
Appeal Decision

Site visit made on 5 June 2017

by Harold Stephens BA MPhil DipTP MRTPI FRSA

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

Decision date: 21 June 2017

Appeal Ref: APP/W1850/W/17/3169420

Land adjacent Orchard Farm, Comberton, Orleton, Leominster, Herefordshire

- 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 and Mrs Colin Mason against the decision of Herefordshire Council.
 - The application Ref 163231, dated 5 October 2016, was refused by notice dated 30 November 2016.
 - The development is a proposed 2 bedroom dwelling and garage, workshop/implement store. Form new access and close existing.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for a partial award of costs was made by the Appellants against Herefordshire Council. This application is the subject of a separate Decision.

Procedural Matters

3. I note that following refusal of the application on 30 November 2016, the Appellants submitted revised plans Drg Nos 1465/4A and 1465/5A¹ showing a repositioning of the proposed access further west. However, these plans were not before the Council when it made its decision and no amended proposal is before me on a formal basis for consideration. Accordingly, I have determined this appeal on the basis of the original layout as shown on Drg Nos 1465/1, 1465/2, 1465/3, 1465/4 and 1465/5.
4. The proposal seeks full planning permission to develop a parcel of land some 0.32 has in area, which is located on the northern side of the B4362 road that runs through Comberton, with a single detached self-build dwelling to Passivhaus standards. The proposal includes improvements to the existing access to the land, construction of an implement store and domestic garage and car turning area. Comberton is a modest hamlet comprising some 10 dwellings mostly farmhouses or cottages derived from the agricultural heritage of the area. The village of Orleton lies to the south of the site, which contains a range of facilities and services.

¹ February 2017

5. The development plan for the area includes the adopted Herefordshire Local Plan Core Strategy (October 2015). Policy SS1 reflects the presumption in favour of sustainable development. The policy indicates that when considering development proposals the Council will take a positive approach that reflects the presumption in favour of sustainable development contained within national policy. It will work proactively to find solutions which mean that proposals can be approved wherever possible and to secure development that improves the social, economic and environmental conditions in Herefordshire. Planning applications that accord with policies in the Core Strategy (and, where relevant with policies in other Development Plan Documents and Neighbourhood Development Plans) will be approved, unless material considerations indicate otherwise.
6. A Neighbourhood Development Plan (NDP) is in preparation for the parishes of Orleton and Richards Castle. The NDP has involved two statutory six week periods of public consultation during 2016 and an independent examination of the NDP was carried out between January and March 2017. Subject to a number of modifications set out in the examiner's report it is recommended that it should proceed to referendum. It is anticipated that the Approved Plan will be adopted in Autumn 2017. As the NDP has reached an advanced stage in the process it can be afforded significant weight in terms of paragraph 216 of the NPPF.²
7. On 10 May 2017 the Supreme Court issued a judgment³ concerning the interpretation of paragraph 49 of the NPPF and its relationship with paragraph 14 of the NPPF. The judgment makes it clear that the primary purpose of paragraph 49 of the NPPF is to trigger the operation of the *tilted balance* in paragraph 14 of the NPPF where a Local Authority cannot demonstrate a 5-year supply of deliverable housing sites. The important issue is not the categorisation of development plan policies as "policies for the supply of housing" but whether the application of these policies is achieving a 5-year supply of deliverable housing in accordance with the objectives of paragraph 47.
8. In this case the Council has indicated that, despite the adoption of the Herefordshire Local Plan Core Strategy, it is unable to identify a 5-year supply of deliverable housing land. This indicates to me that the policies for the supply of housing in the development plan are out-of-date. As such, in accordance with paragraph 14 of the NPPF the presumption in favour of sustainable development is engaged. The housing requirement for the NDP area is 73 dwellings and the latest position provided by the Council is that completions/permissions amount to 66 dwellings. With 14 years of the plan period to run only a further 5 dwellings are required to meet the minimum target. The Council's position in terms of housing land supply is that it stands at 4.39 years.

Main Issues

9. In the light of the above I consider the main issues are:-
 - (i) the effect of the proposed development on the rural character of the area;

² National Planning Policy Framework

³ [2017] UKSC37 on appeals from: [2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and [2015] EWHC 410 (Admin)

- (ii) the effect of the proposed development on highway safety; and
- (iii) the effect of the proposal on ecology.

