
Appeal Decision

Site visit made on 25 August 2020

by Stuart Willis BA Hons MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 September 2020

Appeal Ref: APP/W1850/W/20/3249019

Land to the north of Corner House Farm, Little Hereford. The site sits adjacent to the C1053 to the east and Temple Lane to the south

- 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 Mrs Kerby against the decision of Herefordshire Council.
 - The application Ref 182607, dated 13 July 2018, was refused by notice dated 23 October 2019.
 - The development proposed is creation of 4 no. new dwellings to meet local demand; 2 no. 2-bed single storey dwellings, 2 no. 3-bed 1.5 storey dwellings.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. I have taken the address and description of development above from the application form. While different to that on the decision notice, no confirmation that a change was agreed has been provided to me.

Main Issues

3. The main issues of the appeal are:
 - whether the proposed foul drainage system would be acceptable, with particular regard to development plan policy; and
 - the effect of the proposed development on the heritage significance of the Leominster to Stourport Canal (the Canal).

Reasons

4. Policy SD4 of the Herefordshire Local Plan Core Strategy 2011-2031 (Core Strategy) sets out foul drainage methods. Where connection to the wastewater infrastructure is not practical, the policy gives alternative options that can be considered. The policy states that the use of cesspools will only be considered in exceptional circumstances, and where it can be demonstrated that sufficient precautionary measures are in place to ensure no adverse effect upon natural drainage water quality objectives. As such, cesspools are a potential option under this policy. The supporting text for Policy SD4 goes on to say that where cesspools are deemed the only option that a rigorous assessment of potential effects will be required.

5. The Drainage Report and other evidence before me indicates that there are no public sewers in the area and a clay layer prevents infiltration on site. In addition, septic tanks have been investigated and found not to be suitable. Individual sewage treatment plants were initially proposed for foul drainage. However, during the course of the application this was altered to cesspools following comments from consultees, in part, due to the presence of the River Teme SSSI near the site.
6. I acknowledge there have been no objections from statutory consultees regarding the use of cesspools and that the Framework¹ states that the focus of planning policies and decisions should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions.
7. Nonetheless, there is limited information before me about precautionary measures. There is no detailed evidence relating to calculations of the size of the cesspools, their construction, control or operation. Other than the frequency of emptying them, it is unclear how the cesspools would be accessed and managed or where the contents would be disposed of and how this would be monitored.
8. The River Teme SSSI is close to the site and the evidence that has been provided acknowledges issues with the ground conditions for drainage. This further supports a precautionary approach with measures and a rigorous assessment of potential effects from the cesspools being needed.
9. Conditions have been suggested by the main parties to provide certain additional details of the foul drainage system. Nevertheless, without greater clarity of what would be proposed and required, I cannot be sure that planning conditions would be an appropriate mechanism to control the construction, operation, management and monitoring of the system. No alternative mechanism, such as a planning obligation, has been presented to secure these objectives.
10. Whether or not the individual considerations of the proposal constitute 'exceptional circumstances', the evidence before me has failed to demonstrate that the scheme would have no adverse effect on natural drainage water quality objectives due to insufficient details of precautionary measures. Furthermore, to my mind, that other foul drainage options have been ruled out does not constitute a rigorous assessment of the effects of using cesspools themselves. Consequently, the proposal would fail to accord with Policy SD4 of the Core Strategy.

Heritage Significance

11. The appeal site is an undulating field that slopes up towards what remains of a section of the Canal that once extended over several miles. The shape of the embankment is less pronounced towards the roadside boundary of the appeal site with the plateau atop it primarily only visible in views from above. A plateau and embankment are also present within the garden of the property across the road from the site. Close range views of the site are limited by mature landscape features, although glimpses of it and the Canal are possible from some nearby properties and along the lane to the bottom of the field.

