



Appeal Decisions

Hearing Held on 19 October 2021

Site visit made on 2 November 2021

by P H Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 December 2021

Appeal A: APP/W1850/C/21/3269917

Land at Sheepcote Farm, Clifford, Herefordshire HR3 5HU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Tom Pugh against an enforcement notice issued by Herefordshire Council.
 - The enforcement notice, numbered EN2020/003146/ZZ, was issued on 26 January 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission unauthorised operational development in the area hatched in blue shown on the attached plan¹, to extract significant amounts of gravel to facilitate the raising of land and works associated with foundations and slurry chambers in connection with a proposed dairy development.
 - The requirements of the notice are:
 - (1) Remove all of the gravel and concrete, which has been placed across the site to facilitate the land raising, along with the slurry chambers and channels from the area hatched in blue as shown on the attached plan; and
 - (2) Following compliance with (1), fill any depressions in the ground and level the Land to maintain the existing ground levels surrounding the slurry lagoon within the area hatched in blue as shown on the attached plan; and
 - (3) Remove from the Land within the area hatched in blue as shown on the attached plan all debris and rubble arising from compliance with requirements (1) and (2) above and transport to a registered approved waste site; and
 - (4) Return the Land within the area hatched in blue as shown on the attached plan, to grass.
 - The periods for compliance with the requirements are as follows:
 - Compliance with (1) within 180 days from the date the notice takes effect;
 - Compliance with (2) within 270 days from the date the notice takes effect;
 - Compliance with (3) within 330 days from the date the notice takes effect;
 - Compliance with (4) within 360 days from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/W1850/W/21/3271701

Land at Sheepcote Farm, Clifford, Herefordshire HR3 5HU

- 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 Tom Pugh (WRL Pugh & Son) against the decision of Herefordshire Council.
- The application Ref 190569, dated 14 February 2019, was refused by notice dated 5 October 2020.

¹ The plan is attached to the enforcement notice

- The development proposed is a dairy unit comprising of the erection of a cattle cubicle building, milking parlour building, feed & milk silos, ancillary works plus retention of slurry lagoon.
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Decision: Appeal A

1. It is directed that the enforcement notice be corrected by replacing the wording at Section 3 (The matters which appear to constitute the breach of planning control) with the following:

Without planning permission, unauthorised operational development in the area hatched in blue shown on the attached plan, comprising the raising of land and the construction of foundations and slurry chambers in connection with a proposed dairy development.

2. Subject to this change, the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Decision: Appeal B

3. The appeal is dismissed.

Procedural Matter

4. I did not close the Hearing in person because of the possible need to carry out consultation pursuant to Regulation 63 of *The Conservation of Habitats and Species Regulations 2017* (the Habitats Regulations). In view of my decisions on the appeals it was not, in the event, necessary to carry out any consultation, and I closed the Hearing in writing.

The Enforcement Notice

5. The breach of planning control includes, 'to extract significant amounts of gravel to facilitate the raising of land'. However, during my site visit it was clear that the material had actually been extracted from land outside the site identified by the notice. Consequently, the notice cannot stand as it is.
6. I have the power to correct the notice, provided there would be no injustice to the Council or the appellant. In this case, the notice could be corrected by removing the reference to the extraction of gravel. Although the extraction works are referred to in the reasons for issuing the notice, the Council confirmed at the Hearing that its concerns actually relate to the raised land levels rather than the removal of material from the adjoining land. Indeed, there is no requirement for the material to be returned to the land it came from. In these circumstances, amending the notice as I have outlined would not alter the effect of the notice and, consequently, there would be no injustice.
7. The alleged breach also includes 'works associated with' foundations and slurry chambers. I raised this wording at the Hearing, and both parties considered that the words 'works associated with' could be replaced with 'construction of' without causing injustice. I will make that change in order to improve the clarity of the allegation.

8. At the Hearing the Council suggested that Requirement 4 could be changed to refer to the planting of a traditional orchard, since there had previously been an orchard on the site. However, both parties considered that such a change would make the notice more onerous, a view I share. With that in mind, it would cause injustice to the appellant in my view. At the Hearing the appellant advised that the site was grassed before the development took place and, consequently, was content with Requirement 4 in its current form. Having regard to these matters, I have concluded that Requirement 4 should remain unchanged.

Reasons: Appeal A

9. For the reasons set out below, I have concluded that Appeal B should be dismissed. In these circumstances, I can see no justification for permitting the earthworks and structures that have already been carried out as a commencement of that same development. Indeed, it is clear that the earthworks are a significant part of the Council's concerns. Accordingly, for the same reasons outlined in relation to Appeal B, the appeal fails. I shall uphold the enforcement notice as corrected and refuse to grant planning permission on the deemed application.

