



Appeal Decision

Site Visit made on 5 July 2021

by B Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 July 2021

Appeal Ref: APP/W1850/W/21/3270441

Land at Llangrove, Ross on Wye, Herefordshire

Grid Reference: 352439:219102

- 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 C Hatt against the decision of Herefordshire Council.
 - The application Ref 200782, dated 4 March 2020, was refused by notice dated 14 January 2021.
 - The outline application proposes the construction of 2 no. dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application form proposes the erection of three dwellings. However, the proposal was amended during the application consideration process to two dwellings and was subject to re-consultation. As a result, I shall use the amended version of the description of development which I am content would not cause prejudice to any party.
3. The application has been made in outline form with all matters reserved. I shall consider this appeal on the same basis. An indicative layout plan has been submitted showing how the dwellings could be arranged on site to avoid the protected Oak trees on the site's southern boundary. Nevertheless, as this layout is illustrative only, I shall pay it limited regard.
4. The Llangarron Parish Neighbourhood Plan (NP) is at its submission stage. Draft policy SUS1 requires development to take place within the settlement boundary of Llangrove. However, the NP has been subject to a number of unresolved objections, including the proposed settlement boundary of Llangrove. I have therefore afforded this policy limited weight in accordance with paragraph 48 of the National Planning Policy Framework (The Framework).

Main Issues

5. The main issues are:
 - the effect on the integrity of the River Wye Special Area of Conservation (SAC) and the Site of Special Scientific Interest (SSSI), with particular regard to drainage, and
 - the effect of the proposed dwellings on highway safety, especially with respect to the use of the access of the site.

Reasons

River Wye Special Area of Conservation

6. The site is located within the zone of influence of the River Wye SAC. This is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). Policy SD4 of the CS seeks to ensure that the designated area, and its catchment system, remain resilient in supporting river habitats. The appellant has indicated that the proposed dwellings would be subject to either on site foul drainage management or would be connected to the mains sewer. It is also proposed that surface water drainage would be managed by soakaways.
7. However, the Court of Justice of the European Union recently ruled¹ that it is not acceptable for the competent authority to take mitigation measures into account when considering likely significant effects. These measures can only be considered at the Appropriate Assessment (AA) stage when the effect on the integrity of the protected site is being considered. This responsibility now falls to me within this appeal. Such an assessment is necessary regardless of the status of the policies of the development plan. I recognise that Natural England has commented that an AA is required prior to the granting of planning permission.
8. Evidence shows that the River Wye is under significant pressure from pollutants. The River Wye SAC has several conservation objectives, including to ensure that the drainage of new development within its catchment does not worsen its water quality. Although the impact of two dwellings would be small, in combination with further local development, the proposal has the potential to significantly impact the integrity of the SAC, through increased pollution of the watercourses within the catchment of the river.
9. The site slopes downhill away from the site entrance to the south towards a valley. The appellant's drainage solution would include on site soakaways and would connect foul water drainage to either on site plant or the main sewer. The appeal site is of sufficient size to accommodate a sustainable drainage solution. However, without a detailed drainage strategy it is not possible to determine whether drainage would affect local water quality. Furthermore, whilst Welsh Water have stated that a foul water connection could be made to the mains sewer network this is provided that drainage details show it to be technically feasible. These details would inform the consideration of an AA. It is therefore clear that without such details an AA cannot be undertaken.
10. The Habitat Regulations state that permission may only be granted after I have ascertained through AA that the development would not affect the integrity of the SAC. This assessment would require consideration of any offered mitigation including drainage details. I therefore cannot be satisfied that the proposal would not affect the integrity of the SAC and its status as a SSSI. Consequently, without such assurance the proposed development would conflict with policies SS6, LD2, SD3 and SD4 of the Hereford Local Plan – Core Strategy (CS). These require, among other matters, for development to manage surface water appropriate to the hydrological setting of the site, to restore and enhance the biodiversity and geodiversity assets of the district and to not undermine the water quality targets for rivers within the county. These

¹ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

policies are generally consistent with the Framework which seeks to refuse development if significant harm to biodiversity cannot be avoided or adequately mitigated.

Highway safety

11. The settlement of Llangrove is a small village. Access routes to it, and through it, largely consist of narrow lanes. The main road through the village contains a church, parish hall and primary school. A number of lanes run off of the main road, some of which loop round back to the main road, others terminate at houses or tracks. The appeal site is located at the corner of a narrow lane. At this point the route continues on south to 'Yew Tree Cottage' in the distance, east towards 'Holly Tree' and other dwellings and provides an access to 'Tretawdy Bungalow' to the immediate south of the site. An access route connects the front of the site to a slightly wider section of highway between the dwellings of 'The Old Chapel' and 'Hillcrest'. As such, existing housing is located within close proximity of the site which are interconnected with narrow country lanes and tracks.
12. Although the specific details of means of access are reserved, the proposal would be likely to use the existing field gate access point on the eastern corner of the site. This access is adjacent to a footpath that runs alongside the eastern boundary of the site and is therefore orientated at a slight angle to the access track. As a result, the access to the site would be close to a boundary wall of 'The Old Chapel' and would present a slightly awkward access into the site.
13. However, the appellant indicates that the adopted highway terminates just beyond the access to 'Tretawdy Bungalow' and includes the drain cover in the centre of the track. The vehicle access/egress arrangement has also been shown to be capable of being achieved by cars within the limits of the public highway.
14. Larger vehicles would need to reverse into the private part of the lane to gain access to the site, when arriving. The tracking plan shows that a 3.5 tonne van could enter the site, in a minimum of two manoeuvres, with over running onto the adjacent unadopted lane. Access and egress could also be obtained for larger vehicles through the use of the unadopted lane opposite the site in one continuous movement. The appellant confirms that he has an agreement to use this private road. The use of the access would not result in a hazard to local vehicles if undertaken with the proper care and attention expected of any road user. Furthermore, access to existing neighbouring dwellings by large vehicles, such as refuse collection vehicles, would be an existing part of traffic movements in front of the site. It is also recognised that the Council's Waste Officer raised no objection to the proposal from a refuse collection standpoint.
15. The visibility splay has been indicated in evidence. The boundary wall, and fence above, around the southern corner of 'The Old Chapel', is around 1.8 metres high. This would present a visual obstruction to motorists both leaving and arriving at the site. However, visibility would be otherwise generally clear in all other directions and would not be substantially different than available for existing users of the track, especially occupiers of 'Tretawdy Bungalow'. Therefore, the safety of other road users, including pedestrians emerging from the adjacent footpath, would not be compromised due to the expected low speeds of vehicles and likely caution exercised by motorists in this context.

