



Appeal Decision

Site Visit made on 17 August 2021

by Stuart Willis BA Hons MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 October 2021

Appeal Ref: APP/W1850/W/21/3274482

Tower Lodge, 15 Linton Lane, Bromyard, Herefordshire HR7 4DQ

- 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 P Brooks against the decision of Herefordshire Council.
 - The application Ref 191409, dated 5 April 2019, was refused by notice dated 17 March 2021.
 - The development proposed is the redevelopment of Tower Lodge, 15 Linton Lane, Bromyard to include alterations to existing dwelling together with construction of two new dwellings.
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Decision

1. The appeal is dismissed insofar as it relates to the construction of two new dwellings. The appeal is allowed insofar as it relates to the alterations to the existing dwelling only at Tower Lodge, 15 Linton Lane, Bromyard, Herefordshire HR7 4DQ in accordance with the terms of the application, Ref 191409, dated 5 April 2019, so far as relevant to that part of the development hereby permitted and subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted, insofar as it relates to alterations to the existing dwelling only, shall be carried out in accordance with the following approved plans: Proposed Site Plan Rev A Scale 1:200; Location Plan Scale 1:1250; Existing House Plans PBV6; Existing House Proposed Floor Plans PBV5; and Existing House Proposed Elevations PBV4.
 - 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.

Preliminary Matters

2. I have taken the description of development from the decision notice as the scheme was amended, reducing the number of new dwellings proposed, during the application.
3. Comments were sought from the main parties regarding the new National Planning Policy Framework 2021 (Framework), and where received have been taken into account in my decision. There have been no fundamental changes to national planning policy relevant to the main issues in this appeal. Therefore, there has been no injustice caused to any of the appeal parties by my taking account of the revised Framework.

Main Issues

4. The main issues of the appeal are:

- whether the proposed development would have a likely significant effect, alone or in combination with other plans and projects, on the River Wye Special Area of Conservation (the SAC),
- the effect of the proposed development on the character and appearance of the area,
- the effect of the proposed development on the living conditions of the occupiers of nearby properties, with particular regard to outlook, privacy, noise and disturbance.
- the effect of the proposed development on highway safety, with particular regard to free flow of traffic and pedestrian safety.

Reasons

River Wye Special Area of Conservation

5. The appeal site is within the River Lugg catchment. This is part of the SAC that is designated in accordance with the Habitats Directive as transposed in the UK by the Conservation of Habitats and Species Regulations 2017 (Habitats Regulations).
6. The Habitats Regulations require the decision-maker, before granting consent for a plan or project, to carry out an appropriate assessment in circumstances where the plan or project is likely to have a significant effect on a European site, alone or in-combination with other plans or projects. I have sought comments from Natural England and undertaken this assessment on a proportional basis, adopting a precautionary approach.
7. I have had regard to the conservation objectives for the SAC which are to ensure that its integrity is maintained or restored as appropriate and ensure that it contributes to achieving the favourable conservation status of its qualifying features, which include a range of aquatic flora and fauna.
8. The nutrient regime of the SAC, and in particular its phosphate levels, can affect the range of species and the habitats that can survive in these rivers. Natural England have confirmed that the SAC is currently failing its conservation objectives for phosphate and is in unfavourable condition.

New Dwellings

9. The proposal is not directly connected with or necessary for site management for nature conservation. The River Wye SAC Nutrient Management Plan (Management Plan) states that the main source of phosphates in rivers is thought to be sewage effluent. The proposed new dwellings would connect to the main sewer system and as a result would increase foul water flows into the Bromyard Waste Water Treatment Works. This would then discharge to the River Lugg catchment and subsequently into the River Wye hydrological network. Therefore, there is a pathway for effect on the designated features from the scheme

