



Appeal Decision

Hearing held on 12 April 2023

Site visit made on 12 April 2023

by James Blackwell LLB (Hons) PGDip

an Inspector appointed by the Secretary of State

Decision date: 12 May 2023

Appeal Ref: APP/D1265/W/22/3313240

Sevengates, Western Street, Over Compton, Dorset DT9 4QZ

- 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 & Mrs Kellaway against the decision of Dorset Council.
 - The application Ref P/FUL/2022/00437, dated 16 February 2022, was refused by notice dated 20 June 2022.
 - The development proposed is erection of an agricultural dwelling. (Amendment to Planning Permission WD/D/17/001001 already built, to amend the garage to be integral rather than external).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have used the Council's description of development as this more succinctly describes the scheme.
3. The development has already been carried out so is retrospective in nature. References to the development should therefore be construed accordingly.
4. Planning permission was granted by the Council for a rural worker dwelling under outline permission ref WD/D/16/000651 and reserved matters approval ref WD/D/17/001001 (Original Permission). The Original Permission granted consent for a single dwelling, together with a separate detached garage. A condition was attached to the Original Permission which limited the internal floorspace of the dwelling to 140sqm. When constructing the development, the appellants integrated the garage space so that it now forms part of the main dwelling. This resulted in a dwelling with an internal floorspace of approximately 181sqm. The appeal application seeks to regularise the as-built position under the Original Permission.
5. The acceptability of a rural worker's dwelling within the appeal site is therefore already established. However, the Council contends that the integration of the garage floorspace has resulted in a dwelling which exceeds the size requirements of a rural worker dwelling, which renders it unaffordable to other rural workers. This context is pertinent to the second main issue in this appeal.
6. During the Hearing, the appellants requested a network map from Wessex Water. Whilst submitted late, both parties agreed the map may be helpful in determining the proximity of any mains sewer connections in the vicinity of the appeal site, which is pertinent to the Council's reason for refusal concerning

nutrient neutrality. Given its relevance to this main issue, and the fact that the Council has not objected, I am satisfied that I can accept the map into evidence without undue prejudice to the main parties. I have proceeded on this basis.

Main Issues

7. The main issues are:

- the effect of the development on the integrity of the Somerset Levels and Moors Special Protection Area and the Somerset Levels and Moors Ramsar Site; and
- whether the development meets the requirements of a rural worker dwelling, with particular regard to its size.

Reasons

Protected Sites

8. The appeal site is located within the hydrological catchment of the Somerset Levels and Moors Special Protection Area (SPA), as well as the Somerset Levels and Moors Ramsar Site (Ramsar Site). The SPA and Ramsar Site comprise a series of extensive wetlands, which are characterised by flat, wet meadows bordered by rhynes, ditches and low hills. These wetlands are afforded special protection under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitat Regulations), as they provide important and valuable habitat for a large variety of wildlife, including breeding wader populations.
9. The SPA and Ramsar Site are deemed to be in an unfavourable condition by Natural England (NE), due to the risks of eutrophication caused by excessive levels of phosphates. Given the appeal site falls within their associated catchment, any additional nutrient load attributed to the foul effluent from the development risks exacerbating the unfavourable condition of these protected sites. In turn, the development, whether alone or in combination with other projects, risks likely significant effects on the SPA and Ramsar Site.
10. The development is currently connected to a Package Treatment Plant (PTP). Where small-scale development is connected to a PTP, likely significant effects on the SPA and Ramsar Site can sometimes be ruled out, provided it meets nine threshold criteria set out in the Council's Nutrient Neutrality Interim Guidelines¹. This is because much of the phosphate discharged from a development via a PTP is removed from the effluent as it percolates through soil in the associated drainage field. In this instance, both the Council and NE have confirmed that the development meets each of these threshold criteria. In turn, subject to a PTP being the most appropriate drainage option, likely significant effects on the protected sites could potentially be ruled out.
11. However, connection to a private non-mains foul drainage system (such as a PTP) is not considered to be environmentally acceptable within publicly sewered areas. Indeed, both the Building Regulations 2010 and Planning Practice Guidance (PPG) set out a presumption in favour of connection to the public foul sewer wherever it is reasonable to do so. Indeed, the PPG says "septic tanks or

