
Appeal Decision

Site visit made on 1 April 2021

by L Page BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th May 2021

Appeal Ref: APP/W1850/W/20/3263476

Land adjacent The Link, Weston under Penyard HR9 7QA

- 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 Dr Warwick Green against Herefordshire Council.
 - The application Ref 202707 is dated 17 August 2020.
 - The development proposed is construction of holiday accommodation.
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Decision

1. The appeal is allowed, and planning permission is granted for construction of holiday accommodation at land adjacent The Link, Weston under Penyard HR9 7QA in accordance with the terms of the application, Ref 202707, dated 17 August 2020, and the plans submitted with it, subject to the conditions in the attached schedule.

Procedural Matters

2. The Council failed to give notice of their decision within the prescribed period. However, they have subsequently identified that they would have granted planning permission under the application. Consequently, there is no dispute under the appeal between the main parties.
3. Notwithstanding this lack of dispute, it is clear from the previous appeal decision¹ at the site that the main reason resulting in dismissal related to the effects on the character and appearance of the area, and uncertainty therein. In essence, it appears that the detailed proposals before me now seek to provide certainty in this regard. The appeal has been dealt with accordingly.

Main Issue

4. The main issue is the effect of the proposal on the character and appearance of the area.

Reasons

5. The site is located on land adjacent to The Link, and physically related to the southern extent of the settlement at Western under Penyard. It is accessed off of Church Lane, which runs in a north, south direction and is bounded by a number of detached dwellings for around half of its length. In essence, the dwellings bounding Church Lane form a linear spur that extends to the south west of the settlement's core pattern of development.

¹ APP/W1850/W/19/3235107

6. Beyond the immediate vicinity of the site, to the west and south east, is countryside with rolling agricultural fields which contribute to the rural character and setting of the settlement. The site itself is a small field enclosed by mature tree and hedgerow features, all of which effectively screen the site from view and make it inconspicuous in the landscape.
7. The proposal would be outside of but directly adjacent to the settlement boundary identified within the Weston under Penyard Neighbourhood Development Plan 2016 (NDP). However, there is no evidence before me that it should be treated as residential development for the purposes of applying development plan policy.
8. Consequently, it does not fall to be considered under Policy H2 of the NDP, which is a restrictive policy for housing predicated on the settlement boundary. Instead, it falls to be considered under Policy SB1 of the NDP, which is a policy managing tourism development that does not include the same settlement boundary restrictions, and to which the proposal relates. This is consistent with the foregoing appeal decision at the site.
9. In this context the proposal would comprise a single storey, stone built holiday chalet under a slate roof and its position directly adjacent to the settlement boundary, and its physical relationship with other dwellings nearby, would reduce any visual impact.
10. In essence, the diminutive form of the proposal, coupled with use of materials consistent with the wider vernacular, and its favourable location abutting other development, means it would preserve the character and appearance of the area in terms of its relationship with the pattern of development.
11. In addition, the existing nature of the site, being enclosed by mature trees and hedgerows, coupled with landscaping measures proposed that would comprise additional hedgerows and trees, would further reinforce the preservation of the character and appearance of the area.
12. I have no evidence in front of me demonstrating that trees were removed unlawfully from the site, furthermore a landowner is free to manage their land and remove trees through a number of lawful means.
13. Whatever the case may be, even if trees or hedgerows have been removed, this does not undermine the evidence, which would protect what features remain. Furthermore, details relating to landscaping measures, including species and positioning of new hedgerow, among other things, are adequately set out².
14. Overall, the proposal would preserve the character and appearance of the area and would accord with Policies SB1 and D1 of the NDP, Policies LD1 and E4 of the Herefordshire Local Plan Core Strategy 2015, and Paragraphs 83 and 84 of the National Planning Policy Framework.
15. Among other things, these policies acknowledge that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements. Furthermore, it is stated that such proposals can be acceptable if they come forward in a manner that is sensitive to their surroundings.

² 1320:1961:03 A & Explanation of Design

Other Matters

16. The listed building comprising the Church of St Lawrence, on Church Lane and tomb chests to the north of the church tower and the north aisle of the church are located approximately 60 metres to the north east of the site. The foregoing appeal concluded that given the distance and intervening built form and other landscape features, additional development at the site would be unlikely to affect their significance.
17. This was something that I was able to reaffirm during my site visit and there is no evidence in front of me that would change these conclusions and therefore I am satisfied that the proposal would have a neutral effect on the setting of nearby heritage assets, that is to say their heritage significance would be preserved.
18. There is no evidence before me demonstrating that the road is busy or that the proposal would generate a quantum of additional traffic that would overload the highway network or make it unsafe. Furthermore, the site plan demonstrates that satisfactory visibility splays can be achieved at the site, something confirmed by the Council's transport officer. There is no technical reason that I am aware of that would undermine or cast doubt on the highways evidence in front of me.
19. Any future proposals for development on land to the south of the site in this case would be a matter for the Council to consider in the first instance, through normal planning application procedures, and not a matter for me to deal with under this appeal.
20. Percolation testing demonstrates that soakaways or another similar form of sustainable drainage system is feasible on the site. Consequently, it is reasonable to secure full details of such a scheme by planning condition, which would mitigate against harmful effects of surface water runoff.
21. In relation to foul drainage, the top soil is described as free draining, and the measures would be laid out and controlled in accordance with relevant standards. Consequently, I am satisfied that there is little risk of harmful runoff to neighbouring sites.
22. Given the limited scale of the proposal, distance between other dwellings in conjunction with boundary features, the risk of harmful effects on living conditions of adjacent occupiers is very limited. It has not been substantiated that there would be a tangible risk of harmful effects in this context.
23. Notwithstanding some very precise contentions relating to individual questions on the application forms, based on the combined weight of all the evidence, not least the description of development, it is clear that the proposal is for holiday accommodation.

