), relating to the rearing of calves.
8. The appellant currently resides with her partner in rented accommodation around 2 miles from the appeal site. A notice has been served for them to vacate that dwelling. However, due to an ongoing TB infection at the holding relating to the rented dwelling, the notice to vacate has been extended. Nevertheless, there is no long-term certainty relating to the appellant's current living arrangements.
9. Policy D10 of the Sedgemoor District Council Local Plan 2011-2032 adopted 2019 (the Local Plan) relates to the erection of rural workers dwellings outside of settlements. Schemes will be acceptable, amongst other things, where applicants clearly establish an existing functional need to live at or near their place of work, that cannot be met within the defined boundaries of settlements. Additional requirements include the prerequisite that the rural business has been established for at least three years, has been profitable for at least one of them, is financially sound, and has a clear prospect of remaining so.
10. At the Hearing the appellant indicated that the locality is a TB hot-spot with restrictions being placed by animal health agencies on farms with infected animals. With those restrictions in place the ability of many farms in the locality to rear cattle is severely curtailed. The appellant's holding, in part, operates a system whereby uninfected calves from the locality are brought on to the site for rearing.
11. The submitted evidence shows that the agricultural sheds at the site are registered as TBIUs by the Government's Animal and Plant Health Agency (APHA). The APHA imposes prescriptive measures requiring animals to be tested and clear of TB before being brought to the holding, with further tests required before they are removed and sold on as beef cattle. The sheds require intensive cleaning and disinfecting before more calves are brought onto the holding to be reared. Moreover, a further licence from the APHA is needed before this can happen.
12. The young calves brought to the holding would initially be reared by the appellant in the TBIUs. Hand feeding the animals would take place several times during the day and a farm worker would need to be on hand to

undertake those duties. Furthermore, during the initial rearing of the calves, the appellant would need to be within sight and sound at all times of the day/night to respond to any changes in behaviour and identify signs of illness, such as pneumonia and diarrhoea, often associated with young calves. To my mind, rearing calves in this way is very intensive as the herd is kept within the TBIU for up to 14 months.

13. The unpredictability and intensity associated with the rearing of the livestock would not diminish, in my view, the requirement to have an on-site presence at the site most of the time.
14. I note the high value of the animals adds to the balance of factors that warrant a permanent on-site presence. The security of the animals through mobile surveillance was discussed at the Hearing. Yet given the close attention required to spot changes in behaviour, CCTV cameras, in my view, may not prove to be an effective means of checking on the health of the calves remotely.
15. The appellant has carried out a search of available market dwellings in the vicinity. The most likely source of available housing would be in the settlement of Stone Allerton, located a short distance to the east. The properties for sale are significantly beyond the budget of the appellant.
16. Even if more affordable dwellings became available to the appellant, traveling to the holding from Stone Allerton would present some delay in response to urgent or unexpected situations. I also recognise that the unpredictable and intensive husbandry associated with cows around the time of early rearing. Therefore, the type of farming undertaken at the appeal holding is likely to require a continuous presence on site or close by to react and respond to emergencies. It is therefore not apparent that the functional need identified could be fulfilled by another existing dwelling within the local area.
17. Based on the above supporting factors, I find that the claim that a permanent site presence is required for much of the time, justifies a permanent agricultural worker's dwelling at the site.
18. The Council's case is largely predicated on why the dwelling is needed when the appellant could continue to reside at their current residence, or live at one of the two agricultural worker's dwellings approved on land elsewhere. Those were, in part, justified by agricultural activities on land forming part of the appeal holding.
19. As indicated earlier, residing at the existing dwelling would be uncertain as a tenancy notice has been served, while the two consented dwellings would be occupied, according to the appellant, by her partner and his son, and are therefore not available. Despite the somewhat ambiguous way in which some land on the appellant's holding was used to justify other agricultural dwellings locally, I do not have full sight of those cases. Besides, in this case, there would be a need to live very close to the TBIU given the risks associated with calve rearing and residing at one of those other dwellings further afield would not address the essential need.
20. The appellant's financial accounts demonstrate that the farming enterprise has made a profit in each of the last three years. The level of profit has fluctuated, although, according to the appellant, this was due to investment in additional

farm buildings and the winding down of a catering business previously used to supplement her income. Moreover, the Council's decision notice did not raise any concerns regarding the enterprise being unsound financially.