16. The Council has identified the location of potential vehicle strikes on adjacent neighbouring walls. Evidence from interested parties appears to confirm that minor collisions have occurred in the past. Although, road users could collide with boundary features along the access track, such an action seems generally unlikely. Furthermore, the access track, and its boundary features, present an existing risk from traffic attending local dwellings, and the proposal would not materially add to this potential risk.
17. Taking the above points together, the proposed access would be slightly awkward but would not be substantially different to the access routes into several local properties. Narrow lanes, with restricted access points, seem to be a common characteristic of the village. Furthermore, the access to the site would use a country lane that carries limited amounts of traffic, travelling at low speeds and therefore would present a low risk for collisions. Accordingly, in this context, the access would be safe and would not result in an adverse impact on highway safety.
18. As a result, the proposal would propose a safe and convenient access into the site without leading to an adverse impact on highway safety. Accordingly, the proposal would satisfy policy MT1 of the CS. This requires, among other matters, for development to be designed and laid out to achieve a safe entrance and exit. This policy is consistent with the Framework which seeks to only refuse development that would have an unacceptable impact on highway safety.

Other Matters

19. An appeal decision has been included in evidence for two dwellings in Llangrove which was also within the influence of the Wye SAC. In that case Welsh Water confirmed that a foul water connection would be viable. Also, a drainage statement explained that surface water would be discharge to a SuDS system. The Inspector found it would be unlikely that the proposal would cause a significant effect on the integrity of the SAC. However, the context of that scheme is not before me. Furthermore, the appeal was dismissed as it did not benefit from comments from Natural England confirming the considered impact. The proposal associated with this appeal is different in that Natural England have advised that, in the absence of an AA the effect on the integrity of the SAC cannot be satisfied. Consequently, that appeal decision has had a limited bearing on my consideration of the proposal.
20. Policy RA2, of the CS, supports sustainable housing growth in and adjacent to settlements such as Llangrove. This is to bolster existing service provision and meet the needs of the local community. The policy also states that Neighbourhood Plans will be the principle mechanism to allocate rural housing. The Submission Stage Llangrove NP identifies settlement boundaries and suitable sites for new housing. This identifies that the proposal would be contrary to policy SUS1 of the NP. However, this policy currently has limited weight. In the absence of a made Neighbourhood Plan proposals for new housing should be judged on their own merits in consideration of policy RA2. The site is well connected to the settlement and is adjacent to existing built form. It would therefore have a functional link to the village which would support the principle of development of the site in accordance with policy RA2. The locational benefits of the site weigh in favour of the proposal.

21. The site is also within the Wye Valley Woodlands SAC, primarily designated to protect the Horseshoe Bat population. The submitted ecological surveys have found that limited bat foraging occurs over the site, having an overall low importance to bats. The Council's ecologist has confirmed the conclusion of these recent surveys. I have no reason to disagree with these findings. As such the impact of the proposal on the integrity of the Wye Valley Woodlands SAC would be unlikely to be significantly adverse.

Planning balance and conclusion

22. Main parties concur that the Council cannot demonstrate a five-year housing land supply (HLS). However, there is dispute as to the extent of the shortfall with the appellant citing a potential figure of 2.71 years and the Council referring to 4.22 years. In either event, the shortfall is significant.
23. In such circumstances paragraph 11(d) of the Framework indicates that where the policies which are most important for determining the application are out-of-date, permission should be granted. However, paragraph 11(d)(i) sets out that the presumption in favour of sustainable development does not apply where the application of policies within the Framework, that protect areas of importance as defined by footnote 6 including Special Areas of Conservation, provide a clear reason for refusing the development. As I have found harm in this case, to the River Wye Special Area of Conservation, the presumption in favour of sustainable development does not apply, an important consideration in the planning balance.
24. I note that the proposed development would make a small contribution towards meeting housing needs in the area on a site which would be functionally connected to a settlement. However, the proposal would accord with neither the development plan nor the Framework. Also, the provision of two additional dwellings, nor a lack of harm to highway safety, would outweigh the clear reason to refuse the proposal. There are no other considerations which outweigh these findings. Accordingly, for the reasons given, the appeal should not succeed.

B Plenty

INSPECTOR