



Appeal Decision

Site visit made on 17 April 2024

by T Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 April 2024

Appeal Ref: APP/P1133/W/23/3334474

Cockhaven Arms, 12 Cockhaven Road, Bishopsteignton, Devon TQ14 9RF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr J Birch, Heartstone Inns Limited against the decision of Teignbridge District Council.
 - The application Ref is 22/02156/FUL.
 - The development proposed is Proposed stationing of three shepherd huts and the erection of a linen and cycle store.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. An amended block plan and additional section drawing were submitted with the appeal. These include some changes compared to the scheme that was considered by the Council and by interested parties at the application stage. However, the amendments, principally related to boundary treatment, are all relatively minor, and cumulatively would not fundamentally change the proposed development or result in a substantial difference from that originally applied for. The changes shown could also have been secured by means of a condition. Accordingly, considering the appeal with regard to the amended and additional plans would neither cause procedural unfairness nor prejudice third parties' interests, and I have determined the appeal on this basis.

Background and Main Issues

3. The Decision Notice includes one reason for refusal relating to the effect of the proposed development on the living conditions of adjoining occupiers. However, the Council's Delegated Report indicates that the appeal proposal is subject to the requirements of the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) because of its location relative to the Dawlish Warren Special Area of Conservation (SAC) and Exe Estuary Special Protection Area (SPA) and Ramsar site. Due to my findings in relation to the reason for refusal and having regard to Regulation 63 of the Habitats Regulations, it is therefore also necessary for me to consider the effect of the proposed development on these designated nature conservation sites.
4. Accordingly, the main issues are the effect of the proposed development on designated nature conservation sites; and the living conditions of adjoining occupiers.

Reasons

Nature conservation

5. The appeal site is located within 10 kilometres of the Dawlish Warren SAC and the Exe Estuary SPA and Ramsar site. The evidence before me indicates that additional accommodation within 10 kilometres of these designated sites adds to the existing issues of damage and disturbance arising from recreational use at the sites. Alone and/or in-combination with other residential development in the area, the proposed development would therefore be likely to have a significant effect on them. Accordingly, under the Habitats Regulations, Appropriate Assessment of the implications of the project for the designated sites in view of their conservation objectives is required.
6. The qualifying features of the SAC include white dunes, grey dunes, humid dune slacks and petalwort. The qualifying features of the SPA include avocet, Slavonian grebe, dark-bellied brent goose, dunlin, oystercatcher, black-tailed godwit, grey plover, and the overwintering assemblage of over 20,000 migratory waterfowl. The sites' conservation objectives seek to ensure that their integrity is maintained or restored as appropriate, with the SPA and Ramsar site contributing to the aims of the Wild Birds Directive and the SAC contributing to achieving favourable conservation status of its qualifying features. In summary, this includes maintaining or restoring the population and distribution of both sites' qualifying species/features; and the extent, distribution, structure, function and supporting processes of the habitats which qualify in their own right and which the qualifying species rely.
7. The available evidence indicates that without mitigation it would not be possible to ascertain that the proposed development would not adversely affect the integrity of the designated sites through the effects of increased recreational impacts on the sites' qualifying features. However, the effects of development can be mitigated by developers providing a financial contribution towards mitigation measures – ranging from on-site management, education and enforcement to the creation of alternative recreation space – delivered by the South East Devon Habitat Regulations Partnership.
8. The evidence before me indicates that the securing of the necessary financial contribution would be sufficient to mitigate the effects of the development on the designated sites. In this instance, the appellant provided a financial contribution to the Council when submitting the planning application. On this basis, the Delegated Report sets out that the Council, as Competent Authority (CA) at that point, was able to conclude that there would be no effect on the integrity of the designated sites. As such, the Council did not allege that the proposal would conflict with any TLP policies related to this matter or the Habitats Regulations. However, in determining the appeal, I am now the CA under Regulation 7(1); and as per Regulation 63 and subject to Regulation 64, the CA may agree to the project only after having ascertained that it will not adversely affect the integrity of the designated sites.
9. I recognise that an advance payment, by completing a form on the Council's website, is an established, local approach for mitigation and provides a written record. However, without there also being a mechanism before me – such as a legal agreement or unilateral undertaking – that ties the contribution specifically towards mitigation for the appeal proposal, such a payment is not sufficient for me to be certain that the required mitigation would be secured

and provided to mitigate against the effect of the proposed development. In addition, whilst stemming from an unfortunate set of events, the financial contribution provided by the appellant to the Council does not cover the full amount required to mitigate the effects of the proposed serviced (B&B) accommodation. Consequently, and as the CA undertaking Appropriate Assessment of the proposed development, I cannot ascertain that it would not adversely affect the integrity of the designated sites.

10. In the light of a negative assessment on the implications on designated sites, the Habitats Regulations require consideration as to whether there are any alternative solutions and if not, whether there are any imperative reasons of overriding public interest. However, irrespective of whether there may be any alternative solutions to the project, the provision of three shepherd huts for B&B accommodation is not sufficient to amount to imperative reasons of overriding public interest.
11. The Habitats Regulations indicate that permission must therefore not be granted. The appellant's ability to place shepherd huts/caravans on the site without the need for planning permission does not change or override this. Based on my findings above, the appeal proposal would also conflict with Policies EN8 and EN10 of the Teignbridge Local Plan 2013-2033 (TLP). Amongst other aspects, these seek to protect the area's biodiversity, including in designated wildlife sites.

