



Appeal Decision

Site visit made on 30 August 2022

by Alison Fish BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 April 2023

Appeal Ref: APP/Q3305/W/22/3291273

Knapp Hill Farm, Knapp Hill, Wells BA5 3HT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission
 - The appeal is made by Mr R Thorner against the decision of Mendip District Council.
 - The application Ref 2021/1246/APP, dated 26 May 2021, sought approval of details pursuant to Condition No 7 of a planning permission Ref 2019/1726/FUL, granted on 20 April 2020.
 - The application was refused by notice dated 20 August 2021.
 - The development proposed is change of use of existing agricultural building into 1no. one bedroom residential dwelling and associated works.
 - The details for which approval is sought are: No development shall commence until there has been submitted to and approved in writing by the local planning authority a scheme for surface water drainage. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall: i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters; ii) include a timetable for its implementation; and, iii) provide, a management and maintenance plan for the lifetime of the development to secure the operation of the scheme throughout its lifetime. The development will be carried out in accordance with the approved details prior to first occupation of the dwelling hereby permitted.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Planning permission was granted on appeal¹ for a one bedroom dwelling at the appeal site in April 2020. This was subject to a number of pre-commencement planning conditions. Subsequently, the Somerset Levels and Moors Ramsar site was found to be in an unfavourable condition due to elevated levels of phosphates. The appeal site is within the catchment flowing into the Ramsar site.
3. The appellant is seeking to discharge a pre-commencement condition attached to that permission relating to a scheme to deal with surface water at the site.

¹ Ref: APP/Q3305/W/19/3242239

They have already received consent for the foul drainage details submitted to discharge a pre-commencement condition. As such, they say, consideration should be given to the merits of the scheme to deal with surface water from the approved development and not on the basis of the phosphate output from the overall development.

4. The main issue in this appeal therefore is whether an Appropriate Assessment pursuant to the Habitats Regulations² is necessary in order to agree the conditions attached to the planning permission and, if it is necessary, the effect of the proposal on the Somerset Levels and Moors Ramsar site with particular regard to the discharge of phosphates.

Reasons

5. The Somerset Levels and Moors are listed as a Ramsar Site under the Ramsar Convention and is designated for its internationally important wetland features including the floristic and invertebrate diversity and species of its ditches.
6. In a letter from Natural England (NE) dated 17 August 2020, local planning authorities were advised that the interest features of the Ramsar were unfavourable or at risk, from the effects of eutrophication caused by excessive phosphates entering watercourses. The letter also explained that where the conservation status of a protected natural habitat is unfavourable, the possibility of authorising activities which may subsequently compromise the ability to restore the site to favourable condition and achieve the conservation objectives are 'necessarily limited'.
7. In the Written Ministerial Statement on 'Improving water quality and tackling nutrient pollution' published on 20 July 2022 (WMS) it states that the Habitats Regulations Assessment provisions apply to any consent, permission, or other authorisation and that this may include post-permission approvals including discharges of conditions. On my plain reading of the WMS, I am satisfied that the Habitats Regulations Assessment provisions apply to the appeal before me as the appellant is seeking post-permission approval to discharge a condition.
8. Additional residential units within the Ramsar catchment are likely to add phosphates to the designated site via the waste water treatment effluent. The letter from the Chief Planner dated 21 July 2022 (CPL) sets out that this is the dominant nutrient causing pollution in the catchment of habitats sites.
9. Whilst I accept that there is a planning permission in place for the provision of a new dwelling, the building is not currently occupied as a dwelling. The effect of my allowing the details submitted pursuant to Condition 7 of planning permission 2019/1726/FUL would be that the planning permission could then be implemented, the building could be occupied as a dwelling and this could result in phosphates entering the Ramsar via waste water treatment effluent.
10. For these reasons, I consider that the proposal would have a likely significant effect, alone and in combination with other plans and projects in the area, on the integrity of the Somerset Levels and Ramsar Site. As the competent authority, I am required to carry out an Appropriate Assessment pursuant to the Habitat Regulations.

² Conservation of Habitats and Species Regulations 2017

11. I accept that the CPL refers to there having been a high mitigation requirement to achieve the necessary offsetting of nutrient pollution related to development as well as an insufficient supply of accessible mitigation. However, in this instance no measures or mitigation proposals have been proposed by the appellant to avoid or reduce the impacts on the Somerset Levels and Moors Ramsar site. 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, the discharge of Condition 7 must not be approved.
12. I find that the proposal would cause harm to the Somerset Levels and Moors Ramsar site with particular regard to the discharge of phosphates. The proposal would, therefore, conflict with Development Policies 5 and 8 of the Mendip District Council Local Plan Part 1: Strategy & Policies 2006-2029, adopted 2014 which seek to ensure the protection, conservation and, where possible, enhancement of internationally, nationally, or locally designated natural habitat areas and species and that new development does not impose burdens on natural systems.
13. The proposal would also fail to meet the expectation set out in Paragraph 174 e) the National Planning Policy Framework which seeks to prevent development from contributing to unacceptable levels of water pollution.

Other Matters

14. The appellant has provided a list of cases which they say demonstrates that the Council are not consistently applying their own standing advice in relation to the discharge of conditions. The Council advise that some of the sites were outside the catchment area, others were for uses which did not result in overnight accommodation being provided and others had realistic fall-back positions of comparable development which could be implemented. They also acknowledge that errors have been made in some instances. However, in respect of this appeal, I am the competent authority and I have applied the Habitat Regulations accordingly.
15. The appellant says that a previous submission under Condition 7 relating to a surface water drainage scheme was not discharged by the Council on a technicality, as it involved land outside application site. The appeal proposal is clearly a different scheme as it is now contained within the appeal site boundary, and in light of my findings above, I give this limited weight.
16. Whilst the proposed surface water drainage scheme may be technically acceptable as a means of attenuating surface water from the proposed development, this does not override the harm I have found in respect of the main issue.
17. The appellant points to the advice in The Planning Practice Guidance which states that in considering applications under section 73 of the Town and Country Planning Act considerations should be confined to the disputed condition and not a complete re-consideration of the proposal. However, this advice relates to proposals where an appellant is seeking to vary or remove a condition and as such, it does not relate to the proposal before me.

18. I accept that there are no readily available strategic options available to mitigate the effects of development on the Ramsar. It is in the Councils interest to investigate solutions in order to address housing supply in their area but as it stands, that work is not yet complete. Whilst this is understandably frustrating for the appellant, the appeal must fail as the harmful effects of the proposal cannot be mitigated.

Conclusion

19. 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