¹ Interim guidelines on small scale thresholds and nutrient neutrality principles for the Somerset Levels and Moors Ramsar catchment, May 2021

package sewage treatment plans may only be considered if it can be clearly demonstrated by the applicant that discharging into a public sewer is not feasible².

12. The Council's Environmental Assessment Team (EA Team) has provided a map which shows the appeal site sits on the very edge of the catchment of a Wessex Water Waste Water Treatment Works (WWTW). This means it may be possible for the development to connect to the public sewer system rather than a PTP.
13. The appellants contend that the network map for Wessex Water shows there is no public sewer connection within the vicinity of the appeal site. However, the map does not show the location of the nearest connection, nor has Wessex Water given any confirmation whether connection to the WWTW would be possible. Without explicit confirmation in this regard, I cannot be certain whether or not the development could feasibly connect to the public sewer.
14. In line with the legislation and guidance set out above, the development should connect to the public sewer if it is feasible to do so. NE has confirmed this approach. If connected to the public sewer, foul effluent from the development would be treated at the WWTW. In these circumstances, given the pathway links between the WWTW and the SPA and Ramsar Site, the development has the propensity to increase the nutrient load in the SPA and Ramsar Site. In turn, mitigation to secure a nutrient neutral scheme would be needed before likely significant effects on these protected sites could be ruled out.
15. Whilst the appellants have indicated a willingness to connect to the public sewer (if possible) and provide appropriate mitigation, no mitigation has been secured at this stage. Unfortunately, this means I am unable to rule out the possibility of likely significant effects on the SPA or Ramsar Site. Moreover, as the development comprises a single dwelling, there are no imperative reasons of overriding public interest which justify permission being granted in the absence of adequate mitigation.
16. On this basis, I am left with no option but to conclude as competent authority that the development risks adverse effects on the integrity of the SPA and Ramsar Site. In turn, the development does not pass the appropriate assessment required under Regulation 63 of the Habitat Regulations. This says a competent authority may only agree to a plan or project after having ascertained that it will not adversely affect the integrity of any relevant European site.
17. The development also conflicts with paragraph 174 of the National Planning Policy Framework (2021) (Framework) which seeks to ensure development helps to improve local environmental conditions wherever possible, including water quality. It also conflicts with paragraph 180 of the Framework, which says planning permission should be refused if significant harm to biodiversity cannot be avoided, adequately mitigated, or, as a last resort, compensated for.

Rural Worker Dwelling

18. The appellants run two dairy farms which operate over approximately 960 acres. There are two agricultural buildings in close proximity to the appeal site which act as the main heifer rearing unit in conjunction with these farm

² Planning Practice Guidance, 020 Ref ID: 34-020-20140306

operations. As mentioned, a rural worker dwelling was consented under the Original Permission, as the nearby heifer rearing unit demands round-the-clock attention, to ensure the requisite welfare standards are met.

