



Appeal Decision

Site visit made on 29 April 2025

by **C Rose BA (Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 26 June 2025

Appeal Ref: APP/E3335/W/24/3357448

Land at OS3727 Part, Windmill Hill Lane, Ashill, Ilminster TA19 9PA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by Mr Matthew Lugg, MJL Cornwall Limited against the decision of Somerset Council.
 - The application Ref 20/03697/REM sought approval of details pursuant to condition Nos 2, 4, 5, 9, 16 and 20 of a planning permission Ref 17/03800/OUT, granted on 19 March 2019.
 - The application was refused by notice dated 14 June 2024.
 - The development proposed is application for approval of appearance, landscaping and scale (the reserved matters), landscaping (condition 4), ecological mitigation (condition 5), access details (condition 9), cycle and footpath links (condition 16) and foul and surface water drainage (condition 20) pursuant to outline planning permission ref. 17/03800/OUT for the erection of 25 dwellings and formation of access.
 - The details for which approval is sought are:
 - Condition 2: appearance, landscaping and scale
 - Condition 4: landscaping
 - Condition 5: ecological mitigation
 - Condition 9: access details
 - Condition 16: cycle and footpath links
 - Condition 20: foul and surface water drainage
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal is accompanied by a signed and dated Unilateral Undertaking (UU) under S.106 of the Town and Country Planning Act 1990 to mitigate likely significant effects on the Somerset Levels and Moors Ramsar site.
3. The appeal is also accompanied by revised plans (Drawing No. 001 Proposed Junction and Off-site works, Drawing No. 205 Proposed Drainage Layout – Sheet 1 of 2, Drawing No.206 Proposed Drainage Layout – Sheet 2 of 2,) and a Highways Appeal Statement December 2024, Drainage Statement December 2024, Ecology Update Report December 2024, Technical Note 01 Rv0: Nutrient Assessment December 2024, and Shadow Habitat Regulations Assessment (sHRA) December 2024. The revised plans and further reports relate to all four reasons for refusal.
4. The plans and reports have not been subject to formal public consultation but the Council and interested parties did have an opportunity to comment on them as part of the appeal process. Given this and given that the plans and reports respond directly to the reasons for refusal with the Council taking the information into account when providing its Statement of Case, accepting this evidence at this stage

would not be unfair or deprive those who should have been consulted the opportunity of such consultation. Therefore, having regard to the principles of Holborn¹, acceptance of the plans and reports would not be procedurally unfair and as a result I have therefore taken them into account in determining this appeal.

5. The Council's Statement of Case accepts that the submission of Drawing No. 001 Proposed Junction and Off-site works, along with the Outline consent, a subsequent non-material amendment, and additional conditions would address the first reason for refusal and that this no longer stands. As I have no reason to disagree, I do not need to address this further as a main issue.
6. The Council's Statement of Case states that the Lead Local Flood Authority has reviewed the further Drainage Statement December 2024 and Drawing No's 205 and 206 Proposed Drainage Layout and is satisfied with the proposed features and that as such the second reason for refusal no longer stands. The Council do however advise that a further condition is required in relation to the discharge of condition 20. As I have no reason to disagree, I do not need to address this further as a main issue.
7. The Council's Statement of Case also advises that the LPA's Ecologist has reviewed the Ecology Update Report December 2024 and is satisfied that the third reason for refusal has been addressed subject to further conditions. As I have no reason to disagree, I do not need to address this further as a main issue.

Main Issue

8. In light of the Preliminary Matters above, the main issue is the effect of the proposal on the integrity of the Somerset Levels and Moors SPA and Ramsar Site (Ramsar Site).

Reasons

9. By way of background, in 2020 planning authorities in Somerset received an advice note from Natural England concerning the unfavourable conditions resulting from levels of phosphates in the Ramsar Site.
10. The appeal site is within the catchment of the Ramsar Site. The Habitat Regulations require that where a project is likely to result in a significant effect on a European site, the competent authority is required to undertake an appropriate assessment of the implications on the integrity of the European site in view of its conservation objectives. Any likely significant effects arising from the proposal need to be considered alone and in combination with other development in the area.
11. The Ramsar site is designated for its internationally important wetland features including floristic and invertebrate diversity and consists of a series of SSSIs within a large area of lowland wet grassland and associated wetland habitat. The Qualifying Features of the Ramsar Site include 17 species of Red Data Book invertebrates, vascular plants *Wolffia arrhizal*, *Hydrocharis morsus-ranae* and *Peucedanum palustre*, waterfowl, Eurasian teal, Northern lapwing, Eurasian wigeon, Nute swan, Northern pintail and Morthern shoveler. The Ramsar Site designation therefore recognises the international importance of the area.

