



Appeal Decisions

Site visits made on 12 September 2023

by **O Marigold BSc DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 04 October 2023

Appeal A: APP/R3325/W/23/3317386

Land to the north of Fore Street, Tatworth, Somerset TA20 2SJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Joint Appeal Brewer, Lillington Land Allocation Ltd against South Somerset District Council.
 - The application Ref 22/02461/OUT, is dated 25 August 2022.
 - The development proposed is outline application with all matters reserved, except for access, for up to 35 dwellings.
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Appeal B: APP/R3325/W/23/3317387

Land to the north of Fore Street, Tatworth, Somerset TA20 2SJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Joint Appeal Brewer, Lillington Land Allocation Ltd against South Somerset District Council.
 - The application Ref 22/02462/OUT, is dated 25 August 2022.
 - The development proposed is outline application with all matters reserved, except for access, for up to 13 dwellings.
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Decisions

1. Appeal A is dismissed and planning permission is refused.
2. Appeal B is dismissed and planning permission is refused.

Application for costs

3. An application for costs was made by Joint Appeal Brewer, Lillington Land Allocation Ltd against South Somerset District Council (the Council). This application is the subject of a separate Decision.

Preliminary Matters

4. The applications are for outline planning permission, with all matters other than access reserved for future consideration in each case. They relate to two different sites, but both adjoin each other, have the same appellants and propose residential development. I have considered each proposal on its individual merits but, to avoid duplication, I have dealt with the two schemes together, except where otherwise indicated.

5. The appeals result from the failure of the Council to determine the applications within the prescribed period. Therefore, no formal decision notices were issued by the Council. However, its Statement of Case set out putative reasons for refusal for both proposals, had it been so empowered. I have considered the appeals on this basis.
6. During the appeals, at final comments stage, the appellants submitted revised plans, together with amended nutrient calculations. The changes proposed a new package treatment plant within the site of Appeal A. This included additional access points off Lovereage Lane to serve the plant. Although the plans are indicative in respect of the layout of the proposals, access is a matter that falls to be considered now, and so the changes are substantive in nature, as is the updated nutrient information.
7. I am mindful of guidance¹ that the appeal process should not be used to evolve a scheme, and that I should consider essentially only what was before the Council at application stage, on which the views of interested people were sought. As such, in the interests of fairness, I cannot take the amended plans, the package treatment plant or the updated nutrient calculations into account in reaching my decision.
8. As part of both appeals, Unilateral Undertakings (UUs) making planning obligations in respect of affordable housing, public open space, health, education and off-site sports and recreation have been submitted by the appellants. I have some concerns that the UU for appeal B would be ineffective because it incorrectly refers to the reference number for appeal A. Nevertheless, I have taken both UUs into account in my decision.

Main Issues

9. The main issues in respect of both appeals are:
 - the effect of the proposals on the River Axe Special Area of Conservation (SAC) and Site of Special Scientific Interest (SSSI), with regard to phosphates,
 - the effect of the proposals on biodiversity within the site,
 - whether the proposals, in combination with other development, would result in an amount of growth that would be excessive or unsustainable in respect of access to local services and facilities, and
 - the effect of the proposals on highway safety.

Reasons

Phosphates

10. The sites are within the catchment area of the River Axe SAC and SSSI, which is protected pursuant to the Conservation of Habitats Regulations 2017 as amended (the Regulations). The SAC and SSSI has been designated for its water courses of Ranunculion fluitantis and Callitriche-Batrachio vegetation. The favourable ecological condition of the river is at risk, due to high levels of phosphorus.

¹ The Planning Inspectorate 'Procedural Guide: Planning Appeals – England'.

