



Appeal Decision

Site visit made on 12 January 2021

by B Davies MSc FGS CGeol

an Inspector appointed by the Secretary of State

Decision date: 8 March 2021

Appeal Ref: APP/W1850/W/20/3259726

Land adjacent to Walney Lane, Aylestone Hill, Hereford, HR1 1JD

- 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 outline planning permission.
 - The appeal is made by Mr and Mrs Holt against Herefordshire Council.
 - The application Ref 202315 is dated 17 July 2020.
 - The development proposed is a 2-storey 4-bedroom dwelling with associated landscape to create a green buffer zone adjacent to Walney Lane.
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Decision

1. Planning permission is refused, and the appeal is dismissed.

Procedural matter

2. The application was submitted in outline form with all matters reserved except for layout and landscaping. This means that access, appearance and the scale of the development are all reserved matters.

Main issues

3. The Council has provided the reasons on which it would have based its refusal had it determined the applications within the statutory period. Based on these and the evidence before me, I consider the main issues to be the effect of the development on:
 - the character and appearance of the landscape;
 - biodiversity, including nearby Sites of Special Scientific Interest (SSSI), the River Wye Special Area of Conservation (SAC) and protected species.

Reasons

Character and appearance of the landscape

4. The appeal site is a sloping arable field located towards the top of a ridge, overlooking the flat expanse of the River Lugg meadows below. A public right of way (PROW), runs along the inside boundary of the site and is a well-used route for accessing the meadows. The site is at the end of Walney Lane, an unclassified road, which is used to access a small number of houses and Walney Hill Farm. The Rhea stream, a tributary of the River Lugg, runs adjacent to the lowest site boundary.

5. The steep, north-east facing slopes of Aylestone Hill are classified as the undeveloped, rural 'Principal Settled Farmlands' landscape character type, and the area is defined as having 'high' landscape sensitivity¹. The River Lugg Meadows are one of the most extensive, traditionally managed hay meadows in the country and have remained largely unchanged since medieval times. The surrounding undeveloped slopes are a key element in the setting of Hereford when approached across Lugg Meadows, giving a sense of rural seclusion.
6. The proposal would introduce a 2-storey house to the north west corner of the site. The lower, larger part of the site would be retained as a meadow, albeit with a copse of nearly 700 trees planted across the middle. The boundary with the Rhea would be supplemented with native trees and a further 500 trees would be introduced alongside the PROW to provide screening. I am mindful that it will take many years for the trees to mature, and that the effects on the landscape prior to the trees reaching their full potential are also relevant.
7. There is considerable intervisibility between the site and Lugg Meadows, as far as Worcester Road, which runs approximately 750 m to the north east. I note that the landscape assessment² states that the site is only visible along a narrow cone from the meadows. However, this is not borne out in the associated drawing³, nor is it the experience as described in numerous third party representations from regular users of Lugg Meadows, nor is it my experience of visiting the area.
8. The proposal would interrupt the characteristic open setting of the meadows by introducing development to the surrounding slopes. It would harmfully change the setting from agricultural to a combination of domestic and woodland, neither of which are characteristic of this landscape type.
9. The appellant suggests that the development would appear as principal settled farmland. I do not find this to be the case. Before the trees and hedging had matured, it would clearly be a modern domestic property with associated domestic paraphernalia, noise and light. Once the screen had grown, the number of trees would not be typical of settled farmland, nor characteristic of the open arable land of the area.
10. The site is separated by a field from the edge of the built-up area and I consider retention of this buffer critical for protection of the landscape. The proposed encroachment into this would therefore be harmful. The site is also at a notably lower elevation than houses at the top of the ridge and for this reason, would harmfully intrude on views from Lugg Meadows. I acknowledge that Walney Hill Farm is in a similar position on the slope, but this is a legitimate part of the rural landscape, given its close historical association with the meadows, and therefore does not set a precedent.
11. The PROW at this location is sensitive to change because it frames the point of transition between the built-up area and rural landscape, providing sweeping views across Lugg Meadows. I consider that in the shorter term views of the proposed house would intrude into this view. The tree copse and hedged boundary would lead to a significant and harmful loss of openness and view, in the longer term. The appellant considers that the proposal would improve the

¹ Urban Fringe Sensitivity Analysis (January 2010), Herefordshire Council

² 11124_R01_Assessment of Objections Relating to Landscape Concerns (undated, but site visited 2017), Tyler Grange

³ Landscape opportunities and constraints plan (August 2017), Tyler Grange

experience of visitors using the PROW because of the naturalisation of the area. However, numerous third parties including the CPRE have recorded their enjoyment of the characteristic openness of the track, and loss of this is not desirable.

