
Appeal Decision

Site visit made on 24 September 2019

by K Stephens BSc (Hons), MTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 December 2019

Appeal Ref: APP/W1850/W/19/3232324

Lyde Cross Tree Farm, C1127 From Lyde Cross to Munstone, Munstone HR1 3AE

- 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 S Berry against the decision of Herefordshire Council.
 - The application Ref 191313, dated 9 April 2019, was refused by notice dated 14 June 2019.
 - The development proposed is application for outline planning permission for the erection of three detached dwellings and garage with all matters bar access reserved.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description above is taken from the application form. During determination of the application the appellant decided to no longer include access, such that **all** matters would be reserved. This is reflected on the appeal form and the Council's description on the refusal notice. I have therefore determined the appeal on this basis, notwithstanding the description above.
3. As the application is submitted in outline, the submitted plans are illustrative only and I have considered them on that basis. However, they provide a useful guide as to how the site could be developed for the quantum of development proposed.
4. The Council's second reason for refusal related to inadequate evidence for it to be satisfied the proposed development would conserve, restore or enhance biodiversity. During the determination of the appeal the appellant has submitted a Phase 1 Habitat Survey Report. The Council has confirmed that it no longer needs to defend this reason.

Main Issues

5. In light of the above, the main issues in this appeal are:
 - Whether the proposed residential development is in accordance with policies and national guidance with regard to location, and
 - The effect of the proposed development on the character and appearance of the rural area.

Reasons

Location

6. The Herefordshire Local Plan Core Strategy 2011-2031¹ (the Core Strategy) Policy RA1 deals with the distribution of rural housing to promote sustainable patterns of development, with an emphasis on supporting services and facilities in villages. Under Policy RA2 sustainable housing growth will be supported 'in or adjacent' to the settlements listed in its figs 4.14 and 4.15. The village of Munstone is listed in fig 4.15 as a settlement where proportionate housing is appropriate. This policy is broadly consistent with the National Planning Policy Framework (the Framework) in terms of being responsive to local circumstances and supporting housing developments that reflect local needs and promoting sustainable development in rural areas. Lyde Cross is not listed in figs 4.14 and 4.15. It is disputed by the parties as to whether the site is within the settlement of Munstone.
7. The proposal is for the erection of three dwellings in a field adjacent to Lyde Cross Tree Farm and some of its agricultural buildings. The plans indicatively show three dwellings each with a detached garage positioned approximately parallel to the lane but set back from it a substantial distance, to be broadly in line with the farmhouse at Lyde Cross Tree Farm. A single point of access is indicatively shown off Munstone Lane that would split to serve the three dwellings and their garages.
8. From my site visit I observed that the site is some distance north of the main cluster of housing and built up area of Munstone, which lies west of the crossroads with Munstone Lane and Coldwells Road. Travelling along Munstone Lane from the crossroads it was noticeable that the appeal site was significantly separated from the crossroads and Munstone by open countryside and a small number of dwellings sporadically positioned along the lane. Therefore, in my view, Lyde Cross and the appeal site do not lie within Munstone. Due to the surrounding fields the site is clearly in the countryside.
9. The Policy also allows development 'adjacent to the main built up area' of Munstone. Neither the policy or the Framework define 'adjacent' so I have taken the normal dictionary definition of 'adjoining'. As already described above, the main built up area of Munstone is some distance to the south of the appeal site with several large intervening fields and sporadic housing, such that the appeal cannot be described as being 'adjacent' to the main built up area of Munstone. As the appeal site is in countryside and not within or adjacent to Munstone, the proposal conflicts with Policy RA2.
10. Being in the countryside, the proposal falls to be considered under Policy RA3 that limits development in the countryside to that which meets one of the seven listed exceptions. The proposal would not be required for agricultural or forestry purposes; for rural enterprise; would not involve the replacement of an existing dwelling or the re-use of a redundant or disused building; is not purported to be for rural exception housing nor is it being promoted as a design of exceptional quality or innovative design, and it is not for gypsy or other travellers. Therefore, the proposal does not fulfil the requirements for housing in the countryside under Policy RA3.

