
Appeal Decision

Hearing held on 28 March 2017

Site visit made on 28 March 2017

by H Porter BA(Hons) PGDip IHBC

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

Decision date: 22 May 2017

Appeal Ref: APP/W1850/W/16/3162093

**Losito Stud, A4137 from A40 Junction to Burnthouse Green, Whitchurch
HR9 6EG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Ms Karen Harris against the decision of Herefordshire Council.
 - The application Ref 162117, dated 5 July 2016, was refused by notice dated 18 October 2016.
 - The development proposed is to replace a redundant barn with a four bedroom house in a sustainable location at Losito Stud, Whitchurch, HR9 6EG.
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Decision

1. The appeal is dismissed.

Application for costs

2. Prior to the Hearing a written application for costs was made by Herefordshire Council against Ms Karen Harris. This application is the subject of a separate Decision.

Preliminary Matters

3. The proposal is for outline planning permission. At the Hearing, the appellant provided clarity on the reserved matters, confirming that landscaping is the only matter to be reserved for future consideration. I have therefore determined the appeal on the basis that approval is being sought at this stage for access, layout, appearance and scale.
4. It was also agreed at the Hearing that the proposed Site Plan is that indicating a red line boundary from the access and including a residential curtilage to the north and south of the proposed dwelling. It was also confirmed that the plan submitted identifying 'curtilage' was in relation to a planning permission granted for a dwelling elsewhere on the property, and submitted for the purpose of illustrating the wider context only. Both parties also confirmed that the correct route of the Public Right of Way is that labelled 'WC94' submitted by the Public Rights of Way Officer in support of his consultation response.

Main Issues

5. In light of all that I have read and the discussions at the Hearing, I consider the main issues of the appeal are:
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- Whether the design of the proposed dwelling is of exceptional quality or innovative nature so as to justify a new isolated home in the countryside, giving particular regard to the effect on its character and appearance and the Wye Valley Area of Outstanding Natural Beauty;
- Whether the proposal would be in a suitable location, having regard to issues of land contamination and stability.

Background

6. There is an extensive planning history on the appeal site, which includes a number of appeal decisions¹. The circumstances under the current appeal differ in various respects to those considered by previous Inspectors, including in terms of the location within the site and replacement rather than re-use of an existing structure. That said, the earlier appeals have set out some useful parameters, including that the appeal site is in a sustainable location, and that the existing access would not risk highway safety; I see no reason to dispute such findings. It is undisputed that the appeal site is located within the open countryside, where development is strictly controlled.

Reasons

Design quality

7. The appeal proposal relates to a portion of land associated with Losito Stud, an equestrian facility located on the outskirts of the village of Whitchurch. The site is situated just off the A4137, which bounds it along the northwest. Mature hedges and undeveloped fields provide visual separation from the cluster of industrial buildings located south of the A40. The local topography falls steeply away from the road and reveals an open valley landscape to the north and east. Therefore, while the site is just visible above the hedge and fence along the road, it is far more prominent when seen from the surrounding countryside to the east of the site, as well as from the Public Rights of Way that run nearby.
8. The site falls within the open countryside as well as the Wye Valley Area of Outstanding Natural Beauty (the AONB). Policy LD1 of the Herefordshire Local Plan Core Strategy 2011 – 2031, adopted October 2015 (the Core Strategy) indicates that proposals should conserve and enhance the natural, historic and scenic beauty of important landscapes, including AONBs. Such areas are also afforded the highest status of protection in relation to landscape and scenic beauty within the National Planning Policy Framework (the Framework). Policy RA3 of the Core Strategy lists seven criteria under which development in the countryside may be acceptable. This policy is consistent with Paragraph 55 of the Framework, which seeks to avoid new isolated homes in the countryside unless there are special circumstances.
9. At the Hearing, the appellant confirmed that the proposed dwelling would be unconnected to the equestrian enterprise; the development would therefore be speculative. As such, the only circumstance in both Policy RA3 and Paragraph 55 of relevance pertains to the exceptional quality or innovative nature of the design of a dwelling. In order to meet this test, the proposed design should be truly outstanding or innovative, helping to raise standards of design more

¹ APP/W1850/W/15/3128690; APP/W1850/A/14/2219527; APP/W1850/A/14/2223782; APP/W1850/A/14/2221384; APP/W1850/13/2203539; APP/W1850/A/12/2184664; APP/W1850/A/11/2165174; and APP/W1850/A/11/2159074.

generally in rural areas; reflect the highest standards in architecture, significantly enhance its immediate setting; and be sensitive to the defining characteristics of the local area.

