



Appeal Decision

Site visit made on 24 March 2025

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th June 2025

Appeal Ref: APP/D0121/W/24/3349043

Land off Stowey Road, Yatton, North Somerset

- The appeal is made under section 78 of the Town Country Planning Act 1990 (as amended) against the failure of the local planning authority to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Taylor Wimpey UK Ltd against North Somerset Council.
 - The application Ref is 17/P/1754/O.
 - The development proposed is up to 34 no. dwellings including 10 no. affordable dwellings (30%), vehicular access from Stowey Road and associated works.
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Decision

1. The appeal is dismissed and planning permission for up to 34 no. dwellings including 10 no. affordable dwellings (30%), vehicular access from Stowey Road and associated works is refused.

Preliminary Matters

2. The application to which this appeal relates was first made to the Council in 2017 when planning permission was sought for up to 60 dwellings. It was a duplicate application of another, subject of a dismissed appeal, at the same site. After a period of inactivity, the application was amended, primarily by reducing the number of dwellings and the Council carried out re-advertisement and re-consultation.
3. Further revisions were made in 2022, and additional information provided on various occasions until November 2023. The Council re-notified interested parties at each stage and this appeal, therefore, now proceeds on the basis of the revised proposal for 34 dwellings as it stood on 23 November 2023. For convenience, the description of development in my heading and formal Decision is taken from the appeal form, which is representative of the position of both main parties and the application as it stood when the appeal was made. The application was for outline planning permission, seeking approval for access at this stage.
4. The appeal is against the Council's failure to determine the application. The Council has confirmed that, had it done so, then it would have been refused for 4 reasons relating to a conflict with the settlement strategy, flood risk, effect on the North Somerset and Mendip Bats Special Area of Conservation ("the SAC") and a lack of mechanism to secure affordable housing and various contributions. Completed planning obligations provide for affordable housing, open space, and contributions to education transport. I have no reason to find that they do not overcome the 4th putative reason for refusal.

Main Issues

5. The main issues for this appeal are:
- a) The effect of flood risk on the development, and the development's effect on flood risk elsewhere;
 - b) Whether the development is in an appropriate location with regard to policies of the development plan; and
 - c) The effect of the development on the integrity of the SAC.

Reasons

Flood Risk

6. Part of the site is within the mapped tidal flood risk zone. Nevertheless, there are extensive tidal defences protecting a substantial part of the surrounding area. Modelling demonstrates that there is no risk of flooding to the site in a defended scenario. However, in the event that the defences were breached, then there would be a risk of tidal flooding within the lifetime of the development, if climate change allowances were applied.
7. Following revisions to the National Planning Policy Framework ("the Framework") the parties agree that the 'sequential test' set out therein must be applied and that, in the absence of any evidence to the contrary, it is failed. Such results in conflict with Policy CS3 of the North Somerset Core Strategy 2017 ("CS"), that requires development to comply with the sequential test set out in the Framework.
8. The site is a considerable distance from the coast, the defences, and at the far extent of the area at risk, as shown on the Environment Agency's flood maps. It would take some considerable time for flood waters to reach the site, allowing time for effective notification of affected properties, or repair of any breach in the event that such occurs. This aligns with a finding made in an appeal at a nearby site at Rectory Farm, Chescombe Lane, where it was concluded that, given the time-lag, residual risk could be managed by a flood management plan.
9. In the present scenario, ground raising to the lowest part of the site would remove all residual risk from residential property. The Environment Agency has raised no objection to the proposal, and the Council has confirmed that concerns of the Internal Drainage Board around on-site surface water run-off management can be dealt with by condition. On this basis, I have no reason to find that the proposal would give rise to flood water management concerns or increased flood risk elsewhere. The ground raising would ensure that property was safe for the lifetime of the development and, given that the raised ground would be on part of the site furthest away from existing dwellings, such would not lead to adverse effects on neighbouring residents.
10. The failure of the sequential test and conflict with CS Policy CS3 should not be overlooked because a development can be made safe, as the underlying purpose is to steer development away from areas at risk of flooding. It is well-established in national policy that mitigation should not be considered before avoidance, as set out in another recent appeal decision at Moor Lane, Backwell.