Reasons: Appeal B

Procedural Matters

10. The appellant advises that during the application process the description of the development was amended in an updated Design & Access Statement and should be, 'Proposed dairy unit comprising of the erection of a cattle cubicle building, milking parlour building, feed & milk silos and ancillary works; part retrospective'. The Council's decision notice has the original description, which includes reference to the slurry lagoon. However, it appears that the decision to leave the description unchanged was solely due to the appellant's failure to submit a revised planning application form rather than due to any practical concerns on the part of the Council. At the Hearing, both parties confirmed the view that the slurry lagoon is now lawful due to the passage of time. Consequently, no purpose would be served by retaining it as part of the development for which permission is now sought. Accordingly, I will consider Appeal B on the basis of the appellant's revised description.

Main Issues

11. The main issues are:
- Whether the development accords with the Sequential Test, as set out in local and national policy relating to flood risk;
 - Whether the development would be served by an implementable and technically adequate drainage system;
 - Whether the setting of the Grade II listed Sheepcote Farmhouse would be preserved; and
 - The effect of the development on biodiversity and the integrity of the River Wye SAC/SSSI and Severn Estuary SAC/SPA/SSSI/Ramsar site.

Flood Risk and the Sequential Test

12. The National Planning Policy Framework ('the Framework') states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. This is achieved by applying a Sequential Test to proposals for new development. Details of the application of the Test are set out in the Government's Planning Practice Guidance (PPG).
13. In applying the Sequential Test it is necessary to consider the vulnerability of the site to flooding, which is indicated by a Flood Zone categorisation. In this case the site is located close to the River Wye, leading to a risk of fluvial flooding, and there was discussion at the Hearing regarding whether the site lies within Flood Zone 3a or 3b. Zone 3a means that there is a high probability (greater than 1 in 100) of flooding. Zone 3b is the functional floodplain – land where water has to flow or be stored in times of flood.
14. Having considered various iterations of the appellant's Flood Risk Assessment (FRA), the Environment Agency (EA) accepts that the site is not within Zone 3b. It qualifies this view by stating that, 'only 2D modelling would confirm this movement of floodwater in the floodplain and appropriate levels for use in the FRA'. The EA did not request such modelling in this instance (given the remote location of the site and the scale and nature of the development) and the appellant did not commission that work. I have no clear evidence to show that the earthworks carried out at the site have had any bearing on the matter.
15. Accordingly, I have considered the proposal on the basis that the site falls within Zone 3a and is not part of the functional floodplain. While that conclusion is based on imperfect information (specifically, the absence of 2D modelling), it appears that the appellant has provided the information requested and there is no information before me to show clearly that it is wrong.
16. It is necessary to consider the area the Sequential Test is applied to. The PPG advises that this will be defined by local circumstances relating to the catchment area for the type of development proposed and that a pragmatic approach to the availability of alternatives should be taken.
17. The Sequential Test is addressed in the appellant's Design and Access Statement (DAS). This states that Sheepcote Farm and Parks Farm is the only land available to the appellant. Parks Farm is not considered to be a viable location for this level of investment, given that it is only rented. On this basis, all land other than the land at Sheepcote Farm, owned by the appellant, is rejected.
18. Neither party has referred me to any specific catchment area that would be served by the proposed dairy unit. The only evidence I have relating to the need for a unit in this general area is the fact that the appellant wishes to build one at Sheepcote Farm. In these circumstances, an extensive area of search for alternative sites would not be appropriate, and the land the appellant rents at Parks Farm, being some distance away, can be discounted on that basis.
19. I do not accept, as a general point of principle, that only land within the appellant's ownership should be considered, since to do so would limit the effectiveness of the Sequential Test. In this instance, however, Sheepcote Farm

is constrained by the River Wye to the north, east and west and sloping land to the south. In these circumstances, it seems improbable that additional land suitable for the development and in a lower flood zone could be acquired in a location that would allow it to function as part of the existing farm.

Consequently, the focus should be on the appellant's existing holding. This includes Sheepcote Farm and the adjoining land at Lower Court.

