



Appeal Decision

Site visit made on 27 October 2020

by **M Aqbal BA (Hons) DipTP MRTPI**

Decision date: 30 December 2020

Appeal Ref: APP/W1850/W/20/3255195

Land adjacent to The Croft, Lower Derndale, Westhope HR4 8BS

- 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 Mr and Mrs Pullen-Warner against the decision of Herefordshire Council.
 - The application Ref 200969, dated 20 March 2020, was refused by notice dated 22 June 2020.
 - The development proposed is construction of a new two bedroom bungalow with new vehicular access.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The appellants have expressed a preference for the appeal to be determined on the basis of an alternative design and layout for the proposed dwelling. However, the Procedural Guide, Planning Appeals-England, states that the appeal process should not be used as a mechanism to evolve a scheme. Accordingly, I have determined the appeal on the basis of the original plans and drawings submitted with planning application Ref 200969.

Main Issues

3. The main issues are a) the effect of the proposed development on the character and appearance of the area; b) whether the proposed dwelling would provide satisfactory living conditions for its future occupiers; and, c) the effect of the proposed development on the River Wye Special Area of Conservation ('SAC').

Reasons

Character and appearance

4. The appeal site forms part of the relatively generous garden to a detached dwelling ('The Croft') within the settlement of Westhope.
5. Westhope comprises predominantly detached properties in an assortment of sizes located within plots of different dimensions, which contribute to the diverse spacing between dwellings. The existing pattern of development is predominantly linear with dwellings typically arranged in a single plot depth, close to the adjacent highway with direct access from it. Nonetheless, there are variations to this, including nearby dwellings that are set-back further away from the highway, such as Two Chimneys and New House. Properties in

Westhope are also in a range of architectural styles, which vary considerably, these variations include detailing, materials and roof forms. Cumulatively, all of the above factors, result in a diverse character and appearance, which defines the distinctive quality of the area.

6. The proposed plot is to be directly accessed off the highway and would be located between The Croft and a neighbouring dwelling ('The Firs'). The latter is located slightly deeper within its plot. Consequently, although the proposed dwelling would be set back, beyond the rear elevation of The Croft, it would not extend unreasonably beyond The Firs, and given the varied pattern of development in the area, the proposed arrangement would be acceptable.
7. Although the proposed dwelling would occupy a sizeable footprint, this is partly dictated by the need for the property to be wheel-chair accessible. In any event, the single-storey design of the dwelling and its largely hipped roof form, would reduce its overall bulk. Moreover, the spacing achieved from neighbouring dwellings would not be uncharacteristic for the area. This, along with the creation of a generous frontage for the new dwelling would support the 'loose-knit' composition of Westhope and mitigate the overall scale of the new dwelling, when viewed from the highway.
8. The proposed dwelling would be of a simple form, incorporating building materials found locally, whilst its recessed garage and rendered bay windows would add some architectural interest to its design. Overall, the design of the proposed dwelling would complement the varied local vernacular. The appellants also intend to retain some of the existing landscaping, which could be secured by a condition if the appeal were to succeed. This would further enhance the setting of the new dwelling.
9. For the above reasons, the siting, scale and design of the proposed dwelling would contribute to local distinctiveness. The proposed development would therefore not harm the character and appearance of the area. As such, I find no conflict with the design aims of Policies RA2, SD1 and LD1 of the Herefordshire Local Plan-Core Strategy ('CS') and Policies PG6 and PG9 of the Pyons Group Neighbourhood Development Plan ('NDP').

Living conditions

10. Due to the siting of the proposed dwelling, views towards its principal elevation which includes windows serving bedrooms, would be available from the rearward facing, first-floor balcony at The Croft. Nonetheless, because of the considerable separation achieved between these and the general orientation of the proposed bedroom windows, away from the balcony, the proposed siting arrangement would not result in any unacceptable loss of privacy.
11. Consequently, there would be no harm to the living conditions of the occupiers of the proposed dwelling. Therefore, I find no conflict with Policy SD1 of the CS and Policy PG6 of the NDP, which amongst other things seek to safeguard residential amenity of proposed residents.
12. The Council's second reason for refusal also refers to Policy PG7 of the NDP. This Policy however relates to development in areas other than Westhope and therefore is not relevant to the proposal.

River Wye SAC

13. 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.
14. 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.
15. The 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.
16. 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.
17. The application was not supported by a detailed drainage scheme, other than a copy of email correspondence from the appellants' drainage contractor, which was provided to the Council. This confirms that soil porosity tests had been carried out at the site which showed that ground conditions are unsuitable to support the installation of a drainage field due to low permeability and suggests the use of a soakaway mound.
18. However, the abovementioned five criteria are largely predicated on the use of a drainage field, which therefore casts doubt on a suitable solution being found. Furthermore, in the absence of any technical information on the proposed soakaway mound, I cannot be certain of its suitability. 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.
19. In light of the above, I do not have sufficient certainty that the suggested drainage solution 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 confirm that the proposal would not add to the unfavourable phosphate levels within the River Lugg sub-catchment. Accordingly, I conclude that the proposed development would result in harm to the River Wye SAC via the discharge of phosphates into the River Lugg.

20. The appellants have referred to the approval of budgets for the Council to purchase land for reed developments in respect of the River Lugg and also state that a planning application for a dwelling in Westhope was approved, despite this not meeting all of the aforementioned five criteria. Nevertheless, there is insufficient information before me on these matters, to alter my findings in respect of the effects of the appeal scheme on the River Wye SAC.
21. For the above reasons, the proposal is contrary to CS Policies LD2 and SD4. Together, these do not permit development that would harm environmental assets including sites of European importance or undermine water quality objectives.

Other Matters

22. 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. Therefore, and irrespective of some local support for the proposal, the presumption in favour of sustainable development does not apply.
23. The proposed dwelling is intended to provide accommodation for a disabled person. In my assessment of this aspect of the appeal I am mindful of the Public Sector Equality Duty (PSED) arising from section 149 of the Equalities Act 2010 (the Act). The Act requires me to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Amongst other things, for the purposes of the Act protected characteristics include disability.
24. Nevertheless, it does not follow from the PSED that the appeal should succeed. In particular, because there is nothing before me to indicate why another form of development could not provide for the appellants' needs without causing harm to the River Wye SAC. Matters relating to how the Council processed the appellants' planning application are not for this appeal.

Conclusion

25. I have found that the proposed development would not harm the character and appearance of the area or the living conditions of its future occupiers. On the other hand, it would harm the River Wye SAC. For this reason and the overall conflict with the development plan, I conclude that the appeal should be dismissed.

M Aqbal
INSPECTOR