21. Although not presented in the submitted evidence, the appellant, indicated at the Hearing that the construction of the consented buildings and the associated expansion of the TBIUs, would result in a profit forecast between £60-90k in the next few years. Therefore, the appellant's expansion plans demonstrate that the enterprise would endure financially.
22. In conclusion, there is sufficient justification for a permanent agricultural workers' dwelling at the site, having regard to policies which seek to restrict rural development. The proposal would accord with Policies S2, C01 and D10 of the Local Plan which allows residential development in the open countryside that meets an essential need and is required to satisfy an existing functional need to live at or near a person's place of work.

Character and appearance

23. The surrounding landscape has a pastoral quality typified by agricultural fields enclosed by trees and hedgerow. There are occasional farm buildings that reinforce the area's agrarian character.
24. There is a history of the Council approving agricultural buildings close to the appeal site. Two existing agricultural sheds used for storage and rearing calves, are located a short distance to the south. These have a shallow roof pitch with eaves measuring around 5.4m in height. Two further buildings have permission to the south of the appeal site, close to the existing sheds. Should those be built, there would be four buildings adjacent to the proposed dwelling.
25. The proposed dwelling would form a cluster with the other structures. The group would have a linear arrangement that would run parallel with the tree lined field enclosure to the east. That boundary would also screen the buildings and the dwelling somewhat when approaching from Stone Allerton. When viewed from the site's road frontage, the proposed dwelling would likely become more obvious and would result in the partial loss of the open, undeveloped land. Nonetheless, the proposed dwelling would integrate with, and be screened somewhat, by the adjacent structures. In this context, the proposal would have a negligible effect on the character of the area.
26. Details of the proposed dwelling's design and scale have not been submitted at this stage. Nonetheless, it is considered that an appropriately sized dwelling that respects the local vernacular could be built at the site, without harming the locality's character.
27. Any residential paraphernalia would be seen against the background of the dwelling, adjacent farm buildings and any associated agricultural machinery and implements. In this context, the introduction of residential paraphernalia, would be unlikely to cause visual harm to the wider landscape.
28. The appellant indicated that the existing buildings contain internal and external lighting. Similarly, I would expect the consented buildings to have some form of lighting when built, so that workers can undertake activities during darkness and low light conditions.

29. With up to four farm buildings close to the appeal site, the level of illumination emanating from the farmstead would likely be noticeable from the surrounding area during the darker hours, especially given its relatively isolated location outside the built-up area. The proposed dwelling would introduce, to some extent, further lighting in the form of external directional lighting and light emanating from windows. The intensity of the illumination from the site could be controlled by condition to ensure it is not excessive whilst also respecting local ecological interests.
30. I note the concerns of the community council and their reference to the village design statement, where it requires sensitive development in the open countryside. However, in this case the proposed dwelling, subject to appropriate scale and appearance details, would not appear visually alien or insensitive. It would also satisfy an essential agricultural need.
31. Therefore, the proposal would, subject to detailed design, not harm the character and appearance of the surrounding area. It would accord with Policy D19 of the Local Plan which require schemes to protect the landscape's character and scenic qualities.

