



Appeal Decision

Site visit made on 14 February 2023

by Ann Veevers BA(Hons) DipBCon MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 March 2023

Appeal Ref: APP/X1355/W/22/3313256

Crimdon Pony World, Coast Road, Blackhall Colliery, Hartlepool TS27 4BL

- 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 Robert Ayre against the decision of Durham County Council.
 - The application Ref DM/21/02236/FPA, dated 21 June 2020, was refused by notice dated 23 June 2022.
 - The development proposed is described as 'provide additional 3no holiday let style accommodation to existing block of stables/accommodation and kids club'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Following the determination of the application, Natural England (NE) has issued updated advice in relation to nutrient level pollution¹. The appeal site lies within the catchment of the Teesmouth and Cleveland Coast Special Protection Area and RAMSAR site (TCCSPA). In this instance the appeal proposal could increase nitrogen discharge into the internationally important European site. Although not forming part of the Council's reasons for refusal, it is incumbent upon me as the competent authority to consider whether the proposed development would be likely to have a significant effect on the ecological integrity of the TCCSPA in relation to nutrients in accordance with the Habitats Directive².
3. To inform my assessment of the appeal in relation to this matter, the Council has provided a summary of the implications on nutrient neutrality having regard to the appeal proposal. The appellant has had the opportunity to provide comment which I have taken into account in determining this appeal.

Main Issues

4. The main issue is the effect of the proposed development on the integrity of European protected habitat sites with particular regard to recreational activity and nitrogen and phosphorus nutrient levels.

Reasons

Habitats

5. The appeal site is located within the Zone of Influence for the TCCSPA and the Northumbria Coast Special Protection Area and RAMSAR (NCSPA) as well as the

¹ Natural England - Advice for development proposals with the potential to affect water quality resulting in adverse nutrient impacts on habitats sites – March 2022.

² Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

Durham Coast Special Area of Conservation (SAC) and Castle Eden Dene SAC. These sites are protected as European Sites of Nature Conservation Importance and are subject to statutory protection under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations).

6. The Regulations require where a plan or project is likely to result in a significant effect on a European site, a competent authority is required to make an Appropriate Assessment (AA) of the implications of that plan or project on the integrity of the European site in view of its conservation objectives. Any likely significant effects (LSEs) arising from a development need to be considered alone and in combination with other development in the area, adopting the precautionary principle.
7. The importance of the NCSPA is due to its rocky shore and sandy beaches which support a rich algal flora and fauna that form an important feeding ground for wading birds and include its qualifying features of wintering and/or breeding Purple Sandpiper, Ruddy Turnstone and a nationally important colony of Little Tern. The features of interests in the TCCSPA are its intertidal sand and mud flats, rocky shore, sand dunes and saltwater/freshwater marshes which support a wintering assemblage of waterbird, including wintering/breeding or concentrations of Red Knot, Common Redshank, Ruff, Avocet, Common Tern, Sandwich Tern and Little Tern, which comprise its qualifying features.
8. Both the NCSPA and the TCCSPA (the SPAs) are also referred to as a European Marine Sites (EMSs) as they consist of areas continuously or intermittently covered by tidal waters.
9. The conservation objectives of the SPAs are to maintain or restore their integrity and ensure the sites contribute to achieving the aims of the Wild Birds Directive³, by maintaining or restoring the extent, distribution, structure, function and supporting processes of the habitats of the qualifying features and species, the population of the qualifying features and species, and the distribution of the qualifying features and species within the sites.
10. There is no dispute between the parties and Natural England (NE) that, although the site lies close to the Durham Coast SAC and Eden Castle SAC, there are no relevant impact pathways in relation to the qualifying species of these SACs.