¹ adopted October 2015

11. Along the southern site boundary is a track, leading to an agricultural building beyond the appeal site. There is also a dwelling Larch House. Opposite the site is a row of dwellings. Having regard to paragraph 79 of the Framework, the appeal site would not be isolated, due to the proximity of these dwellings. Even if the site is not isolated and was found to be an 'infill' site, it does not alter the fact that the site is not within or adjacent to Munstone.
12. The appeal site is located relatively close to the northern outskirts of Hereford with its good range of services, facilities, schooling and employment. It may be the case that some of the settlements listed in Policy RA2 have limited access to services and facilities compared to the appeal site and some settlements may have better access to public transport than others. However, the listed settlements have been selected as suitable for proportionate housing development as part of the Local Plan process and the Council's spatial strategy and settlement hierarchy for the Borough.
13. Paragraphs 102 and 103 of the Framework seek to manage patterns of growth to support a number of objectives, including identifying and pursuing opportunities to promote walking, cycling and public transport use and that development should be focussed on locations which are or can be made sustainable through limiting the need to travel and offering genuine choice of transport modes. The Framework also recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas.
14. The appeal site is on a narrow lane with no pavement or streetlighting and I do not consider these circumstances conducive to encourage walking on a regular basis to Hereford, or to the bus stop near the crossroads. Cycling would be more attractive in terms of travelling time, but not likely in all weather conditions or during hours of darkness, and not suitable for all purposes. Therefore, I find that future occupiers of the proposed development would be reliant on the private car to access day-to-day facilities, albeit a fairly short car journey. I accept that the site would be no less accessible to facilities than existing dwellings on Munstone Lane south of the appeal site, but new development has to be considered against current policy and guidance.
15. In the emerging Holmer and Shelwick Neighbourhood Development Plan (NDP) settlement boundaries are being proposed around Holmer, Munstone and Shelwick. During the determination of this appeal, the NDP has been submitted for consultation, and more recently the Examiner's Report has been received. The report does not recommend any changes to the identified settlement boundaries in the draft regulation 16 plan for Holmer, Munstone and Shelwick (shown in the Council's appendix III and at paragraph 4.4 of its Statement), which draws the settlement boundary for Munstone around the cluster of dwellings west of the crossroads. Furthermore, the report recommends amending the text to draft NDP Policy HS1 such that new housing adjacent to and outside the settlement boundaries of Munstone and Shelwick will be supported where it delivers rural exception housing and where it is evidenced through a local housing needs assessment.
16. The appeal site therefore falls outside of the proposed NDP settlement boundary for Munstone and the appeal proposal is not put forward for rural exceptions housing. The proposed NDP boundary for Munstone is an indication of how the local community would like to define the settlement for the

purposes of planning and guiding development. Whilst the NDP has been through examination, there has not yet been a referendum and the NDP is not yet 'made' so does not form part of the Development Plan. However, in accordance with paragraph 48 of the Framework and its stage of preparation I attach significant weight to it.

17. Both parties draw my attention to a number of planning consents and appeal decisions for dwellings. These have been chosen to either seek to illustrate inconsistencies in the Council's application of its policies, to show how other Inspectors have regarded development proposals outside settlements in terms of accessibility, and what weight should be attached to policies in light of the Council's lack of a 5 year housing land supply, which I shall deal with later. Even though some information about these applications and appeals has been provided, I must consider the appeal before me on its merits.
18. For the above reasons, I conclude that the proposed housing development would not be in the settlement of Munstone, but in the countryside in an unsustainable location which would undermine the Council's spatial strategy for the location of housing in the rural area. Accordingly, the proposal would be contrary to Core Strategy Policies SS1, SS4, RA1, RA2, RA3, MT1, LD1 and SD1. These collectively seek, amongst other things, to promote rural housing in sustainable locations within or adjacent to main built up areas of settlements to reduce the reliance on travel by private car.

Character and appearance

19. The appellant has submitted a Landscape and Visual Appraisal (LVA). This states that the development would result in a 'major' landscape change that would result in an overall 'moderate adverse' effect on the landscape. There would be a loss of openness that the LVA considers could be mitigated by careful layout and planting such that the development would not compromise the character of the village or its landscape setting.
20. The site lies within the 'Principal Settled Farmlands' Landscape Character Assessment behind a dense hedge, which is a characteristic feature of the Herefordshire countryside. Historic field patterns are relatively intact, with orchard plantations maintained in some fields to the south. I saw from my site visit that there are open views of and across the site from the south on Munstone Lane near Larch Barn and from the public right of way (PROW) that passes to the north of Lyde Cross Tree Farm and rises up to the west. There is also a sizeable gap in the hedge by the agricultural buildings to the north. The three dwellings would therefore be prominent in the landscape and would represent substantial built form that would be an encroachment into the open countryside.
21. The existing timber post and rail fences around the site would be replaced by new native species hedgerows, and an orchard would be planted to the west, but this land does not form part of the appeal site. These would help mitigate against some of the visual intrusion eventually. However, they would take time to mature. Furthermore, the density and pattern of planting in fruit orchards, together with the limited height of the trees, would not provide substantial visual mitigation, especially when the trees are not in leaf. The orchard planting would not mitigate against the open views from the PROW or Munstone Lane.

22. In addition, a substantial length of the roadside hedge would have to be removed to facilitate the creation of a new access off Munstone Lane and provide the necessary visibility splays. The indicative plans show that new hedges would be planted on the visibility splays at an angle to the road. But this would erode a strong linear and characteristic feature of the Principal Settled Farmlands' Landscape Character and Herefordshire countryside.
23. I find the proposed development would represent an encroachment into the countryside that would harm the character and appearance of the rural area. Accordingly, it would be contrary to Core Strategy Policies SS6, LD1 and SD1. These seek, amongst other matters, to ensure that development conserves and enhance the landscape that contributes to the county's distinctiveness, in particular its settlement pattern and landscape.