Reasons

Effect on the rural character of the area

10. Outside of Hereford and the market towns, Policy RA1 of the Core Strategy identifies that Herefordshire's rural areas will need to find a minimum of 5,300 new dwellings between 2011 and 2031 to contribute towards the county's needs. The dwellings will be broadly distributed across the seven Housing Market Areas (HMA). Policy RA2 of the Core Strategy sets out the criteria for new housing within or immediately adjacent to the rural settlements set out in Figures 4.14 and 4.15. Policy RA3 makes provision to accommodate specified residential development within Herefordshire's countryside.
11. The Appellants contend that the appeal site's location is viewed as part of a settlement where housing development is directed in the Core Strategy and that the strategy in the rural areas is to deliver sustainable housing development across the broad range of settlements listed in Policy RA1 and RA2. Further, it is claimed that in Policy RA2, proportionate housing development is specified in a list of small settlements for the Leominster HMA that includes Orleton. The Appellants point out that the close geographical proximity of Comberton to Orleton ensures that it is sustainably located in relation to the settlement of Orleton and its identification for housing development in the Core Strategy. I disagree for several reasons.
12. Firstly, Policy RA2 of the Core Strategy is not relevant to the assessment of the appeal proposal due to the remote nature of the site from the main built-up area of Orleton. Secondly, it is Policy RA3 of the Core Strategy that is applicable here and this limits residential development to proposals which meet one or more of the criteria set out in this policy, amongst other policy considerations, including the emerging Orleton and Richards Castle NDP. Thirdly, the proposal fails to comply with any of the criteria set out in Policy RA3 or the circumstances set out in paragraph 55 of the NPPF.
13. Fourthly, in relation to the emerging NDP, the most relevant policy is ORC7, which proposes that new housing in Orleton will be restricted to sensitive infilling within the settlement boundary and sites identified for development. In this case, the site lies well outside of the boundary shown on the emerging NDP Orleton Policies Map. The site lies some 280m to the north of the proposed boundary. Whilst the boundary cannot be regarded as definitive at this stage, it does provide an indication of the main built-up area of the settlement. Bearing in mind the recent permission for 39 dwellings on land at Hallets Well and earlier housing commitments there is no need to consider sites detached from the main built up area of the village. Fifthly, with regard to pedestrian connectivity, the proposed means of access into the village of Orleton would be across a busy classified road with no pedestrian refuge and then via a public footpath (OL1). This route would be hazardous in respect of the road crossing and unattractive during winter months as the footpath is unlit and unsurfaced.
14. At my site visit I saw that the site lies well outside the settlement boundary for Orleton defined in the emerging NDP. The site comprises productive agricultural land and is part of a Traditional Orchard. The appeal site, with the

existing trees, makes a strong contribution to the rural character of the area. The cumulative effect of the proposed dwelling, its outbuildings and the provision of a new access would result in an unacceptably harmful impact on the open, rural character of the area. In my view, the proposal would constitute a prominent and intrusive feature in the landscape by virtue of its roadside location and in the context of the modest amount of scattered development at Comberton.

15. In coming to this view I have taken into account that this would be a self-build dwelling and that the design would be vernacular to the Marches Borders and characteristic of the traditional dwellings of this area. Traditional materials would be used such as lime render, timber cladding on hand made brick plinths for the walls and clay tiles for the roof. The outbuilding to the rear of the site, whilst large in footprint, would be of a design that would not appear out of context with other farm buildings locally. The proposal would meet the design requirements of Policy SD1. It also addresses climate change in line with Policy SS7 insofar as it includes provision for use of locally sourced materials, energy efficient construction, solar photovoltaic panels, rainwater harvesting, potable water supply from a borehole and water conservation measures. Effluent from foul drainage would be taken to a wetland ecosystem treatment area.
16. Bearing in mind all of these matters I conclude on the first issue that the proposal would be contrary to policies in the Core Strategy including Policy RA1, Policy RA3 and Policy LD3 which seeks amongst other matters to identify and protect existing green infrastructure. It would also be contrary to Policy ORC7 of the emerging NDP and paragraph 55 of the NPPF. On the first main issue I conclude that the appeal must fail.