Recreation

11. Policy 42 of the County Durham Plan 2020 (CDP) relates to internationally designated sites. The explanatory text comments that the Council has identified a buffer zone that extends 0.4 kilometres (km) from the perimeter of the SPA/SC/Ramsar within which development is likely to have significant effects on the site and therefore it may not be possible to sufficiently mitigate for the impacts of proposals within this zone. It is also noted that outside the 0.4km zone, development may still have the potential to impact upon designated sites.
12. My attention has also been drawn to the Council's coastal avoidance and mitigation strategy set out in the adopted 'Habitat Regulations Assessment: Developer Guidance and Requirements in County Durham' (DG). The document advises under 'Measure 1' a general presumption against any net increase in

³ Directive 2009/147/EC

- residential development/visitor accommodation within 0.4km of a designated habitat site.
13. The appeal site lies some 140 metres from the boundary of the TCCSPA (and approximately 375 metres from the Little Tern breeding area), and around 600 metres from the NCSPA. From the information before me, both the SPAs are vulnerable to pressure from people using the area, resulting in disturbance to qualifying bird species, particularly to predation, pollution and disturbance from informal recreation use, especially walking and dog exercise.
 14. Due to its proximity to the SPAs, there is a reasonable likelihood that they would be accessed for recreational purposes by future occupiers of the development. Although small in itself, the proposal is likely to contribute further to recreational disturbance impacts and is likely to have a significant adverse effect on the integrity of the SPAs, alone and when considered in combination with other development in the surrounding area.
 15. In these circumstances, the Habitats Regulations require that an Appropriate Assessment (AA) is carried out. The Habitats Regulations also indicate that permission may only be granted after having ascertained that a scheme will not affect the integrity of the European site. I may give consideration to any conditions or other restrictions which could secure mitigation and so provide certainty that the proposal would not adversely affect the integrity of the site.
 16. I have undertaken this assessment on a proportionate basis and adopting a precautionary approach. I have had regard to the Council's HRA, incorporating appropriate assessment, further to my duty as competent authority in accordance with the Habitat Regulations. Natural England (NE) was consulted in the course of the application.
 17. I have also had regard to the appellant's 'Gray's Ecology' ecology assessment (GEEA) which concludes that there would be no likely significant effect (LSE) due to the distance of the appeal site from the qualifying species of the SPAs. Nonetheless, the appeal site lies within the Zone of Influence of the SPA's. Some measures are already in place to protect the Little Tern colony that nest close to the appeal site, delivered by partnership organisations in the area, and I recognise that the colony could switch to other areas of the coast. However, even if the council encourages visitors away from the shore due to their promotion of alternative green spaces, I cannot be sure that additional visitors to the area as a result of the proposal would not cause disturbance to birds or their habitat.
 18. The appeal site and nearby beach has historically been subject to significant use by people and animals. Evidence of the significant past use of the site as a pony trekking and holiday business/kids club has been provided. This involved thousands of horse-riding trips on the nearby beach over a substantial period of time. The creation of the England Coast Path National Trail and the council's car parking and visitor facilities at Crimdon Dene indicate that there remain high visitor numbers to the area. The evidence indicates that the current levels of recreational disturbance in the SPAs are already having a negative impact on the use of the area by qualifying bird species.
 19. Even if the activity at the appeal site would reduce from the previous pony trekking use in terms of numbers of staff and visitors, and the proposed holiday lets utilise an existing building, I observed the stables at my site visit

and I cannot be certain that some form of similar riding enterprise would not re-open, and indeed add to recreational pressures in the area. I also note that NE did not object to the planning permission⁴ for holiday accommodation at the site, which remains extant. However, this permission pre-dated the Habitats Regulations. The site already provides overnight visitor accommodation within the 0.4km buffer zone. Nevertheless, the proposal would result in additional overnight accommodation in conflict with Policy 42 of the CDP and the presumption against any net increase in visitor accommodation contained in the DG.

20. From the information before me, I cannot be certain that the proposal would not contribute to recreational pressure to a level that would have a likely significant effect on the SPAs through harm to their qualifying features to the detriment of their conservation objectives.
21. While the appellant has indicated a willingness to provide a financial contribution as mitigation for LSE, in this case, I cannot conclude that the proposal would not have an adverse effect on the integrity of the SPAs because there is no provision within the DG to overcome the conflict with the 0.4km buffer zone through the use of financial contributions. There is no mechanism in place by which the required mitigation can be secured and controlled.
22. The proposal does not include any provision for the delivery of any other on-site or wider, more strategic mitigation. Accordingly, from the evidence, I cannot be sure that an appropriate means of securing adequate mitigation has been provided nor, therefore, that the proposal would not adversely affect the integrity of the SPAs.
23. Where suitable mitigation cannot be secured the Habitats Regulations state that planning permission should only be granted if there are no alternative solutions, that there are reasons of overriding public interest and suitable compensatory measures are secured. No other solutions have been put to me and I have found none myself. Based on the individual merits of the case, the provision of 3 holiday lets is not sufficient to amount to imperative reasons of overriding public interest. Finally, no compensatory measures have been put forward.
24. Consequently, having regard to the Habitat Regulations, permission should not be granted. The proposed development would result in unjustified harm to the integrity of the SPAs. Accordingly, the proposal would conflict with the requirements of the Habitats Regulations, Policy 42 of the CDP and the objectives of the National Planning Policy Framework ('the Framework') for the protection of biodiversity and the conservation of the natural environment.