12. It is proposed to 'restore' the landscape, particularly in respect of reinstated hedged boundaries. However, no analysis regarding the 'ideal' has been provided, so I am unable to assess the success of the scheme in this regard. Native trees and hedging would screen the conifer boundaries associated with Walney Hill Farm, which would confer a minor benefit in landscape terms. In addition, the appellant suggests that the screening would soften the edge of Hereford. Given the difference in both distance and height between the appeal site and the development behind, which appeared to me to be reasonably well screened already, I do not find this compelling.
13. It has been brought to my attention that Defra's 'Magic map' defines the north western side of the site as a 'built up area'. However, this map is on a coarse grid and must be put in context with my observations of the site on the ground. The site is clearly not in a built-up area.
14. The proposal would cause harm to the character and appearance of the landscape. The proposal is therefore in conflict with Policy LD1 of the Herefordshire Local Plan Core Strategy 2011 – 2031 (October 2015) (CS), which requires that development should conserve and enhance the natural and scenic beauty of important landscapes and features. It is also in conflict with Policy SS6 of the CS, which requires that environmental assets be conserved and enhanced where they contribute to the county's distinctiveness, in particular its settlement pattern and landscape.
15. It is not in dispute that the local planning authority cannot demonstrate a deliverable 5-year supply of housing sites. This means that the most important policies for determining the application are deemed to be out-of-date. It is therefore necessary for me to assess the proposal against the up to date policies in the National Planning Policy Framework (2019) (Framework). The development would conflict with the requirement to protect and enhance valued landscapes in paragraph 170 of the Framework and paragraph 127, which requires that development is sympathetic to local character and history, including the landscape setting.

Biodiversity

16. The Lugg and Hampton Meadows SSSI and associated Rhea stream are immediately below the site. The SSSI is a nationally important site for its species-rich neutral grassland communities, with rare MG4 and MG5 National Vegetation Classification (NVC) types. The River Lugg SSSI, and associated SAC, runs through the meadows and downstream of the site. These are protected for their aquatic interest, including otters⁴.
17. Lugg Meadows is a designated Special Wildlife Site. This is an area of substantive nature conservation value, which can make an important contribution to ecological networks⁵. In addition to uncommon plants, the meadows can support large numbers of birds when flooded in winter. Broadlands Local Nature Reserve is 50 m to the south and is likely to provide

⁴ River Lugg SSSI citation (notification date 2 February 1995)

⁵ Paragraph: 013 Reference ID: 8-013-20190721, revision date 12 July 2019

habitat for protected species. There are 'significant and multiple records' of protected species in the area according to the Council, including fish, birds, newts, reptiles and bats. Representations from third parties indicate that there are also owls in the vicinity of the site. Plantlife, who have managed the Lugg Meadow for over 20 years, describe the land adjacent to the appeal site as an area of 'exceptionally high ecological sensitivity'.

18. Otters are associated with tributaries of the River Lugg SSSI and the Council's ecologist states that they can be found up to 2 km from a watercourse, a distance which would include the site. The ecological survey does not contain an assessment of how otters may use the site, the boundary hedge and the Rhea, as required by Natural England's standing advice⁶. In addition, a range of bat species will likely commute and forage over the eastern boundary scrub and stream. The site was not visited during the bat's active season, as per the standing advice⁷. For these reasons, it is not possible to confirm that mitigation plans would avoid, reduce or manage any negative effects from the development on these species.
19. The adjacent stream has potentially significant value in supporting protected species, including bats, otters, curlew, owls and flora. I note the argument that the stream will provide hydraulic separation from the NVC communities. However, no assessment of the relationship between the stream, groundwater and NVC communities has been provided to confirm this. I also note that no specific information has been provided regarding curlew, a priority species associated with the SSSI⁸. Harm to the Rhea stream could therefore lead to harm to protected species, the SSSIs and SAC.
20. It was proposed to send foul water to a package treatment plant over 50 m distance from the stream. However, a recent site investigation demonstrates that the permeability of the clay substrata is too low to support the planned drainage field. A drainage mound is therefore required. The Council and Natural England have not had the opportunity to comment on the amended scheme.
21. I do not have details of the drainage mound before me, including capacity and size, which may have a bearing on location and therefore the length of the pathway to the Rhea. Information regarding preferential hydrological pathways, for example through shallow soil or field drains, has not been provided in line with the Council's guidance⁹ and, given the proximity of the site to the highly sensitive Rhea, I consider this crucial. Given the steep slope towards the nearby Rhea, the consequences of failure of this system could be significant and for this reason I consider the requirement for monitoring in relation to such water courses in Policy SD4 critical. This has not been included in the proposals.
22. I also note that the original mitigation strategy discharged surface water via a soakaway pond, which may no longer be viable given the low permeability of superficial deposits in the area. No assessment of this has been provided. This could cause flooding and reduce the efficacy of silt interception from the site, both of which could cause a risk to the quality of the stream.

