



Appeal Decision

Site visit made on 1 October 2019

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: Friday, 29 November 2019

Appeal Ref: APP/W1850/W/19/3233291

Land to the rear of Mortimers Cross Inn, Mortimers Cross, Leominster, Herefordshire HR6 9PD

- 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 Mr Jim Locke against the decision of Herefordshire Council.
 - The application Ref 174073, dated 27 October 2017, was refused by notice dated 16 January 2019.
 - The development proposed is outline planning application with some matters reserved for residential development and new vehicular access.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was submitted in outline. The application form indicates that approval was sought only for access, with the matters of appearance, landscaping, scale and layout reserved for future approval. Details of the layout for the proposed dwellings, which includes five large plots for detached houses was submitted with the application for illustrative purposes only, but the Design and Access Statement indicates this level and type of housing proposed.
3. As part of the appeal, the appellant has included additional plans showing an amendment to the access, visibility, indicative layout and topography. The Council has had the opportunity to comment on the revised plans, I do not consider that its interests would be prejudiced if I take these amended plans into account. I shall therefore determine the appeal for planning permission on the basis of the OS plans at the time of determination, as well as the plans submitted as part of this appeal.
4. The Council during the appeal have provided evidence that the Aymestrey Neighbourhood Development Plan 2011-2031, (ANDP) was made in July 2019. As such, this forms part of the development plan and I therefore attribute full weight to this in the appeal decision, as the decision has, legally, to be made on the basis of the development plan situation on the date of this decision.

Main Issues

5. The main issues are (i) whether the appeal site forms a suitable location for development, having regard to the national and local planning policies; and (ii) the effect of the proposed development on highway safety; and (iii) the effect of the proposed development on the Special Area of Conservation.

Reasons

Location of development

6. The appeal site is a rectangular parcel of land with some hardstanding and a temporary building to the rear of Mortimers Cross Inn public house. I observed the majority of the site was unmaintained and overgrown with vegetation. It is located within the Aymestrey neighbourhood area boundary and outside the settlement itself of Mortimers Cross, which is identified within the ANDP and therefore by definition this would be within the countryside. Policy AYH2 of the ANDP does not permit new residential development outside of the settlement boundary, including upon adjacent or adjoining sites unless it complies with one or more provisions of the Herefordshire Local Plan Core Strategy 2011-2031, adopted 2015 (HLPCS).
7. The HLPCS for housing strategy sets out that residential development should be located within the existing settlement boundaries. Policy RA2 of the HLPCS informs that Neighbourhood Development Plans will be the principal mechanism by which new rural housing will be allocated. The proposed development would result in large dwellings constructed at odds from the settlement pattern, encroaching and eroding the countryside, particularly reducing the openness that characterises the rural setting of the area.
8. The site is within an area of countryside and the principle of the development must be assessed against HLPCS Policy RA3; the ANDP clearly identifies this is the criteria. This policy has exceptions under which residential development may be permitted within the countryside. When assessed against the criteria in Policy RA3 the proposed development would not fall within any of those exceptions.
9. The appellant contends that the appeal site amounts to previously developed land (PDL). The National Planning Policy Framework 2019 (the Framework) supports development that makes efficient use of land, through the definition of PDL, which includes land occupied by a permanent structure including the curtilage of developed land and fixed surface infrastructure, however this does not go without being caveated. The main parties differ on whether the site is PDL and its previous uses. The Council confirm the site is not on their brownfield register or identified within the development plan for residential development. The evidence before me is inconclusive, but even if I were to consider the site amounts to PDL, the proposal would not make efficient use of land, it would not maintain the area's prevailing character or setting and so would not accord with paragraph 122 of the Framework.
10. For the above reasons, I conclude that the location of the proposed development would be harmful and would be contrary to Policy RA3 of the HLPCS, which seeks a positive approach in favour of sustainable development; focussing development to the most sustainable locations; in or adjacent to settlements whilst limiting residential development outside of settlements and encourages high quality sustainable schemes which are appropriate to their context and make positive contributions to the surrounding environment and landscape settings. It would also be in conflict with Policy AYH2 of the ANDP, which restricts new housing outside the settlement boundaries.