Living conditions

12. The appeal site is part of the plot containing Cockhaven Arms, which is a reasonably large public house providing indoor and outdoor food and drinks and 14 rooms of B&B accommodation. The surrounding residential area is relatively built up and the site is close to several properties, particularly No 4 The Haven, Nos 14, 16 and 18 Bishops Avenue and Long Drive. Due to the area's topography, No 18 and Long Drive are above the site, No 16 is on a similar level, and Nos 4 and 14 are slightly below it.
13. The positioning of the proposed shepherd huts means that their front windows would not face towards any of the above properties. The huts would also have no rear windows, the side windows serving the living areas/fold down beds would be high-level, and the huts' other side windows would serve bathrooms. Combined with boundary treatment (existing and proposed), topography and separation distances, the proposed development would therefore not result in unacceptable levels of overlooking – from either the shepherd huts or sitting out areas – of the properties listed above or any others in the locality, including 10 Cockhaven Road and 12 Bishops Avenue.
14. Positioned relatively close to existing homes, the shepherd huts would provide year-round tourist accommodation which would be likely to produce more noise than a permanent residence. However, the submitted Management Plan sets out various measures that would significantly limit, if applied as indicated, the amount of noise generated by occupiers of the huts. Whilst concern has been raised about the extent to which the managers of Cockhaven Arms would impose the rules detailed in the Management Plan, a planning condition could be imposed to require implementation of the management plan and the Council could enforce against any failure to do so. Whether the restrictions for such a B&B holiday destination might not be considered reasonable by some does not lead me to a different conclusion.

15. In addition, the huts' size would limit the number of tourists who could stay on the site, the outdoor seating areas would not back on to any adjoining properties, the huts' construction would provide some sound insulation, and additional boundary treatment and planting would be provided, full details of which could also be secured by condition. Furthermore, the built-up nature of the surrounding area and the presence of Cockhaven Arms indicates that the locality is likely to have various activities and comings and goings that generate some noise already. On this basis, although the huts and associated facilities would intensify the site's use compared to the existing situation, the appeal proposal would not generate levels of noise that would significantly disturb surrounding occupiers.
16. The proposed huts would be visible from some surrounding properties. However, despite their height, the huts would not be particularly large or bulky. In addition, they would not be positioned up against any shared boundaries with adjoining properties, whilst existing and proposed boundary treatment would screen a large extent of them. Accordingly, although adjoining occupiers may be able to see the huts, including from the inside of No 4 and its rear garden, the huts would not read as intrusive or overbearing features that would unacceptably harm the outlook of adjoining occupiers.
17. The appellant has indicated that external lighting could be low level, motion-activated and timer controlled with low illuminance. This, along with full details of the external lighting required on the site, could be secured by condition. In addition, boundary treatment (existing and proposed) would provide some screening, whilst the built-up area is already likely to have various sources of external lighting. Accordingly, the appeal proposal would not result in significant light disturbance.
18. For the above reasons, I conclude that the proposed development would not harm the living conditions of adjoining occupiers. I therefore find that it accords with TLP Policies S1 and S2. Amongst other aspects, these require development to perform well against various criteria including existing residential amenity; and have a design that responds to the site's context and characteristics, and which creates inclusive layouts which promote well-being.

Other matters

19. Although not forming a reason for refusal, the Council's Delegated Report alleges that the proposed development would also harm the visual amenity of the area. However, as I am dismissing the appeal for other reasons, it is not necessary for me to consider this matter further.

Planning Balance and Conclusion

20. I have found that the proposed development would accord with TLP Policies S1 and S2. Being within a defined settlement and connected to a local business with a mix of uses, other policies, such as EC11, S6 and S12 of the TLP and BSE2 of the Bishopsteignton Neighbourhood Development Plan 2013 – 2033, support the proposal in principle. The Council has also not alleged a conflict with other development plan policies relating to matters such as flood risk, parking/highways and on-site biodiversity. Nevertheless, my findings in relation to designated nature conservation sites, and the consequent conflict with development plan policies related to this matter, leads me to conclude that the appeal proposal conflicts with the development plan as a whole.

21. By expanding the amount and type of tourism accommodation in an accessible location, creating more local employment opportunities and through the appellant's intended use of local suppliers, the proposed development would support the local economy and tourism sector. By extending and diversifying the offer at Cockhaven Arms, it would support the viability of a commercially successful local facility through bookings for the huts and associated spending on food and drinks in the pub. This would, in turn, also support the vitality of the community. In addition, it has been put to me that the introduction of soft landscaping on the site would provide visual and biodiversity enhancements.
22. The proposed development would therefore provide various social, economic and environmental benefits, as well as make efficient use of previously developed and underutilised land. The available evidence also indicates that the appellant may well be able to place caravans (or other similar moveable structures, such as shepherd huts) on the site without the need for planning permission. Be that as it may, the proposed development includes the provision of serviced accommodation and the Habitats Regulations indicate that consent for the project – which, as a whole, does require planning permission – cannot be granted, irrespective of any fallback scenarios. Taking all of the above into account, I also find that the scheme's benefits do not outweigh the conflict with the development plan. The appeal is therefore dismissed.

T Gethin

INSPECTOR