The Planning Inspectorate

Appeal Decision

Site visit made on 9 September 2021

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05/01/2022

Appeal Ref: APP/W1850/W/21/3273273
Field Known as Emily's Meadow, Nr. Weobley HR4 8RS

- 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 Darren Pearce against the decision of Herefordshire Council.
- The application Ref 204246, dated 2 December 2020, was refused by notice dated 5 February 2021.
- The development proposed is: Retention of portable cabin for use as an agricultural classroom.

Decision

1. The appeal is dismissed.

Procedural Matters

2. There are two other appeals for the same site that were linked to this appeal[1]. These will be the subject of a separate decision.

3. Whilst the development in this case is described as a portable cabin, both parties have referred to the unit as a building. I have been given no reason to determine the appeal otherwise than as an application for a building. Furthermore, the description suggests that the application is retrospective and the application form indicates that the development has already started. Indeed, I noted that there is a unit on site in the approximate location indicated on the layout plan. Accordingly, I have determined the appeal on the basis of development that has already occurred.

4. The site visit was arranged as an accompanied visit and should have been attended by a representative of the Council and the appellant. However, the Council did not attend the visit and could not be contacted. Accordingly, I conducted my visit as access only; the appellant's representative was present but did not accompany me during my inspection of the site or the adjoining highway.

5. The development in this case provides an education facility for children and young adults, many of which have particular health and social difficulties. Accordingly, there is potential for my decision to have an effect on a person or persons with a protected characteristic, as defined by the Equality Act 2000. I am also mindful of Article 3(1) of the United Nations Convention on the Rights of the Child and the implications of my decision on the best interests of the child or children. In view of my duty with regard to these matters, I sought the

[1] Appeals reference APP/W1850/C/21/3273276 and APP/W1850/C/21/3273277.

parties' views and have had regard to the comments received in reaching my decision.

6. Finally, the revised National Planning Policy Framework was published after the appeal had been submitted and initial statements made. As such, the written comments of the parties were invited with regard to the National Planning Policy Framework (20 July 2021).

Main Issues

7. Having regard to the Council's reasons for refusal, I have identified the main issues as the effect of the development on:

   i. The character and appearance of the site and surrounding area;

   ii. Highway safety; and

   iii. Protected species and habitats.

Reasons

Character and Appearance

8. The appeal site is located within a wider parcel of land used for agriculture and for the keeping of horses. The evidence suggests that the wider parcel is also used for farm related educational activities. The site also accommodates a number of buildings of timber construction, as well as a number of mobile units. The site is set off the boundary of the wider parcel with the C1094, which is a rural lane separated from the wider parcel by a mature hedgerow. The site is to the east of the village of Weobley and in a rural location characterised by field parcels bound by mature trees and hedgerow.

9. The development subject of this appeal is a flat roof building, finished with dark green cladding, together with white UPVC window frames and a door. Although there are other buildings on site, these form a linear cluster along the side boundary of the wider field parcel. The appeal building is physically separated from these other buildings, and sits in a prominent location close to the site entrance. It is, therefore, conspicuous when viewed from the public highway.

10. The visual prominence of the building is exacerbated by its utilitarian appearance, which is not improved by the dark green colour. Its materials and design are incongruous within the surrounding area, and contrast with the timber constructed buildings on site that have an appearance that is more usual in a rural setting. I acknowledge that the existing mature hedgerow provides some screening from public vantage points. This is not, however, sufficient to eliminate all views. I note the suggestion that additional landscaping would further screen the development from view, or that alterations to the external appearance of the building might improve its appearance. I have not, however, been provided with any landscaping or materials details and cannot be certain that additional planting or an alternative finish would be sufficient to mitigate the visual effect of the development.

11. For the reasons given above, I conclude that the development has an unacceptable effect on the character and appearance of the site and

surrounding area. For this reason it conflicts with policies SS6 (Environmental quality and local distinctiveness), LD1 (Landscape and townscape) and SD1 (Sustainable design and energy efficiency) of the Hereford Local Plan Core Strategy 2011-2031 Adopted October 2015 (HLPCS), and Policy WEO9 (Conserving the Landscape and Scenic Beauty of the Parish) of the Weobley Neighbourhood Development Plan 2011 – 2031 dated July 2019 (WNDP). These policies require, amongst other matters, that development conserves and enhances the environmental assets that contribute to Herefordshire's distinctiveness, including its landscape; that it preserves or enhances the landscape within the parish of Weobley; and that the design, scale and nature of development is positively influenced by the character of the landscape. The harm identified is also in conflict with the advice on design and protection of the natural environment within chapters 12 and 15 of the Framework.

12. Whilst the Council has referred to Policy WEO13 (Enhancement of the Natural Environment) of the WNDP, this is of limited relevance to this first main issue as the policy relates to biodiversity.

