
Appeal Decision

Site visit made on 15 August 2016

by JP Roberts BSc(Hons), LLB(Hons), MRTPI

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

Decision date: 3rd November 2016

Appeal Ref: APP/W1850/W/16/3150357

Fernleigh, Eau Withington, Hereford, Herefordshire HR1 3NG

- 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 Mr David Stokes against the decision of Herefordshire Council.
 - The application Ref 152240, dated 23 July 2015, was refused by notice dated 18 November 2015.
 - The development proposed is the erection of a replacement dwellinghouse and the erection of 1 new dwellinghouse.
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Decision

1. The appeal is allowed and planning permission is granted for a replacement dwellinghouse and the erection of 1 new dwellinghouse at Fernleigh, Eau Withington, Hereford, Herefordshire HR1 3NG in accordance with the terms of the application, Ref 152240, dated 23 July 2015, subject to the conditions set out in the Annex to this decision.

Main Issues

2. Since the refusal of the application, the Council has approved a replacement dwelling on the site identical to the one shown in this proposal. Thus the reason for refusal in relation to the proposed replacement dwelling has been overcome, and I shall confine my consideration only to the proposed new dwelling. In its appeal statement the Council raised landscape concerns about the proposal, which were not referred to in the decision notice, but subsequently withdrew them.
3. Thus, the main issues are:
 - i) whether the proposal would accord with the Council's housing strategy;
 - ii) whether occupiers of the proposed dwelling would have satisfactory access to services and facilities, and
 - iii) the effect of the proposal on highway safety.

Reasons

4. The site forms part of the curtilage of an existing dwelling, one of a small, sporadic group of residential properties lining the south side of the A467 road. Policy RA2 of the Herefordshire Core Strategy (CS) aims to restrict growth in rural areas to defined settlements, including Withington, about 2km away. Policy RA3 says that in rural locations outside of defined settlements, residential development will be limited to proposals which satisfy one or more
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of a number of criteria, none of which is satisfied in this case. This approach is replicated in Policy BL5 of the Bartestree and Lugwardine Group Neighbourhood Development Plan (NDP). That plan has been submitted for examination, and thus the weight that it carries at this stage is limited, although the fact that the Parish Council responsible for producing the NDP supports this proposal carries some weight.

5. I therefore conclude on the first main issue that the proposal would not accord with the Council's housing strategy, and would conflict with Policies RA2 and RA3. It is common ground that the Council is unable to demonstrate a 5 year supply of housing land. Paragraph 49 of the National Planning Policy Framework (the Framework) provides that in such circumstances relevant policies for the supply of housing should not be considered to be up-to-date. Framework paragraph 14 says that where relevant development plan policies are out-of-date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, or where specific policies in the Framework indicate that development should be restricted.
6. The appellant argues that in these circumstances, the development plan policies carry no weight, but I disagree, and I shall refer to this further below.

Accessibility to services and facilities

7. The Framework indicates that new isolated homes in the countryside should be avoided other than in specified circumstances that do not apply here, and that the proposal would result in an isolated dwelling, thus precluding the effect of the presumption in favour of development as set out in paragraph 14. The site is not physically isolated, as it forms part of a recognisable group and there are dwellings on either side.
8. Whilst the site does not adjoin any settlements, it is not far from Withington, at just over 2km, or from the outskirts of Hereford slightly further away, where there are numerous employment opportunities, shops, services and facilities. The absence of a footpath would be likely to preclude walking to reach these destinations, and although a bus service operates nearby, the nearest bus stop is some distance away, and the absence of a footpath would deter walking to it. However, it would be practicable for occupiers to travel by bicycle. Moreover, car journeys to reach shops, employment, services and facilities would be likely to be short.
9. The Council refers to the site as being "relatively isolated" and I agree that there are varying degrees of isolation. Whilst I recognise that the site's location outside of a settlement and with poor accessibility to public transport means that there would be likely to be a heavy reliance on travel by car, the short distances involved, and the ability for some journeys to be made by cycling, lead me to conclude that the site would not be isolated in the terms of the Framework. Even so, the lack of the opportunity to travel by means other than the car does not accord with the Framework advice that development should be located where practical to give priority to pedestrian and cycle movements, and have access to high quality public transport facilities.
10. The proposal would provide a total of 10 parking spaces for the two dwellings, which exceeds the Council's standards. However, in view of my findings above

about the limited accessibility to other modes of travel, I consider that the provision above the Council's standard would not have the effect of diverting travel in favour of use the private car. Thus the level of parking proposed would not have any materially harmful effect on travel patterns.

