
Appeal Decision

Site visit made on 12 August 2022

by Lewis Condé BSc (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 September 2022

Appeal Ref: APP/W1850/W/22/3294311

Land to the East of The Withies, Litmarsh, Marden, Hereford, Herefordshire HR1 3EZ

- 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 Mrs Lorraine Sant against the decision of Herefordshire Council.
 - The application Ref 211063, dated 13 April 2021, was refused by notice dated 24 November 2021.
 - The development proposed is described as 'Proposed construction of one cottage-style dwelling and associated works'.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Whether the development would be in an appropriate location with regard to the Council's spatial strategy for development; and
 - The effect of the development on the River Wye Special Area of Conservation (SAC).

Reasons

Location

3. The appeal site lies adjacent to but outside of the defined settlement boundary of Litmarsh. Policy RA2 of the Herefordshire Local Plan Core Strategy 2011 – 2031 (adopted 2015) (the Core Strategy) seeks to secure sustainable development in rural areas by directing housing to locations within or adjacent to identified settlements. The supporting Figures to Policy RA2 identify Litmarsh as a settlement whereby proportionate housing growth is appropriate in principle.
4. Policy RA2 further establishes that the minimum housing growth targets in each rural housing market area will be used to inform the level of housing development to be delivered in relevant settlements. The policy also identifies that neighbourhood development plans will allocate land for housing to meet its relevant targets.
5. Policy M2 of the Marden Neighbourhood Development Plan To 2031 (Made 2016) (MNDP) sets out that proposals for new housing development in designated hamlets (including Litmarsh) will only be permitted within the

relevant settlement boundary. Despite its close relationship to existing built form, the proposal is outside the settlement boundary and therefore in conflict with Policy M2 of the MNDP.

6. I note that Marden Parish Council has offered support to the proposed development. The Parish Council had also sought to include the site within its revised Neighbourhood Development Plan (NDP). It is understood that the revised NDP has been withdrawn, due to the need to consider phosphate issues affecting the nearby River Lugg and Wye. Based on the evidence before me, the replacement NDP therefore remains at an early stage of preparation. It is likely that the plan will be subject to further consultation and potential modification. Accordingly, I afford it negligible weight.
7. The Council has also indicated that the Parish of Marsden is exceeding its housing growth target, while the level of housing within the Hereford Rural Housing Market Area, is also exceeding its growth target. No substantive evidence has been provided to suggest otherwise. Accordingly, it is not considered that the proposal is necessary to achieve a proportionate level of housing growth within the MNDP area.
8. Policy RA3 of the Core Strategy sets out exceptions where residential development would be permitted outside of settlements, that are defined in either Neighbourhood Development Plans or the Rural Areas Site Allocations Development Plan Document. However, the proposal has not been demonstrated to meet the exceptions criteria.
9. Consequently, the proposal is contrary to Policy M2 of the MNDP and is not an appropriate location for development having regard to the Council's spatial strategy within its adopted development plan.

Special Area of Conservation

10. The site is within the catchment area of the River Lugg, which comprises part of the River Wye Special Area of Conservation (SAC). The SAC is a European Designated Site that is afforded protection under the Conservation of Habitats and Species Regulations 2017, as amended (the Habitat Regulations), due to its international importance for its aquatic flora and fauna.
11. It is understood that the River Lugg is experiencing significant pressure from pollutants, with the present levels of phosphates exceeding water quality objectives. The proposed development of a single dwelling, although limited in scale, has the potential to significantly impact on the integrity of the SAC, through increasing pollution within the watercourses within the catchment of the SAC.
12. Core Strategy Policy SD4 relates specifically to wastewater treatment and river water quality. It seeks to ensure that water quality targets for rivers within the county are maintained. Amongst other matters, the policy allows for the use of package sewage treatment works in new development, subject to criteria. This includes that the proposal is accompanied by information to demonstrate there will be no likely significant effect on the water quality of designated sites, notably the River Wye SAC.
13. Furthermore, Policy SD4, as per The Habitats Regulations, requires that permission may only be granted after having ascertained that it will not affect the integrity of the European site. Consideration may be given to any

conditions or other restrictions which could secure mitigation and so provide certainty that the proposal would not adversely affect the integrity of the site.

14. The development proposes to manage surface water via a soakaway, whilst foul drainage is proposed to be dealt with via a packaged treatment plant. The Council's drainage team is satisfied, from a technical perspective, with the method of drainage proposed. However, the Council's drainage team deferred to other colleagues on wider matters relating to the impact of foul drainage on the River Lugg catchment area.
15. Technical specifications relating to the model of the proposed package sewage treatment plant have been provided. However, overall, the appellant's submitted drainage information is not sufficiently detailed or robust to conclude that the proposal would be phosphate neutral. As such, it cannot be ruled out that there would be no likely significant effects on the water quality of the SAC. It is acknowledged that there is no statutory requirement for a drainage engineer to be used to justify the proposal. Nevertheless, the burden of proof is on the applicant to satisfactorily demonstrate that the effects of the proposal are acceptable.
16. Overall, I cannot be satisfied, beyond reasonable scientific doubt, that the proposal would not have an adverse effect on the SAC. Consequently, I must conclude that the proposal is likely to have a significant effect on a European site. As I am dismissing the appeal on other matters, I have not gone on to do an Appropriate Assessment. In any case although the appellant indicates that concerns surrounding drainage could be appropriately mitigated through the Council's phosphate credit scheme, no details have been provided of how the credit scheme works, with no robust mechanism to secure mitigation before me. The development proposed therefore conflicts with Core Strategy Policies LD2 and SD4. Together, amongst other matters, these policies seek to prevent development that is likely to harm sites and species of European Importance, including preventing additional, unmitigated phosphate loading within a SAC. The proposal would also not conform with the provisions of the National Planning Policy Framework (the Framework) in respect of conserving or enhancing the natural environment, nor would it accord with the Habitat Regulations.

Other Matters

17. The appellant has referred to another development nearby (reference 201300) that was approved by the Council despite being located near a watercourse and outside of the settlement boundary. I have limited details of the scheme and the specific circumstances under which the permission was granted. However, in terms of its location outside of the settlement boundary, the Council has identified that development was approved at a time when it was unable to demonstrate a five-year housing land supply. As such, the planning context appears to be somewhat different. In terms of its position near a watercourse, I have no details as to whether the development was considered to have an impact on a SAC, and if so, how this was addressed. Therefore, based on the information before me, the scheme does not alter my findings in relation to the appeal proposal.
18. My attention has also been drawn by the appellant to the fact that the proposal has not attracted any objections from local representatives, unlike other nearby housing development that has previously gained planning permission.

However, the absence of local objections, or presence of support, does not justify the approval of unacceptable development.

19. The appellant raises concerns over the approach the Council took in determining the application, including its requests for information and timeliness. I have dealt with the appeal on its own merits.

Conclusion

20. It is recognised that the proposal would provide social and economic benefits, whilst there is Government support for the delivery of housing. However, given the development would involve the provision of a single dwelling the benefits it would provide would be very modest. As such, they carry limited weight in my decision making and would not outweigh the conflict with the development plan as a whole.
21. For the reasons set out above, having regard to the development plan and all other material considerations, I conclude the appeal should be dismissed.

Lewis Condé

INSPECTOR