



Appeal Decision

Site visit made on 12 July 2022

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 August 2022

Appeal Ref: APP/W1850/W/21/3282386

Land adjacent to Saint Mary's Church, Kings Pyon, Leominster, Herefordshire HR4 8PS

- 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 Colin Pudge against the decision of Herefordshire Council.
 - The application Ref 201780, dated 23 June 2020, was refused by notice dated 4 June 2021.
 - The development proposed is two houses complete with all necessary drainage and extended access drive with turning head.
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Decision

1. The appeal is dismissed.

Main Issues

2. 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 safe and efficient operation of the local highway network;
 - Whether the proposed development provides adequate foul and surface water disposal; and
 - The effect of the proposed development on the River Wye Special Area of Conservation (SAC).

Reasons

Location of site

3. Policy PG1 of the emerging Pyons Group Neighbourhood Development Plan states that proposals for new development will be supported within defined settlement boundaries.
4. The appeal site comprises part of an agricultural field neighbouring existing residential development on two sides but nonetheless it is located beyond the draft settlement boundary of Kings Pyon.
5. The Council acknowledge that there is no conflict with the spatial strategy outlined in the Hereford Local Plan Core Strategy (CS) (2015), but the emerging Neighbourhood Development Plan policies should attract limited weight in the decision making process.

6. The National Planning Policy Framework (the Framework) in paragraph 48 sets out that the weight to be given to relevant policies in emerging plans varies according to the stage of preparation, the extent to which there are any unresolved objections and consistency with the Framework.
7. Based on the evidence before me the neighbourhood plan is at an early stage of preparation and is likely to be subject to further consultation and modification. Therefore, in this instance I afford it negligible weight in coming to my decision.
8. In any event this matter is not determinative as the Council acknowledge that the appeal site is an appropriate location for new development in the context of the CS.

Safe and efficient operation of the highway network

9. The site is accessed from a private track that currently serves a small number of dwellings. A Public Right of Way extends along the track and is used by pedestrians. The track is narrow wide enough for a single vehicle, but along its entire length it varies in width.
10. The alignment of the road provides reasonable visibility along it and pedestrians and vehicles would be able to see each other. However, due to its narrow width and the additional vehicular movements along it the proposal is likely to result in conflict between vehicles travelling in different directions as well as pedestrians, despite the presence of grass verges.
11. The proposed package of highway works includes widening of part of the track to form a passing bay. It is proposed the works could be secured by the imposition of a Grampian condition which would prohibit the proposed development until the passing bay has been constructed.
12. The provision of the passing bay to allow for two vehicles to pass safely and the turning area within the site allowing vehicles to enter and exit the site in forward gear would make a meaningful improvement overcoming my concerns in this regard.
13. However, the Planning Practice Guidance (PPG) sets out that Grampian conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission.
14. The issues identified by all parties are complex and beyond my remit in consideration of a Section 78 appeal. However, based on the evidence before me it is clear that there are significant questions regarding the ownership of the track and land in question leading to uncertainty as to whether the track could be widened to accommodate the passing bay.
15. Paragraph 56 of the Framework states that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Without any adequate resolution or certainty in respect of the ownership of the track and having regard to the PPG, I have significant doubts as to whether there would be a reasonable prospect of any widening being undertaken within the statutory time limit applied to the grant of planning permission. I do not therefore consider that the imposition of a Grampian

condition would be reasonable or enforceable and conclude that this matter cannot be dealt with by condition.

16. I conclude that the proposed development would adversely affect highway safety contrary to CS Policies MT1 and SS4 and Policies PG7 and PG8 of the made Pyons Group Neighbourhood Development Plan (NDP) which, amongst other things, seek to ensure that developments are designed and laid out to achieve safe entrance and exit; the safe operation of the highway network and a satisfactory impact on the road network.
17. It would also be contrary to the Framework which states that developments should ensure that safe and suitable access to the site can be achieved for all users.

Foul and surface water disposal

18. Surface water runoff from the proposed development would be directed towards two geocellular soakaways. However, it is unclear from the submitted information whether the storage volume would be sufficient to serve the dwellings. Nor has it been outlined who would be responsible for the maintenance of the soakaways.
19. In terms of foul water drainage, the appellant is proposing drainage fields in a field neighbouring the appeal site. The drainage fields are positioned upgradient of the proposed dwellings meaning use of a pumped system rather than a gravity fed discharge.
20. The Council object and express concern regarding a pumped system and the potential flood risk in the event of failure of the system. Despite the appellant's comments given the absence of information regarding the system and 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.
21. Whilst the proposed strategy entails the use of individual private treatment plants it is not certain that the proposed strategy would not result in localised flooding of foul water or adversely affect the environment.
22. It is also accepted that the proposed development would not fully accord with the Council's position statement. I acknowledge that it is guidance, as opposed to planning policy, nonetheless it sets out guidance in relation to development in the River Lugg Catchment Area and there is no compelling evidence before me to deviate from its contents.
23. The Council has pointed to several deficiencies in the drainage strategy and based on the evidence before me I agree. This creates uncertainty about the robustness of the strategy advanced by the appellant, despite the submission of additional information.
24. Thus, the submitted strategy would not ensure satisfactory drainage of the site or prevent the increased risk of flooding by ensuring a satisfactory means of surface and foul water disposal.
25. I conclude that the submitted drainage strategy would not provide an adequate means for foul and surface water disposal. It would be contrary to CS Policies SD3, SD4, LD2, SS6 and NDP Policy PG9 which, amongst other things, require appropriate sustainable drainage systems; developments designed to be safe

for the lifetime of the development; proposals not to undermine the achievement of water quality targets and the protection of nature conservation sites and habitats.

Impact on River Wye SAC

26. 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 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.

27. However, as I have found harm in respect of highway safety and foul and surface water drainage which is significant enough to dismiss the appeal there is no benefit in me pursuing this matter any further.

Other Matters

28. I note that representations were made by local occupiers to the proposed development raising additional concerns. However, given my findings, it is not necessary to consider these matters in detail.

Conclusion

29. For the reasons set out above the appeal does not succeed.

B Thandi

INSPECTOR