



Appeal Decision

Site visit made on 30 July 2024

by Alison Fish BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 August 2024

Appeal Ref: APP/K1128/W/23/3332427

3 Sentinel House, Poundwell Street, Modbury, Devon PL21 0QJ

- 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 Alex Hammerstein of The Modbury Group Ltd against the decision of South Hams District Council.
- The application Ref is 3557/22/FUL.
- The development proposed is change of use from redundant office to residential use.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this appeal is the effect of the appeal proposal on the integrity of the Tamar European Marine Site comprising the Plymouth Sound and Estuaries Special Area of Conservation (SAC) and the Tamar Estuaries Complex Special Protection Area (SPA).

Reasons

3. Designated in recognition of their international importance for wildlife, the SAC and SPA include key marine habitats such as sandbanks, estuaries, shallow inlets and bays, reefs and saltmarshes. These sheltered waters are home to the protected Allis shad migratory fish and other protected species. They also provide important feeding and roosting areas for little egret and avocets which are both protected birds.
4. The development of new residential accommodation would lead to increased levels of recreational activity taking place in the SAC and SPA. Human disturbance can damage key habitats and increase fish and bird mortality, which would have a harmful impact on the integrity of the protected sites. In order to prevent any net increase in recreational disturbance as a result of additional recreational pressures arising from new dwellings, mitigation is required.
5. Visitor surveys undertaken found that 75% of visitors to the SAC originated from within a radius of 12.3km whilst those visiting the SPA did so from a radius of 12.1km. Accordingly, and adopting a precautionary approach, the Council have identified areas within 12.3km of the SAC and SPA as the Zone of Influence in the Recreation Mitigation and Management Scheme ('the Mitigation Scheme')¹.

¹ Plymouth Sound and Estuaries EMS Recreation Mitigation and Management Scheme November 2019

6. The Mitigation Scheme contains a package of mitigation measures which have been costed and divided by the anticipated housing supply within the ZOI to provide the level of financial contribution required per new dwelling. I have not been provided with evidence which indicates that I should not afford the Mitigation Scheme significant weight as a material planning consideration for the purposes of determining this appeal.
7. There is no dispute that the appeal proposal would result in the creation of an additional dwelling. However, the appellants case is that the appeal site lies outside the ZOI and would not therefore lead to an increased level of recreation which requires mitigation.
8. Figure 1 in the Mitigation Scheme identifies the SAC, SPA and the Zone of Influence (ZOI). The built extent of Modbury, which includes the appeal site can be seen as lying wholly within the ZOI. The appellant argues that the appeal site is 13.68km away from the nearest point of the EMS but no substantive evidence to demonstrate this has been provided. On the basis of the evidence before me, I conclude that the appeal site lies within the ZOI and therefore in combination with other plans or project, is likely to have an effect on the European site. Accordingly, I am required to carry out an Appropriate Assessment as required by the Habitat Regulations.
9. From the evidence before me and in the absence of substantive evidence to the contrary, I am satisfied that a financial contribution to mitigate the effects of the proposed development would be necessary to make the development acceptable in planning terms, is directly related to the development and fairly and reasonably related in scale and kind to the development. It therefore complies with Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.
10. However, in respect of this appeal, there is no mechanism in place such as a legally binding planning obligation to secure the required financial contribution. I therefore cannot be certain that the effects of the proposed development on the SAC and SPA can be effectively mitigated. Accordingly, the proposed development is likely to contribute to an increase in recreational pressure on the SAC and SPA and result in an adverse effect upon the integrity of the protected sites. I have considered whether there are any imperative reasons of overriding public interest but there are not.
11. The proposal would cause harm to the integrity of the Tamar European Marine Site comprising the Plymouth Sound and Estuaries SAC and the Tamar Estuaries Complex SPA. Accordingly, the proposal would conflict with Policies SPT12, SPT14 and DEV26 of the Plymouth and South West Devon Joint Local Plan 2014-2034, adopted July 2020 which seek to safeguard European sites from development which would have a harmful impact on the integrity of those sites. My conclusion aligns with Paragraph 186 of the National Planning Policy Framework which requires that planning applications are refused if significant harm to biodiversity resulting from a development cannot be adequately mitigated.

Other Matters

12. The appellant refers to inconsistencies in the way that the Council apply the Mitigation Scheme to development proposals and request financial contributions from developers towards mitigation. I have not been provided

with specific examples but in any event, the way in which the Council apply this elsewhere is not a matter for this appeal. I have found that the appeal proposal would increase recreational harm and therefore a financial contribution to mitigate the impact is justified in this instance.

13. The appellant has also expressed concern about documents being uploaded to the Council website once the planning application had been determined. However, this is not a matter for this appeal.
14. I note that the application has the support of the parish council but this does not alter my findings in respect of the main issue.

Conclusion

15. For the reasons given above the appeal should be dismissed.

Alison Fish

INSPECTOR