



Appeal Decision

Site visit made on 21 December 2021

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 January 2022

Appeal Ref: APP/W1850/W/21/3281065

Land adjacent to Liongrove, Crowels Ash, Pencombe, Bromyard HR7 4SW

- 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 and Mrs Michael Jones against the decision of Herefordshire Council.
 - The application Ref 210874, dated 1 March 2021, was refused by notice dated 26 May 2021.
 - The development proposed is retirement self build dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council advise they no longer wish to defend the sixth reason for refusal in respect of a climate change checklist. I therefore have not addressed this matter in the reasoning below.
3. Following determination of the planning application by the Council, the appellant has prepared a Drainage Report. I have paid regard to this document in consideration of the appeal and having regard to the Wheatcroft Principles I am satisfied that no interested parties have been prejudiced by my approach.
4. The revised National Planning Policy Framework (the Framework) has been published since the appeal was submitted. Both main parties have been given the opportunity to comment on this. My decision is made in the context of the revised Framework and I am satisfied that no interested party has been prejudiced by my approach.

Main Issues

5. The main issues are:
 - Whether the proposed development would be consistent with local policies relating to the location of new housing development;
 - The effect of the proposed development upon the character and appearance of the area;
 - Whether the proposed development would provide adequate living conditions for future occupiers in respect of land contamination;
 - The effect of the proposed development upon trees;
 - Whether the proposed development provides adequate water disposal; and

- The effect of the proposed development on the River Wye Special Area of Conservation (SAC).

Reasons

Location of site

6. The appeal site is located within an area known as Crowels Ash, which is not identified as a settlement for new housing development in Policy RA2 of the Herefordshire Local Plan – Core Strategy (2015) (CS) and as such the site is located within open countryside. Policy RA3 sets out that in open countryside new housing will be limited to certain types of development.
7. The nearest accessible settlement containing services and facilities is Bromyard located approximately 2.5 miles from the site. The surrounding roads are devoid of footpaths and street lighting and there are no cycle routes linking the site. Walking and cycling to and from the site to local services would be extremely difficult and would be especially difficult for the young, the elderly and those with mobility issues. This would be particularly so during the hours of darkness and inclement weather.
8. Whilst there is a bus stop nearby with services to Ledbury and Hereford this is infrequent. It is acknowledged in the Framework in paragraph 105 that transport solutions vary between urban and rural areas, however, future occupiers would be overwhelmingly reliant on private vehicles to access services and facilities to meet their day-to-day needs. There are no realistic alternative modes of transport or footpaths that would be available for future occupiers. Consequently, the accessibility to services and facilities would be poor, which would be inconsistent with the requirements of Policy RA2. This combination of factors demonstrates that the appeal site is not in a location where a new dwelling would be considered acceptable.
9. I note the appellant's personal circumstances and have given it careful consideration. I am mindful of the advice contained in the Planning Practice Guidance that in general planning is concerned with land use in the public interest. It is also probable that the proposed development would remain long after the current personal circumstances cease to be material. For these reasons, I find that this factor is not sufficient to outweigh the harm that I have identified.
10. As such, I conclude that the proposed development would not be located within a suitable location for new housing contrary to Policies SS1, RA1, RA2, RA3, SS4, SS7 and MT1 of the CS which, amongst other things, seek to direct new development to or adjacent to settlements; to avoid unsustainable patterns of development; proposals to be accessible by and facilitate genuine choice of modes of travel. It would also be contrary to paragraph 79 of the Framework which seeks to prevent the development of isolated homes in the countryside.
11. The Council has referred to Policy BY1 in the first reason for refusal, however, I find that with specific regard to this appeal I have given it negligible weight in coming to my decision.

Character and appearance

12. The site is largely made up of compacted ground and contains building materials and miscellaneous items. A small pond is located towards the north

of the site. Its boundaries are defined by landscaping and fencing. The site sits within a prominent spot within a wider agrarian landscape defined by verdant rolling hills, wooded areas and scattered buildings.

13. The Council advises that the site is located within the Timbered Plateau Farmlands character area set out in their Supplementary Planning Guidance 'Landscape Character Assessment' (2004). The document indicates the area is an undulating agrarian landscape with key features including hedged fields, scattered farms and woods. This landscape provides open views of woodlands and fields. The area has a varied settlement pattern containing dispersed farms and hamlets and occasional villages or wayside cottages.
14. The proposed development would have the appearance of a Dutch barn with the external appearance incorporating corrugated sheets, vertical boards and Corten panels.
15. I acknowledge that the site is brownfield and that the proposed development would have the appearance of a rural building. However, taking into account the site's prominent position it would not successfully integrate into the wider landscape on account of its scale, form and height. It would be very apparent and intrusive appearing as an incongruous form of development that would harm the character and appearance of the surrounding agrarian landscape. The presence of barn conversions in the area does not justify the harm that I have identified.
16. The appellant has suggested a vernacular designed cottage as an alternative proposal, if I were minded to allow the appeal. In the interests of fairness, I must ensure that what is considered at appeal is what was considered by the Council and therefore I have not taken this into account.
17. As such, the proposed development would be contrary to CS Policies SD1, LD1 and SS6 which, amongst other things, require developments to make a positive contribution to the architectural diversity and character of the area; conserve and enhance the natural, historic and scenic beauty of important landscapes and features and conserve and enhance those environmental assets that contribute to the county's distinctiveness.
18. It would also be contrary to paragraphs 126, 130 and 134 of the Framework which, amongst other things, seek to create high quality, beautiful and sustainable buildings and places; developments that add to the overall quality of the area and are sympathetic to local character including landscape setting.