Effect on highway safety

17. The proposed access is within a 40mph speed limit. The proposal was supported by a speed survey undertaken in the vicinity of the proposed vehicular access in July 2016. The speed survey results demonstrated an 85th percentile wet weather speed of 47.1mph westbound and 46.4mph eastbound. There have been no recorded personal injury collisions within the vicinity in the five year period 2012 to 2016.
18. In terms of proposed visibility splays the Appellants have used an X distance of 2m in accordance with the Herefordshire Design Guide for New Developments (2006), which specifies this distance for single dwellings or small groups of up to half a dozen dwellings or thereabouts. Regarding the Y distance, as specified in Manual for Streets (MfS) 1 and 2, the proposed visibility splays have been determined with Minimum Stopping Sight Distances of 102m westbound and 100m eastbound. The Appellants claim that these visibility splays can be attained without encroachment onto adjacent property and the removal of any vegetation can also be achieved.
19. The Highway Authority's position is that the visibility splays would need to be set back 2.4m from the road edge not 2m as shown in the Appellants' drawings. Using MfS2 it is argued that the required visibility in the western direction is 111m and 116m in the eastern direction. At my site visit I observed that the majority of cars, HGVs, tractors and motor bikes far exceed the speed limit in the vicinity of the proposed access to the site. There is no provision of pedestrian pavements on the B4362 at the proposed access point. I also saw that the road starts to narrow immediately east of the Appellants' site.

20. MfS2 (2010) is an advisory document but it provides more recent guidance than the Herefordshire Design Guide. MfS2 is a companion guide to MfS1 which focuses on lightly trafficked residential streets. MfS2 builds on the guidance contained in MfS1 and explores in greater detail how and where its key principles can be applied to busier streets and non-trunk roads. Given vehicle speeds on the B4362, the number of HGVs, no footways and the carriageway width in the vicinity of the appeal site, I consider that MfS2 would be more applicable here. The visibility splays would need to be set back 2.4m from the road edge to achieve the visibility splays required by the Highway Authority. The Appellants' plans show that visibility splays of 102m westbound and 100m eastbound can be provided. However, the Highway Authority has shown that the actual alignment of the B4362 is not as straight as the plans show and a hedge line on the adjacent landowner's land would restrict visibility looking east to about 80m which is substantially less than the Appellants' offered visibility and less than the assessed MfS2 distances suitable for the site.
21. I am not satisfied from the evidence that is before me that there would be sufficient visibility to achieve a safe entrance and exit to the site to meet the required standards for the 85th percentile wet weather speed. The visibility splays required cannot be accommodated within the confines of the land owned by the Appellants. Accordingly, the proposed development would be prejudicial to highway safety and contrary to Policies MT1 and SS4 of the Core Strategy, Policy ORC13 of the emerging NDP and the advice contained at paragraphs 32 and 35 of the NPPF. On the second issue I conclude that the appeal must fail.

Effect on ecology

22. The appeal proposal would affect about 20% of the area of a Traditional Orchard. It was recorded as HERE2734 in the recent Natural England Traditional Orchards Survey. A Traditional Orchard is recognised as a Habitat of Principal Importance (Priority Habitat) within the UK Biodiversity Action Plan (added in 2007) and through Section 41 of the NERC Act 2006.⁴ Traditional Orchards are also recognised as locally important habitats within the Core Strategy under Policies LD2 and LD3. Any loss or degradation of this recognised habitat should be strongly resisted as once developed the remnant flora and fauna of this fragile ecosystem may well be lost forever.
23. The submitted plan Drg 1465/4 and the Design and Access Statement and email from the Appellants' agent dated 22 November 2016 make clear the position that all the existing trees on the site would be retained. The existing native hedgerows around the site would be largely retained or re-planted. The application was accompanied by an ecological report from Shropshire Wildlife Surveys. No evidence of any protected species was found and the landscaping scheme would include re-planting the adjoining mixed fruit orchard.
24. However, I note that the Protected Species Report does not include a detailed tree and hedgerow survey to BS5837:2012, nor does it make any detailed observation of the trees or the national and local importance and value of Traditional Orchards e.g. there was no assessment of their potential to support Noble Chafer – a species recognised as being nationally 'Vulnerable' and that is almost solely found in mature and over mature Traditional Orchards. Although the Design and Access Statement mentioned that replacement fruit trees would be planted no detail was supplied to show how many, where or