Nutrients

25. NE have identified the TCCSPA and Ramsar as a habitat site in 'unfavourable' conservation status due to excessive nutrients. The sources of these nutrient inputs are from wastewater from existing housing and agriculture. NE has advised that there is the potential for future development across the region, including overnight accommodation for visitors, to increase nutrient inputs into the catchment of the TCCSPA.

⁴ LPA Ref: 5/PL/2013/0025

26. In this instance, from the information before me, wastewater from the proposed holiday lets is proposed to be disposed into the main sewer, which eventually outfalls into the TCCSPA catchment and has the potential to increase nitrate pollution and harm the integrity of the European site.
27. I have not been provided with evidence demonstrating the appeal site is not within the TCCSPA catchment, or a calculation and detailed measures demonstrating nutrient neutrality can be achieved. Therefore, it is not demonstrated the appeal proposal would not result in increases in the nutrient load of nitrates and phosphates in the catchment. Although the increase from 3 holiday lets would be small, based upon the evidence before me, alone and in-combination, the development would result LSEs that would be harmful to the integrity of the TCCSPA.
28. I have been provided with no details of mitigation in respect of nutrients on the TCCSPA catchment.
29. I recognise that an earlier scheme for the demolition and replacement of holiday accommodation, children's club and equine stables, including erection of holiday chalets to tourist accommodation did not seek nitrate neutrality. However, this scheme pre-dated the Habitats Regulations and the recent advice of NE regarding nutrient neutrality. In any event, I must base my decision on evidence before me which I have done.
30. Applying the precautionary principle, in the absence of appropriate mitigation being secured, the appeal scheme would have significant adverse effects on the integrity of the TSSPA. For this reason, the appeal scheme would fail to adhere to the conservation objectives. No other substantive mitigation measures are secured. Imperative reasons of overriding public interest do not exist and there are no other considerations that clearly outweigh the harm to the TCCSPA.
31. For the reasons set out above the proposed development would conflict with the Habitats Regulations and Policy 42 of the CDP and the provisions of the Framework.

Other Matters

32. I acknowledge that the holiday lets contribute positively towards the aim of the Framework of '*Building a Strong, Competitive Economy*'. The proposal would likely contribute to increased expenditure in the local area by visitors to the area. I also understand the importance that small businesses can make when looking to create local employment and provide visitor accommodation. Furthermore, there is some local support for the proposal.
33. The proposal would utilise an existing vacant building on the site and the proposed external alterations would be acceptable. However, for the reasons set out above, I find future occupiers of the site would be likely to use the surrounding area for recreational use during their stay and add to wastewater discharge which has the potential to affect the integrity of the SPAs.
34. It has been brought to my attention that Parkdean Resorts caravan park is located north of the appeal site and the large residential development is under construction to the south of the site, both of which the appellant states are within the Zone of Influence of the SPAs. I have been provided with limited information regarding these sites, however I have already assessed the in-combination effects of the proposal above.

35. While there may be disagreement between the ecologists for the main parties, I have undertaken my own AA as competent authority on the basis of the evidence presented to me.

Conclusion

36. The occupation of the 3 holiday lets would have individual and in-combination adverse effects on the integrity of European protected habitat sites with particular regard to recreational activity and nitrogen and phosphorus nutrient levels.

37. I therefore conclude that, for the reasons given above, and taking into account all matters raised, the appeal should be dismissed.

Ann Veevers

INSPECTOR