



Appeal Decision

Site visit made on 13 December 2023

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 December 2023

Appeal Ref: APP/R3325/W/23/3318600

Former Radio Station, Watts Quarry Lane, Somerton TA11 7JE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Beacon Vale Developments Ltd against the decision of Somerset Council.
 - The application Ref 22/00302/FUL, dated 1 February 2022, was refused by notice dated 22 September 2022.
 - The development proposed is provision of a single dwelling and double garage with associated access and parking.
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Decision

1. The appeal is dismissed.

Applications for Costs

2. An application for costs was made by the Applicant against the Council in writing. This application is subject of a separate decision.

Preliminary Matters

3. The appeal was submitted against the refusal of permission by South Somerset District Council, which since the submission of the appeal, has merged with other Councils to form Somerset Council. As a result, I have referred to Somerset Council in the banner heading above.
4. An elevation and floor plan of the proposed garage was submitted with the Appellant's final comments (Plan Ref 21-22.SK6). Whilst this was absent from the original submission, the garage is detailed in the description of the development and its location is shown in the Proposed Site Plan. Therefore, I have accepted the additional Plan on the basis of the Wheatcroft¹ principles and do not consider this has prejudiced any interested parties.
5. During my site visit, I noted that groundworks were being undertaken on the appeal site. These works appear to commence a previously approved scheme² to construct an office building, which, despite the difference in uses, would be the same in terms of scale, siting and appearance to the proposed dwelling.

¹ Wheatcroft Ltd V SSE [1982]

² 19/02970/FUL, 21/02883/S73 and 21/02882/S73

Main Issue

6. The main issues in this appeal are:

- whether the location of the development accords with local and national policies that seek to provide residents with convenient access to facilities and minimise the dependency on private vehicle; and
- the effects of the proposal on the Somerset Levels and Moors Special Protection Area and Ramsar Site (SPA).

Reasons

Location of development

7. The appeal site is situated to the south-east of a cluster of 9 dwellings which were converted from buildings associated with a former radio station. As part of that scheme³, some poorer quality buildings were removed and three new dwellings have been built in their place. Under a separate permission, an office building was approved which would have been situated adjacent to Plot 7 but accessed from the Watts Quarry Lane from its own separate access driveway. The site is still covered in hardstanding from its former car park use and is partially enclosed by unsightly security fencing and floodlights.
8. Considered in a broader context, the site is situated in the countryside on the outskirts of the village of Somerton. The distance from the appeal site to the edge of Somerton is around 1.6km with a marginal additional distance to its town centre. Somerton is a Local Market Town under Policy SS1 of the South Somerset Local Plan (Local Plan) (adopted 2015) due to its strong employment, retail and community role. On visiting the area, it became evident that Somerton contains a range of facilities to support its residents, including convenience shops, recreational spaces, a public house and a primary school. The Policy seeks to provide for housing, employment, shopping and other services that increase the degree of self-containment and enhance the role of the settlement as a service centre.
9. Policy SS2 of the Local Plan and its preamble set out that developments outside of Market Towns and Rural Centres will be strictly controlled to that which provides employment opportunities, enhances or provides community facilities, or meets an identified housing need, particularly for affordable housing. The preamble also indicates that new housing development should only be located in Rural Settlements that offer easy access to a range (i.e., two or more) everyday facilities, such as a convenience shop, pub, post office, village hall and primary school etc.
10. As the site is outside of the Market Town of Somerton, it is essentially within the countryside and therefore, the proposal is contrary to Policies SS1 and SS2 of the Local Plan. Whilst the Council's decision notice also refers to Policy SD1 of the Local Plan, that essentially confirms the Council's proactive approach to reflect the National Planning Policy Framework (the Framework) and adds nothing locally specific to the way in which the proposal should be assessed.