Highway Safety

13. There is an existing means of access onto the C1094, enclosed by an agricultural type metal bar gate, and with mature hedgerow either side. I note that a traffic survey for the C1094 has been undertaken and that the appellant has acknowledged that the development results in an intensification of vehicle movements to and from the site, with an additional two vehicle movements per day. The parties agree that a visibility splay of 2 metres by 43 metres is required in order to make the use of the access safe for vehicle movements to and from the site, including those resulting from the development.

14. The second reason for refusal specifically refers to the visibility to the south of the access. The appellant has provided a plan[2] showing the position of the agreed visibility splay in this direction. The edge of the splay cuts through the mature hedgerow located along the boundary of the wider field parcel within which the appeal site is located.

15. The hedgerow is on land within the appellant's control and he has suggested that it could be cut and maintained at a height of 1.5 metres. At this height it is suggested that sufficient visibility would be achieved over the hedgerow for the minibus used to take pupils to and from the site. At my visit I noted that the hedgerow has a height in excess of 1.5 metres, but I have no guarantee that it would not be adversely affected if it were cut to this height. Furthermore, having regard to the Planning Practice Guidance: Use of Planning Conditions (PPG), a condition limiting access to the site by minibus alone would be difficult to enforce. It is likely that staff require preparation time for lessons and so arriving at the site at the same time as pupils is likely to be impractical. There are also likely to be incidents were pupils are late for lessons and arrive at the site without using the shuttle bus service. Furthermore, the activities on the wider field parcel are likely to generate vehicle movements that are not associated with the development; such vehicle movements would not be controlled by the condition.

16. In order to provide sufficient visibility for any type of vehicle to enter or leave the site safely, not just the minibus, it is likely that a significant reduction in

[2] Appendix 8 of the appellant's appeal statement.

the height of the hedgerow would be required. Having regard to the appellant's visibility splay plan, a substantial length of hedgerow would be affected to achieve the 2 metre by 43 metre splay. As noted above, I cannot be certain that the hedgerow would not be adversely affected by the necessary works and that they would not ultimately result in its loss. Having regard to the prevailing character of the site and surrounding area, as set out earlier in my decision, the loss of a substantial length of the hedgerow would have a harmful effect on the character and appearance of this rural area. Furthermore, I have no evidence that leads me to conclude that such works would not have an adverse effect on the ecological value of the hedgerow.

17. I note the appellant's case with regard to the traffic numbers on the C1094 and the likely incidents of conflict when vehicles enter and leave the site, even during the times of peak flow. This does not, however, justify the continued use of a means of access that does not provide a sufficiently safe environment for its users.

18. In granting permission for a riding arena, and a barn and haystore on the wider field parcel, I acknowledge that the Council did not object on highway safety grounds. Whilst I do not have the full details of the applications in order to make an informed comparison, I note from the decision notice for the riding arena[3] that the development permitted is limited to use by the applicant alone. Such a condition is likely to limit vehicle movements to and from the site. The appellant also indicates that the barn and haystore is also for private use. These previous decisions of the Council do not alter my conclusions with regard to the acceptability of the development that is before me.

19. All things considered, whilst the development may have resulted in an increase of only two vehicle movements each day, I cannot be certain that any traffic to and from the site does not have an adverse effect on highway safety on the C1094. I have had regard to the conditions suggested in an attempt to mitigate the harm caused. However, I cannot be satisfied that these comply with the tests set out in paragraph 003 of the PPG or that the measures secured by the conditions would not result in the loss of a significant length of hedgerow, causing harm to ecology and the character and appearance of the site and surrounding area.

20. For the reasons given above, the development fails to comply with policies SS4 (Movement and Transportation), MT1 (Traffic management, highway safety and promoting active travel) and RA6 (Rural economy) of the HLPCS. These inform that development should, amongst other matters, create safe environments; are designed and laid out to achieve a safe entrance and exit; and do not generate traffic movements that cannot safely be accommodated within the local road network. For these reasons the development also fails to comply with the Framework, paragraph 111 in particular.

21. I also find conflict with Policy WE02 (Protection and Enhancement of Community Facilities) of the WNDP, which does not support development that has an adverse impact on traffic flows on local roads. Policy WEO3 (Protection of Local Green Space) of the WNDP is also mentioned in the reason for refusal. I do not, however, see the relevance of this policy to the development before me as the appeal site is not identified as a local green space. Finally, the appellant has referred to Policy WE023 (Highway Design Requirements). The

[3] The appellant's appendix 4 - Application reference 191600.

development does not comply with this policy as it does not ensure safe access onto the adjacent road.

Protected Species and Habitats

22. The development subject of this appeal is for a building used as an agricultural classroom. There are no w.c. facilities within the building and none are shown on the plans submitted as part of the application. However, the appellant has responded to the Council's objection to the development with regard to w.c. facilities, and it is clear that w.c. facilities are necessary to serve the classroom. I note that, at present, these are provided within portable toilets located outside the appeal site, but on land within the appellant's control. Accordingly, I have regarded the provision of w.c. facilities as part of the development that is before me to consider.