19. Policies SUS2 and HOUS6 of the West Dorset, Weymouth & Portland Local Plan 2015 (Local Plan) both provide policy support for rural worker housing outside of defined settlement areas. Whilst neither policy is explicit in terms of any size limitations, the supporting text to Policy HOUS6 says that the size of a rural worker dwelling should be “appropriate to the needs of the business and positioned where it will effectively meet the functional needs”.
20. The rural worker dwelling consented under the Original Permission comprises three bedrooms, two bathrooms, a kitchen/diner, a lounge and a separate WC. The additional accommodation attributed to the integrated garage comprises an office, a boot room, an additional bathroom, a plant store and an upstairs meeting space.
21. Notwithstanding the potential for the additional accommodation attributed to the integrated garage to be used in some other way (e.g. as additional bedrooms), on my site visit, these spaces did appear closely tied to the daily operations of the farm business. Indeed, the office accommodated two separate desks which both appeared to be in regular use. The upstairs room housed a large table and chairs, together with an abundance of paperwork related to the business. Such usage is indicative of the business and functional need for the space with regard to the appellants’ farm operations, which seems entirely reasonable for a business of such size. Moreover, without the integrated garage accommodation, the need for such spaces would risk compromising the quality of living accommodation in the main part of the dwelling.
22. In terms of affordability, the appellants have obtained valuations of the appeal site, based on both the consented scheme under the Original Permission and the as-built scheme. These valuations suggest the as-built scheme would be just 6% higher in value than the consented dwelling. Whilst the valuations were informal, the estimation of difference in value seems rational, given the overarching footprint of the as-built development is very similar to the consented dwelling under the Original Permission (when the detached garage is also factored in). The Council has also not presented any substantive evidence to back up its assertion that the additional floorspace would render the dwelling unaffordable. On the available evidence, I am therefore not persuaded that the as-built development makes a meaningful difference to the affordability of the property with regard to any future rural workers.
23. Nonetheless, the Council contends that the generally accepted size limit for a rural worker dwelling is 140sqm. The Council has referenced an appeal decision relating to Haywood Park Farm³ in support of its position. Whilst the Inspector did conclude that 140sqm was an appropriate size limit for the rural worker dwelling in this case, at paragraph 14 of their decision, the Inspector says “I stress that I have assessed the case on its own merits, in the light of the evidence before me. No two cases are the same and this decision does not set a precedent for decisions elsewhere”. Indeed, the business and functional needs of a business will invariably vary from case to case, and what constitutes an appropriate size of any associated rural worker dwelling will similarly differ.

³ APP/N1215/A/13/2200385

In turn, I attach limited weight to this appeal decision. Moreover, there is nothing in the Council's policy nor the Framework which specifies any particular limitations on the size of rural worker dwellings.

24. For these reasons, I am satisfied that the size of the rural worker dwelling is appropriate to the business and functional needs of the appellants' business. Moreover, the as-built dwelling would not make a meaningful difference to its affordability for any future rural workers. In turn, the development is consistent with Policies SUS2 and HOUS6 of the Local Plan, both of which permit rural worker dwellings outside of defined settlement limits, provided the size is appropriate to the needs of the associated business. The development is also consistent with paragraph 80 of the Framework, which provides support for rural worker dwellings in the countryside, where essential need is demonstrated.

Other Matters

25. I acknowledge that the effect of the development with regard to the integrity of the SPA and Ramsar Site is likely to be comparable to the effect of the dwelling consented under the Original Permission. However, as a full application, the appeal scheme must be determined on its own merits. Since the Original Permission was granted, guidance from Natural England regarding the status of the SPA and Ramsar Site has evolved. Moreover, the relevant provisions of the Habitat Regulations are explicit that planning permission should only be granted where it will not harm the integrity of these sites. In turn, the Original Permission does not alter my conclusions with regard to this issue.

Conclusion

26. Whilst I have found in favour of the appellants with regard to the second main issue, I have been unable to rule out adverse effects on the integrity of the SPA and Ramsar Site. In turn, the development conflicts with the development plan as a whole and there are no other considerations, including the provisions of the Framework, that outweigh this finding. Therefore, for the reasons given, the appeal should be dismissed.

James Blackwell

INSPECTOR

Appearances

FOR THE APPELLANT

Morgan Clement (Agent)

Andrew Tregay (Agent)

Greg Kellaway (Appellant)

Jenny Kellaway (Appellant)

FOR THE COUNCIL

Jim Bennett (Dorset Council)

Emma Ralphs (Dorset Council)