11. Thus, whilst I find that the proposal would not be isolated within the meaning of the Framework, occupiers would not have satisfactory accessibility to services and facilities. However, because of the short duration of journeys needed to reach these destinations, the harm that would result would be small.

Highway safety

12. The proposal would utilise an existing access where visibility along the A465 road is restricted in both directions. Subsequent to the refusal of the proposal, the appellant commissioned a speed survey, which indicates that the 85th percentile speeds are 56mph for northbound traffic and 56 mph for southbound traffic.
13. The main parties disagree as to the available visibility, but in my judgement, from what I assessed at the site visit, the achievable visibility of 2.4m by 56m to the south and 75m to the north as indicated by the Council is about right. The visibility is impeded by obstructions on land outside the appellant's ownership and by roadside vegetation which I expect may vary in extent during different times of the year and over time. However, I agree with the appellant that it is appropriate to take the splay to the centreline of the road to the south, as I consider that, whilst there is no prohibition against overtaking in this vicinity, the bend and the presence of nearby accesses would deter most people from doing so, other than where very slow vehicles are involved, in which case the need for a lengthy splay would be lessened. A measurement 1m into the carriageway to the north would also be appropriate, as that would enable emerging vehicles to see approaching traffic and be seen from those positions.
14. Using such measurement positions would provide slightly greater X distances. Even using the appellant's indicated visibility figures, they would be below the Absolute Minimum Stopping Sight Distance set out in Manual for Streets 2 (MfS), and more significantly below the figures put forward by the Council. Paragraph 10.5.9 of MfS says that the Y distance should be based on the recommended SSD values. However, it goes on to say that based on the research referred to in the manual, unless there is local evidence to the contrary, a reduction in visibility below recommended levels will not necessarily lead to a significant problem.
15. There is also no recent record of accidents along this stretch of the road, although that does not mean that the accesses are necessarily safe. I am mindful that the access is an existing one, and that some road users will be aware of the existence of the access, and those nearby which also possess limited visibility. I place little weight on the appellant's contention that the Council's approval of a larger replacement dwelling countenanced an increase in movements from the site, as a replacement of one dwelling with another would not necessarily result in a materially greater number of movements.
16. On leaving the site in my car, I was aware of the need to accelerate quickly because of the restriction on visibility, but I did not feel that the access was inherently dangerous. I accept that the failure to meet the MfS2 standards

poses some risk to highway safety, but I consider that notwithstanding the severity of a possible impact, the overall risk would be low. On balance I consider that the access would be safe, and that the proposal would comply with the criterion of CS Policy MT1 which requires a safe entrance and exit for developments.

The planning balance

17. I have found that the proposal would conflict with the Council's housing strategy, but the failure to demonstrate a sufficient supply of housing land, following the advice in the Framework, justifies my not determining the proposal in accordance with the relevant, but out-of-date, policies. I have also found that there would be some small harm in respect of the limited accessibility to services and facilities. The highway safety issue would be neutral. Against this is the benefit of providing a new dwelling which would help to meet the housing needs of the area, although this would be a modest contribution. There would be some social benefit in providing a home for the appellant's parents, who would benefit from the close relationship with their family. It would also free up a home elsewhere in the county, which is said to be affordable, and this too carries modest weight. There would be economic benefits arising from the construction and occupation of the new dwelling, and support for local services and facilities.
18. The harm that I have found would not significantly and demonstrably outweigh the benefits of the scheme, and I consider that it would, in the round, amount to sustainable development. In such circumstances I conclude that the appeal should be allowed.