11. Nevertheless, as with other examples cited by the Council such as at Lynchmead Farm or 62 Beach Road, Weston-super-Mare, where flood risk appeared to be more imminent, or flood depths would be deep, the Moor Lane case was different to the current one. It concerned surface water flooding that occurred at the site now, as opposed to a slowly developing tidal flooding situation that would only occur following a breach of defences. Given the particular circumstances at this site in terms of the length of time for flood water to reach the site and that the development would, ultimately, be safe from flooding, I find that the flood risk policies of the Framework would not provide a strong reason for refusal of this particular development.

Location of development

12. The site adjoins the settlement boundary of Yatton, which is defined as a Service Village in CS Policy CS32. The Policy states that new development outside the settlement boundary in excess of about 25 dwellings must be brought forward as allocations through Local Plans or Neighbourhood Plans. No such allocations have been made. While considerably reduced from the 60 dwellings originally proposed, there is no compelling reason to find that a development of up to 34 dwellings, some 36% higher, is reasonably 'about 25'. The scale of development is, therefore, in conflict with Policy CS32.
13. Policy CS32 contains a number of other criteria that development at Service Villages must meet. The planning obligations would mean that the development provided the size, type, tenure and range of housing required. There are a number of services available within Yatton as well as train services to major nearby settlements that can be accessed safely from the site. Despite local concern, there is no substantive evidence that significant adverse impacts would be caused to local infrastructure or services. The Council is content that the proposal at the scale now proposed would respect the local landscape character.
14. Accordingly, the specific criteria of Policy CS32 would be met, with the only substantive conflict being that relating to the scale of development.

Effect on the SAC

15. The SAC is designated for its populations of Greater Horseshoe bats ("GHB") and Lesser Horseshoe Bats ("LHB"). The conservation objectives are to ensure that the integrity of the SAC is maintained or restored as appropriate and that the SAC contributes to achieving the favourable conservation status of its qualifying features. The SAC Guidance on Development: Supplementary Planning Document 2018 ("SPD") sets out various measures to achieve the objectives, including maintaining or restoring the extent and distribution, structure and function of qualifying natural habitats and habitats of qualifying species.
16. The appeal site falls within the consultation zones of the SAC. Detailed survey work has established that the site is used extensively for foraging by GHB and LHB. There is no dispute that development of the site could result in changes to the habitat that could lead to likely significant effects on the bat populations and integrity of the SAC.
17. The SPD explains that the SAC bats are sensitive to light and will avoid lit areas. They move through the landscape and forage following linear features that could be interrupted by light disturbance. The application is in outline, with layout, scale,

appearance, and landscaping reserved for subsequent consideration. Light contour plans have been provided indicating that light spill from street and external building lighting in a final scheme could avoid unacceptably high illumination at the site boundaries. However, while dwellings could be orientated, fenestrated, or designed to minimise light spill from internal spaces, and solid boundary fencing could be erected, there is no substantive evidence about the potential light spill from internal spaces and whether that would affect levels of illumination of the key bat foraging and commuting areas.

18. While boundary hedgerows would be maintained and enhanced, the development of the site would result in the loss of the open fields for foraging purposes. Habitat Evaluation Procedures (“HEP”) set out in the SPD have been followed to evaluate the existing and proposed habitats for both species of bat. The Council and Natural England, as Statutory Nature Conservation Body (“SNCB”) have criticised the HEP calculations for two main reasons. The first relates to a lack of account for the site being used by both GHB and LHB at key times of year. The second relates to a lack of clarity over the proposed, post-development, habitat provision and its management.
19. It is clear to me that the habitats at the site are important to both species of bat. The SPD provides no guidance on how that situation should be considered. Nevertheless, Natural England and the Council both believe that additional weighting should be applied to the baseline value of the site.
20. I have posed direct questions to both the Council and Natural England in respect of this matter. In response, the Council have suggested that the additional weighting is needed to ensure that the true value of the site is reflected. Natural England have said that the additional weighting refers to the remarkably high numbers of Horseshoe bats, in particular GHB, recorded at the site, and that there is no mechanism in the SPD to distinguish between foraging activity and the extremely high levels of foraging and commuting activity at important times of the year that has been evidenced at the site.
21. The high presence of GHB (in particular) at the site is clearly significant given the small size of the national population relative to other bat species. However, it appears to me that the purpose of the HEP is to ensure that there is no loss of suitable habitat as a consequence of development. It would seem to follow that, if the same (or more) suitable habitat was provided, the use of the site for the same purposes, and for the same number of bats could continue. The need for additional weighting has not been evidenced so I see no reason why the HEP, as undertaken, should not suffice as a methodology.
22. There has been disagreement about a proposal to manage part of the future habitat through sheep grazing on the basis that it may not be compatible with the proposed residential land use. However, the habitat land is not required to provide accessible open space for future residents and so I see no reason why a Landscape and Ecological Management Plan (“LEMP”) could not, theoretically, ensure that people were excluded and the land was grazed in perpetuity.
23. In any event, management of that part of the land has been scored through the HEP procedure as being unmanaged grassland, which, despite the erroneous wording in the matrix, would be a plausible alternative that could be secured through a LEMP and would also carry no temporal establishment risk. I have no