Other considerations

24. The Council accepts that it cannot currently demonstrate a 5 year supply of deliverable housing land (5 YHLS) having 4.05 years. Therefore, in accordance with paragraph 11d) of the Framework, as this is an application for the provision of housing, the development policies which are most important for determining the application, namely RA2 and RA3, are considered out-of-date, albeit they are broadly consistent with the Framework as stated above. However, conflict with the development plan is given reduced weight as a result. I am therefore required, by paragraph 11d)ii, to grant planning permission 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 specific policies in the Framework indicate development should be restricted.
25. I attach significant weight to the shortfall of housing and under delivery over the last few years, evidenced by the appellant and acknowledged by the Council. Therefore, the provision of 3 dwellings would help address the shortfall and accord with the Government's objective of significantly boosting the supply of homes, especially in a context where there is no 5 YHLS. The Framework, at paragraph 68, also recognises that small sized sites can make an important contribution to meeting the housing requirements of an area. This would offer some social benefit.
26. The Framework's seeks to promote sustainable patterns of housing development in rural areas and to locate it where it will enhance or maintain the viability of rural communities (paragraph 78). The proposal would present limited opportunities to promote walking, cycling and public transport to be identified and pursued (paragraph 102) and that development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes (paragraph 103). The proposal does not offer this as future occupiers would be reliant on the car to access day-to-day services and facilities. Furthermore, there would be loss of a roadside hedge, which is a distinctive landscape features, which would be at odds with paragraph 170 of the Framework, which recognises the intrinsic character and beauty of the landscape. I find this weighs significantly against the environmental aims of the Framework.

27. I therefore find the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

Planning Balance

28. Planning law requires that planning applications are determined in accordance with the development plan unless material considerations indicate otherwise. My findings against the Framework as a whole are a material consideration in the overall planning balance.
29. There would be some economic and social benefits arising from the provision of 3 dwellings, in light of the Council not having a 5YHLS, and there being evidence of under delivery of housing. There would also be moderate economic uplift to the local economy during construction of only three dwellings through short-term employment and the purchase of building materials and longer-term local spend from future occupiers. And there would also be some environmental gains with the planting of an orchard, albeit outside the appeal site, and new boundary native species hedgerows
30. On the other side of the balance, three new dwellings in a countryside location not within an identified settlement, where future occupiers would be unduly reliant on the car, would undermine the Council's spatial strategy for the location of housing in the rural area. This is further endorsed by the emerging NDP and proposed settlement boundary for Munstone, which the appeal site lies outside of. Furthermore, the proposal would result in encroachment into the countryside and substantial removal of a roadside hedgerow, a characteristic feature of the landscape, which would harm the character and appearance of the rural area. I find this outweighs the harm arising from the Council's lack of 5YHLS.

Other Matters

31. A number of third parties raise a series of other concerns about the proposal. But in view of the reasons for refusal and my conclusions on the main issues there is no need for me to address these in the current decision.

Habitats Regulation Assessment (HRA)

32. The site falls within the catchment of the River Lugg, which is part of the River Wye Special Area of Conservation (SAC), a European designated site afforded protection. The river currently suffers from pollution as phosphate levels exceed conservation objectives. The proposal would involve a private foul water treatment system discharging to soakaway drainage fields.
33. Natural England (NE) issued a 'holding' letter, dated 22 July 2019 (Council's Appendix V), which explains the implications of a recent judgement² known as the Dutch Nitrogen case. Where a European conservation site is failing its water quality objectives due to water quality and is therefore in an 'unfavourable' position, there is no or very limited scope for the approval of additional damaging effects, i.e. development. Therefore, NE is unable to respond to casework in the Lugg catchment in the meantime while it seeks legal advice.

² Coöperatie Mobilisation Joined Cases C-293/17 and C-294/17

34. Herefordshire Council was the competent authority responsible for undertaking the HRA Assessment and must consult NE as a statutory consultee when carrying out an AA. The Council, in its letter to the Planning Inspectorate dated 26 September 2019, says it is seeking legal advice in light of the Dutch Nitrogen case. It can no longer be certain that all phosphate pathways to the River Lugg have been mitigated against as it did not assess the appeal proposal and HRA against new criteria. They consider a new HRA AA is required.
35. In determining this appeal, it would fall to me, as the competent authority in this case, to undertake the HRA AA. However, as I am dismissing the appeal for other reasons, I do not need to consider or pursue this matter further.

Overall Conclusion

36. Drawing all the above points together, the proposed development would not represent a sustainable or acceptable form of development in the open countryside. For the reasons set out above, having regard to all matters raised, I conclude the proposed development conflicts with the development plan read as a whole, and there are no material considerations to justify the development. The appeal should be dismissed.

K. Stephens
INSPECTOR