Conditions

19. The Council has suggested a number of conditions which I have assessed in the light of national guidance. A condition requiring compliance with the approved plans is needed to ensure certainty. Conditions relating to materials and landscaping are needed in the interests of appearance. The provision of the access, parking and turning spaces, the retention of the visibility splay across land in the appellant's control, and parking for site operatives' vehicles are required for highway safety reasons. The provision of cycle parking is needed to promote travel other than by car, and the implementation of ecological measures is justified in order to promote biodiversity. Water efficiency measures are necessary in order to safeguard water resources.

Conclusion

20. For the reasons given above, I conclude that the appeal should be allowed.

JP Roberts

INSPECTOR

ANNEX

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development shall be carried out in accordance with the approved plans (drawing nos. 14/179/106 A, 14/179/1/05, 14/179/1/04, 14/179/1/03 & 14/179/102), except where otherwise stipulated by conditions attached to this permission.
- 3) With the exception of any site clearance and groundwork, no other development shall take place until details or samples of materials to be used externally on walls and roofs have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) With the exception of any site clearance and groundwork (excluding any works to retained features), no other development shall commence on site until a landscape design has been submitted to and approved in writing by the local planning authority. The details submitted shall include:

Soft landscaping

- a) A plan showing details of all existing trees and hedges on the application site. The plan should include, for each tree/hedge, the accurate position, species and canopy spread, together with an indication of which are to be retained and which are to be removed.
- b) A plan at a scale of 1:200 or 1:500 showing the layout of proposed tree, hedge and shrub planting and grass areas.
- c) A written specification clearly describing the species, sizes, densities and planting numbers and giving details of cultivation and other operations associated with plant and grass establishment.

Hard landscaping

- a) Existing and proposed finished levels or contours.
 - b) The position, design and materials of all site enclosures (e.g. fences, walls).
- 5) The soft landscaping scheme approved under condition 4 shall be carried out and completed no later than the first planting season following the completion of the development. The landscaping shall be retained for a period of 5 years, during which time, any trees, shrubs or other plants which are removed, die or become seriously diseased shall be replaced during the next planting season with others of similar sizes and species unless the local planning authority gives written consent to any variation. If any plants fail more than once they shall continue to be replaced on an annual basis until the end of the 5-year maintenance period. The hard landscaping shall be completed prior to the occupation of the development hereby permitted.
 - 6) Prior to the first occupation of the development a scheme demonstrating measures for the efficient use of water at the rate of 110 litres/person/day shall be submitted to and approved in writing by the local planning authority and implemented prior to the first occupation of the dwellings as approved.

- 7) Prior to the first occupation of the dwellings hereby approved the access, parking and turning space shall be laid out within the curtilage of each of the properties that is the subject of this permission in accordance with the approved details. The access, parking and turning areas shall be consolidated, surfaced and drained in accordance with details to be submitted to and approved in writing by the local planning authority prior to the occupation of the dwellings and that area shall not thereafter be used for any other purpose than the parking of domestic vehicles.
- 8) Development shall not begin until parking for site operatives and visitors has been provided within the application site in accordance with details to be submitted to and approved by the local planning authority and such provision shall be retained and kept available during construction of the development.
- 9) Before any other works hereby approved are commenced, the access into the application site shall be so constructed that there is clear visibility from a point 0.6 metres above the level of the adjoining carriageway at the centre of the access 2.5 metres from and parallel to the nearside edge of the adjoining carriageway over the entire length of the site frontage. Nothing shall be planted, erected and/or allowed to grow on the area of land so formed which would obstruct the visibility described above.
- 10) Within 8 weeks of the first occupation of the development hereby approved a scheme for the provision of covered and secure cycle parking within the curtilage of each dwelling shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details. The cycle parking shall be installed and made available for use in accordance with a timescale to be agreed in writing by the local planning authority.
- 11) The recommendations for species and habitat enhancements set out in Section 5 of the ecologist's report from Pure Ecology should be followed unless otherwise agreed in writing by the local planning authority and the scheme shall be carried out as approved. On completion of the enhancement measures, confirmation should be made to the local planning authority in writing together with photographic evidence of the measures implemented. An appropriately qualified and experienced ecological clerk of works should be appointed (or consultant engaged in that capacity) to oversee the ecological mitigation work.