



Appeal Decision

Site visit made on 21 November 2022

by James Blackwell LLB (Hons) PgDip

an Inspector appointed by the Secretary of State

Decision date: 13 January 2023

Appeal Ref: APP/W3330/W/21/3287661

The Wilderness (land north of The Warren), Stoke Road, North Curry, Somerset TA3 6HN

- 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 consent, agreement or approval to details required by a condition of an approval.
- The appeal is made by Mr Mark Taylor against the decision of Somerset West and Taunton Council.
- The application Ref 24/18/0036, dated 20 February 2021, sought discharge of conditions 4 and 8 of planning permission Ref 24/18/0036 granted on 10 December 2018.
- The details of the conditions for which approval are sought are:
 - (4) Before the commencement of the development hereby permitted the applicant, or their agents or successors in title, shall have secured the implementation of a programme of archaeological work in accordance with a Written Scheme of Investigation (WSI) which has been submitted and approved in writing by the Planning Authority. The WSI shall include details of the archaeological excavation, the recording of the heritage asset, the analysis of evidence recovered from the site and publication of the results. The development permitted shall be carried out in accordance with the approved scheme.*
 - (8) Before development commences (including site clearance and any other preparatory works) a scheme for the protection of trees to be retained shall be submitted to and approved in writing by the Local Planning Authority. Such a scheme shall include a plan showing the location of the protective fencing, and shall specify the type of protective fencing, all in accordance with BS 5837:2012. Such fencing shall be erected prior to commencement of any other site operations and at least two working days' notice shall be given to the Local Planning Authority that it has been erected. It shall be maintained and retained for the full duration of works or until such time as agreed in writing with the Local Planning Authority. No activities whatsoever shall take place within the protected areas without the prior written agreement of the Local Planning Authority.*

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Notwithstanding the substantive content of conditions 4 and 8 attached to planning permission Ref 24/18/0036 (Planning Permission), discharge of these conditions was withheld by the Council due to the requirement for an appropriate assessment to be carried out, under Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended) (The Habitat Regulations). The requirement for an appropriate assessment arose following advice from Natural England dated 17 August 2020, which said new

housing development could, alone or in combination with other projects, lead to likely significant effects on the integrity of the Somerset Levels and Moors Ramsar (Ramsar Site). This is due to the unfavourable condition of the Ramsar Site arising from the high level of phosphates, which in turn, means that any additional phosphate load risks additional harm.

3. The Written Ministerial Statement dated 20 July 2022 (WMS) confirms that the requirement for an HRA can arise in connection with an application for the discharge of conditions. Specifically, it states "*The Habitats Regulations Assessment provisions apply to any consent, permission, or other authorisation, this may include post-permission approvals; reserved matters or discharges of conditions*".
4. I acknowledge that conditions 4 and 8 are not directly related to the issue of phosphates. Nonetheless, following the advice of Natural England and the potential risk of the proposal to the integrity of the Ramsar Site, I consider it entirely appropriate for the Council to require an appropriate assessment to be carried out before development can properly commence. The WMS confirms the lawfulness of this approach, which has been further endorsed in a recent appeal decision¹. I have proceeded on this basis.

Main Issue

5. In this context, the main issue is the effect of the proposed development on the integrity of the Somerset Levels and Moors Ramsar Site.

Reasons

6. The Ramsar Site is afforded special protection under the Ramsar Convention, due to its internationally important wetland features, including the floristic and invertebrate diversity and species of its ditches, which together help support numerous habitats and protected species. As highlighted above, Natural England has advised that the Ramsar Site is now in an unfavourable condition, due to the effects of eutrophication caused by such excessive phosphate levels. Any additional phosphate load into the Ramsar Site could therefore exacerbate the site's unfavourable condition, thereby further undermining its integrity.
7. The appeal site is located within the catchment of the Ramsar Site. In this area, wastewater from new residential development risks increasing phosphate levels within the protected area. The proposal could therefore exacerbate the unfavourable effects of eutrophication caused by excessive phosphate levels. In turn, likely significant effects on the Ramsar Site cannot be ruled out without appropriate mitigation.
8. To rule out such effects, proposed mitigation would need to procure nutrient neutrality in connection with the development. Mitigation measures would therefore need to fully offset the potential additional phosphate load arising from the development into the Ramsar Site. In this instance, the appellant's Nutrient Neutrality Statement (NNS)² concludes that the proposal would lead to a total phosphate surplus of 0.304kg/year.
9. A Package Treatment Plant (PTP) has been proposed by the appellant as mitigation for the phosphate surplus arising from the development. However,

¹ APP/W3330/W/22/3296248

² Nutrient Neutrality Assessment & Mitigation Strategy, 29 September 2022

advice from both Natural England and the Environment Agency (EA) is clear that new development should connect to a public foul sewer (rather than a PTP), where it is reasonable to do so. This is because private non-mains foul drainage systems are not considered to be environmentally acceptable within publicly sewered areas. Generally, where a site is within 30 metres of a public foul sewer, the presumption in favour of connection to a public foul sewer will therefore apply.

10. In this instance, correspondence between the Council and the EA suggests that the site is indeed within 30 metres of a public foul sewer. On this basis, the EA says that a PTP would not be appropriate. Without any information to indicate otherwise, this means it is unlikely that the EA would issue a permit to the appellant for use of the proposed PTP. In turn, I cannot be certain that the proposed mitigation would be realistic, or indeed feasible, and without such mitigation, the total phosphate surplus arising from the development would not be adequately offset.
11. On this basis, I am left with no option but to conclude as competent authority that the proposal would have significant adverse effects on the integrity of the Ramsar Site. The development would therefore fail to pass the appropriate assessment required under Regulation 63 of the Habitats Regulations.

Other Matters

12. The appeal application relates to land north of The Warren (known as The Wilderness), and not The Warren itself. Whilst the two sites are closely linked, the planning history of the wider site would not alter outcome of the appropriate assessment. Indeed, the NNS concluded that development of The Wilderness (specifically) would lead to a total phosphate surplus of 0.304kg/year. Irrespective of the number of dwellings that have previously occupied the wider site (including The Warren), the development would therefore exacerbate the unfavourable condition of the Ramsar Site, without appropriate mitigation. In turn (and in its own right), the development would fail the appropriate assessment required under Regulation 63 of the Habitats Regulations.
13. Whilst I sympathise with the appellant's position, any application to extend the time limit for implementation of the Planning Permission would need to have been made within six months of the date of the original Permission. This is because such applications are specifically excluded from the remit of s73 TCPA 1990³. Instead, such applications would be dealt with in accordance with the provisions of s93(3) and s78 of the TCPA, which impose the standard six month time limit for such an appeal.
14. The proposed sale of the appeal site (with the benefit of Planning Permission) is intended to help fund necessary repairs to, and restoration of, the Brewery (which a listed building). Whilst this would be a benefit of the scheme, it would not be sufficient to outweigh the significant adverse effects on the integrity of the Ramsar Site.

Conclusion

15. I have not been able to rule out the possibility of likely significant effects on the integrity of the Ramsar Site. The proposal would therefore conflict with the

³ s73(5) Town and Country Planning Act 1990 (as amended)

requirements of the Habitats Regulations, as well as the development plan as a whole. There are no other considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons given, the appeal should be dismissed.

James Blackwell

INSPECTOR