



Appeal Decision

Site visit made on 14 July 2021

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary

Decision date: 19 October 2021

Appeal Ref: APP/W1850/W21/3273138

Kingcup Cottage, A49 from Dinmore Manor Lane to Auberrow Lane via Wellington, Wellington HR4 8DT

- 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 and Mrs Craig and Myra Thomson against the decision of Herefordshire Council.
 - The application Ref 201326, dated 22 April 2020, was refused by notice dated 15 January 2021.
 - The development proposed is erection of three detached dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was submitted in outline with only access to be determined at this stage. I have therefore dealt with the appeal on this basis.
3. Since the appeal was lodged, a revised version of the National Planning Policy Framework, 2021 ('the Framework, 2021') has been released. The main parties have been consulted on this and I have taken this into account where relevant to my Decision.

Main Issues

4. The main issues are: a) whether the site is in a suitable location for housing having regard to local policies; b) the effect of the proposal on flood risk; c) the effect of the proposal on highway safety; d) the effect of the proposal on protected species; and e) the effect of the proposal on the integrity of the River Wye Special Area of Conservation (SAC).

Reasons

Suitability of location for housing

5. The appeal site comprises a paddock to an existing dwelling 'Kingcup Cottage'. This property lies to the south of the hamlet of Wellington Marsh, which includes around 30 dwellings located to the west of the A49(T).
6. Policy RA2 of the adopted Herefordshire Local Plan Core Strategy 2011-2031 ('CS') forms part of the Council's spatial strategy and provides guidance on housing in settlements outside Hereford or the market towns. In part, this aims to encourage a pattern of growth which reduces the overall need to travel by

- private motor vehicles. It sets out several settlements where proportionate housing development would be acceptable to maintain and strengthen locally sustainable communities.
7. Wellington Marsh is not identified as such a settlement and is located about 2km kilometre from the village of Wellington where there is a primary school, public house, church and a shop and post office.
 8. Access to Wellington village on foot can be achieved by walking along the A49(T). However, the footpath along this route is not continuous on both sides of the road, so that a user would have to cross to the other carriageway. Whilst there are uncontrolled pedestrian crossing points along the A49(T) the footpath is fairly narrow and unlit in parts. Therefore, this does not form an attractive route being close to a busy highway with a speed limit of 50 mph. This would be likely to deter some pedestrians, particularly those with young children walking to and from school. In reaching this conclusion, I am also mindful that Paragraph 4.4 of Manual for Streets, identifies that areas most conducive to walking are where there are a range of facilities within a 10-minute walk (800m).
 9. An hourly bus service from Hereford to Leominster is accessed opposite the appeal site. However, this does not operate in the evening and is less frequent on a Sunday with no Bank Holiday service. This provides an alternative to private motor vehicles for those wishing to travel to these larger settlements for employment or to access shops and services. However, as a result of its frequency it would not form a convenient service for those going into Wellington. Again, this is likely to encourage future residents of the appeal scheme to use private motor vehicles. Although cycling to Wellington could be an option, given the speed and number of vehicles on the A49(T) including many HGV's, this would not be a favoured option for many.
 10. The less than acceptable walking and cycling options would limit multi-modal trips which would also be less preferential against the convenience of private motor vehicles. Furthermore, when in private motor vehicles, occupiers of the proposed dwellings would be likely to drive further afield to access the better range of services and facilities offered by larger settlements, in preference to Wellington and other villages nearby. Therefore, the proposal is only likely to offer limited support to services in rural villages, as Paragraph 79 of the Framework, 2021 envisages.
 11. I acknowledge that Paragraph 105 of the Framework, 2021 recognises that sustainable transport solutions are likely to be more limited in rural locations and that the number of trips generated by a scheme for 3 dwellings would be substantially less than a scheme for 15 dwellings which was previously refused at Kingcup Cottage and dismissed on appeal. Even so, for the above reasons, the siting of new development at the appeal site would not encourage a pattern of growth which reduces the overall need to travel by private motor vehicles.
 12. Although the appellants refer to the proposal meeting the 'test' of CS policy RA2, the requirements of this Policy relate to those settlements specifically identified under Figures 4.14 and 4.15 of the CS, which do not include Wellington Marsh.
 13. For the above reasons, the appeal site is an unsuitable location for new housing, contrary to Policy RA2. There would also be conflict with Policy MT1,

which amongst other things seeks to promote and where possible, incorporate integrated transport connections and supporting infrastructure (depending on the nature and location of the site), including access to services by means other than private motorised transport. The proposal also fails to accord with Policies W5 and W13 of the Wellington Neighbourhood Development Plan ('WNDP') which amongst other things require developments to include measures that improve accessibility.