¹ Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

12. The Ramsar Site is in an 'unfavourable' condition due to poor water quality as a result of elevated concentrations of phosphorus. This ultimately results in harm linked to eutrophication in the form of excessive algae growth adversely affecting the ditch invertebrate and plant communities. A proportion of the phosphorus entering the Ramsar Site catchment is from human sewage discharge. As a result of an increase in overnight accommodation, the development is likely to result in an increase in the discharge of phosphorus entering the Ramsar Site causing a likely significant effect on its integrity.
13. The Council's strategy for avoiding an adverse effect from phosphorus is to ensure that all planning applications for residential development, amongst others, demonstrate phosphate neutrality. In relation to this, there is no dispute between the main parties that the proposed development needs to offset an additional 14.90 kgTP/year of phosphates to demonstrate phosphate neutrality. I have no reason to disagree with this calculation.
14. As part of the proposals the appellant has put forward two alternative mitigation approaches. The first option comprises the construction of an onsite Package Treatment Plant (PTP) to reduce the phosphorus budget to 2.5 kgTP/year with this 2.5kgTP/year addressed through the purchasing of phosphate credits. The second option is the purchasing of the full 14.90 kgTP/year through phosphate credits with no PTP provided.
15. These options are secured through the completed UU accompanying the appeal that requires that the phosphate credits are purchased from a 'P-Credit Provider' which has been approved by the Council within the Catchment Area of the Ramsar Site. As the Council are required to have approved the 'P-Credit Provider', it has the opportunity to withhold its approval if Natural England do not agree that the 'P-Credit Provider' scheme is suitable.
16. The appellant has confirmed that a further option of off-site fallowing of land, as discussed in the Technical Note 01 Rv0: Nutrient Assessment December 2024, is not being pursued.
17. I have consulted with Natural England which has stated that it seems likely that the scheme would have to use a PTP model that requires regular chemical dosing and that such dosing is not normally accepted for private residential schemes. This is on the basis that it proves difficult to ensure that the PTP is properly maintained, the chemical dosing applied, and, in this case, aluminium based dosing is avoided. Therefore, Natural England state that in order to be acceptable the PTP would need to be adopted by an OFWAT appointed statutory sewage undertaker. I have no reason to disagree. However, and as adoption by an OFWAT appointed statutory undertaker is not proposed as part of the UU, I find that the UU is insufficient to avoid adverse impacts on the integrity of the Ramsar Site and its features. Consequently, I am not satisfied that likely significant effects to the ecological integrity of the Ramsar Site would be avoided.
18. Furthermore, with regard to the option involving the purchase of credits only, whilst Natural England have no objection in principle, it states that the credits required are relatively high for the number of houses with the cost of the purchase of credits also high. As a result of these high costs, Natural England advise that the purchase of the full credits may well impact on the schemes viability and as a result should be secured prior to determination.

19. In response to the comments from Natural England, the appellant has advised that they would be happy to accept a condition that requires the purchase of off-site credits prior to commencement. However, and while the Planning Practice Guidance² does not rule out the use of a condition to require an applicant to enter into an agreement or make a payment, it states that this is unlikely to be appropriate in the majority of cases. While the PPG goes on to state that in exceptional circumstances a negatively worded condition requiring an agreement (in this case the purchase of P-Credits) to be entered into before development can commence may be appropriate, this is where there is clear evidence that the delivery of the development would otherwise be at serious risk and states that this may be in the case of particularly complex development schemes.
20. Although the appeal proposal relates to the construction of 25 dwellings, this is the only remaining matter of dispute between the main parties, and I have very little information before me clearly demonstrating that the delivery of the development would be at serious risk should I dismiss the appeal. Furthermore, by reason of the scale of development and issue in dispute, the appeal proposal is not a particularly complex development scheme. As such, I do not find the use of a condition acceptable.
21. It therefore follows that I am not satisfied that likely significant effects to the ecological integrity of the Ramsar Site would be avoided in accordance with Policy EQ4 of the South Somerset Local Plan (2006-2028) and the related provisions of the Framework. Amongst other things, these do not allow development to proceed unless it can be demonstrated that it will not result in any adverse impact on the integrity of national and international wildlife and landscape designations, including features outside the site boundaries that ecologically support the conservation of the designated site.

Other Considerations

22. The appeal also seeks to discharge condition numbers 4, 5, 9, 16 and 20 pursuant to outline planning permission 17/03800/OUT. However, and while there is no dispute between the parties that the details accompanying the proposal are adequate to discharge the conditions, as I am dismissing the appeal for other reasons and approval of these details require the imposition of further conditions, I cannot deal with these matters further as part of this appeal.

Conclusion

23. For the reasons given above, the appeal should be dismissed.

C Rose

INSPECTOR

² Paragraph: 010 Reference ID:21a-010-20190723