



Appeal Decision

Site visit made on 31 May 2023

by O Marigold BSc DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 June 2023

Appeal Ref: APP/W1850/W/22/3307131

**Site adjacent to Homelands, Village Link Road, Orcop, Herefordshire
HR2 8SD**

- 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 Rory Jones against the decision of Herefordshire Council.
 - The application Ref 211049, dated 12 March 2021, was refused by notice dated 18 March 2022.
 - The development proposed is proposed new dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for a proposed new dwelling at site adjacent to Homelands, Village Link Road, Orcop, Herefordshire HR2 8SD in accordance with the terms of the application, Ref 211049, dated 12 March 2021, subject to the conditions in the Schedule to this decision below.

Application for Costs

2. An application for costs was made by Mr Rory Jones against Herefordshire Council. This application is the subject of a separate Decision.

Preliminary Matters

3. Following the Council's determination of the appeal application, the Orcop Neighbourhood Development Plan (NP) was the subject of a successful referendum and now has full weight. The parties have been able to comment on this and so I have therefore determined the appeal having regard to the NP as part of the Development Plan.

Main Issues

4. The main issues are the effect of the proposal on: the character and appearance of the area; the living conditions of the occupiers of nearby dwellings with regard to outlook and overlooking; its surroundings because of foul and surface water drainage; and the River Wye Special Area of Conservation (SAC) and nutrient neutrality.

Reasons

Character and Appearance

5. The site is in the centre of Orcop Hill village. It consists of undeveloped sloping land which was formerly within the curtilage of the adjacent bungalow, Homeland. The site is largely surrounded by dwellings of varying storey heights. These include three recently constructed dwellings at The Trees,

behind the site and at a higher level than it. On the opposite side of the road and lower than the site are established dwellings, including Fountain View, Old Oak House and 1 to 4 Wilkes Row.

6. The proposal is for a two-storey dwelling and the topography of the site means that the proposal would be somewhat elevated above the road. However, the design of the proposal would use rooms within the roof space to ensure that eaves and ridge heights are low, limiting its overall mass. The differing ground levels and cut-and-fill construction mean that the proposed ridge would be only a little higher than that of Homeland. It would be taller than those properties opposite, such as Old Oak House and Fountain View, but this would reflect the topography of the surrounding land.
7. The proposal would be sited back from the edge of the road, broadly in line with Homeland and behind a tall and dense hedgerow, which is proposed to be retained. Even so, public views of the proposal would still be obtainable from the road. However, given the built-up nature of its surroundings, including the dwellings at The Trees with their taller ridge heights, the proposal would not appear unduly large or jarring in the street scene. As such, the scale of the proposal would not appear excessively dominant and would reflect the pattern of development locally. Its design and external materials would also be appropriate.
8. Consequently, the proposal would not harm the character or appearance of the area. It would therefore comply with policies SS6, LD1 and SD1 of the Herefordshire Local Plan Core Strategy (HLP), adopted October 2015. These policies require that proposals are positively shaped and influenced by local distinctiveness, landscape and townscape, and have a scale, massing and proportions that reflects their surroundings. For the same reasons, the proposal would comply with NP policies ORC1 and ORC4, which require conservation of the landscape and a high quality of design that respects the built form of adjoining development.

Living Conditions

9. The proposal would be visible from nearby dwellings. I have already found that it would be taller than the properties directly opposite, in particular Fountain View and Old Oak House. It would also have ground and first floor windows serving habitable rooms that would face directly towards these properties.
10. However, the proposal would be set back from the edge of the road. Fountain View and Old Oak House are also positioned away from the road, and behind driveways, garage buildings and boundary treatments. These features would provide screening from the proposal and the distance between it and the existing dwellings would also ensure a degree of privacy.
11. Moreover, it is generally the front elevations of the dwellings opposite that would face the proposal. These already front onto the road and so there is less expectation of privacy than might otherwise be expected. For the reasons I have given above, the mass of the proposal would not be excessive. This and the separation distances available mean that the proposal would not have an unduly oppressive effect on Fountain View or Old Oak House. I therefore conclude that the proposal would not result in undue loss of outlook or privacy, or its perception, to these properties.

12. Other dwellings, such as those at Homelea, 1 to 4 Wilkes Row, The Trees and Homeland are further from or higher than the proposal or would have sufficient boundary treatments to ensure their reasonable privacy and outlook would be maintained. As such, I conclude that the proposal would not unduly harm the living conditions of the occupiers of nearby dwellings, with regard to outlook and overlooking.
13. For these reasons, the proposal would comply with HLP policy SD1, which requires that the amenity of existing residents is safeguarded, including in respect of overshadowing and overbearing impacts. Similarly, it would also comply with NP Policy ORC4, which requires that unacceptable impacts on privacy amongst other things should be avoided.