14. The proposal is also contrary to Policy W1 of the WNDP which only supports development outside the settlement boundaries in accordance with policies for Herefordshire Council.

Flood Risk

15. The Framework, 2021, states that when determining planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood-risk assessment. Development should only be allowed in areas at risk of flooding where, in the light of this assessment (and the sequential and exception tests, as applicable). This approach is also reflected under Policy SD3 of the CS.
16. The Sequential Test seeks to steer new development to areas with the lowest probability of flooding. Whilst normally it is not necessary to apply the Sequential Test to development proposals in Flood Zone 1, the Planning Practice Guidance advises that this may not be the case where more recent information, indicates there may be flooding issues now or in the future.
17. The Environment Agency's (EAs) Flood Map for Planning shows that the appeal site is located within the low-risk, Flood Zone 1. Nevertheless, on the information before me the appeal site and a number of properties to the south of it were flooded during February 2020, as a consequence of backwater fluvial flooding from the River Lugg. In this case a Sequential Test has not been undertaken.
18. A site-specific Flood Risk Assessment ('FRA') has been provided. The FRA incorporates outputs from the EA's Surface Water flood map. Along with this and photographic evidence of past flooding, the submitted drainage strategy proposes raising the finished floor levels for the proposed dwellings. Nonetheless, the risk is of fluvial flooding and the photographs only provide a snapshot of a flooding event. Therefore, and in the absence of any hydraulic modelling, I cannot be certain that the proposed mitigation would be adequate to safeguard the new dwellings from the risk of flooding.
19. Based on the submitted infiltration testing results, the shallow water table would be a major limiting factor to the feasibility of soakaways across the site, including crate soakaways. As such, despite the use of permeable paving for the site roads and collection of rainwater from roofs, I cannot be certain that these along with the use of crate soakaways would limit runoff to Greenfield rates to ensure that there is no increase in flood risk downstream.
20. For the above reasons, I am not assured that there are no sequentially preferable sites with a lower risk of flooding to accommodate the proposed development than the appeal site. Irrespective of this, the proposal does not adequately deal with surface water drainage and the risk of flooding. This

would be in conflict with Policy SD3 of the CS which requires that measures for sustainable water management are an integral element of new development in order to reduce flood risk. I also find conflict with Policy W12 of the WNDP which states that new development should be designed to maximise the retention of surface water on the development site and to minimise runoff.

Highway safety

21. To facilitate access to the proposed dwellings, the scheme seeks to utilise the existing access off the A49(T) but with some amendments. Because the A49(T) forms part of the strategic road network, the responsibility for this lies with Highways England ('HE').
22. The most recent response from HE, dated 28 June 2021, confirms that they have no objection in principle to the proposal, adding that the design and visibility plays shown for the access would meet with the relevant standards.
23. Whilst HE acknowledge that previous applications for similar access arrangements at the appeal have been supported, subject to conditions, they advise that since then there is a mandatory requirement at the preliminary design stage for a Walking Cycling Horse riding Assessment and Review report and a Stage 1 Road Safety Audit. Additional information with regard to the management of the proposed foul drainage arrangement has also been requested.
24. The appellants advise that foul waste would be removed from the proposed cesspools via a small tanker every 4 to 6 weeks for each property. Given that the proposed driveway would incorporate a turning facility, and the limited number of trips proposed in association with the removal of foul drainage, this is unlikely to raise any significant highway safety issues. However, it does not appear that the Walking Cycling Horse riding Assessment and Review report and the Stage 1 Road Safety Audit have been provided in relation to the application before me and I have also noted concerns raised by third parties in relation to highway safety along this stretch of the A49(T).
25. Nevertheless, the response from HE confirms that collision/accident data within the last three years shows 1 incident involving a single vehicle. I am also mindful that a similar access has previously been supported at this location. Therefore, in this particular case, I am satisfied that any outstanding information in relation to the proposed access could be secured by a condition if the appeal were to succeed.
26. In light of the above reasons, I do not consider that the proposal would unacceptably prejudice highway safety and I find no conflict with the highway safety aims of Policies SS4 and MT1 of the CS and Policy W5 of the WNDP.

Protected Species

27. The submitted Ecological Assessment ('EA') by Star Ecology was initially undertaken in 2014 and was reviewed and supported by a site visit in 2018. On this basis it was relevant at the time of the application and I have not been provided with any strong reasons to doubt its reliability in determining this appeal. The EA assesses the likelihood of various protected species on and near the site and includes an assessment of the existing buildings and structures at the site.