⁴ Natural Environment and Rural Communities Act 2006

that these would be replacement full standard (Traditional) trees as mitigation and betterment of the Priority Habitat. I accept that effluent from foul drainage would be taken to a proposed wetland ecosystem treatment area which would result in some enhanced biodiversity.

25. I appreciate that an arboricultural report⁵ was submitted by the Appellants at the appeal stage in May 2017 and further information was submitted by the ecologist in an email dated 23 May 2017. However, no management plan has been submitted to demonstrate how the orchard's biodiversity interest would be conserved and enhanced, in line with paragraph 118 of the NPPF. The whole orchard area and new trees should have been accompanied by a detailed long-term management plan for both the trees and the potential re-instatement (or recovery from potentially retained seed bank) of the rich Traditional Orchard ground flora. Moreover, given its recognised importance, the proposed removal of native hedgerow associated with the new vehicular access weighs against the proposal. I accept that a length of new hedgerow is proposed along the western site boundary but there is no accompanying specification identifying the diversity of species to be planted.
26. All of this information should have been supplied in order to show sufficient 'betterment' to a retained area of what is a Priority Habitat to consider the ecological balance of the development. Planning conditions would not overcome the concerns which I have described. I consider that the proposal fails to demonstrate compliance with Policies LD2 and LD3 of the Core Strategy and the advice contained within paragraphs 109 and 118 of the NPPF. On the third issue I conclude that the appeal must fail.

Overall Planning Balance and Conclusion

27. In terms of the 3 limbs of sustainable development set out at paragraph 7 of the NPPF I accept that there would be some economic benefits arising from the scheme which carry some weight. In the absence of a 5-year housing land supply the appeal proposal would provide one new dwelling which I accept would make a contribution, albeit a very small one, towards improving the 5-year housing land supply. Furthermore, in terms of economic benefits, the appeal proposal would provide economic uplift through construction activities and by providing one new household in the local area. The additional spending power of a new household would help to support local businesses and services in the wider area. Some limited weight in favour of the proposal is afforded by these economic benefits.
28. Socially the proposed development would be unsustainable due to the pedestrian connectivity. The proposed means of access to the village would be across a busy classified road with no pedestrian refuge and then via a public footpath (OL1). This route would be hazardous in respect of the road crossing and unattractive during winter months as the footpath is unlit and unsurfaced. In my view services and facilities within Orleton village such as the school shop/post office and church although potentially accessible on foot and by the hourly bus service are likely to be accessed via the private car.
29. In terms of the environmental role, I note that the proposal is for a self-build dwelling which is encouraged by Government policy and the NPPF.⁶ It would be

⁵ Arboricultural Planning Statement May 2017

⁶ NPPF paragraphs 50 and 159

constructed to Passivhaus Standards and the Design and Access Statement lists a number of these standards. The wetland ecosystem treatment would bring enhancement to biodiversity. These matters attract some weight in the overall balance. However, I have found that the cumulative effect of the proposed dwelling, its outbuildings and the provision of a new access would result in an unacceptably harmful impact on the open, rural character of the area. In my view, the proposal would constitute a prominent and intrusive feature in the landscape by virtue of its roadside location. I have also found that the proposed development would be prejudicial to highway safety due to the proposed access arrangements. The unresolved concerns about biodiversity/ecological enhancement which the development could offer to a Priority Habitat are significant and adverse.

30. In the overall balance I consider that the substantial harm in relation to pedestrian connectivity, to the rural character of the area, to highway safety and to ecology would significantly and demonstrably outweigh the benefits which I have identified when assessed against the development plan and policies of the NPPF taken as a whole. I conclude that the proposal is in overall conflict with the development plan and does not represent sustainable development. Having considered these and all other matters raised I find nothing of sufficient materiality to lead me to a different conclusion.

Harold Stephens

INSPECTOR