Drainage

14. The local ground conditions and topography mean that drainage and flooding are particular concerns here. Amongst other things, NP Policy ORC5 requires full drainage details, an assessment of ground conditions and the water table, including seasonal variations, and testing. The proposal would discharge foul waste into a private package treatment plant, with final outfall to a drainage field within the appeal site. Surface water from impermeable parts of the site would be discharged into a SuDs system consisting of a soakaway crate.
15. The Council and representations have questioned the suitability of these arrangements. The Council's Land Drainage consultee identified the possibility of groundwater seepage because the drainage field would be installed in fractured sandstone. A high groundwater level could mean that the drainage field becomes flooded, risking foul water spillage affecting the health and living conditions of residents and highway safety. Representations also state that the appellant's drainage testing report cannot be relied upon; that similar systems have failed at The Homeland and at The Trees, and that the roadside drainage ditch is in poor condition.
16. However, the application site has been subject to ground tests on several occasions, and no clear evidence of a high water-table at the site has been found. I have little reason to doubt the drainage tests that have been undertaken, and whether they accord with the Building Regulations is essentially a matter of separate control under that regime. That the appellant's drainage report has repetition and similarities from another report at The Trees does not necessarily invalidate its findings, particularly given the linkages between both sites.
17. Little clear evidence of the cause of any systems failures at The Trees has been provided by the Council, for instance in its response to the appellant's Freedom of Information request. Similarly, claims of failure of the private treatment plant at Homeland have been disputed by the first owners of that property since its installation, with little to challenge this. From the information before me, the improvement of the roadside ditch would not be essential to mitigate the effects of the proposal. The overall conclusion of the Council's technical Land Drainage consultee was to raise no objection to the proposal.
18. As such, I have no reason to believe that the proposed drainage arrangements would be unsuitable or ineffective. Subject to planning conditions securing use of the treatment plant and SuDs system and preventing discharge over the road or its drain, the proposal would not be harmful to its surroundings

because of foul and surface water drainage. It would therefore comply with NP Policy ORC5, as well as its policies ORC4 and ORC6, which require effective drainage and management of water and flood risk. It would also comply with the similar requirements of HLP Policies SD3 and SD4.

Nutrient Neutrality

19. The site is within the catchment area of the River Wye, part of the SAC, which is protected pursuant to the Conservation of Habitats Regulations 2017 as amended (the Habitat Regulations). Concerns have been raised that discharged effluent draining directly into groundwater will receive no further purification treatment and so could harm water quality and thus undermine the nutrient neutrality of the SAC.
20. As a result, alone and in combination with other development, the proposal could well have a significant effect on the SAC. Accordingly, as the competent authority in the context of this appeal, I am required to undertake a Habitats Regulations Assessment (HRA).
21. In undertaking the HRA, I have considered the advice of the Council's Ecologist that the proposed management of foul and surface water means that the proposal would not increase nutrient inputs to the SAC. Natural England did not disagree and this accords with my findings above. Moreover, the SAC catchment area is not currently failing its conservation status and so, even if there were to be any additional nutrient loading on the SAC, this could be accommodated within the allowance currently secured through the Core Strategy housing allocation.
22. On this basis, the impact of the development on the SAC could be mitigated by the imposition of and adherence to planning conditions securing the drainage proposals. Accordingly, the evidence before me is that adverse effects on the integrity of the SAC can be avoided such that the proposal would not have an unacceptable effect on it. The proposal would therefore accord with the Habitats Regulations and would comply with NP Policies ORC1 and ORC4, and HLP Policy SD4, which seek to ensure nutrient neutrality and that the SAC is conserved. It would similarly comply with the aim of the National planning Policy Framework to protect biodiversity.

Other Matters

23. The NP has not identified a particular local need for 4-bed homes, but the proposal would nevertheless add to the housing stock. The proposal may result in additional traffic and, particularly during construction, heavy vehicles using local roads. However, as a single dwelling, such movements would be limited and if carefully managed I see little reason why they would be prejudicial to highway safety. I note that the Highway Authority did not object to the proposal.
24. Reference has been made to protected species, particularly hedgehogs and Great Crested Newts being in the vicinity. However, there are no records of important or protected species within or adjacent to the site and the submitted Ecology Appraisal found that the site only has a very low ecological value. The Council did not disagree with these findings, and I concur with this view. Nevertheless, a planning condition can ensure some biodiversity enhancements.

25. The planning history of the site has been drawn to my attention. However, I have considered the proposal before me on its own merits. I have also noted comments made about the Council's handling of the case, but this has had no bearing on my consideration of the planning merits of the appeal.

