
Appeal Decision

Hearing held on 28 July 2015

Site visit made on 28 July 2015

by Geoffrey Hill BSc DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 18 August 2015

Appeal Ref: APP/Y3940/W/15/3002731
Land at Bradford Road, Corsham SN13 0QR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Redcliff Homes Ltd, against the decision of Wiltshire Council.
 - The application Ref 14/04179/OUT, dated 17 April 2014, was refused by notice dated 29 October 2014.
 - The development proposed is described as "The development of up to 170 dwellings, a site for a medical centre/community hall, public open space and associated works, with access from Park Lane and Bradford Road."
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Decision

1. The appeal is dismissed.

Main Issue

2. The Council has withdrawn its previous objection to the proposed scheme on the ground that there is no overriding need for additional housing development: the Council has accepted that, at the time this Hearing was held, it was not able to demonstrate a 5-year supply of developable housing land. No other objections were maintained by the Council with regard to development in this general vicinity of Corsham, highway safety or highway capacity, or the ability of services and infrastructure to support the proposed scheme.
3. Whilst local residents maintained their objections to the scheme, including concerns about an increased risk of flooding, I am satisfied that on the evidence heard in this appeal and having regard to the views of the statutory consultees and the possibility of attaching planning conditions to regulate the development, those concerns on their own would not justify dismissing the appeal.
4. In which case, the one remaining point of difference between the appellant and the Council is whether the proposed development would have an unacceptable effect on the Bath and Bradford on Avon Bats Special Area of Conservation (SAC).

Reasons

5. It is accepted by the Council and the appellant that the appeal site is close enough to the Bath and Bradford on Avon Bats SAC that the proposed development could have a significant effect on the nature conservation value of the SAC. The nature conservation interest of the site is covered by The Conservation of Habitats and Species Regulations 2010 ('the Habitats Regulations'). Regulation 61 requires that if a development is likely to have a significant effect (LSE) on the interest features of a European site, alone or in combination with other plans and projects, then it is necessary for the competent authority (the decision-taker) to undertake an appropriate assessment, in view of the site's conservation objectives, to determine whether the proposed development will adversely affect the integrity of the site.
6. The appeal site is within 4 km of the SAC and has the potential to have effects on the designated features of the SAC, namely important populations of three species of bats. Accordingly, in order to assess whether the proposed development would result in LSE on the SAC, bat survey information covering a full year is required. At the time the application was considered by the Council not all of this information was available, in particular the activity between April and July for commuting and foraging. Consequently, following the precautionary principle set out in the Habitats Regulations, it was necessary to refuse the application.
7. Since the application was refused the missing information has been provided, such that a full year's activity at the site has been recorded. Nevertheless, the Council maintains its concerns over the LSE. In the view of the Council it is not clear that, should development go ahead, adequate mitigation could be put in place as part of the proposed scheme so that it would be unlikely to have significant effects on the Bath and Bradford on Avon Bats SAC. Consequently, before a decision can be made to allow the development to go ahead it is necessary to undertake an appropriate assessment to determine whether the proposed development will adversely affect the integrity of the SAC.
8. The species of bats which are of particular concern are: lesser horseshoe, greater horseshoe and Bechstein's bat, a bat within the *Myotis* genus. The appellant's surveys have identified that the site is over-flown by bats of all the relevant species, with one or two sighting per hour of each of the horseshoe bats. A higher number of *Myotis* sightings was recorded but it is agreed that it is difficult to be sure how many of these – if any – were of Bechstein's bat.
9. The parts of the site over-flown by the bats are the wooded belt across the eastern end of the site, the line of the stone wall running north-south across the site, and along the hedgerow fronting Bradford Road. These features are thought to be foraging routes for the bats. Whilst it is agreed that the bat species of concern are found at the site, disagreement remains as to whether the potential effects of the proposed scheme represent LSE. The Council's concerns focus particularly on the loss of hedgerow, removal - or breaches in the continuity - of the dry stone wall, a lack of buffering at the edges of the development, loss of foraging areas, and the effect of additional street lighting.
10. There is no statutory definition of 'significant' in this context. Evidence produced by the Local Planning Authority of the European Court of Justice