Highway Safety

11. A new vehicular access would be created from the B4362 to serve the development and a pedestrian and cycle access would be created linking the site through the Mortimers Cross Inn public house car park to specifically utilise nearby public transport. From the evidence before me it appears that the appellant has been able to demonstrate that suitable visibility can be achieved at the site and the Council are satisfied that it could be dealt with by condition; I have no reason to disagree with this.
12. However, as I observed on my site visit the pedestrian / cycle link has been marked out along the car park but there is no physical barrier in place to prevent vehicles parking up to the fence line and obstructing the access when utilising the public house car park. As such it is unclear how this link would be facilitated particularly as the car park is within third party ownership. I have considered whether it is appropriate to impose a Grampian condition as set out in the Planning Policy Guidance (PPG)¹. However, I cannot be certain that this would be a safe access for pedestrians and cyclists and would not impact on the access that is required for the public house car park. Moreover, from the evidence of third parties on land ownership the condition would not meet the tests of being reasonable or enforceable since there are no prospects at all of the action in question being performed within the time-limit which could be imposed by the permission.
13. For the reasons outlined above, I conclude that the appeal proposal fails to demonstrate that the pedestrian and cycle link can be adequately or safely provided and would not cause harm to highway safety. It would be contrary to Policy MT1 of the HLPSCS, where proposals should demonstrate that development does not adversely affect the safe and efficient flow of traffic; ensure developments are designed and laid out to achieve safe entrance and exit and accommodate provision for all modes of transport. It would also be odds with Policy AYT2 of the ANDP which sets out the requirements for highway design.
14. The development would not therefore accord with the highway safety aims of the Framework, Paragraphs 109 and 110.

Special Area of Conservation

15. The site is within the catchment area of the River Lugg, which is a tributary of the River Wye, designated as a Special Area of Conservation (SAC), a linear ecosystem that provides an important habitat as an essential migration route and key breeding area for many nationally and internationally important species. The River Lugg is currently failing its conservation targets of phosphate levels as a result of water pollution from several sources. The Council have provided details of the recent European court judgement² and advice from Natural England of which the appellant has seen and provided comments. The Habitat Regulations³ require an assessment of the impacts of development and, with scientific certainty require there to be no likely significant effect (LSE) on phosphate levels on the designated SAC site from the proposal either on its own or in combination with other plans and projects.

¹ Paragraph: 009 Reference ID: 21a-009-20140306: Revision date: 06 03 2014

² Joined cases 293/17 and C294/17 Court of Justice of the European Union: Coöperatie Mobilisation for the Environment UA and Others v College van gedeputeerde staten van Limburg and Others

³ The Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations')

16. Suitable soakaway drainage is required at the site and no plans were submitted as part of the application and I have no substantial evidence of the design of a sustainable drainage system. Percolation testing was undertaken but I understand that the appellant did not provide any infiltration testing in accordance with BRE365. Although the appellant asserts that the site is further than 50m from any surface water feature, the failure to comply with BRE365 means that, based on the limited information provided it has not been shown that the outfall of the proposed drainage for the site would not have, in combination with other plans and projects, a significant effect on the internationally important interest features of the SAC or demonstrate that the impacts would be at least neutral in counterbalancing any phosphate increase with the current failing target levels. In the absence of these, it is reasonable, given its proximity, to conclude there may be an LSE.
17. I therefore find that the proposed development would be contrary to the Framework, paragraph 175 sets out that if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated then permission should be refused. Whilst at paragraph 177, the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site, unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.

Other Matters

18. The site is located nearby to two Grade II Listed Buildings, Rock Cottage a former tollhouse about 50m to the west and Mortimers Cross Cottage to the west on the opposite side of the road. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, (the Act) requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest.
19. In determining the application, the Council concluded that the proposal would cause no harm to the setting of any nearby listed building. Based on my site visit, which also included a consideration of the separation distance between the appeal site and the listed buildings, I have no reason to disagree with the Council in respect of this matter. However, this is a matter of neutral consequence in the overall planning balance.
20. I note that the parish council and local residents have expressed additional concerns about the proposed development, including the site being a previous water meadow. However, the Council did not raise this as a reason for refusal and given my decision to dismiss this appeal, it is not necessary to consider this and the other matters in detail.

Planning Balance & Conclusion

21. The appellant contends that the Council cannot currently demonstrate a 5-year supply of housing land, however as set out in paragraph 14 of the Framework the Council would need only to demonstrate that there is a 3-year supply as the ANDP was made in July 2019 and is less than two years old and sets out policies and allocations to meet the identified housing requirement for the area.

22. In any event, in accordance with the Framework paragraph 177, the presumption in favour of sustainable development would not apply in this appeal decision, where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site of which it has not been demonstrated. This provides a clear reason for refusing the development and means I must conclude that the appeal be dismissed.

KA Taylor

INSPECTOR