28. Overall, the EA concludes that the site is of low ecological value and that subject to the proposed mitigation there would be no adverse effect on any protected species. Consequently, if the appeal were to succeed, subject to securing the proposed mitigation, the proposal would not negatively impact protected species. The proposal would therefore accord with Policy LD2 of the CS which amongst other matters seek to safeguard nationally protected species.
29. The Council's decision notice also refers to Policy LD1 of the CS which relates to issues of character and appearance. Therefore, it is not directly applicable to the effects on protected species.

River Wye SAC

30. 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.
31. The Framework, 2021 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.
32. 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.
33. 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.
34. In this case the appellants have suggested other methods for foul water drainage including the use of a public sewer which crosses the site and a package treatment plant. These have been discounted based on the reasons provided by the Council's Ecologist. Instead, the appellants are proposing to use cesspools for each property. These would comprise sealed underground tanks to store the sewage before removal by a tanker.
35. Policy SD4 of the CS does not preclude the use of cesspools and given that the appellant has considered alternatives which cannot be secured in this case, this amounts to special circumstances which necessitate the use of cesspools.
36. Nonetheless, I understand the Council's concerns about the difficulty of managing disposal locations for waste from cesspools in the interests of safeguarding against any adverse effects on any designated nature conservation site. Hence, such arrangements would need to be in place to inform the AA and therefore cannot be relied on through conditions.

37. Although some information about the location and capacity of the cesspools has been provided and that these would include alarms to be triggered when a certain level is breached, there is insufficient information about managing the disposal locations and any monitoring of this.
38. 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 foul water management system.
39. Moreover, the appellants advise that the use of cesspools would be a temporary measure because it would be two years before the site came to need a drainage facility and by then the Council anticipate a resolution to the problems associated with using main sewers for foul drainage. However, there is no certainty with this approach.
40. In light of the above, I do not have sufficient certainty that the identified arrangement would avoid adverse effects on the integrity of the River Wye SAC. 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.
41. For the above reasons, the proposal is in conflict with Policies LD2 and SD4 of the CS and Policy W5 of the WNDP. Together, these Policies do not permit development that would harm environmental assets including habitats sites or undermine water quality objectives.

Other considerations

42. When determining the application, the Council accepted that they could not demonstrate a sufficient level of housing land supply. However, and despite the appellant's evidence and references to appeal decisions in support of this, the most recent evidence¹ before me from the Council suggests that a five-year housing land supply does exist.
43. Even if I were to accept the appellants' position in respect of the Council's five-year housing land supply because I have found that the proposal would harm the integrity of a habitats site, this provides a clear reason for refusing the development proposed. Therefore, having regard to Paragraph 11d (i) of the Framework, 2021, the presumption in favour of sustainable development does not apply.
44. The appellants suggest that the proposed plots could be made available for older persons' or self-build housing in order to address such unmet need locally for such housing. The Self Build and Custom Housebuilding Act 2015 puts a duty on local authorities to have regard to the Self build register and to give enough suitable development permissions to meet the identified need. Nevertheless, as a result of the conflict I have identified with development plan policies, it would not form a suitable development. I therefore give limited weight to this in the assessment of the proposal. There is also no mechanism identified to secure the proposed accommodation for older persons in perpetuity. I therefore attach limited weight to this in the assessment of the proposal.

¹ Briefing Note: Five-year housing supply 2021, dated 9 July 2021

45. The proposal would align with the Framework, 2021, where it seeks to significantly boost the supply of housing and acknowledges that small-scale developments can make an important contribution to meeting the housing requirement and be built out quickly. However, given the modest scale of the proposal (three dwellings), this and any associated benefits would be limited and do not outweigh the harm I have identified and conflict the development plan.
46. Whilst the submitted scheme may address matters associated with the previously dismissed proposal for 15 dwellings at Kingcup Cottage with regard to the character and setting of the settlement and the amenity of the occupiers of the proposed development, each application is determined on its merits and in this case, based on the above reasons, I have found the proposal before me to be unacceptable.

Conclusion

47. If the appeal were to be allowed, subject to conditions, the proposal would not harm highway safety or adversely affect protected species. On the other hand, the proposal does not accord with the Council's spatial strategy for the location of new development, fails to safeguard against flood risk and the integrity of the River Wye SAC. For these reasons and overall conflict with the development plan, I conclude that the appeal should be dismissed.

M Aqbal
INSPECTOR