23. The Council say that the appeal site is within the River Lugg sub-catchment area of the of the River Wye, which is a Special Area of Conservation (SAC). It says that the River Wye is recognised as being of international importance for the flora and fauna it supports. The Council say that the SAC is currently failing its conservation targets for phosphate levels. This is not disputed by the appellant, who accepts that the development 'could, if unchecked, potentially increase phosphates levels into the adjoining watercourse which has an indirect pathway to the River Lugg'.

24. In view of the above, it is necessary for me to exercise the duty under Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (the Habitat Regulations) and undertake an appropriate assessment (AA), being the competent authority in this appeal. In order to do this I must first undertake an initial assessment as to the likelihood of any significant effect of the development on the National Sites Network (NSN)[4]. In this regard, I note the requirements of Regulation 63(2), that a person applying for permission must provide such information as the competent authority may reasonably require for the purposes of the assessment. Whilst I note the appellant has proposed a number of options for draining or dealing with the waste that results from the w.c. facilities, before I can determine whether or not the effects of the development would be adequately mitigated, I must first understand the nature and extent of any adverse effects upon the integrity of the NSN. I am not satisfied that the limited information before me is sufficient for me to do this and properly undertake an AA. For example, I do not have sufficient information regarding the volume of waste material disposed of prior to the development taking place and then after. I am, therefore, unable to make an informed comparison between the existing and previous situation in order to determine the extent of the effect on the NSN.

25. For the above reasons I cannot conclude that the effect of the development on protected species and habitats is acceptable, and that the development accords with the requirements of the Framework with regard to habitat sites. As such, I am unable to determine whether or not the development accords with policies LD2 (Biodiversity and geodiversity) and SD4 (Waste water treatment and river water quality) of the HLPCS, which are policies that require the conservation and enhancement of the NSN and, in particular, deal with the matter of the effect of waste water from development on the conservation objectives of the

[4] The initial 'screening' in accordance with Regulation 63(1)(a) of the Habitat Regulations.

SAC. However, given that I am dismissing the appeal on other grounds, I have not considered this matter further.

Other Matters

26. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. For the reasons set out above, the development proposed is contrary to the development plan. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.

27. As mentioned earlier, the development provides an education facility for children and young adults, many of which have particular health and social difficulties and/or share a protected characteristic[5]. Accordingly, I am mindful of Article 3(1) of the United Nations Convention on the Rights of the Child, which provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children. Furthermore, under the Public Sector Equality Duty (PSED) contained in Section 149 of the Equality Act 2010, I must have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it.

28. The appellant has set out details of the service provided by his business, that it provides an educational service for 34 pupils that have been referred by the local educational authority, and that it provides employment for 2 full time and one part time members of staff. I note that the service has operated for in excess of 8 years and that it previously operated from a nearby business park. As he was unable to renew the lease on the last premises, the appellant has moved the education service to the appeal site and has operated from here from early 2020. I acknowledge that the move has allowed the service to continue.

29. Notwithstanding the above, I cannot see that the appellant explored any other local alternative accommodation in 2020 before deciding to relocate to the appeal site. He does not suggest that there are any particular barriers (e.g. financial) to accommodating the service elsewhere in the locality, or that there is a reason why alternative accommodation away from the appeal site would not be appropriate. Furthermore, I have insufficient evidence to conclude that the education service provided by the appellant is unique in the local community, such that pupils could not be educated by another local service provider. As such, in the event the appeal is dismissed, I have not been given a reason to conclude that the business would not continue to operate in accommodation elsewhere in the locality, or that the pupils would be disadvantaged.

30. I do not underestimate the value of the service provided to the local community by the appellant's business. I note the support for the development, testimonials of service users, and that the value of the service is

[5] As defined in section 149(7) of the Equality Act 2010.

acknowledged by the Council. Indeed, I am mindful that, for the children that gain education from the service, their best interests are at the forefront of my determination of this appeal. I am also mindful of my duty with regard to pupils that share a protected characteristic. It is likely that dismissing the appeal would cause disruption to the pupils' education. This might result from the need for the appellant to obtain alternative accommodation to operate his business, or the need for pupils to find an alternative education provider. However, I have insufficient evidence to conclude that it is unlikely that such alternatives would not be found. I am, therefore, unable to conclude that the pupils would be disadvantaged to a degree that would outweigh the harm I have identified in respect of the main issues in this case. I am particularly mindful of the harm identified with regard to highway safety, which has a direct effect on those entering and leaving the site, including the pupils using the service.

Planning Balance

31. I have found that the proposed development causes harm to highway safety and to the character and appearance of the site and surrounding area. I have also been unable to conclude that the development is acceptable with regard to its effect on protected species and habitats. I cannot be satisfied from the evidence before me that the imposition of conditions could overcome the harm I have identified. For these reasons the development conflicts with the development plan. I have had regard to all material considerations and the importance of these, but find these of insufficient weight to indicate that determination should be made otherwise than in accordance with the development plan. Accordingly, I conclude that planning permission ought not to be granted.

Conclusion

32. Having regard to my findings above and all matters raised, I conclude that the appeal should be dismissed.

J Moss

INSPECTOR