10. The contribution of the appeal scheme to the overall flows into the SAC would not be large. However, such an approach over a number of schemes would give rise to cumulative harm. The development would result in an increase in foul sewage in a river that is in an unfavourable condition. As such, the increased foul water flows mean the scheme would be likely to have significant effects either alone, or in combination with other projects.
11. While the Management Plan is under review, it is currently not effective in controlling phosphate levels. The outcome of the review and timescale for the implication of any resulting proposals is unclear and no other clear mitigation is proposed. In the absence of a potential solution, the timescale involved, or the implications of any such measures on the appeal scheme, I am not satisfied that the imposition of a condition to prevent occupation until phosphate levels are acceptable would be reasonable.
12. No detailed evidence has been provided of flows resulting from potential fallback positions involving extensions, outbuildings or hardstanding areas at the site. Moreover, there are no plans or certificate of lawfulness for any such proposals. Even if I were to agree that farming activities made a greater contribution to phosphate levels, the proposed development would still add to them.
13. Where suitable mitigation cannot be secured the Habitats Regulations state that planning permission should only be granted if there are no alternative solutions, that there are reasons of overriding public interest and suitable compensatory measures are secured.
14. There is no compelling evidence to indicate that the appeal proposal is the only solution for such a scheme. Housing Delivery Test results and the Council's latest figures for housing supply do not indicate that any current limitations due to phosphate levels is severely restricting residential development. Based on the individual merits of the case, even if I were to agree with the appellant regarding the Council's housing land supply, the provision of 2 additional dwellings is not sufficient in this instance to amount to imperative reasons of overriding public interest. In addition, no compensatory measures have been put forward.
15. Consequently, having regard to the Habitat Regulations, permission should not be granted for the proposed new dwellings. The proposed development could result in harm to the integrity of the SAC and conflict with the Habitats Regulations and Policies SS1, SS6, LD2 and LD4 of the Core Strategy¹ and the Framework where they state that development that would harm sites of European importance will not be permitted.

Alterations to Existing Dwelling

16. The details before me indicate that the proposed alterations to the existing dwelling would not involve any additional connections to the sewer system and the new development would have a comparable footprint to the existing garage. Therefore, that aspect of the scheme would not have an impact on phosphate levels. Consequently, the alterations to the existing dwelling would not have adverse effects on the integrity of the SAC and therefore accord with the Habitats Regulations as well as the above policies.

¹ Herefordshire Local Plan Core Strategy 2011-2031

Character and Appearance

17. While the proposed dwellings would not be orientated towards or accessed from Linton Lane, neither does the existing dwelling or those opposite on the same cul-de-sac. The proposed properties would continue the linear form of development with modest gaps between buildings that is common to the area and have a similar building line. Moreover, although the plots would be smaller than some nearby, the existing plot is larger than many and there is no uniformity to the size, shape or orientation of plots in the area.
18. The site is elevated from Linton lane. Nevertheless, changing land levels and mature vegetation would mostly screen the proposed properties in views from it. Were the new dwellings to be allowed, conditions could be imposed to retain the existing features and for a proposed landscape scheme. Where it would be seen, including in longer distance views and during periods when there may be less tree cover, the proposed development would be seen in the context of the existing built form of nearby properties in the foreground and background along with the adjacent tight knit development at the park home site.
19. There is variation in the appearance and scale of properties in the area. The external materials, scale and detailing of the proposed dwellings, while not replicating the existing one, would draw on aspects of it and the others in the same cul-de-sac. Therefore, the built form would not appear incongruous.
20. The proposed extension would replace the existing flat roof garage with a more in keeping smaller pitched roof one and use matching materials. Openings would be of a similar style to the existing ones.
21. Therefore, the proposed development would not harm the character and appearance of the area. It would accord with Policies BY1, LD1 and SD1 of the Core Strategy, where they, in part, require schemes to take account of local context and character of the landscape and townscape. It would also comply with the Framework where it requires schemes to be sympathetic to local character.

Living Conditions

22. There would be first floor windows at the new properties and at the existing dwelling. Notwithstanding this, intervening mature landscaping would partly screen views towards the park home properties across Linton Lane. Conditions regarding proposed and existing landscape features could be imposed if the new dwellings aspect of the appeal were to succeed. These would ensure features are retained and the protection that they provide is strengthened.
23. Furthermore, the close-knit arrangement of the park home properties means that there is already considerable overlooking between the units themselves both into windows and outdoor spaces. The proposed windows would be at a greater distance and the difference in land levels would direct views over, rather than down towards, the park homes.
24. There would be an additional first floor window at the existing property. However, it would be orientated in a similar way to, be smaller than, and comparable distance from, the park home units as an existing window at the same level. Therefore, it would not result in significant detrimental harm to nearby occupiers.

25. The proposed dwellings would be closer to the park home site than the existing one. Nonetheless, the separation distance and intervening landscaping would prevent the proposed development being overbearing or oppressive features in the outlook from the park home properties.
26. This would also reduce the noise and disturbance experienced at other properties, including from additional traffic that would not be significant given the scale of the scheme. The effects of construction works would be temporary and would not be significant from the alterations to the dwelling. The movements and timings associated with the more extensive works needed for the new dwelling could be controlled by condition were that element of the appeal to be allowed.
27. As such, the proposed development would not unacceptably harm the living conditions of the occupiers of nearby properties with regard to outlook, privacy, noise and disturbance. It would comply with Policy SD1 of the Core Strategy, where it seeks to safeguard residential amenity for existing residents.
28. Policies BY1 and LD1 of the Core Strategy do not relate directly to living conditions and weighs neither for nor against the proposal in regard to this issue.

