



Appeal Decision

by B Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 March 2026

Appeal Ref: APP/E3335/W/22/3299026

Land north of Tangier and Castle Street (A3807), Taunton, Somerset TA1 4AS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a condition of an approval.
 - The appeal is made by Vistry Partnerships West against Somerset Council.
 - The application sought to discharge pre-commencement planning conditions 4, 8 and 9
 - The development proposed is Residential development of 176 no. dwellings, application Ref 38/18/0162, granted 27/6/19.
 - Condition 4 is: No works, other than site clearance and preparation works, shall be undertaken on site until a phasing programme for the provision of (a) the amenity/play areas, (b) associated roads, (c) footpaths, (d) open spaces, (e) boundary treatments including screen walls and fences, (f) parking spaces, (g) garages, (h) drainage, (i) street lighting, (j) bin storage, (k) cycle storage, (l) access's indicated on the approved plans has been first submitted to and approved in writing by the Local Planning Authority and the development shall not be carried out other than in accordance with this programme and agreed timings of works.
Reason: The Local Planning Authority wish to control and ensure the delivery of the matters referred to.
 - Condition 8 is: The development hereby permitted shall not be commenced until details of a strategy to protect wildlife has been submitted to and approved in writing by the Local Planning Authority. The strategy shall be based on the advice of EDP's submitted report, dated April 2018 and 'It does lighting's' Planning application lighting assessment for Tangier dated April 2018 and an up to date otter and badger survey and include:
 - Details of protective measures to include method statements to avoid impacts on protected species during all stages of development;
 - Details of the timing of works to avoid periods of work when the species could be harmed by disturbance
 - Measures for the retention and replacement and enhancement of places of rest for nesting birds
 - A CEMP and LEMP
 - Full Details of lightingOnce approved the works shall be implemented in accordance with the approved details and timing of the works unless otherwise approved in writing by the Local Planning Authority and thereafter the resting places and agreed accesses for nesting birds shall be permanently maintained. The development shall not be occupied until the scheme for the maintenance and provision of the new bird boxes and related accesses have been fully implemented.
Reason: To protect wildlife and their habitats from damage bearing in mind these species are protected by law. Pre-commencement reason; To ensure protection of wildlife and habitats though all stages of the development.
 - Condition 9 is: Prior to the commencement of development, an invasive non-native species protocol shall be submitted to and approved by the local planning authority, detailing the containment, control and removal of Himalayan balsam, Japanese knotweed, and giant hogweed on site. The measures shall be carried out strictly in accordance with the approved scheme.
Reason; To protect wildlife from invasive non-native species. Reason for pre-commencement; To ensure the species are not spread during the construction phases.
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Decision

1. The appeal is allowed.

Preliminary Matters

2. Planning permission was given in 2019 for the erection of 176 dwellings, subject to a range of conditions. The appellant made an application in 2022 to discharge conditions 4, 8 and 9 of this approval. These consisted of the following details:
 - Condition 4 - Phasing Programme and supporting Covering Letter (dated 13 January 2022),
 - Condition 8 - Construction Environmental Management Plan and supporting Covering Letter (dated 17 December 2021), and
 - Condition 9 - Japanese Knotweed Management Plan (with accompanying Site Plan and Photographs) and Covering Letter (dated 6 September 2021).
3. The Council has explained, in its Statement of Case, that the details submitted to discharge the conditions are acceptable, and I see no reason to disagree with this finding.

Background and Main Issue

4. The site is within the zone of influence of the Somerset Levels and Moors Special Protection Area (SPA) and listed as a Ramsar Site under the Ramsar Convention.
5. Correspondence from Natural England (NE) to the Council explained that following the 'Dutch N' Judgement, greater scrutiny should now be applied to development that would increase nutrient loads on SPAs, Special Areas of Conservation and Ramsar Sites.
6. It was explained by NE that it is unlikely that the additional nutrients from typical new development would, either alone or in combination, have a likely significant effect on the internationally important bird communities for which the SPA is designated. Nonetheless, NE also stated that the interest features of the Ramsar Site are considered to be unfavourable, or at risk, from the effects of eutrophication caused by excessive phosphates, limiting the scope for permitting further residential development. The Conservation of Habitats and Species Regulation 2017 (the Habitat Regulations) require a decision maker as competent authority, to be satisfied through an Appropriate Assessment (AA) whether or not development would have an adverse effect on the integrity of the SPA.
7. Accordingly, the main issue is whether the details provided in support of the above three conditions are dependent on meeting the requirements of the Habitat Regulations.

Reasons

8. The Supreme Court handed down a judgement last year in the case of *CG Fry & Son Ltd v SSHCLG* [2025] UKSC 35. This identified that the statutory protection afforded by the Habitat Regulations does not extend to Ramsar sites as they are

not European protected sites. This found that the provisions of the Framework [2021], at paragraph 181 (now paragraph 194(b) of the latest version of the Framework), did not have the same status and force of paragraph 63 of the Habitat Regulations. The Council has noted that this judgement negated its reasons for delaying the discharge of the conditions associated with this appeal.

9. The Planning and Infrastructure Act (The Act), among other matters, will extend the provisions and protections afforded to SPA and SAC sites to Ramsar Sites. The Act gained royal ascent in December 2025. Schedule 5(a) of the Act amends the Habitat Regulations 2017 to ensure that Ramsar sites are treated in the same way as European sites.
10. Nonetheless, Provision 4(3) of the 'Levelling-up and Regeneration Act 2023 (Commencement No. 9) and the Planning and Infrastructure Act 2025 (Commencement No. 1 and Transitional Provisions) Regulations 2025' specifically excludes Part 1, Schedule 5 of the Act which would otherwise amend Part 3 and would have been brought into force on 18th February 2026. There is no indication, yet when this provision will be brought into force.
11. As such, the three conditions applied to be discharged are not dependant on assessment under the Habitat Regulations. Accordingly, I conclude that the submitted conditions can be agreed.

Conclusion

12. The appeal is allowed. Consequently, the details submitted pursuant to conditions No's 4, 8 and 9 submitted 19 January 2022, in associated with planning permission 38/18/0162 dated 27 June 2019, are approved.

B Plenty

INSPECTOR