Conditions

24. The Council suggested 12 conditions, and these were all considered against the National Planning Policy Framework and Planning Practice Guidance. Conditions were subject to minor amendments in the interests of clarity. All the conditions set out in the attached schedule are considered necessary to make the development acceptable in planning terms.

25. Conditions relating to standard time limits and compliance with the approved plans are necessary for certainty. Drainage and water usage conditions are necessary to ensure that foul and surface water flows are dealt with in a sustainable way whilst preserving the water environment. Conditions relating to access gates and visibility splays are necessary to ensure vehicles can enter and exit the site without harming highway safety. A condition limiting the intensity of the use is necessary to ensure the character of the use remains acceptable.
26. Given that the proposal would not function and has not been otherwise characterised as a dwellinghouse, it would not be classed as such for the purposes of the use classes order and therefore permitted development rights associated with dwellinghouses could not be advanced at the site. Accordingly, any development carried out that is not permitted would be open to the Council's normal enforcement proceedings and a condition limiting permitted development rights in this context would not be necessary.

Conclusion

27. For the reasons given, the appeal is allowed, and planning permission is granted subject to conditions in the attached schedule.

Liam Page

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development hereby approved shall be carried out strictly in accordance with the approved plans (1320:1961:03A; 1320:1961:02; 1320:1961:01) and the schedule of materials indicated therein.
- 3) All foul water shall discharge to a private foul water system, discharging to a soakaway drainage field on land under the applicant's control; and all surface water shall discharge to appropriate SuDS or soakaway system.
- 4) No development approved by this permission shall be occupied until a detailed SuDS or soakaway system strategy has been submitted to and approved in writing by the local planning authority. The strategy shall include supporting calculations that demonstrates there will be no surface water flooding up to the 1 in 30 year event, and no increased risk of flooding as a result of development between the 1 in 1 year event and up to the 1 in 100 year event and allowing for the potential effects of climate change. The strategy shall also include results of infiltration testing undertaken in accordance with BRE365 and confirmation of groundwater levels to demonstrate that the invert level of any soakaways or unlined attenuation features can be located a minimum of 1m above groundwater levels. All details shall be implemented as approved and before the development is occupied.
- 5) Any new access gates shall be set back five metres from the adjoining carriageway edge and shall be made to open inwards only.
- 6) The holiday accommodation unit hereby permitted shall only be used for holiday purposes by tourists. No person or group of persons shall occupy the accommodation for more than 28 consecutive days at a time and no same person or group of persons shall occupy the accommodation for more than 156 days in any one calendar year. The owners/operators of the site shall maintain an up-to-date register of the names of all occupiers of the accommodation and of their main home address (i.e. place of residence) and shall make this information available at all reasonable times to the local planning authority.
- 7) The construction of the vehicular access shall be carried out in accordance with a specification to be submitted to and approved in writing by the local planning authority, at a gradient not steeper than 1 in 12. All details shall be implemented as approved and before the development is occupied.
- 8) Before any other above ground works hereby approved are commenced, visibility splays, and any associated set back splays at 45 degree angles shall be implemented in accordance with the Site Plan drawing number 1320:1961:03A. Nothing shall be planted, erected and/or allowed to grow on the triangular area of land so formed which would obstruct the visibility described above.
- 9) Prior to the first occupation of the development a scheme demonstrating measures for the efficient use of water as per the optional technical standards contained within Policy SD3 of the Herefordshire Local Plan Core Strategy 2015 shall be submitted to and approved in writing by the local planning authority. All details shall be implemented as approved and before the development is occupied.

10) Except where otherwise stipulated by condition, the development shall be carried out strictly in accordance with the following document: Tree & Hedge Assessment and Arboricultural Constraints Report – Jerry Ross Arboricultural Consultancy 15/16-11-2016.

11) The ecological protection, mitigation, compensation and working methods scheme including biodiversity enhancements, as recommended in the report by Shropshire Wildlife Services dated August 2020 shall be implemented and maintained thereafter in full.

End of Schedule