



Appeal Decision

Site visit made on 28 October 2024

by J J Evans BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 November 2024

Appeal Ref: APP/E3335/W/24/3339086

Blostins Restaurant, 29-33 Waterloo Road, Shepton Mallet BA4 5HH

- 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 N & L Reed against the decision of Somerset Council.
 - The application reference is 2022/0285/FUL.
 - The development proposed is change of use of part of property from restaurant to residential.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal property is within the catchment flowing into the Somerset Levels and Moors Ramsar. The Conservation of Habitats and Species Regulations (2017) (the Regulations) require the decision maker to undertake an Appropriate Assessment where there are likely to be significant effects from the proposal, either alone or in combination with other schemes, and this duty falls to me as the competent authority.
3. 29-33 Waterloo Road is within the Shepton Mallet Conservation Area. As required by Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) special regard has been paid to preserving or enhancing the character or appearance of a conservation area.

Main Issue

4. The main issue in this case is the effect of the scheme upon the integrity of the Somerset Levels and Moors Ramsar.

Reasons

5. 29-33 Waterloo Road (No 29-33) is within the catchment flowing into the Somerset Levels and Moors Ramsar (the Ramsar). The Ramsar comprises large areas of lowland wet grassland and wetland habitats that support internationally important wildfowl, flora, and invertebrates. Nutrient pollution is a particular problem for freshwater and wetlands habitats as it can cause eutrophication that disrupts and destroys them thereby detrimentally impacting upon the species they support. Unacceptable levels of phosphates are entering the Ramsar and the resultant eutrophication has now put its interest features in an unfavourable condition.

6. Where habitat sites are found to be in an unfavourable condition any further deleterious impact that occurs, regardless of scale, would compromise the ability to restore it to a favourable condition. It is imperative that no additional phosphates enter the catchment. It follows that new residential development should demonstrate that it is nutrient neutral to ensure that no additional nutrients enter the Ramsar.
7. Whilst the appellants question whether a single dwelling would have a significant effect upon the Ramsar, the Council's Nutrient Neutrality in Somerset guidance (2024) (NNS) makes it clear that a variety of new developments, including new residential development, needs to demonstrate beyond a reasonable doubt that it would not give rise to additional phosphates within the hydrological catchment of the Ramsar. Such a requirement reflects those of Natural England and also judgements from the Court of Justice of the European Union (Cases C-293/17 and C-294/17 *Coöperatie Mobilisation for the Environment UA, Vereniging Leefmilieu v College van gedeputeerde staten van Limburg and Stichting Werkgroep Behoud de Peel v College van gedeputeerde staten van Noord-Brabant*).
8. A single dwelling would increase the number of residents within the catchment with consequential impacts upon the integrity of the Ramsar. The NNS reflects guidance from Natural England regarding the assessment means for the change of use of commercial properties to residential use as it is based upon the impact of new residents. Although the appellants consider the approach to lack justification, the key issue is ascertaining the impact of additional residents upon the Ramsar. Given the unfavourable status of the Ramsar and the high bar required to ensure that development does not result in significant effects to its integrity, even a single new dwelling should demonstrate nutrient neutrality.
9. The pertinent issue therefore is to establish whether the change of use would be nutrient neutral, and if not, what mitigation would make it so. This is not a discretionary process, but one required for all new dwellings to ascertain their impact upon the Ramsar and to ensure no further deleterious impact occurs. The restaurant would have resulted in wastewater, and consequently the question to be answered is whether the change of use of the premises to a dwelling would be nutrient neutral.
10. The appellants' phosphorous budget calculator shows that mitigation is required, and the water / wastewater figures also demonstrate an increase in wastewater levels resulting from the scheme, albeit the restaurant figures reflect the impact of Covid and also the reduced opening times of the business before it closed. Nevertheless, it has not been conclusively demonstrated that the change of use would be nutrient neutral. Furthermore, no mitigation has been proposed, a requirement of the NNS and also that which was advised by Royal Haskoning if the water / wastewater figures show a nutrient increase. In such a situation there can be no certainty that the suggested conditions would reduce the adverse effect to a de minimis level that can be secured for the lifetime of the development.
11. Whether the scheme would be nutrient neutral has not been conclusively established, nor has any mitigation been secured. In such circumstances it has not been necessary to examine this matter in greater detail, including

undertaking an Appropriate Assessment to assess the likely significant effects of the proposal on the integrity of the Ramsar, both alone and in combination with other schemes.

12. The National Planning Policy Framework makes it clear that if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated or as a last resort compensated, then planning permission should be refused. The effect of the scheme upon the integrity of the Somerset Levels and Moors Ramsar has not been conclusively established, and this would conflict with the Regulations and with objectives of the Framework. There would also be conflict with Policies DP5 and DP8 of the Mendip District Local Plan Strategy and Policies (2014), as these seek, amongst other things, the protection of internationally designated habitats and species, to minimise and where possible reduce all forms of pollution, and not give rise to unacceptable adverse environmental impacts.

Other Matters

13. No 29-33 is within the Shepton Mallet Conservation Area and is part of the long row of mostly historic buildings that are found to the western side of Waterloo Road, which is one of the principal routes into and out of the town. The repeated presence of numerous historic buildings, some of which are high status and others that have a more modest appearance, along with the physical and functional importance of the road within the town, is a distinct element of the character and appearance of the conservation area.
14. The appeal property makes a positive contribution to the area, as its modest two storey form frames the highway and harmonises with the buildings nearby. The external appearance of the building would remain largely unaltered, with the retention of the shopfront providing legible evidence of its former use. Many of the nearby properties already have residential appearances and uses. In such a context the change of use would preserve the character and appearance of the conservation area.
15. The appellants raise several concerns regarding the Council's handling of the application, including incorrect advice, delays, lack of consultation, and the introduction of new evidence at a late stage. However, such concerns fall to be pursued by other means and have no bearing on the consideration of the planning merits of the case.

Conclusion

16. Thus, for the reasons given above and having considered all other matters raised, the appeal is dismissed.

JJ Evans

INSPECTOR