decision in the Waddenzee¹ case and the subsequent opinion of the Advocate General in the Sweetman² case indicates that this has been set at a low threshold. It was ruled in the Waddenzee judgement that an appropriate assessment must be carried out if it cannot be excluded, on the basis of objective information, that a proposed development will have a significant effect on a European site, either individually or in combination with other plans or projects. It follows that if interest features are found (ie in this case, the specified bat species), then this would indicate that further investigation and evidence to inform an appropriate assessment would be required. No alternative judgment or rulings relevant to this point were drawn to my attention at the Hearing.

11. As noted above, and reflecting the conclusions of the Wadenzee case, Regulation 61 requires that an appropriate assessment would not only need to take into account the effect of the proposed scheme on the appeal site, but also the possible effect together with (ie in combination with) any other proposed or committed development in the vicinity would have to be considered.
12. At the Hearing it was noted that there has been approval of another residential development nearby at Rudloe. In addition to the Rudloe scheme, there is a current proposal for a new stone mine on land opposite the appeal site. There are also several other plans or projects within 4 km of the SAC – as listed in the Council’s ‘Assessment of Likely Significant Effects’ dated March 2015 – all of which should be considered in any ‘in combination’ assessment.
13. The Council acknowledge that the developers of the Rudloe scheme had not been required to submit information to inform an appropriate assessment, but it was said that this was an oversight on behalf of the Council and it should not be regarded as a precedent.
14. The proposed scheme on its own might not be regarded as representing a LSE on the SAC, but I have to have regard to the possibility of a LSE arising when the appeal scheme is seen together with other committed and proposed development. The precautionary principle must be applied in the application of the Habitats Regulations. Although survey information for a full year is now available for the appeal site on its own, there is not sufficient information to conclude that there would be no significant effect when the appeal scheme is considered in in combination with other projects or development in the vicinity. In which case it is necessary to require an appropriate assessment for the appeal scheme to be carried out before a decision can be made as to whether the scheme would have an unacceptable effect on the Bath and Bradford on Avon Bats Special Area of Conservation. Accordingly, the appeal should be dismissed.

Geoffrey Hill

INSPECTOR

¹ Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij. ECJ (C-127/02), 2004

² Peter Sweetman and Others v An Bord Pleanála ECJ (C-258/11), 2011

APPEARANCES

For the Appellant:

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| Mr D Washington | Senior Planner, GL Hearn Ltd., (Agents) |
| Mr M Davies BSc (Hons) MSc MCIWEM | Environmental Gain Ltd., |

For the Local Planning Authority:

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|---------------------------|----------------------------------|
| Mr M Staincliffe | Area Team Leader |
| Mr J Taylor BSc PgDip MSc | Landscape and Design Team Leader |

Interested Persons:

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| Mr P Turner | Local resident |
| Mr D Musson | Local resident |
| Mr C Peuple | Local resident |

DOCUMENTS

Doc. 01 Unilateral Undertaking; put in by Mr Washington.
Doc. 02 Text of additional planning condition; put in by Mr Staincliffe

PLANS

Application drawings:

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| A.1 | 3657/203 | Location Plan (including 'blue line') |
| A.2 | FMW1191 Fig 4.1 | Proposed site access junction onto Bradford Road |
| A.3 | FMW1191 Fig 4.2 | Proposed site access junction Park Lane |
| A.4 | 12731-500-001 | Topographical survey sheet 1 of 3 |
| A.5 | 12731-500-001 | Topographical survey sheet 2 of 3 |
| A.6 | 12731-500-001 | Topographical survey sheet 3 of 3 |
| A.7 | 3657/sk01 rev B | Sketch feasibility layout for 170 dwellings |

Drawings submitted during the Hearing:

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| B.1 | 3657/July 2015/05 | Sketch Site Plan 05 |
| B.2 | 3657/July 2015/06 | Sketch Site Plan 06 |