



Appeal Decision

Site visit made on 31 January 2024

by David Smith BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 February 2024

Appeal Ref: APP/L2250/W/23/3319922

Lyveden, Stone Street, Westenhanger, CT21 4HS

- 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 Mr John Moberly against Folkestone and Hythe District Council.
 - The application Ref 22/1030/FH is dated 19 June 2022.
 - The development proposed is erection of two detached houses on land to the sides of existing dwelling.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs has been made by the appellant against the Council and this is the subject of a separate decision.

Main Issue

3. This is the effect on the integrity of the Stodmarsh Special Protection Area.

Reasons

4. Stodmarsh is a Special Protection Area (SPA), a Ramsar site, a Special Area of Conservation, a Site of Special Scientific Interest and a National Nature Reserve. Excessive nutrients from wastewater discharge are affecting these nationally and internationally important wildlife sites. The appeal site is within the River Stour operational catchment area where Natural England objects to the provision of new overnight accommodation. This is due to the adverse impacts that nitrates and phosphates arising from additional foul drainage would have on the condition of the designated areas.
5. No information has been provided about the implications of the proposal for total nitrogen and phosphorous loading within the catchment area. However, it is reasonable to suppose that this would increase as a result of the two additional dwellings proposed, albeit that the increase would be a modest one. Nevertheless, in combination with other development, the proposal would have a likely significant effect on the SPA. In these circumstances, the Conservation of Habitats and Species Regulations 2017 requires that, before giving permission for any project, an appropriate assessment of the implications for that site must be made.
6. No mitigation is proposed to avoid the effects of the nutrients that would occur. The appellant proposes that the matter be dealt with by condition. However,

the project can only be agreed to if it can be ascertained that it will not adversely affect the integrity of the European site (in this case at Stodmarsh). There is no indication of the detailed measures that would or could be employed to provide mitigation and therefore no indication that they would be likely to work in practice. A high degree of certainty is required in this respect and there is insufficient assurance that imposing a condition would be effective in safeguarding the conservation interests of the SPA.

7. Information from Southern Water indicates that an existing public combined sewer crosses both pieces of land either side of Lyveden. As a result, it may be the case that the drainage strategy for the adjoining Otterpool Park site will need to take account of the development along Stone Street. Whilst discussions between the development team, Southern Water and Natural England are said to be taking place, there is no indication of how or when the matter might be resolved. This possible solution therefore cannot be treated as one that would provide suitable mitigation.
8. Outline planning permission has been granted for 8,500 homes adjacent to the appeal sites at Otterpool Park. According to the appellant, a nutrient neutrality report is to be provided as part of the full planning conditions. However, the memo of February 2023 indicates that Council officers were satisfied that nutrient neutrality could be achieved with appropriate mitigation. Furthermore, that the analysis undertaken was sufficient to discharge the duties under the Regulations. That is not so here and, in any event, the Regulations require this proposal to be assessed and found acceptable in its own right.
9. An appropriate assessment has to be undertaken in conjunction with the appeal and cannot be deferred. In this case, the proposal would adversely affect the integrity of the Stodmarsh SPA because of the nitrogen and phosphorous that would be generated by it. By virtue of the Regulations, agreement cannot therefore be given to the project. The proposal would also be contrary to Policy NE2 of the Places and Policies Local Plan which safeguards and protects sites of European importance.

Other Matters

10. The application is in outline with all detailed matters reserved. There are no other objections to the proposed dwellings which would replace existing outbuildings.

Conclusion

11. The proposed development would not accord with the development plan. There are no material considerations that outweigh this finding. In any event, the adverse effect on the habitats site at Stodmarsh is decisive. Therefore, for the reasons given, the appeal should not succeed.

David Smith

INSPECTOR