Protected sites

32. The appeal site is within the catchment of the Somerset Levels and Moors Ramsar and SPA. These protected sites are designated for their internationally important wetland features including the floristic and invertebrate diversity and species of its ditches. The favourable condition of the protected sites is partly reliant on water quality. The Council indicates that ditches in the catchment are in a poor or moderate status for phosphate, which is having a detrimental effect on the overall classification of water bodies. The conservation objective is to ensure that the integrity of the protected sites is maintained or restored.
33. Phosphorous discharges, found in waste-water, from residential development entering the catchment, can significantly harm the biodiversity of the ditches. In combination with other development in the catchment, the proposal could exacerbate the existing impacts and so threaten the conservation status of the Ramsar / SPA. To avoid this, the advice of Natural England is that development should achieve nutrient neutrality and provide suitable mitigation to overcome any harm.
34. Policy D20 of the Local Plan explains that development proposals should maintain or enhance protected sites. Where the avoidance of harm is not possible, impacts from development which could result in adverse effects on nature conservation will need to provide adequate mitigation.
35. The report entitled 'Somerset Levels and Moors Phosphate Mitigation Solutions' sets out a range of options that could reduce diffuse-source phosphate loads in the catchment. These include nature-based solutions like taking land out of agricultural use and creating new habitats.
36. The appellant's mitigation strategy calculates a net increase of 0.30kg/y in phosphorus discharges resulting from the proposal. To mitigate this the appellant intends to take 0.621 hectares of land in her ownership out of agricultural use and allocate it for woodland planting. There is agreement, in principle, between the main parties that the extent of tree planting would qualify as an acceptable offsetting measure.

37. However, the specific area identified by the appellant for the planting has not been accompanied by an ecological survey to assess its suitability. This would be particularly important given that land's designation as a UK Biodiversity Action Plan habitat. Furthermore, I do not know what tree species would be planted, the stocking levels or the planting's ability to establish and endure for the lifetime of the development. Even if this information was provided, I would then need to know how the area would be managed to ensure it continues to fulfil its role in offsetting phosphorous discharges. Without knowledge of those matters, I am unable to ascertain with confidence whether the proposed mitigation would be effective beyond reasonable scientific doubt. Therefore, it is not possible to be sure that any adverse impacts on the protected sites would be avoided.
38. In the absence of detailed information, the appellant has suggested a planning condition requiring the submission of further details of the planting area's suitability. The Council would prefer that the mitigation is secured through a more robust planning obligation.
39. The PPG indicates that any measures used to inform the decision about the effects on integrity need to be sufficiently secured and likely to work in practice (ID: 65-004-20190722). A high degree of assurance is required if the provisions of the Conservation of Habitats and Species Regulations are to be met. This would normally be done by means of a planning obligation.
40. Regardless of which mechanism is preferred, I do not have the full details of what is proposed as mitigation. Furthermore, were I to allow the appeal, the ecological assessment of the donor land's suitability would be unknown until after permission is issued. Consequently, I am not persuaded that the mechanisms suggested would be sufficiently detailed or precise to deliver effective mitigation so as to not have an unacceptable adverse effect on the Ramsar / SPA designation.
41. Therefore, following an appropriate assessment, the proposal would adversely affect the integrity of the protected sites. As a result, it would be contrary to Policy D20 of the Local Plan which seeks to protect sites of international conservation importance.

Conclusion

42. I have found that there is an essential need for a rural worker's dwelling at the site, whilst there would be no harm to the character and appearance of the area. However, on account of the lack of detailed mitigation, it has not been shown that the development would be nutrient neutral. The resulting adverse effect on the integrity of the protected sites is decisive and because of this the proposal would not accord with the development plan. The addition of a further dwelling to support the agricultural economy is acknowledged and attracts significant weight. But it would not outweigh the substantial harm, in this case, to the protected sites. Therefore, for the reasons given, the appeal should not succeed.

R E Jones

INSPECTOR

DOCUMENTS SUBMITTED

Document 1	Front cover of Farm Business Tenancy Agreement between Isgar and Morgan
Document 2	Council's revised list of the suggested planning conditions
Document 3	Grazing Licence 2018 between Isgar and Stitch
Document 4	Somerset Levels and Moors Phosphate Mitigation Solutions Report

APPEARANCES

FOR THE APPELLANT

Miss Kate Isgar	Appellant
Tim Hector	Agent

FOR THE LOCAL PLANNING AUTHORITY

Dawn DeVries	Council's Planning Officer
Emma Chorley	Council's Planning Officer

INTERESTED PERSONS

Councillor Fiona Torrens-Spence	Church Allerton Parish Council
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