

Appeal Decision

Site visit made on 3 September 2024

by Alison Fish BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 September 2024

Appeal Ref: APP/D0121/W/23/3331987

Land south of The Pippins, Hill Lane, Tickenham BS21 6RA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant permission in principle.
 - The appeal is made by Mr Matthew Seaman of OMS Land and Property Limited against the decision of North Somerset Council.
 - The application Ref is 23/P/1386/PIP.
 - The development proposed is permission in principle for the erection of 3 dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The appeal proposal is for a permission in principle. This consent route has two stages, the first stage establishes whether a site is suitable in principle and the second stage, the technical details consent, is where the detailed development proposals are assessed. The appeal proposal is at the first stage and therefore relates to the principle of the scheme which is limited in scope to location, land use and amount of development. The Planning Practice Guidance (PPG) states that it is not possible for conditions to be attached to a grant of PIP. Planning obligations also cannot be secured at this stage.
3. Under Article 5B of the Town and Country Planning (Permission in Principle) Order 2017 (as amended), permission in principle must not be granted for development which is habitats development. Habitats development means development which is likely to have a significant effect on a qualifying European site either alone or in combination with other plans or projects. There is a specific process to deem what would constitute habitats development which I must assess. Therefore, as the effect of the proposal on a European designated site is a determinative issue, I have elevated this matter to a main issue.

Main Issue

4. In light of the above, I identify the main issue in this appeal to be whether the proposal would be a habitats development under Article 5B of the Town and Country Planning (Permission in Principle) Order 2017 (as amended) ('the Order').

Reasons

5. The appeal site is located within the Horseshoe Bat Consultation Zone (BCZ) 'C' as set out in the SPD¹. The SPD contains guidance relating to the impact of development on the North Somerset and Mendip Bats Special Area of Conservation (SAC), one of four sites in North Somerset, designated because of its importance for Greater and Lesser Horseshoe Bats. These are protected as European Sites of Nature Conservation Importance and are subject to statutory protection under the Conservation of Habitats and Species Regulations 2017 ('the Regulations'). Regulation 63 prevents the competent authority from granting permission unless the proposal would not adversely affect the integrity of the European site. I am the competent authority for the purposes of this appeal.
6. The SPD explains that whilst the BCZ's are not within the SAC, the landscape surrounding the European site is important in providing foraging habitat needed to maintain the favourable conservation status of the Horseshoe bats. This includes permanent pasture grazed by cattle and sheep and hay meadows. The bats also need to be able to move through the landscape between their roosts and their foraging areas, requiring linear features in the landscape such as hedgerows to provide flyways. They are also sensitive to light and will avoid lit areas forcing them to find an alternative route. This could lead to an additional energetic burden and/or fragmentation of the bat population from foraging areas and roosts.
7. I saw at my site visit that the appeal site is an undeveloped grass field. Whilst there was no livestock grazing at the time of my visit, I saw that there are established hedges along the east and west boundaries and notable trees particularly within the western boundary. These are all features which could provide foraging habitat and flyways for bats. Hill Lane does not have street lights. The addition of three new dwellings on the site could also introduce illumination of these features through internal and external lighting sources.
8. The SPD advises that developers should consult with an ecologist at an early stage for proposals within BCZ 'C' to identify and assess any impacts on Horseshoe bats. However, I have no evidence before me that this has taken place. The appellant states that the adverse impacts upon existing trees and hedgerows can be avoided and further tree and hedgerow planting could be included. However, I have nothing before me to secure this. Adopting a precautionary approach, I am not satisfied that the appeal proposal would not adversely affect the foraging habitat and flyways for Horseshoe bats. Accordingly, I cannot be certain that the integrity of the protected site would not be harmed as a result of this proposal, either alone or in combination with other plans and projects.
9. As the competent authority, I have carried out an appropriate assessment of the effect of the proposed development as required by the Regulations. Overall, I conclude that the proposal would constitute habitats development which is excluded from a grant of permission in principle under Article 5B of the Order. Consequently, it is development for which an application for

¹ North Somerset and Mendip Bats Special Area of Conservation Guidance on Development Supplementary Planning Document, adopted January 2018 (SPD).

planning permission is required. Such an application would be a matter for the local planning authority to consider in the first instance.

Other Matters

10. The Council's reasons for refusal refer to a number of other matters, including the proposed location of the development, the effect on the character and appearance of the area, and that the proposal would amount to inappropriate development within the Green Belt. However, it would not be appropriate for me to address these matters or those raised by interested parties, as permission in principle must not be granted in this instance and to do so may fetter the judgement of any future decision maker.

Conclusion

11. For the reasons given above I conclude that the appeal should be dismissed as it does not comply with Article 5B (1) of the Town and Country Planning (Permission in Principle) Order 2017 (as amended).

Alison Fish

INSPECTOR