Living conditions for future occupants

19. The Council alleges that the site is used for steel fabrication which has the potential to contaminate the site and unacceptably affect the living conditions of future occupiers. However, I have not been provided with any evidence to substantiate the Council's position. Furthermore, I did not observe any evidence to suggest that such activities have been or are taking place on site, during my visit.
20. I am also not aware of any objection to the planning application from the Council's Environmental Health Officer. I am satisfied that relevant conditions could be imposed if I were minded to allow the appeal in relation to land contamination.

21. As such, the proposed development would provide satisfactory living conditions for future occupiers. In this regard the proposed development would accord with CS Policy SD1 which, amongst other things, seeks to safeguard residential amenity for proposed residents and ensure new developments do not suffer from adverse impacts arising from contaminated land.

Impact on trees

22. Along the site boundaries are a number of trees. Due to their size, form and height they are highly visible and positively contribute to the appearance of the area.
23. The Council contend that a Tree Survey is required to consider the impact upon trees to facilitate the proposed development. Whilst the potential effect on trees is a significant consideration, given the position of the existing trees along the boundaries and the proposed site layout I am satisfied that appropriately worded planning conditions could be imposed if I were minded to allow the appeal, in order to safeguard trees during construction and post development.
24. Therefore, the proposed development would accord with CS Policies LD1, LD2 and LD3 which, amongst other things, seek to retain important trees and biodiversity features.

Water disposal

25. The appeal site is located within the River Lugg catchment which forms part of the River Wye SAC, which is recognised by the Conservation of Habitats and Species Regulations 2017 as an area of international importance for its flora and fauna. The Regulations requires decision-makers to undertake appropriate assessment (AA) where significant effects on a SAC are likely either alone or in combination with other proposals. The River Wye SAC is currently considered to be failing its water quality targets due to phosphates levels.
26. The Council's 'Position Statement - Development in the River Lugg Catchment Area' identifies the use of drainage fields to manage water discharge where phosphates are unlikely to reach the river. The statement sets out a number of conditions such measures must meet.
27. The appellant's drainage report outlines site specific measures to manage roof and hard surface run-off water. This includes rainwater harvesting and managed surface water run-off via the pond on site and the local watercourse.
28. Based on the submitted percolation test results it is evident that the southern part of the site is unsuitable as a drainage field. The position of a drainage field is also constrained by the pond on site. Taking into account the advice of the Council's Drainage Engineer and the absence of justification for the proposed discharge rate, absence of greenfield run-off rates, lack of information regarding the capacity of the pond and details of the foul water drainage strategy I cannot be satisfied that the proposed development would meet the conditions set out in the Council's position statement. Furthermore, it has not been demonstrated that the proposed development would not increase the risk of flooding on site or downstream, adversely affect the environment or water quality in the area.

29. As the site lies within an internationally important habitat area this is a matter that could not be addressed through the imposition of conditions post decision.
30. The appellant contends that the proposed development would comply with Natural England's criteria for achieving neutrality or betterment. However, no substantive evidence has been provided to support this claim.
31. Subsequently, the proposed development would conflict with CS Policies LD2, SD3 and SS6 which, amongst other things, seek to conserve, restore and enhance biodiversity and geodiversity assets; protect international and nationally designated natural assets and conserve and enhance those environmental assets that contribute towards the county's distinctiveness including those with specific environmental designations.

Impact on River Wye SAC

32. Whilst ordinarily a competent authority, such as myself, would potentially need to carry out an AA I have found against the appellant on other substantive grounds which is significant enough to dismiss the appeal. Therefore, this matter need not be considered any further in this case.

Other Matters

33. I acknowledge that the development would deliver a self-build property and whilst the CS does not include specific policies relating to self-build it does not appear that it prevents opportunities for such development from taking place in the county. Nor is there any credible evidence to indicate that the Council are failing in their self build and custom housebuilding duties. In this particular regard I find that the benefits of a self-build property would not outweigh the harm that I have identified.
34. I acknowledge that the deliverable five-year supply of housing land figure is not an upper limit and the proposed development would contribute to local housing supply. I also note that the Framework and the Council support windfall sites and the redevelopment of previously developed land in meeting the need for homes. However, this must be considered against locations for new houses and safeguarding the environment. I have found that the location of the site would not be an appropriate one for housing and the proposed development would result in harm to the area's character and appearance.
35. The appellant has referred to a number of appeals which they consider relevant. However, based on the evidence before me I am not convinced that they are comparable to the scheme before me. In any event every appeal must be considered on its own merits, as I have done. These decisions do not lead me to reach a different conclusion on the matter.
36. The likely reduction of vehicle movements to and from the site, the absence of an objection from the local Councillor and the energy efficiency of the scheme count neither for nor against the proposal and does not overcome the harm I have identified in relation to the main issues.

Planning Balance

37. I acknowledge at the time the application was determined the Council was unable to demonstrate a deliverable five year supply of housing land. That situation has changed upon publication of the Council's Annual Position

Statement. Despite this the appellant disputes whether the Council can demonstrate a deliverable five year supply of housing land. From the evidence before me and without any credible evidence to refute the Council's position there is a strong indication that a deliverable five year supply of housing land exists in the area. Consequently, paragraph 11(d) of the Framework is not engaged. Planning law requires that applications for planning permission, should be determined in accordance with the development plan, unless material considerations indicate otherwise.

38. Furthermore, paragraph 182 of the Framework indicates 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 AA has concluded that the plan or project will not adversely affect the integrity of the habitats site. For the reasons set out above I have not reached such a conclusion and consequently paragraph 182 applies.

Conclusion

39. Whilst the tilted balance does not apply for the reasons set out above, even if it did, the harm of granting planning permission in respect of an inappropriate location for housing, harm to the character and appearance area and unsatisfactory water disposal measures would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
40. For the reasons set out above the appeal does not succeed.

B Thandi

INSPECTOR