10. The appeal site is close to a complex of existing agricultural buildings and a single-storey dwelling associated with the stud facility. The existing structure is of relatively recent construction, utilitarian in appearance and of a form and material consistent with its intended use. Moreover, the combination of their scale, the local topography and vegetal screening, softens the impact of the existing buildings, which are afforded only restricted views and glimpses from gaps in the hedge alongside the A4137. There are clearer views of the agricultural buildings from the Public Right of Way that runs alongside and through the fields to the northeast, though these are only what one would typically expect to see in the open countryside and in the AONB. The area of green space between the existing barn and the roadside boundary is mainly laid to lawn and populated with young trees. This portion of the site has an orchard-like appearance that reinforces the site's rural setting.
11. The appeal scheme proposes to replace a single-storey, open-sided barn with a three-storey, four bedroom detached dwelling. The proposed dwelling would have a domestic appearance and a footprint and volume well in excess of the existing open-sided barn. The flat roof would reach to just over 8 metres, significantly higher than the top of the existing building, increasing in its visibility from the road and surrounding landscape. The form of the dwelling would be essentially square, with a diminishing floor area on each upper storey. The external materials would be timber cladding, aluminium windows and a grass roof.
12. A degree of subjectivity would always be involved in determining whether a design is truly outstanding or innovative. Notwithstanding its 'contemporary' appearance, the proposed dwelling would appear bulky and box-like, lacking any sense of lightness or design refinement. Combined with its height, footprint and position, the proposal would dominate its surroundings. While there are circumstances where a contemporary design approach can successfully compliment a sensitive context, however, the detailed design of the appeal proposal lacks any features that would render the design as being of the highest calibre. As a result it would appear starkly at odds and harmfully out of place.
13. Although the appellant has indicated that the house would include measures relating to low-carbon strategies to minimise energy consumption, there is nothing persuasive to demonstrate that a high level of insulation, a low space heating and cooling demand, or the provision of a green roof or gas membrane are innovative. In terms of its design, therefore, I cannot agree that the proposal would represent the highest standards of architecture, be truly outstanding or innovative. Rather, the proposal would be highly prominent, starkly contrasting with the structures and land use associated with the stud farm.
14. Notwithstanding a photograph of industrial units some distance away and a 3D plan of the stud, there is very little supporting evidence to demonstrate how the proposed design has evolved or to show a sensitive response to its highly protected context. Some degree of screening would be provided by boundary vegetation, though this would quickly dissipate and the proposed dwelling would become overly prominent from the Public Rights of Way that run nearby.

The trees already planted in the proposed garden area would take some time to reach maturity and even when they do are unlikely to reach above the 8 metre high proposed dwelling. I cannot agree, therefore, that these trees would provide any meaningful screening from the road towards the proposed dwelling.