20. Even so, two sites within the appellant's land holding at Sheepcote Farm/Lower Court have been identified as falling outside Flood Zone 3. Both are located to the southwest of the appeal site, closer to Clifford village. One is a field on which the appellant previously sought planning permission for a farmworker's dwelling and two livestock buildings. The other is a field close to that site, on the opposite side of the B4350. I saw both sites during my site visit.
21. In terms of flood risk, both of these options are clearly preferable to the appeal site, since neither falls within Zone 3. The appellant contends that the development would have an unacceptable landscape impact if carried out on these sites. However, the Council has not offered any view to that effect and there is no material before me to indicate how the scheme might appear if located on either site. It did not appear to me during my site visit that either site could be ruled out on the basis of gradients across it.
22. It is argued that the development would cause amenity problems if located on these alternative sites due to their proximity to Clifford village. However, both are good-sized fields, outside the core of the village, and I have no evidence to show that the unit would need to be located unduly near to dwellings. Little can be inferred from the fact that the previous proposal on one of the sites was withdrawn, since it was a very different scheme which would have had different landscape impacts. In any event, the fact that it was withdrawn means that the Council did not make a final determination.
23. It is argued that the dairy unit needs to be close to the existing farm buildings and house, which provide essential facilities and support, including the storage of feed and machinery. Certainly, it seems that the appeal site is the appellant's preferred option and, to that extent, can be assumed to be preferable from an operational point of view. However, the evidence before me shows only a very basic consideration of the merits of the 2 alternative sites and, based on that, it is not clear to me that either is an unsatisfactory option, even if not the preferred one.
24. I am mindful that the Council's Land Drainage consultee indicated that the requirements of the Sequential Test had been met. However, the Council ultimately took a different view, as do I, for the reasons set out above.
25. I appreciate that the proposal includes excavation and re-grading works designed to offset the loss of floodplain storage and that the scheme generally has been designed with the risk of flooding in mind. However, the starting point is the application of the Sequential Test, and its proper application cannot be set aside on the basis of the design of the scheme or that compensatory works will be carried out. The fact that the Environment Agency did not object to the scheme is of limited relevance, since it made clear that it deferred to the Council on the question of the Sequential Test and drainage.
26. For these reasons I conclude that the development fails the Sequential Test. The Framework advises that development should not be permitted if there are

reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. In this case it appears to me, on the information available, that there is a significant prospect that such sites are available. This brings the development into conflict with Policy SD3 of the Herefordshire Local Plan Core Strategy 2011-2031, which seeks to ensure that development proposals are located in accordance with the Sequential Test.

Drainage Proposals

27. The appellant has not provided a fully-specified drainage scheme. Instead, a surface water drainage strategy is outlined within the Flood Risk Assessment (FRA)². The strategy is designed to address the increased runoff rates that would arise from the increase in impermeable surface area at the site. The design philosophy is to attenuate the surface water runoff flows by means of a buried geo-cellular tank and discharge the outflows into a local brook at a greenfield runoff rate. In order to prevent high water table levels from filling the tank in fluvial flood events, the geo-cellular tank would be lined with an impermeable membrane. Basic specifications for the tank and other key elements of the scheme are provided.
28. The Council has not attacked this overall philosophy and its drainage advisor did not object to the scheme. Nevertheless, in view of the highly sensitive nature of this site, both in terms of flood risk and in terms of nearby biodiversity receptors, I am concerned at the lack of detail regarding the drainage proposals. While a more detailed scheme could be required by a planning condition, as discussed at the Hearing, given the significant surface water issues and potential for flooding on this site, it seems to me that it is important that a detailed scheme is provided before planning permission is granted in order to provide certainty and minimise risk. Moreover, since the site is in a highly sensitive location in terms of biodiversity, it is critical that the drainage system is designed to minimise any likelihood of contamination of the surface water drainage system, which is a potential pathway for contaminating sensitive receptors, including the River Wye SAC/SSSI. This is considered in the appellant's Water Pollution Prevention Strategy, but the proposals are, again, in outline only.
29. Without a detailed scheme, I cannot be sure how successfully the general approach outlined in the FRA will be when applied to the appeal proposal. Full planning permission is sought and, in this instance, the drainage proposals are a fundamental element of the scheme. As things stand, I have only basic information relating to key aspects of the scheme such as the pipework, storage tank, hydro-brakes and outfall structures. The illustrative drawings that have been provided, while supported by calculations, provide insufficient certainty in this instance.
30. At the Hearing the Council indicated that it had a preference for an open infiltration basin rather than the buried tank. The appellant had no objection in principle to an open basin but had understood the Council's own guidance to rule it out. In any event, the Council has not provided me with any technical evidence to show that the proposed tank would be an unsatisfactory option. On the evidence before me, therefore, I have no reason to doubt the principal of a buried tank. This does not, however, alter my view that a more detailed scheme is necessary.

² The FRA is supplemented by a Technical Note dated May 2020

31. For these reasons I conclude that it has not been demonstrated that the development would be served by an implementable and technically adequate drainage system. Accordingly, there is conflict with the aims for sustainable water management within Policy SD3.

