



Appeal Decision

Site visit made on 18 August 2020

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2020

Appeal Ref: APP/W1850/W/20/3247476

Broad Oak Meadow, Broad Oak, Herefordshire HR2 8DZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission in principle.
 - The appeal is made by Mr Len Farr against the decision of Herefordshire Council.
 - The application Ref 191775, dated 17 May 2019, was refused by notice dated 29 October 2019.
 - The development proposed is described as: Application for Permission in Principle for the erection of 2 no. dwellings.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Len Farr against Herefordshire Council. This application is the subject of a separate Decision.

Main Issues

3. In light of the main parties' submissions, the main issues are: a) Whether permission in principle can be granted for the development sought under application reference 191775; and, b) in the event that permission in principle can be granted for the development sought, whether this development would be in a suitable location for housing, in respect of housing growth and the character of the area, with regard to local and national planning policies.

Reasons

Permission in Principle

4. The appeal site is located within the catchment of the River Wye which is part of the River Wye Special Area of Conservation ('SAC') which is a European designated site and is protected by the Conservation of Habitats and Species Regulations 2017 ('Habitats Regulations'). In order for development to be acceptable, these regulations require it to be demonstrated that it will have no likely significant effect on the River Wye SAC, either alone or in combination with other proposals. If it cannot, measures must be proposed to remove the impact, or the proposal should be refused.
5. The proposal is for permission in principle ('PiP'), as provided for in the Town and Country Planning (Permission in Principle) Order 2017 ('the Order 2017'). The Planning Practice Guidance ('PPG') advises that this is an alternative way of

obtaining planning permission for housing-led development which separates the consideration of matters of principle from the technical detail. This appeal relates to the first of these two stages.

6. The Order 2017 and PPG make clear that a local planning authority ('LPA') may not grant PiP in relation to development which is 'habitats development'.
7. The PPG defines habitats development as being broadly development which is likely to have a significant effect on a qualifying European site (either alone or in combination with other plans or projects). If the LPA is satisfied, after taking account of mitigation measures in the appropriate assessment ('AA') and concluding that the development will not adversely affect the integrity of the protected site, then, it can grant PiP.
8. The appellant appears to accept that with no mitigation the scheme would harm the SAC. Consequently, on-site mitigation measures were proposed in the form of cesspools, that if suitably managed could ensure there was no foul water from the development harming the River Wye SAC. He submits that it is possible to screen the development out as being habitats development, on the basis of the submitted drainage solution. Further, that the mitigation measures can be secured through by a condition at the Technical Details Consent ('TDC') stage. The appellant also asserts that if effects of the scheme's drainage, or any other part of the scheme for that matter, were not identifiable until the TDC stage, the LPA would be entitled to carry out an appropriate assessment of the development at that point. Adding that, the LPA would not therefore be unlawfully granting PiP if the application were approved.
9. Whilst Section 5B(2) of the Order 2017, sets out provisions for adopting a screening opinion for Environmental Impact Assessment development, I have not been directed to similar provisions for habitats development in the legislation.
10. Nevertheless, as the decision maker and competent authority, I must consider mitigation measures intended to avoid or reduce the harmful effects on a protected site within the framework of an AA. I have noted the appellant's proposed on-site mitigation measures. However, any measures used to inform the decision about the effects on the integrity need to be sufficiently secured and likely to work in practice. In this case whilst the appellant has submitted some details of the proposed drainage, insufficient evidence has been submitted with the appeal to permit me to undertake the AA and assess the adequacy and effectiveness of the proposed mitigation, particularly in relation to its combination effects with other plans or projects. Moreover, conditions cannot be imposed on a PiP. Consequently, I cannot be satisfied that the development will not affect the integrity of the protected site and so, mindful of the advice above, the proposal would be habitats development.
11. Notwithstanding that the PiP consent procedure is a two-stage process, having found that the proposal is habitats development, I cannot grant PiP and the proposal therefore cannot proceed to the TDC stage. As such, the proposed mitigation measures cannot be secured through a condition at the TDC stage.
12. In light of the above reasons, PiP cannot be granted for the development sought under application reference 191775, as this would be habitats development in the context of the Habitats Regulations and guidance contained within the PPG.

Location of development

13. As the proposal is not considered a form of development for which PiP can be granted, no further assessment of the proposal in relation to the suitability of its location for housing is required as part of this appeal.

Conclusion

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

M Aqbal
INSPECTOR