¹ National Planning Policy Framework

12. I have not been provided with evidence to show that the Canal is included either in the Brimfield and Little Hereford Neighbourhood Development Plan or the Herefordshire Historic Environment Record (Sites and Monuments Record) as a heritage asset. Nevertheless, I have considered the evidence presented, including the appellant's Heritage Statement and made my own observations on site.
13. The embankment forms part of the overall Canal feature and its presence reliant on the construction of the Canal. Given its historical link to the area and its influence over the wider landscape I consider that the Canal is a non-designated asset. The significance of the Canal lies, in part, in it being an example of the ambition of engineering at the time of its construction and how improvements to transport links between parishes were sought.
14. The Framework states that heritage assets are an irreplaceable resource that should be conserved in a manner appropriate to their significance. When considering the effect of a proposed development on the significance of a non-designated heritage asset, the Framework advises that a balanced judgement will be required having regard to the scale of any harm, or loss, and the significance of the heritage asset.
15. There would be some works to the embankment, which forms part of the Canal, altering its appearance. Notwithstanding this, a considerable section of the original form of the Canal within the wider field would not be physically altered. Furthermore, there is no uniformity to the embankment of the Canal, even within the field where the appeal site is located.
16. The area where the proposed works would take place is more gently sloping than elsewhere in the field. This results in the Canal feature at that point being far less noticeable than the steeper areas to the rear of the site. Moreover, the plateau at the top of the bank would remain and the alterations would steepen the slope, making it more defined. Furthermore, the element of the asset that would be physically affected would be minor in nature in relation to the Canal overall that would still remain identifiable elsewhere.
17. The context of this part of the Canal would also be affected due to the introduction of the dwellings and associated development. From the evidence before me and my observations on site, parts of the Canal are already located within or adjacent to residential gardens. Consequently, the presence of development in close proximity to the Canal would not be unexpected.
18. Therefore, the proposal would not harm the heritage significance of the Canal and would accord with Policy LD4 of the Core Strategy and the Framework where they seek to conserve heritage assets in a manner that is appropriate to their significance.

Planning Balance

19. The Council have acknowledged that they are currently unable to demonstrate a 5-year supply of housing land. Therefore, the presumption in favour of sustainable development outlined in Paragraph 11d)ii of the Framework is engaged.
20. The proposal would align with the aims of the Framework to significantly boost the supply of housing and that small site can make an important contribution to meeting the housing requirement, often being built-out relatively quickly. It

also encourages the optimal use of sites where there is a shortage of land for meeting identified housing needs.

21. I acknowledge the appellant's evidence regarding the degree of housing supply shortfall, as well as factors that have constrained past delivery rates, and could affect future delivery across the Council area as a whole. Furthermore, I note the Council's altered stance on the progress made towards growth targets in the Brimfield and Little Hereford Neighbourhood Area. Even if I were to agree with these findings, the scheme would be for only 4 dwellings. Notwithstanding this, in this context, the contribution towards housing supply and mix would attract moderate weight. In the absence of compelling evidence to the contrary, the proposal would have limited effect on house prices. Therefore, this attracts little weight.
22. There would be benefits to the local economy arising from spending and jobs associated with the construction and occupation of the properties in terms of support to local services and facilities, the new homes bonus and tax revenue. Moreover, the site would be accessible to some public transport, services and facilities. These factors weigh in favour of the scheme. However, as with biodiversity enhancements, given the scale of the development, these factors attract limited weight.
23. While I am aware of third-party objections, the Council have not included refusal reasons in relation to living conditions, highway matters or effects on the character and appearance of the area outside of the Canal. In any event, the absence of identified harm would be a neutral factor.
24. I have found that the appeal scheme would potentially cause considerable harm with regard to wastewater treatment and water quality. Therefore, it would fail to accord with the Framework where it states decisions should prevent new development from contributing to, being put at unacceptable risk from, or being adversely affected by, amongst other things, water pollution. I afford this conflict substantial weight.
25. Consequently, the adverse impact of the development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole and Policy SS1 of the Core Strategy.

Conclusion

26. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that applications for planning permission, and therefore appeals, must be determined in accordance with the development plan, unless material considerations indicate otherwise.
27. The proposal would not harm the non-designated heritage asset. Nevertheless, I have found that the appeal scheme would conflict with development plan policy and the Framework as it could result in considerable harm with regard to wastewater treatment and water quality. Even when taken cumulatively, the other material considerations do not outweigh this.
28. I appreciate that the application was recommended for approval by officers. Nevertheless, Members ultimately came to a different conclusion, as have I based on the evidence before me.

29. For the reasons given above, and having regard to all matters raised, I conclude that the appeal should be dismissed.

Stuart Willis

INSPECTOR