11. The Appeal A and B proposals are for numerous dwellings and the sites are close to one of the tributaries of the river. The additional population and the resultant wastewater from the proposals would result in an increase in levels of phosphates entering the River Axe catchment system. This may well result in adverse effects on the integrity of the river and its species, such as oxygen depletion, thereby worsening an already unfavourable situation. As such, alone and in combination with other projects, a significant adverse effect on the integrity of the SAC and SSSI resulting from the proposals cannot be excluded.
12. Accordingly, as the competent authority in the context of this appeal, I am required to carry out an Appropriate Assessment under the Regulations. Initially, the appellants proposed that the developer would provide off-site mitigation, by entering into a recognised credit scheme or by creating suitable wetland elsewhere. Natural England sought further details of the schemes and how the mitigation would be secured.
13. There is no dispute that either of the suggested solutions would need to be secured by means of planning obligations, but the submitted UUs make no such provision. Instead, at a late stage, the appellants proposed the new package treatment plant. For the reasons I have already given, I cannot take this into account. As such, no securable mitigation is proposed. On this basis, in carrying out the Appropriate Assessment, the adverse effects of both proposals on the integrity of the SAC and SSSI would not be avoided by mitigation. For these reasons, they would both have significantly harmful effects on the SAC and SSSI, with regard to phosphates.
14. Consequently, the proposals subject to Appeal A and B would conflict with Policy EQ4 of the South Somerset District Council Local Plan (SSLP), adopted March 2015, which requires no adverse impact on the integrity of national and international wildlife designations. They would also conflict with the National Planning Policy Framework (the Framework) and its requirement to refuse proposals that would cause significant harm to biodiversity where it cannot be avoided, mitigated or compensated for. As such, I give this conflict substantial negative weight.

Biodiversity

15. Government Circular 2005/06 (the Circular) relates to biodiversity and geological conservation. It advises that surveys of protected species should be undertaken where there is a reasonable likelihood of the species being present and affected by the development. A range of ecological surveys of the appeal sites have been carried out, including for bats, reptiles and dormice. These surveys have found, amongst other things, that the sites provide a habitat for slow worms and grass snakes, and that dormouse and bat roosts are within hedgerows.
16. The advice of CIEEM² is that the need for further surveys increases with time and that ecological data between 18 months and three years old should be subject to confirmation and possible updating from an ecologist to ensure its continued validity. In this case, some of the surveys (for example for dormice or the Ecological Impact Assessment) were undertaken within this period but have not been subject to an ecologist's confirmation. Others, such as for bats or reptiles were carried out more than three years ago, in summer 2020. Given

² The Chartered Institute of Ecology and Environmental Management

the length of time that has passed, they do not therefore provide a fully up-to-date assessment of the ecology of the site.

17. It has been suggested by the appellants that further ecology surveys could be required after planning permission has been granted, by way of a planning condition. However, the Circular makes clear that it is essential that the presence or otherwise of protected species, and the effect of a proposal on them, is established before planning permission is granted. This is to ensure that they are fully taken into account. This matter cannot therefore be left to a planning condition.
18. Accordingly, I cannot be satisfied that proposals subject to Appeal A and B would not harm biodiversity within the sites. As such, they would conflict with SSLP Policy EQ4 and its protection of biodiversity features. They would also conflict with the aim of the Framework to protect sites of biodiversity value. As such, I give this conflict significant negative weight.

Amount of Growth, Services and Facilities

19. SSLP Policy SS1 sets out the Council's Settlement Strategy. It seeks to locate most development in Yeovil and identified Market Towns and Rural Centres. These do not include Tatworth, which is treated instead as a Rural Settlement. Amongst other things, Policy SS2 requires that proposals within a Rural Settlement are commensurate with its scale and have access to identified key services. As such, the concern of the Council and others is that the amount of growth proposed would be excessive and unsustainable, adding to pressure on local services and facilities, including the cumulative effects of other development locally.
20. The Council calculates that, together with existing commitments and recent approvals, the Appeal A and B proposals would increase the number of dwellings in the Parish by around 12% over the Local Plan period. I also understand that major applications are being considered by the Council as part of the Chard Strategic Growth Area, and that a decision is pending on a planning application³ for 252 dwellings within Tatworth parish, albeit on the edge of Chard.
21. However, given the proximity of that site to Chard, it seems likely that its occupiers and those of other developments proposed nearby would look towards that town for their services and facilities. Tatworth and its surroundings do not have all the facilities suggested by the appellants, with some shops having closed, but it does have many of the key services referred to by Policy SS2, including a primary school, convenience shop, public house and a bus service. As a result, it has a reasonably good range of community facilities.
22. Although the main parties disagree about the precise terms of the UUs, the proposals seek to mitigate the effects of the proposals in terms of education, healthcare, affordable housing, public open space, and sports and recreation. There is little substantive, specific evidence to suggest that the proposals would result in overdevelopment or undue pressure on these or other services in the area. I therefore see little reason to doubt that there would be insufficient

³ LPA reference 16/0284/FUL

facilities for day-to-day activities to accommodate the proposals, or that the proposals would harmfully affect the availability of services and facilities locally.