reason to believe that the proposed grassland areas could not be managed so as to provide adequate replacement habitat.

24. Nevertheless, Natural England has also raised concern about the inclusion of ponds of high ecological quality within the HEP calculations. The proposed pond, while reconceived as a wildlife pond, having been expanded and labelled to include wetland meadow through the application process, would, essentially, be a manmade drainage feature. The extent to which that could function as the 'new wildlife pond' described in the HEP calculation is not clear.
25. I appreciate that Natural England and the Council have appeared to accept the actual HEP calculations in the past and this latest critique, very late in the day and apparently only in response to my questioning, is unfortunate. Nevertheless, while the appeal process should not be used to evolve a scheme, so it would not be appropriate to amend the proposal at this stage, the appellant has not suggested that Natural England is mistaken, or, unlike with the grazing land, that other alternatives to the pond habitats are equally available. The only meaningful suggestion is that, like the lighting situation, there is sufficient flexibility within the site to achieve an appropriate safeguarded habitat.
26. Herein lies a fundamental problem. While I accept the proposal is in outline, with layout and landscaping reserved for subsequent consideration, there is little detail about the future management of the site, and the HEP calculations for the replacement habitat include items that are not proposed. While, as described above, it appears more likely than not that detailed management regimes of the various habitats can be considered through a LEMP, it is not clear that sufficient replacement habitat will be provided in the first place.
27. There is an outstanding objection from Natural England as SNCB. While Natural England has not evidenced the need for a methodological departure from the SPD, as competent authority under the Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations"), I may agree to the proposal only after having ascertained that it will not adversely affect the integrity of the SAC. Saving detailed design and assessment of lighting, proposed habitats and management for a reserved matters application, or imposing conditions, such as one requiring a LEMP, would leave uncertainty in this case. The required habitat provision might also change and that could have other consequential effects on the development proposed.
28. While the appellant's ecological experts believe that a solution would be available, in the context of the objection from the SNCB, following Appropriate Assessment under the Habitats Regulations, I find that there is inadequate evidence to dispel all reasonable scientific doubt that adverse effects on the integrity of the SAC will not arise. Such would also result in conflict with those aims of CS Policy CS4 and Policy DM8 of the North Somerset Sites and Policies Plan Part 1: Development Management Policies 2016 that seek to ensure that important habitats are not adversely impacted.
29. For the avoidance of doubt, given the nature of my conclusion on this issue, I am not satisfied that the matter is incapable of being addressed, such that there are no alternative solutions available. Therefore, I have not considered whether there might be imperative reasons of overriding public interest that might otherwise justify the proposal.

Planning balance

30. My conclusions on all main issues result in a conflict with the development plan, read as a whole. Against this, as found in the Rectory Farm and seemingly accepted by the Council in the Moor Lane appeal decisions, the Council can only demonstrate a 2.79 year supply of housing land. In this context, the provision of additional housing in an accessible location, and the associated benefits of doing so, carry significant weight in favour of the development.
31. However, my duties under the Habitats Regulations make the potential harm to biodiversity a very significant consideration. In this context, the benefits are insufficient to outweigh the conflict with the development plan. The Framework also makes clear that the presumption in favour of sustainable development outlined at Framework paragraph 11 does not apply where the project is likely to have a significant effect on a habitats site, unless an appropriate assessment has concluded that it will not adversely affect the integrity of the habitats site. My appropriate assessment does not conclude that.
32. Therefore, notwithstanding the housing supply situation, the policies of the Framework, or any other material considerations, do not indicate that a decision should be taken other than in accordance with the development plan.

Conclusion

33. For the reasons given, I conclude that the appeal should be dismissed.

M Bale

INSPECTOR