



Appeal Decision

Site visit made on 8 October 2019

by Thomas Hatfield BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th April 2020

Appeal Ref: APP/W1850/W/19/3231560

Land adj The Stockton Cross Inn, Kimbolton, Leominster

- 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 Border Oak Design & Construction Ltd against the decision of Herefordshire Council.
 - The application Ref 182967, dated 10 July 2018, was refused by notice dated 1 March 2019.
 - The development proposed is erection of a dwelling.
-

Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Border Oak Design & Construction Ltd against Herefordshire Council. This application is the subject of a separate Decision.

Preliminary Matter

3. The Council originally refused planning permission for a single reason relating to the effect of the development on the viability of The Stockton Cross Inn public house. However, it has since been confirmed that the appeal site and the pub are in separate ownerships. Moreover, the appellant states that there is no formal agreement to allow the site to be used for car parking by customers of the pub. The Council has since confirmed that it is no longer seeking to defend this reason for refusal. I further note that the operators of the public house did not object to the development on these grounds. Accordingly, I have not considered this matter in any further detail.

Main Issue

4. The main issue is the effect of the development on the River Wyre Special Area of Conservation (SAC).

Reasons

5. The appeal site is located within the catchment area for the River Lugg, which is a tributary of the River Wye. The River Lugg comprises part of the River Wyre SAC, which is recognised under the Conservation of Habitats and Species Regulations 2017 as being of international importance for the flora and fauna it supports. The River Lugg sub-catchment of the River Wyre SAC is currently

- failing its water quality objectives in relation to phosphate levels and is therefore classed as being in an 'unfavourable condition'.
6. A plan or project that is likely to have a significant effect on a European site (either alone or in combination with other plans or projects) is required to be subject to appropriate assessment before any permission is granted. In the absence of mitigation measures, and adopting a precautionary approach, discharges associated with the development may affect nutrient levels in nearby watercourses. This could further exacerbate the existing unfavourable condition in relation to water quality, and there is therefore a risk of a significant effect on the SAC.
 7. The River Wye Nutrient Management Plan (NMP) (2014) was prepared to enable economic growth in Herefordshire, whilst achieving and maintaining favourable conservation status for the River Wye SAC. However, recent case law¹ suggests that where a designated European site is failing its water quality objectives there is very limited scope for the approval of development that may have additional harmful effects. In this regard, recent advice from Natural England to the Council (dated 5 August 2019 and 30 August 2019) states that reasonable scientific doubt remains as to whether the NMP can provide appropriate mitigation. Accordingly, the council is unable to rely on the NMP to underpin a conclusion of no adverse effects on site integrity.
 8. Notwithstanding this advice, in relation to discharges to drainage fields, Natural England has indicated that if certain criteria are in place then phosphate would be unlikely to reach the river and there is therefore no pathway for impacts. These criteria are: "*The drainage field is more than 50m from the designated site boundary (or sensitive interest feature) and; The drainage field is more than 50m from any surface water feature e.g. ditch, drain, watercourse, and; The drainage field in an area with a slope no greater than 15%, and; The drainage field is in an area where the high water table groundwater depth is at least 2m below the surface at all times and; There are no other hydrological pathways which would expedite the transport of Phosphorus e.g. fissured geology, flooding, shallow soil*". A sixth criterion was later added requiring confirmation that sites are not within 30m of a Welsh Water sewer.
 9. A Technical Note² has been submitted in support of the appeal that assesses foul drainage collection and treatment options for the development. This states that the preferred option would be to discharge to a package treatment plant adjacent to the pub car park with the treated flows then discharged to a drainage field. However, the Technical Note acknowledges that further testing would be required to confirm that there are no fissures, that the ground water level is 2m below the surface, and to determine the actual percolation rate of the soil so that the correct size drainage field could be designed and installed. In the absence of this information, I do not have certainty that this option would achieve compliance with the required criteria.
 10. A second option would be to install a cess tank, on an interim basis, with all foul flows to be removed by tanker for treatment elsewhere. However, from the information before me, it is unclear where this treatment would take place. In this regard, Natural England have advised that security would be required

¹ Coöperatie Mobilisation for the Environment UA and Vereniging Leefmilieu v College van gedeputeerde staten van Limburg and College van gedeputeerde staten van Gelderland (Joined Cases C-293/17 and C-294/17)

² Hydro International (27 December 2019)

that foul waste would not be discharged to the River Lugg part of the River Wye SAC (including via Waste Water Treatment Works). This would require a planning obligation to be entered into. Moreover, the use of a cess tank, even on an interim basis, would conflict with Policy SD4 of the Herefordshire Core Strategy (2015) which states that cesspools will only be considered in 'exceptional circumstances'. Given that the feasibility of other options has not been fully explored, I am not persuaded that exceptional circumstances exist in this case.

11. A third option identified in the Technical Note would be to connect to an existing local private drainage network and treatment plant. The appellant states that Welsh Water has indicated they would not object to such a connection. However, no details are available about the performance of this plant and it is therefore unclear what effect this option would have on the River Lugg. In this regard, I note that Natural England state that it is likely that this would add additional phosphate to the Lugg catchment, as effluent is likely to be discharged to a water course. In the absence of further details, I am unable to conclude that this option would not result in additional phosphates being released into the catchment as a result of the development.
12. In light of the above, I do not have sufficient certainty that any of the 3 identified options would secure compliance with the required criteria and avoid adverse effects on the integrity of a European site. Accordingly, there is no basis to suppose that this matter can be dealt with by condition. I am therefore unable to conclude that the development would not add to the unfavourable phosphate levels within the River Lugg sub-catchment. No other alternative solutions have been put to me, and there are no imperative reasons of overriding public interest in this case that would justify allowing the appeal.
13. For the above reasons, I conclude that the development would result in harm to a designated nature conservation site via the discharge of phosphates into the River Lugg. It would therefore be contrary to the National Planning Policy Framework, which seeks to conserve and enhance the natural environment, and the Conservation of Habitats and Species Regulations 2017.

Conclusion

14. For the reasons given above I conclude that the appeal should be dismissed.

Thomas Hatfield

INSPECTOR