



Appeal Decision

Site visit made on 27 October 2020

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 December 2020

Appeal Ref: APP/W1850/W/20/3255233

Bull Orchard, Shelwick, Hereford HR1 3AL

- 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 Patrick Jenkins against the decision of Herefordshire Council.
 - The application Ref 192785, dated 29 July 2019, was refused by notice dated 14 January 2020.
 - The development proposed is residential development for 4 properties.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The application is in outline with all matters reserved for future consideration. I have determined the appeal on this basis.
3. Since the application was determined by the Council, the Holmer and Shelwick Neighbourhood Development Plan ('NDP') has progressed and following a referendum was made on 11 March 2020. It now forms part of the development plan and I have determined the appeal accordingly.

Main Issues

4. The main issues are the effect of the proposal on the River Wye Special Area of Conservation ('SAC'); and, whether the appeal site is in a suitable location for new housing development, having regard to local policies.

Reasons

River Wye SAC

5. The appeal site is located within the River Lugg sub-catchment of the River Wye SAC, a European designated site which 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.
6. The National Planning Policy Framework ('the Framework') confirms that Special Areas of Conservation should be given the same protection as habitats sites and that the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a

habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment ('AA') has concluded that the plan or project will not adversely affect the integrity of the habitats site.

7. This River Wye SAC is currently considered to be failing its conservation objectives. The nature of the proposed development (when unmitigated) is considered to result in a 'likely significant effect' on the integrity of the site as there will be an increase in phosphates being discharged as part of any foul water drainage. This matter is set out in detail in the Council's Position Statement - Development in the River Lugg Catchment Area (March 2020). This document outlines an interim approach, which includes five criteria for drainage arrangements where there would not be a likely significant effect.
8. 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.
9. The appellant has submitted three drainage options. The information for these comprises a brief outline of each, as set out in the submitted 'Drainage Strategy' along with some technical specifications. In particular, the appellant has not definitively stated, which of these options is to be utilised in the development. As such, 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.
10. In light of the above, I do not have sufficient certainty that any of the identified options would secure compliance with the required criteria¹ 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. I, therefore, conclude that the development would result in harm to the River Wye SAC via the discharge of phosphates into the River Lugg.
11. For the above reasons, the proposal is in conflict with Policies LD2, SS6, SD4 of the Herefordshire Local Plan-Core Strategy (CS) and Policy HS5 of the NDP. Together, these Policies do not permit development that would harm environmental assets including sites of European importance or undermine water quality objectives. Also, because the proposal conflicts with specific national policy in relation to habitats sites, it is not supported by Policy SS1 of the CS.

Location of development

12. In terms of new housing provision across the county, Policy RA1 of the CS identifies that Herefordshire Rural areas will need to find a minimum of 5,300 new dwellings between 2011 and 2031 to contribute towards the county's housing needs. These dwellings are to be broadly distributed across the seven Housing Market Areas (HMAs). The areas of Munstone and Shelwick lie within the Hereford HMA and are listed as being 'other settlements where proportionate housing is appropriate'.

¹ As set out in the Council's Position Statement - Development in the River Lugg Catchment Area (March 2020)

13. Policy RA2 of the CS states that the minimum growth target in each rural HMA will be used to inform the level of housing development to be delivered in the various settlements. Further, that Neighbourhood Development Plans will allocate land for new housing or otherwise demonstrate delivery to provide levels of housing to meet the various targets.
14. Policy HS2 of the NDP identifies settlement boundaries, and states that new housing development to meet local needs will be supported within the settlement boundaries of Munstone (Figure 7) and Shelwick (Figure 8) when it is appropriate and proportionate to the size, role and function of the villages. Further, that new housing development will be supported adjacent to and outside the settlement boundaries of Munstone and Shelwick where it delivers rural exceptions housing in accordance with CS Policy H2 and where it is evidenced through a local housing needs assessment, along with satisfying other criteria set out under Policy HS2 of the NDP.
15. The appeal site lies outside of the identified settlement boundary for Shelwick and therefore, for the purposes of the development plan forms part of the countryside. Furthermore, the appeal proposal is for open market dwellings, which would not accord with the rural exceptions criteria under Policy H2 of the CS.
16. Also, Paragraph 4.8.23 of the CS, explains that outside of the settlements new housing will be restricted to avoid unsustainable patterns of development and to proposals which meet the criteria listed in Policy RA3 (Herefordshire's countryside) of the CS. The evidence presented does not show that the proposal would otherwise fall within any of the exceptions listed in Policy RA3 of the CS.
17. Consequently, the appeal site is not in a suitable location for new housing development. The proposal therefore conflicts with Policies RA1, RA2 and RA3 of the CS, along with Policy HS2 of the NDP. Due to the conflict with the development plan, the proposal is also not supported by Policy SS1 of the CS.
18. In its second reason for refusal, the Council has also cited CS Policies SS4, SS6, LD1 and SD1. However, based on the Council's evidence, it has not been clearly shown that new housing development at the appeal site would be in conflict with these policies.

Other Matters

19. The Council has acknowledged that it currently is unable to demonstrate a 5-year supply of housing land, with the current level of housing being 3.69 years. Therefore, Paragraph 11d) of the Framework is engaged. However, because the proposal would harm the integrity of a habitats site, this provides a clear reason for refusing the development proposed and therefore the presumption in favour of sustainable development does not apply.
20. Matters relating to a previously submitted application for Permission in Principle at the appeal site, the conduct of the Council during the processing of the planning application which is the subject of this appeal and the Neighbourhood Development Plan process are not matters that affect my consideration of the proposal on its planning merits. The appellant has identified other schemes for residential development in the vicinity of the appeal site and also sought to highlight alleged inconsistencies in Natural England's consultation responses on

planning applications. Nevertheless, I have insufficient information in respect of these to draw any meaningful conclusions. In any event, each application is determined on its merits and any decision should be made with regard to the development plan at the time of the decision.

21. Although there may be some ecological and biodiversity enhancements arising from the proposal, these do not outweigh the harm I have identified and overall conflict with the development plan.
22. It would appear that based on a letter dated 25 September 2020, from the Planning Inspectorate's EIA and Land Rights Advisor, the appellant is inferring that the Council's first reason for refusal in respect of the River Wye SAC has been resolved. However, this letter deals with a separate matter, specifically that the proposal is not Environmental Impact Assessment development.

Conclusion

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

M Aqbal
INSPECTOR