Conditions

26. The Council has provided a list of conditions, which I have assessed and where necessary amended, having regard to the advice in the Planning Practice Guidance. As well as the standard time limit for commencement, a condition requiring adherence to the approved plans and materials is necessary for certainty and in the interests of the character and appearance of the area. In the interests of ecology, a condition is necessary to secure biodiversity net gain enhancement features.
27. Conditions are required to secure the provision of an electric vehicle charging point and cycle spaces, in the interests of encouraging sustainable transport. In the interests of highway safety, a condition is required to secure the management of mud on the highway, site traffic, and access and parking during the construction process. For similar reasons, a condition is necessary to ensure that the gradient of the access is not excessively steep.
28. To ensure sustainable water management, a condition is required securing water efficiency measures. In the interests of the character and appearance of the area, the approved landscaping scheme shall be undertaken in accordance with the approved details. For the same reason, no retained tree shall be cut down, uprooted, destroyed, pruned, cut or damaged for at least 10 years. In the interests of biodiversity, no external lighting shall be installed except where it is suitable for wildlife.
29. In the interests of the living conditions of residents, highway safety and biodiversity, a condition is required ensuring that all surface water shall discharge through onsite SuDs within the site and that it shall not go onto the public highway. For the same reasons, all foul water created by the proposal shall discharge through the proposed new package treatment plant and soakaway drainage field and shall not discharge into the highway.
30. To ensure acceptable living conditions for nearby occupiers during the construction phase, a condition is required limiting the operation of machinery, construction processes and deliveries outside of normal working hours. In the interests of the character and appearance of the area, and to ensure the living conditions of nearby occupiers, any further enlargement of the property would need to be assessed through a planning application. As such, a condition is necessary removing permitted development rights for extensions to the dwelling and its roof, and outbuildings within its curtilage. However, I see no particular necessity to remove the rights for microwave antenna normally available to dwellings.

Conclusion

31. For the reasons given above, I conclude that the appeal should be allowed.

O Marigold

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin no later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 7525-07, 7525-09A, 7525-10B, 7525-11A, 20-01-03 01B and 105.0 and the schedule of external materials indicated thereon.
- 3) No construction work above damp-proof course level shall commence until a detailed scheme and annotated location plan for proposed biodiversity net gain enhancement features, including provision of 'fixed' habitat features such as habitat boxes supporting a range of bird species, bat roosting features, hedgehog homes, 'hedgehog highways' and pollinator homes has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in full before the first occupation of the development hereby approved and thereafter maintained as approved.
- 4) With the exception of any site clearance and groundworks, no development shall commence until details of the number, type/specification and location of at least one electric vehicle charging point, shall be submitted to and approved in writing by the Local Planning Authority. The electric vehicle charging point(s) shall be installed prior to first occupation of the dwelling hereby approved and be maintained and kept in good working order thereafter as specified by the manufacturer.
- 5) The development hereby approved shall not be occupied until full details of a scheme for the provision of covered and secure cycle parking facilities within the curtilage of the dwelling has been submitted to and approved, in writing, by the Local Planning Authority and the parking facilities have been made available for use. They shall be maintained as such thereafter.
- 6) With the exception of site clearance, the development hereby approved shall not begin until details and location of the following have been submitted to and approved in writing by the Local Planning Authority:
 - A method for ensuring mud is not deposited onto the Public Highway
 - Construction traffic access location
 - Parking for site operatives
 - Construction Traffic Management PlanThese measures shall be operated and maintained during construction of the development hereby approved.
- 7) The development hereby approved shall not be occupied until full details of the vehicular access of the site, to ensure that its gradient is no steeper than 1 in 12, has been submitted to and approved, in writing, by the Local Planning Authority and the access has been made available for use.
- 8) The development hereby approved shall not be occupied until full details of measures to ensure the efficient use of water have been submitted to and approved, in writing, by the Local Planning Authority and the

measures have been made available for use. They shall be maintained as such thereafter.

- 9) The landscape scheme hereby approved (Garden Design 105.0) including all planting, seeding and turf laying shall be carried out in the first planting season following the occupation of the building or the completion of the development, whichever is the sooner. Any trees or plants which die, are removed or become severely damaged or diseased within 10 years of planting will be replaced in accordance with the approved plans.
- 10) No retained tree shall be cut down, uprooted, destroyed, pruned, cut or damaged in any manner during the construction phase and thereafter for 10 years from the date of occupation of the development as approved, other than in accordance with the approved plans and particulars.
- 11) At no time shall any external lighting be installed or operated, except low power, 'warm' LED lighting in directional down-lighter luminaires, on motion operated and time-limited switches. All lighting installed shall demonstrate compliance with latest best practice guidance relating to lighting and protected species-wildlife available from the Institution of Lighting Professionals.
- 12) All surface water from the site shall discharge through onsite Sustainable Drainage Schemes located within the application site in accordance with the approved details and no surface water shall be allowed to exit the site onto the public highway.
- 13) All foul water created by the development hereby permitted shall discharge through connection to a new private foul water system (Package Treatment Plant) discharging to a soakaway drainage field located on land within the application site in accordance with the approved details. No drainage or effluent from the proposed development shall be allowed to discharge into any highway drain or over any part of the public highway.
- 14) During the construction phase, no machinery shall be operated, no process shall be carried out and no deliveries taken at or despatched from the site outside of the following times: Monday-Friday 7.00am to 6.00pm, Saturday 8.00am to 1.00pm, or at any time on Sundays, Bank or Public Holidays.
- 15) Notwithstanding the provisions of article 3(1) and Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking or re-enacting that Order with or without modification), no development which would otherwise be permitted under Classes A, AA, B, C, D and E of Part 1 and of Schedule 2, shall be carried out.

End of Conditions