
Appeal Decisions

Site visit made on 13 October 2020

by L Page BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th November 2020

Appeal A Ref: APP/W1850/W/20/3255238

Steepways, St Wolstons Road, Welsh Newton NP25 5RT

- 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 Ms. H Boughton against the decision of Herefordshire Council.
 - The application Ref 191286, dated 30 May 2019, was refused by notice dated 22 January 2020.
 - The development proposed is two dwellings.
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Appeal B Ref: APP/W1850/W/20/3255239

Steepways, St Wolstons Road, Welsh Newton NP25 5RT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Ms. H Boughton against Herefordshire Council.
 - The application Ref 200954 is dated 20 March 2020.
 - The development proposed is two dwellings.
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Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed, and planning permission for two dwellings is refused.

Procedural Matters

3. The quantum of development under Appeal A was amended during the respective application from, 3 dwellings, to 2 dwellings. I have amended the description of development and dealt with the appeal accordingly.
4. The Council failed to determine the application under Appeal B within the timescales required, but within its statement of case has confirmed officers would have made a favourable recommendation to planning committee. Notwithstanding the Council's position, in light of other interested party comments and statutory duties, I have assessed the appeal on the basis of the issues at hand.
5. The site is located within the zone of influence of the River Wye Special Area of Conservation (SAC) and the proposal would generate likely significant effects. As the competent authority, under Regulation 7 of the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitat Regulations), I am required to conduct an appropriate assessment under Regulation 63 as part of my decision.

Main Issues

6. The main issues in both appeals are the effect of the proposal on the:
- (a) character and appearance of the area; and
 - (b) River Wye SAC.

Reasons

Character and Appearance

7. The site is located within the small settlement of Welsh Newton and comprises an open field in equestrian use. It is on the corner of St Wolston's Road and a private access track. The site comprises two large beech trees with mature hedgerows along its frontage but otherwise exhibits a degree of openness that lends itself to the sparsely populated character and appearance of the settlement, which has an irregular pattern of development, scattered amongst a patchwork of open fields.
8. Welsh Newton and Llanrothal Neighbourhood Development Plan 2019 (NDP), under Policy WLN4, states that new development should enhance and reinforce the local distinctiveness of the area and proposals should show clearly how the general character, scale, mass, and layout of the site, building or extension fits in with or enhances the grain of the surrounding area. It goes on to require, in prescriptive terms, that ridge heights should not exceed 6m and bedrooms should be limited to three.
9. Under Appeal A, the proposal would comprise two dwellings of 4 bedrooms each, with ridge heights measuring 7.4m. This would be in excess of the prescriptive requirements of Policy WLN4 of the NDP. The policy seeks to limit the height of new development in order to manage the landscape impact on the local area. Pursuant to this protection, and from visiting the site, I can see the rationale in limiting ridge height and overall size of the dwellings in order to limit the bulk of emerging built form and preserve the relative openness and sparsely populated character and appearance of the settlement. Under Appeal B, the proposal would comprise two dwellings of 3 bedrooms each, with ridge heights measuring 6m. Accordingly, the proposal would meet the prescriptive criteria under Policy WLN4 of the NDP and would preserve the relative openness and sparsely populated character and appearance of the settlement by controlling the bulk of the emerging built form.
10. Overall, Appeal A would harm the character and appearance of the area and conflict with Policies SS6, RA2 and SD1 of the Herefordshire Local Plan – Core Strategy and Policies WNL4 and WNL5 of the NDP. Appeal B would preserve the character and appearance of the area in accordance with those aforementioned development plan documents and policies, which among other things, seek to ensure that proposals are appropriately designed and respond to the local context.

River Wye SAC

11. The site is located within the River Wye SAC's zone of influence, specifically relating to its drainage catchment. Given the lack of public sewerage system serving the site, the unmitigated discharge of private sewerage and surface water within the SAC's drainage catchment could provide a pathway to generate likely significant effects on water quality.

12. The Council, in their role as competent authority when dealing with the original applications at the site, pursuant to Regulations 7 and 63 of the Habitat Regulations, carried out an appropriate assessment and consulted Natural England in their role as the appropriate nature conservation body.
13. The Council's appropriate assessment, dated 28 July 2020, established that the discharge of private sewerage could be adequately mitigated by way of planning conditions, which would require treatment before being allowed to soakaway, along with surface water, into land under the appellant's control and eventually into the wider catchment. Natural England raised no objection to this approach, in terms of mitigating adverse effects on the integrity of the SAC.
14. Consequently, the appropriate assessment returned a conclusion of no likely significant effects on the basis of several precise planning conditions. In principal, the Council's approach is generally sound, and I would be satisfied that I could adopt the findings of its appropriate assessment for the purposes of discharging my own duties as competent authority under the appeal.
15. However, one condition would require that a legal agreement was entered into and submitted to and approved by the Council in order to secure the shared management of the sewerage system in perpetuity.
16. I am mindful of Planning Practice Guidance, which is clear that in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate, where there is clear evidence that the delivery of the development would otherwise be at serious risk. However, there is no evidence that the case in front of me represents an exceptional circumstance, and that a condition could be used in lieu of an appropriately executed planning obligation.
17. Consequently, as there is not an executed planning obligation in front of me, the proposal cannot demonstrate that it would secure the required mitigation in perpetuity. Accordingly, there are residual risks that could give rise to significant adverse effects on the integrity of the SAC.
18. There is no evidence that there are alternative solutions, imperative reasons of overriding public interest or that compensatory measures would be provided which maintain the ecological coherence of the Natura 2000 network. Accordingly, the proposals, under both Appeal A and Appeal B, conflict with the requirements of the Habitat Regulations and permission must not be granted.

Conclusion

19. For the reasons given, Appeal A is dismissed, and even though Appeal B is acceptable in relation to effects on character and appearance, it must be dismissed in relation to uncertainty relating to mitigating significant adverse effects on the integrity of the River Wye SAC.

Liam Page

INSPECTOR