
Appeal Decision

Site visit made on 19 April 2022

by S D Castle BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 June 2022

Appeal Ref: APP/W1850/W/21/3284012

Land at South Herefordshire Hunt Kennels, Wormelow, Hereford HR2 8JL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant permission in principle.
 - The appeal is made by Mr Charles O'Connor against the decision of Herefordshire Council.
 - The application Ref 210025, dated 20 January 2021, was refused by notice dated 01 April 2021.
 - The development proposed is described as: Permission in principle for residential development of 2-9 self build dwellings with package treatment plant.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal application is for permission in principle, as provided for in the Town and Country Planning (Permission in Principle) (Amendment) Order 2017 (the Order). The Planning Practice Guidance (PPG) advises that this is an alternative way of obtaining planning permission for housing-led development which separates the consideration of matters of principle from the technical detail. Planning permission does not exist unless both the permission in principle and the technical details are approved. This appeal relates to the first of these 2 stages.

Main Issues

3. The main issues are: a) Whether the development constitutes habitats development for the purposes of the Order; and, b) in the event that permission in principle can be granted for the development sought, whether this development would be in a suitable location for housing, in respect of housing growth and the character of the area, with regard to local and national planning policies.

Reasons

River Wye Special Area of Conservation

4. The Council advises that the site is approximately 150m north of the impact risk zone (IRZ) of the River Wye Special Area of Conservation (RWSAC) and is within the River Wye Special Scientific Interest (SSSI) IRZ for discharges of water and liquid. The RWSAC is a European designated site and is protected by

the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations).

5. Article 5B(1) of the Order provides that permission in principle cannot be given for 'habitats development'. This is defined in Article 5B(5) as development which is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects) and is not directly connected with or necessary to the management of the site; and for which the competent authority has not given consent, permission, or other authorisation in accordance with Regulation 63 of the Habitats Regulations.
6. The PPG¹ explains that this means for sites where development is likely to have a significant effect on a qualifying European site or a European offshore marine site without any mitigating measures in place, the competent authority should ensure an appropriate assessment has been undertaken before consideration of the grant of permission in principle. If the competent authority is satisfied, after taking account of mitigation measures in the appropriate assessment and concluding that the development will not adversely affect the integrity of the protected site, then, subject to compliance with other statutory requirements regarding the permission in principle process, permission in principle can be granted.
7. The RWSAC is identified by Natural England as a site in an unfavourable ecological condition due to excessive nutrients, particularly phosphorous. The additional housing proposed would result in a net increase in the local population and would inevitably have implications for wastewater. The Council is concerned that foul water from the development could have phosphate pathways in to the RWSAC catchment through local soils, local hydrology and geology. The development proposes a package treatment plant for foul water and the appellant asserts that any likely significant effects on the RWSAC would be effectively mitigated by the treatment plant. No substantive details have been provided to evidence that a package treatment plant would be a viable method to safely dispose of foul water on the site.
8. Whilst the appellant asserts that detailed drainage matters are not relevant at the permission in principle stage, as the competent authority, I must consider mitigation measures intended to avoid or reduce the harmful effects on the RWSAC within the framework of an appropriate assessment. To reach a conclusion that there would be no adverse effects on the integrity of the RWSAC, there should be no reasonable scientific doubt as to the absence of such effects. Although the appellant has briefly referred to mitigation measures, insufficient evidence has been submitted with the appeal to enable a detailed appropriate assessment to be undertaken and for the effectiveness of the proposed mitigation to be evaluated.
9. The appellant suggests that an informative regarding the requirements for the private foul water treatment system is attached to any decision granting permission in principle. An informative would, however, be advisory only and it is not possible to secure mitigation measures by condition on a permission in principle decision. As such, there is no legal mechanism before me that would provide the necessary certainty that adverse effects on the integrity of the

¹ Paragraph: 005 Reference ID: 58-005-20190315

RWSAC would be avoided through the delivery of effective mitigation measures.

10. Consequently, I cannot be satisfied, beyond reasonable scientific doubt, that the development would not have an adverse effect on the integrity of the RWSAC. As such, the proposal is likely to have a significant effect on a European site and therefore constitutes habitats development for the purposes of the Order. Permission in principle cannot, therefore, be granted, as to do so would not comply with Article 5B(1) of the Order.

Location of development

11. As the proposal is not considered a form of development for which permission in principle can be granted, no further assessment of the proposal in relation to the suitability of its location for housing is required as part of this appeal.

Conclusion

12. For the above reasons, the appeal is dismissed.

S D Castle

INSPECTOR