³ 19/02955/FUL & 21/ 02882/S73

SPA Effects

11. The application site is within the catchment of the Somerset Levels & Moors SPA and Ramsar which is deteriorating due to increased nutrient loads, in particular phosphates. The addition of overnight accommodation and new residents which increase the amount of foul water produced in the catchment area will be likely to increase the phosphorus loading and further unbalance the nutrient levels within the SPA. Significant effects from the development are therefore incapable of being ruled out and are considered likely.
12. The appeal was submitted with a Nutrient Neutrality Assessment and Mitigation Strategy⁴ (Mitigation Strategy) which details that a specified package treatment plant (PTP) would be installed to deal with foul water, and that an orchard area would be planted within the drainage field within the adjoining land owned by the Appellant to offset the predicted 0.57 kgTP/yr of additional phosphates that would otherwise be directed to the SPA. The Mitigation Strategy also includes management plans for the orchard and PTP.
13. The Council's Ecologist has reviewed the Mitigation Strategy and indicates that it has no objection to it in principle. However, no S106 planning obligation has been provided to secure the implementation of the Mitigation Strategy. The Appellant accepts that the mitigation would be necessary but indicates that there was insufficient time within the appeal timetable to produce one.
14. I have considered the possibility of using planning conditions as an alternative to a S106 planning obligation if the appeal proposal were acceptable in other respects. However, a development has commenced on site, which, given its similarities with the appeal scheme, could simply evolve from one to the other. In this context, the use of a negatively worded condition at the 'prior to commencement' trigger point would not be sufficiently robust, and I therefore do not have sufficient certainty that mitigation could be secured in this case.
15. In the absence of an appropriate mechanism to secure the necessary Mitigation Strategy, it has not been fully considered as part of an appropriate assessment under the Conservation of Species and Habitats Regulations 2017, as amended (Habitats Regulations). Therefore, I can only find that the proposal is in conflict with the expectations of the Habitats Regulations and Policy EQ4 of the Local Plan which prevents development that will adversely impact the integrity of national and international wildlife and landscape designations.

Planning Balance

16. The proposed dwelling would have the same effect on the character and appearance of the site and surroundings as the office building under construction, as one use would essentially be swapped for the other. Whilst I note the submitted viability statement that indicates a current lack of demand for office space of the size that would be available at the appeal site, there appears a clear intent to build it in any event.
17. Though the car park would only cater for 12 of their vehicles, around 20 workers could be accommodated within the available office space if fully occupied according to the viability statement. The proposal would be likely to generate fewer vehicle movements than the office use, which would be a net

⁴ Halpin Robbins, March 2023

- positive, though the overall benefit would be tempered by the loss of employment opportunities.
18. The Appellant has indicated that a fallback position may be available under the General Permitted Development Order (GPDO) 2015 (as amended) to convert the office building. From the evidence, the GPDO route would require that the completed office building shall have been used as an office for at least two years and therefore makes an assumption that such rights will be available some time into the future and under the same terms. This aspect attracts limited weight as it does not provide an immediately available option on which to fall back and as I have limited certainty about future eligibility.
 19. Much has been made of the previously developed status of the site (PDL) which was the rationale behind the conversion of the adjacent buildings and redevelopment of parts of the wider site. I see that the implemented scheme has resulted in a beneficial reuse of PDL and an enhancement of the appearance of the area. The appeal site is absent of any previously used buildings that would be reused or removed, but the scheme would result in the removal of the leftover elements associated with the previous use of the site. It would also complete and give coherence to the development of the wider site, covering the extent which was previously hardsurfaced and enclosed. This is an aspect weighing in favour of the scheme.
 20. Using the terms of Local Plan Policy SS2, I have considered the ease with which residents would be able to access facilities and services. Such facilities are based in Somerton at a distance of around 1.6km away. Combined with the absence of footways along the rural roads, it is unlikely that this journey would be made on foot on more than limited occasions. The journey to Somerton is a short one by car and, given the distance and gradients of the route, cycling would be a realistic alternative for some purposes. However, the absence of attractive walking options or public transport services suggests that the site's access to Somerton would not be easy, insofar as the development would largely perpetuate a reliance on vehicles. Nonetheless, my overall view is that the site could not be considered truly isolated in the context of the Bramshill judgement⁵ and the short length of the journey indicates that the access to some key facilities would at least be reasonable given the Framework's acceptance that transport solutions will vary between urban and rural areas.
 21. In terms of other benefits, the proposal would make a modest contribution to the local housing stock. The construction phase economic boost would be generated by either the consented scheme or the proposal, so I attribute this limited weight. The absence of harms to the character of the area, the local highway network or other interest do not constitute additional benefits.
 22. The parties are in agreement that the Council cannot currently demonstrate a five year supply of housing land which engages Framework paragraph 11 d). This requires that where the policies which are most important for determining the application are out-of-date, permission should be granted unless (i) the application of Framework policies that protect assets or areas of importance provide a clear reason for refusal, or (ii) any adverse impacts would significantly and demonstrably outweigh the benefits.

⁵ City & Country Bramshill Ltd v Secretary of State for Housing, Communities and Local Government [2021] EWCA Civ 320

23. In this case, the site is within the catchment of the SPA which is a protected area under Paragraph 11d) (i) and footnote 7. Therefore, in the absence of potentially necessary mitigation, the likely effects to the SPA constitute a clear reason for refusal. It is therefore unnecessary to proceed to Paragraph 11d) (ii).

Conclusion

24. For the foregoing reasons, the proposal is contrary to the development plan when taken as a whole. There are no considerations of such materiality that indicate that an appeal decision should be made other than in accordance therewith. I therefore conclude that the appeal should be dismissed.

Hollie Nicholls

INSPECTOR