The Listed Farmhouse and its setting

32. Sheepcote Farmhouse combines 16th and 18th Century elements with later alterations and additions. The walls are primarily finished in stone and it has a slate roof. To the immediate west is a courtyard enclosed by traditional farm buildings, which provides an important element of its setting. Beyond this are 20th Century cattle sheds. To the east of the farmhouse, its immediate setting is formed by a grassed area and trees and it has a garden to the rear (south). Other than this, its setting is formed by the surrounding farm fields. The agricultural surroundings of the building, and the traditional farm buildings in particular, are important to the significance of the listed building.
33. The grassed and treed area to the east of the farmhouse provides an important visual break between it and the site of the proposed cattle shed. Additionally, the slurry lagoon and silage clamp are substantial built features which would further separate this building from the farmhouse. Consequently, the effect of this building on the setting of the farmhouse would be minimal.
34. The milking parlour shed would be nearer to the listed building and would be seen in views of the building from the public footpath to the north of the site. As a substantial, contemporary farm building, finished with a mix of brickwork, concrete panels and cladding panels, it would plainly be of a very different character and appearance to that of the farmhouse. However, the farmhouse is already seen in the context of the 20th Century farm buildings to the west and these new farm buildings would not appear inappropriate in that context. Moreover, the grassed and treed area between the proposed building and the farmhouse would ensure a substantial degree of separation. Overall, the setting of the farmhouse would continue to be that of a working farm, with some traditional and some more recent farm buildings, and the significance of the listed building would not be compromised.
35. For these reasons I conclude that the setting of Sheepcote Farmhouse would be preserved. Accordingly, I find no conflict with Local Plan Policy LD4, which seeks to protect, conserve and, where possible, enhance heritage assets and their settings.

Biodiversity, SACs and SSSIs

36. The site is close to the River Wye, which is designated as a Special Area of Conservation (SAC) and Site of Special Scientific Interest (SSSI). The SAC designation means that the River Wye is a 'European Site' for the purposes of the Habitats Regulations. In accordance with Regulation 63, the Council consulted Natural England and Natural Resources Wales and carried out a screening exercise. This concluded that significant effects on the SAC would be likely, indicating a need for an appropriate assessment to be carried out. In its consultation response, Natural England stated that the development could also have potential significant effects on the Severn Estuary SAC/SPA/Ramsar/SSSI and the Bushy Hazels and Cwmma Moors SSSI. There are clear pathways that could allow both the River Wye and the Severn Estuary (into which the Wye flows) to be affected by the development.

37. Consequently, in accordance with the Habitats Regulations, planning permission could not be granted until an appropriate assessment of the implications of the development for the SACs, having regard to their conservation objectives, is carried out. Had I been otherwise minded to allow the appeal, it would have been necessary to carry out such an assessment. However, I have decided to dismiss the appeal for reasons not connected with the conservation designations. Consequently, the requirement for appropriate assessment is not triggered, and it is not necessary for me to reach a finding on this issue. Although I have been referred to various other sites with non-European biodiversity designations, not subject to the same requirements relating to appropriate assessment, I have not considered those further, given the significant crossover of issues and evidence relating to those sites and the European sites.

Other matters

38. The Framework is supportive of developments which contribute to the rural economy. This is a commercial scheme which is likely to be beneficial in economic terms, and I attach some weight to that consideration. I have also borne in mind the claim that the development would result in a reduction in slurry and farmyard manure, ammonia emissions, diffuse pollution loads and benefits in terms of animal welfare. The scheme includes extensive tree planting, with attendant visual and environmental benefits. The appellant has provided a report, which is not disputed, showing a biodiversity net gain arising from the development, in accordance with Government policy, as set out in the Framework.

39. I have had regard to the various planning conditions proposed and discussed at the Hearing. While these would be beneficial, they would not address my fundamental concerns regarding the development.

Conclusion – Appeal B

40. I have found no harm in respect of the setting of the listed farmhouse and no conflict with the development plan policies relating to that matter. I also accept that there are likely to be some benefits arising from the development, as outlined above. However, the Sequential Test is a key element of Government policy relating to flood risk, supported by the development plan. Given the clear sensitivity of this site, it is important that it is rigorously applied in this instance. For the same reason, it is also important that a detailed drainage scheme is prepared. Consequently, even if the benefits of the development were fully as the appellant states, they would not outweigh the harm I have found. Notwithstanding the compliance with some development plan policies, I find that there is conflict with the development plan as a whole. Accordingly, I conclude that the appeal should be dismissed.

Peter Willows

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

P J Triplow
Owen Fry
Tom Pugh
Alan Corner
George Rose
Vincent Smith
Gareth Blockley
Ian Gilby

Berrys
Berrys
Appellant
Hydro-logic Services
Water Design Engineers
Crestwood Environmental
Turnstone Ecology
Berrys

FOR THE LOCAL PLANNING AUTHORITY:

Rebecca Jenman
Scott Lowe
Nicola Stone
Jenny Allen

Principal Planning Officer, Minerals and Waste
Planning Enforcement Officer
Consultant Ecologist
Drainage Consultant (Balfour Beatty)

DOCUMENTS SUBMITTED DURING THE HEARING

- 1 Maps showing the appellant's land holdings
- 2 European Sites - Conservation Objectives and other details