⁶ Otters: surveys and mitigation for development projects, Natural England and Department for Environment, Food & Rural Affairs, last updated 5 April 2019

⁷ Bats: surveys and mitigation for development projects, Natural England and Department for Environment, Food & Rural Affairs, last updated 28 February 2020

⁸ Lugg and Hampton Meadows SSSI citation (notification date 14 December 2011)

⁹ Current Development in the River Lugg Catchment Area, Position Statement (15 October 2019)

23. In addition, no evidence is before me that a connection to foul sewer is not possible, which should be the default option for drainage under Policy SD4 of the CS. I consider that this is particularly important at this location, given the proximity of protected habitats and species. I have not pursued this evidence because I am dismissing the appeal for other reasons.
24. Circular 06/2005¹⁰ states that the presence of protected species is a material consideration, and the extent to which they may be affected by the development must be established before planning permission is granted. For the reasons above, there is a reasonable likelihood that protected species, including bats, curlew or otters, are present nearby and the extent to which they may be affected by the development has not been established.
25. It is proposed to enhance local ecology through planting native hedgerows and trees, an orchard, a wildflower meadow and erecting bat boxes, which, subject to control by condition, it is not disputed would be beneficial. However, this is not sufficient to overcome the potential harm to biodiversity identified above.
26. For these reasons, it has not been demonstrated that harm to biodiversity would be avoided or adequately mitigated. The scheme does therefore not meet the requirements of Policy SD4 of the CS, which controls discharge of wastewater for protection of the environment, nor SS6, which requires that proposals conserve and enhance environmental assets and biodiversity.
27. It has also not been demonstrated that the proposal would meet the requirements of paragraph 175 of the Framework, which states that development outside a SSSI that is likely to have an adverse effect on it should not normally be permitted.

Other matters

28. The appeal site is in the catchment of the River Wye SAC and the proposal must therefore be subject to a Habitats Regulations Assessment (HRA) under the Conservation of Species and Habitats Regulations (2017) (as amended). The Council has undertaken a screening assessment and identified that discharge of foul water to a package treatment plant could cause likely significant effects through discharge of additional phosphates.
29. It has not been demonstrated that connection to sewer is not possible, nor that the amended drainage system would not be likely to have a significant effect on the SAC in combination with other plans and projects. As I am dismissing the appeal for other reasons, I have not considered it necessary to pursue an Appropriate Assessment or consult Natural England.
30. The eastern boundary of Aylestone Hill Conservation Area lies approximately 200 metres to the west. A Grade II listed building (Lugg View and West Wyn) is just over 100 metres to the west and there are 3 other Grade II listed buildings within 250 metres. There is negligible intervisibility between the site and these historical assets and I am satisfied that their settings would be preserved.
31. Numerous concerns have been raised by local third parties regarding the capacity of Walney Lane to absorb more traffic. The Council states that while increasing the traffic on the lane is undesirable, that generated from one extra

¹⁰ ODPM Circular 06/2005, 16 August 2005: Biodiversity and geological Conservation – statutory obligations and their impact within the planning system

house could be accommodated, and I have no reason to come to a different conclusion.

Planning balance and conclusions

32. As outlined above, the local planning authority is unable to demonstrate a 5-year supply of deliverable housing sites. The presumption in favour of sustainable development in paragraph 11d) of the Framework is therefore engaged.
33. Part 11d)(i) of the Framework states that where the application of policies protecting SSSIs provides a clear reason for refusal, then the development should not be approved. For the reasons above, I cannot conclude that the proposal would not have an adverse effect on the nearby SSSIs. However, this is in the absence of information, and conversely, I also cannot be confident that mitigation of any effects would not be possible. In these circumstances, this does not necessarily form a clear reason for refusal under paragraph 175 of the Framework.
34. Turning to part 11d)(ii), I have concluded that introduction of housing and woodland at this location would be inappropriate to the prevailing landscape type and would cause a harmful change of character. The appeal site would extend beyond the settlement and intrude into this important, sensitive and historical landscape. The open character of land around the PROW would be lost, and this change would also cause harm. The proposal therefore fails to accord with paragraphs 127 and 170 of the Framework, which protect valued landscapes. I consider this to be a matter of significant weight.
35. A house would be developed in an accessible location, in line with paragraph 59 of the Framework, making a contribution to the housing supply and the local economy. However, these benefits are minor given the small scale of the development. There would also be potential enhancements to biodiversity, in line with paragraph 174 of the Framework, but this attracts minor weight given the modest scale of the project.
36. Even if sufficient information was provided to overcome concerns regarding the potential adverse effects of the development on biodiversity, I conclude that the adverse effects on the landscape would significantly and demonstrably outweigh the minor benefits from the scheme, when assessed against policies in the Framework taken as a whole. This is a material consideration of significant weight.
37. The proposal conflicts with the development plan when read as a whole, as well as the Framework. It would not amount to the delivery of a sustainable form of development and therefore the appeal is dismissed.

B Davies

INSPECTOR