23. I therefore conclude that the proposals, in combination with other development, would not result in an amount of growth that would be excessive or unsustainable in respect of access to local services and facilities. As such, I find that the proposals would not conflict with SSLP policies SS1 or SS2 in this respect. This matter is therefore neutral in the planning balance.

Highway Safety

24. The proposals would increase the amount of traffic using local roads, adding to that generated by other development. Some of these roads, including Fore Street, Waterlake Road and Loveridge Lane are narrow and do not have continuous pavements. Cyclists and pedestrians, for instance schoolchildren going to the primary school or to the bus stops for secondary school, use these roads regularly including as a Safe Route to School. In some places, for example the junction of Waterlake Road with Roman Road or Perry Street, which is used by heavy lorries, have restricted vehicle sight lines. Other roads, such as around the village shop, are congested, and have limited parking or highway visibility.
25. However, traffic using roads in the village is subject to speed limits of 20mph and 30mph and is also constrained by the built-up environment, including its narrow widths, bends and parked cars. As such, traffic speeds are likely to be low. Moreover, the appellants' evidence, undisputed by the Council, is that the proposals would generate only a relatively small number and frequency of trips during each peak hour. Accordingly, the number of movements from the site would not be unduly significant.
26. The proposals include the provision of a dropped kerb crossing points of Fore Street, opposite each proposed entrance. These would provide a connection with Bulls Lane and Langdons Way, which connect to the primary school, shop and other facilities, using existing roads that largely have footways. There are therefore alternatives to Fore Street or Waterlake Road for some journeys. The A358 on the edge of the village has few places to pass cyclists, causing traffic delays. I saw its junction with Fore Street, including at peak times, and I am told it is subject to frequent collisions. However, I have little data to demonstrate this, or that the proposal would make the risk of collisions materially worse.
27. Each of the two sites would have their own separate accesses from Fore Street, both fairly close to each other. This provision differs from an earlier planning application, where I understand that a single entrance was proposed to serve both sites. However, the evidence before me is that simultaneous use of both accesses would be of limited frequency, and I have little to show that the arrangement would be inherently dangerous. Having undertaken a safety audit, the former County Council as Highway Authority did not object to the proposals. The audit did identify detailed measures to ensure the suitability of the accesses. These could be secured by highway regulatory approval or at reserved matters stage.
28. Consequently, whether taken by themselves or cumulatively, including with other development, I conclude that the Appeal A and B proposals would not have a harmful effect on highway safety. They would therefore accord with

SSLP Policy TA5, which requires that proposals have a safe and convenient access and would not have a detrimental impact on the safety or function of the road network. The proposals would similarly comply with the aim of the Framework for safe and suitable access. It follows that this matter is neutral in the planning balance.

Other Considerations

29. There is no dispute that the Council cannot demonstrate a five-year supply of housing land. In such circumstances, in accordance with Framework Paragraph 11, the policies which are most important for determining the application are deemed to be out-of-date and permission should be granted unless Framework paragraphs 11(d)(i) or (ii) apply. However, in this case, in light of my findings regarding the effect of the proposal on the habitats site of the River Axe SAC and SSSI, in accordance with Framework paragraph 182, the presumption in favour of sustainable development does not apply. Accordingly, the tilted balance set out at Framework Paragraph 11 is not engaged.
30. Nevertheless, the Framework seeks to significantly boost the supply of housing. Each proposal would make a positive contribution to this, of 35 and 13 dwellings respectively. As such, I give significant positive weight to the contribution of the proposals to housing supply.
31. Future occupiers of the proposal would make a positive social and economic contribution to the village, for example to bus services or to the village shop. Construction of the proposals would provide direct and indirect economic benefits for example for those employed in the building industry. The proposals would deliver 12 and 5 units of affordable housing respectively. They would also provide new landscaping and public open space, as well as the provision of a bat box and reptile hibernation sites. I give these benefits moderate positive weight.

Other Matters

32. Local residents have raised concerns that the proposals would worsen problems of ongoing flooding of nearby properties. The proposals include engineered surface drainage solutions including potential additional surface water storage capacity and attenuation measures. As such, I have little reason to doubt the advice of the Local Lead Flood Authority, that subject to conditions, the proposals can adequately deal with surface water drainage.
33. Concerns have also been raised about the effect of the proposal on the landscape. However, the proposals would be contained within the existing built form of the village, and so its landscape effects would be limited. They would not therefore cause significant harm to the character or appearance of the area. The main parties disagree about whether the submitted UUs are adequate and enforceable, including in respect of their terms, definitions, and construction. However, in light of my overall findings, these matters are not crucial to my determination, and so I have not considered them further.