Highway Safety

29. Despite allowing two-way traffic Linton Lane is narrow alongside the site and not subject to parking restrictions. Moreover, there are no designated facilities for pedestrians to take refuge or street lighting along much of it. I saw that were vehicles or pedestrians to meet along much of Linton Lane there would likely be a need for them to reverse to find a space to pass. I acknowledge comments from local residents and the Council over the age of occupiers of the park home site and their potentially greater reliance on Linton Lane as a pedestrian route.
30. Nevertheless, Linton Lane already serves several dwellings and the park home site itself that would already generate considerably more traffic than the appeal scheme. The existing access arrangements are not to be altered. Sufficient parking and turning facilities would be provided and as such the scheme would not lead to an increase in street parking strain.
31. Due to the limited number of properties proposed, the appeal scheme would not give rise to significant additional vehicle or pedestrian movements. Furthermore, the presence of public transport, services and facilities nearby would provide opportunities for residents to use modes of transport other than private car. There is also an alternative informal pedestrian route from the site to the main road without using Linton Lane.
32. Linton Lane would not comply with standards set out in Manual for Streets 1 and 2 or the Council's Highways Design Guide for New Developments. Nonetheless, it is not a new route but an existing one. No compelling evidence of road traffic accidents, significant stress at peak times or inability of emergency/refuse vehicles to use Linton Lane has been provided and there was no objection from the Highway Authority. The proposal would not significantly intensify the use of Linton Lane by vehicles or pedestrians and any impacts, even cumulatively, would not be severe.

33. The alterations to the existing property would not give rise to additional pedestrian or vehicle movements and space for on-site parking is retained.
34. Consequently, the proposed development would not unacceptably harm highway safety with regard to the free flow of traffic and pedestrian safety. The scheme would accord with Policies BY1, SS4 and MT1 of the Core Strategy where they aim to prevent schemes that would adversely affect the safe and efficient flow of traffic, and that they should have safe access, accommodate the needs of people and give a choice of modes of travel.
35. It would also accord with the Framework where it states development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Other Matters

36. I do not have full details of schemes from other Council's where the appellant indicates a different approach has been taken in regard to phosphate levels. In any event, each case is assessed on its own merits.
37. The proposal would contribute towards housing supply and the scheme would align with the aims of the Framework 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.
38. Having published their Annual Position Statement, unlike at the time of the application being refused, the Council indicate they are now able to demonstrate a 5-year supply of housing land. There is no clear case to the contrary. I have not been provided with the full details relating to the appeal highlighted by the appellant². Even if I were to consider there was a shortfall, the application of policies in the Framework that protect areas or assets of particular importance, in this case the harm to the SAC, provides a clear reason for refusing the development proposed. Therefore, in accordance with paragraph 11d)i of the Framework, the tilted balance in paragraph 11d)ii is not engaged.
39. The contribution to housing supply of 2 dwellings would be small. As construction benefits would be short term, and given the number of units proposed, benefits arising from the construction period and future spend of occupants of the new dwellings would be limited, as would biodiversity benefits in light of the limited information provided regarding them.
40. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that applications for planning permission, and therefore appeals, must be determined in accordance with the development plan, unless material considerations indicate otherwise.
41. While I have found the scheme would be acceptable with regard to character and appearance, living conditions and highway safety, the harm arising to the SAC is determinative with regard to the new properties. That aspect of the proposal conflicts with the development plan when considered as a whole and

² APP/W1850/W/20/3244410

there are no material considerations, either individually or in combination, that outweighs the identified harm and associated development plan conflict.

42. However, the alterations to the existing dwelling are acceptable, accord with the development plan and are clearly severable from elements associated with the new dwellings.

Conditions

43. In addition to the standard time limit condition, in the interests of certainty, a condition specifying the approved plans, and clarifying the elements of the scheme allowed is required. To protect the character and appearance of the area, a condition requiring the external materials to match that of the existing property is imposed.

Conclusion

44. For the reasons given above, the proposal insofar as it relates to the alterations to the existing dwelling only, accords with the development plan when considered as a whole.
45. I conclude that the appeal should be allowed subject to the conditions above for the alterations to the existing dwelling but dismissed insofar as it relates to the construction of two new dwellings.

Stuart Willis

INSPECTOR