15. Given the site's location within the AONB, the massing of the timber-clad structure would be a clearly noticeable feature in the landscape. While in relatively close proximity to agricultural buildings, and despite the tops of industrial buildings being visible in the further distance, the proposal would fundamentally harm the character and appearance of the countryside as well as the landscape and scenic beauty of the AONB.
16. Although a dwelling exists on the wider landholding, it is a modestly-sized, single-storey structure with no garden curtilage, which is diminutive within its context. Given the size of the proposed curtilage, the appeal scheme would likely introduce an increased domestic formality into the countryside location. This would add further to the incongruity of the use against the appearance of the grazing land, stables and wider countryside setting. Landscaping is a reserved matter; the appellant cites various ecological benefits and landscaping improvements, although I do not have any substantive evidence to indicate how or where such benefits would be achieved. The combination of these factors demonstrates that the appeal proposal would not contribute to an enhancement of the immediate setting.
17. I conclude therefore that the design of the proposed dwelling would not be of exceptional quality or of a suitably innovative nature so as to justify a new isolated home in the countryside. It follows that the proposal would also result in material harm to the landscape and scenic beauty of the AONB. As such the appeal scheme would conflict with Policy RA3 and LD1 of the Core Strategy; the Wye Valley AONB Management Plan 2015 – 2020, insofar as they require development proposals to be of exceptional quality and innovative design, and to demonstrate the character of the landscape has positively influenced the design, and to conserve and enhance the scenic beauty of important landscapes. Conflict would also arise with paragraphs 55 and 115 of the Framework, as well as its core principles, insofar as they seek to avoid new isolated homes in the countryside and to secure high quality design and development that recognises the intrinsic character and beauty of the countryside, affording great weight to conserving landscape and scenic beauty of AONBs.

Land contamination and stability

18. The appellant's wider landholding occupies a former landfill site. The original planning application showed a residential curtilage drawn tightly around the proposed dwelling, which was subsequently enlarged to delineate a proposed garden area. Upon receiving clarification of the curtilage for the appeal proposal, the Environmental Health Officer deemed the degree of uncertainty relating to land contamination and stability required full investigation.
19. The appellant provided a Contamination Report², undertaken in 2011 in support of a retrospective application for a timber dwelling on the wider landholding. While a previous Inspector and the Council accepted this report; the timber dwelling considered in that instance had no garden curtilage and was

² Losito Stud Potential Ground Contamination – desk study Tivoli Consulting Limited, April 2011

constructed off-ground, with a space for air to flow beneath it. This Report references a Completion Report undertaken in 2007³, detailing a gas monitoring borehole (GM6) located close to the curtilage of the current appeal site. The position of borehole GM6 indicates to me that there was at least some value in monitoring the potential contaminants in that location. Moreover paragraph 3.2.1 of the Contamination Report recommends further monitoring, especially from borehole GM6 to assist in establishing whether or not pathways for landfill gas exist. Although the appellant contends the appeal site is outside the presumed boundaries of the former landfill, it has a significantly larger footprint and garden curtilage compared to the wooden structure. It cannot be assumed, therefore, that there would be no risk to human health affecting the appeal site.

20. The submitted report did not consider ground stability issues and also makes the recommendation that further structures on the site should consider the potential for ground movement, as well as be designed to prevent the build-up of landfill gas within confined spaces. Without adequate site information, such as a desk top study, the appeal scheme fails to provide a clear picture of the potential risks associated with a dwelling in the location proposed. Moreover, there is no substantive evidence to indicate whether the design of the proposed dwelling would prevent harmful gas build-up.
21. Under appeal APP/W/1850/A/14/2223782 the Inspector concluded that the consequence of finding contamination can be both expensive and not always practically remediated. While the appellant contends that the issue could be dealt with by a condition, to my mind such a condition would potentially place a disproportionate financial burden on the appellant, thus failing the test of reasonableness.
22. Without substantive evidence to indicate the proposed development would secure a safe development in terms of land contamination and stability, I conclude that the appeal scheme would not be in a suitable location. Further to the Council's confirmation that the Decision Notice mistakenly refers to the Herefordshire Unitary Development Plan, the development would fail to accord with Policy SD1 of the Core Strategy insofar as it seeks to ensure new development does not suffer from adverse impacts arising from land instability; and, where contaminated land is present, to undertake appropriate remediation where it can be demonstrated that this will be effective. The development would also run contrary to the policies within the Framework, notably paragraphs 120 - 121, which seeks to prevent unacceptable risks from pollution and land instability, and ensure a site is suitable for its new use taking account of ground conditions and land instability.

Planning balance

23. At the Hearing, the Council confirmed they currently have a 4.39 year supply of deliverable housing sites. Therefore, relevant policies for the supply of housing should not be considered up-to-date⁴; and planning permission be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, or where specific policies indicate development should be restricted⁵. Such policies include those relating to an AONB⁶.