Planning Balance and Conclusion

34. Taking all the benefits of the proposals together into consideration, when balanced against with the harms that would arise from the proposals, I conclude that the harms would outweigh the benefits in each appeal.

35. For the reasons given, both proposals would conflict with the Development Plan as a whole. I find that the material considerations in these cases, including the Framework, do not have sufficient weight to warrant decisions other than in accordance with the Development Plan. Appeal A and Appeal B are therefore dismissed.

O Marigold

INSPECTOR

Richborough



Costs Decisions

Site visit made on 12 September 2023

by O Marigold BSc DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 October 2023

Costs application A in relation to Appeal Ref: APP/R3325/W/23/3317386 Land to the north of Fore Street, Tatworth, South Somerset, TA20 2SJ

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Joint Appeal Brewer, Lillington Land Allocation Ltd for a full award of costs against South Somerset District Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for outline planning permission with all matters reserved, except for access, for up to 35 dwellings.
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Costs application B in relation to Appeal Ref: APP/R3325/W/23/3317387 Land to the north of Fore Street, Tatworth, South Somerset, TA20 2SJ

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Joint Appeal Brewer, Lillington Land Allocation Ltd for a full award of costs against South Somerset District Council.
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Decisions

1. Applications A and B for an award of costs are partially allowed in the terms set out below.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The PPG¹ advises that Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. Examples of this include a failure to produce evidence to substantiate each reason for refusal on appeal; and vague, generalised, or inaccurate assertions about the impact of a proposal, which are unsupported by any objective analysis.
4. In respect of the scale of the proposals, the Council has highlighted housing growth in the area to date, as well as limited information about possible future development. However, in seeking to justify its case, the Council has provided little evidence or objective analysis to substantiate its case that the Appeal A and B proposals would have an identified impact on specific local services and

¹ Paragraph: 049 Reference ID: 16-049-20140306

facilities. As such, it has provided only generalised assertions that the proposals would result in excessive or unsustainable growth.

5. In respect of highway safety, the Council has identified constraints within the highway network, including its narrow sections without pavements, and that local roads are used by cyclists and pedestrians, including as a Safe Route to School. However, the Council has made only generalised concerns about the effects of the proposals in this respect. It has provided little detailed technical transport evidence to counter that provided by the applicants in respect of highway safety, or to justify its concerns contrary to the advice of the Highway Authority.
6. In respect of ecological data, the stance of the Council reflected the view of one of its consultees. Surveys of species such as bats, reptiles and dormice were undertaken by the applicants and submitted with the appeals. However, I have found that the length of time since they were undertaken means that they do not provide a fully up-to-date assessment of the ecology of the site. Furthermore, this is not a matter that can be left to planning condition. The Council has therefore not been unreasonable in its behaviour in respect of this issue.
7. The PPG advises that, in any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period. Although the Council did not determine the application within the period, it has made its concerns clear in its Statement of Case, within the timescales required by the appeal process.
8. These concerns were the same as those raised by the Council in its decision to refuse an earlier application, except that information from Natural England which post-dated that decision meant that the effect of the proposals on phosphates became a further issue. Part of the delay in determining the appeal applications related to the need to secure mitigation for this. As I have found, the proposals do not provide sufficient mitigation in respect of phosphates and so its concerns and delay in this respect were not unreasonable.
9. The applicants believe that the Council has not engaged in the drafting or negotiation of the Unilateral Undertakings (UUs). However, the Council has provided detailed comments in response to the submitted UUs. As such, the Council has not been unreasonable because of its delay in reaching decisions on the appeal applications, or in its handling of the UUs.
10. Consequently, I consider that the Council has behaved unreasonably with respect to the substance of its case but only with regard to its second and third putative reasons for refusal, namely the effect of the proposals on services and facilities locally, and highway safety. In respect of these matters, it has caused the applicants to incur unnecessary or wasted expense in the appeal process.

Conclusion

11. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the effect of the proposals on services and facilities locally, and in respect of highway safety, and a partial award of costs is therefore warranted.

Costs Order

12. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that South Somerset District Council shall pay to Joint Appeal Brewer, Lillington Land Allocation Ltd, the costs of the appeal proceedings described in the headings of these decisions, limited to those costs incurred with regard to the effect of the proposals on services and facilities locally, and in respect of highway safety; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicants are now invited to submit to South Somerset District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

O Marigold

INSPECTOR

Richborough