³ Waste Management Licence Completion Report, 2007

⁴ Paragraph 49, National Planning Policy Framework

⁵ Paragraph 14

⁶ Footnote 9

24. The appeal scheme would result in the delivery of one dwelling, which would make a very small, albeit still beneficial, contribution to the supply of housing, which I have given moderate weight. The dwelling would also be in a location where services and facilities to satisfy some everyday needs could be reached by means other than private car. Investment in construction and relative employment for its duration would also represent a modest benefit. The proposed energy-efficient construction would not mitigate the harm identified above. While increased planting may eventually be of some ecological benefit, and provide some net gain to biodiversity, I do not find these measures would be sufficient to outweigh the harm in relation to character and appearance. I recognise the appellant's wider aims for their enterprise; however, these personal circumstances carry little weight and the appeal proposal is not the only means by which the continued enhancement of the land could be achieved.
25. On the other hand, I have found there would be harm in relation to the character and appearance of the countryside; the landscape and scenic beauty of the AONB; and in relation to land contamination and stability. The combination of these factors, and the significant weight attributed to the protected landscape, indicates that the environmental dimension of sustainable development would not be achieved. In weighing up these matters, I find that the adverse impacts would significantly and demonstrably outweigh the totality of the benefits and the proposal would not represent sustainable development as defined in the Framework.

Other matters

26. At the Hearing the appellant referred to a 'contemporary' dwelling that has been granted planning permission nearby. Reference has also been made to the development of 19 houses close to the appeal site. However, I have been given no substantive details. Nor do I have any information, other than a photograph, of the contemporary dwelling within an AONB. Without knowledge of the planning considerations, context, location and policy background I am unable to consider these examples as a useful precedent that would go anyway towards justifying the appeal scheme. Moreover, while the Council may have granted an extension of time in pursuance of a positive solution for the 19 houses, it is clear that the scale of this development sets it significantly apart from the scheme before me. I acknowledge that the appellant intends to submit a planning application for the redevelopment of the existing timber structure, though no application has yet been registered. In any event, I do not find that the potential application to re-develop another part of the appeal site alters my findings on the appeal scheme, which I have considered on its own merits.
27. At the Hearing, the appellant introduced details of a development that had very recently been granted planning permission at land adjacent to The Gasworks, Goodrich (130717/F). After a short adjournment to digest the information it was apparent that, although the site was in the open countryside and the AONB, there were material differences between the appeal proposal and the permitted scheme. The Council also pointed out clear differences, including use, brownfield status of the site, the enhancement of the setting and wider landscape, design quality of the proposed building compared to the existing. Although the application wasn't formally submitted, I have had regard to the circumstances of that case, which I am satisfied would not affect the overall appeal outcome.

28. Interested parties have raised concerns regarding the proposed access to the appeal site, which they consider insufficient to accommodate any increased activity. While reference was made at the appeal site visit to a history of accidents in the site's vicinity, I have no details, such as accident records. Furthermore, under appeal APP/W/1850/A/14/2219527, the Inspector had considered the potential use of the existing access to facilitate an additional dwelling and found no highway objection to use of that access. On this matter, therefore, I do not find any particular harm would arise. A lack of harm in this regard, however, does not alter my overall conclusion.

Conclusion

29. For the reasons set out above, I conclude that the appeal should be dismissed.

H Porter

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Karen Harris	Appellant
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FOR THE LOCAL PLANNING AUTHORITY:

Charlotte Atkins LLB (Hons) MA, MRTPI	Senior Planning Officer, Herefordshire Council
Nick James	Technical Officer, Herefordshire Council
Elizabeth Duberly	Senior Landscape Officer, Herefordshire Council
Abigail Molyneux	Planning Officer (observing), Herefordshire Council

INTERESTED PERSONS:

Geoff Hiscox	Whitchurch & Ganarew Parish Council
Roger Smith	Whitchurch & Ganarew Parish Council

DOCUMENTS SUBMITTED DURING THE HEARING

1. Site Plan
2. Wye Valley Area of Outstanding Natural Beauty Post- SEA & HRA Management Plan 2015 - 2020