



Appeal Decision

Site visit made on 27 March 2024

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 May 2024

Appeal Ref: APP/W1850/W/23/3322225

Tudor House, B4361 from Angora Wood Farm To Upper Court, Luston, Herefordshire HR6 0EB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr & Mrs H and J Hayday and Mr Fildes against the decision of Herefordshire Council.
 - The application Ref is 223835.
 - The development proposed is erection of 2 No. 3 bed single storey dwelling houses.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are: i) whether the appeal site is in a location supported for housing having regard to the development plan; ii) the effect of the proposal on designated heritage assets; iii) highway safety; and vi) Whether the proposal would safeguard the integrity of the River Lugg Special Area of Conservation ('SAC').

Reasons

Location for housing

3. Policy RA2 of the Herefordshire Local Plan – Core Strategy 2011 – 2031 ('CS') states that the minimum growth target in each rural Housing Market Area will be used to inform the level of housing development to be delivered in the various settlements. Further, that Neighbourhood Development Plans will allocate land for new housing or otherwise demonstrate delivery to provide levels of housing to meet the various targets. Amongst other criteria, this Policy specifies the need for the development site to be located within or adjacent to the main built up area of the settlement. Paragraph 4.8.23 of the CS states that where appropriate, settlement boundaries (or a reasonable alternative) for those settlements listed in Policy RA2 will be defined in NDPs or the Rural Areas Sites Allocation DPD.
4. The appeal site lies within the area covered by the Luston Group Parish Neighbourhood Development Plan ('LNDP') October 2017. The LNDP allocates a number of sites for housing, as well as defining a settlement boundary for Luston. Based on 'Map 3 Luston village settlement boundary' whilst the appeal site is adjacent to, it is clearly to the east of the settlement boundary and therefore outside this.

5. In particular, Policy LG6 of the LNDP requires that: New housing development in Luston shall be located within the settlement boundary on a site shown on the Policies Map as a housing allocation or on an infill site or through the conversion of an existing building. In my view, this Policy supports new housing on allocated sites, an infill site and through the conversion of an existing building where such buildings and sites are within the settlement boundary.
6. Therefore, irrespective of whether the proposal falls within the definition of 'infill' as set out in the LNDP, because the appeal site is outside the settlement boundary, the proposal is not supported by Policy LG6 of the LNDP.
7. There is some tension between the wording of CS Policy RA2 which supports development adjacent to the main built up area of the settlement and Policy LG6 of the LNDP, which does not. Nonetheless, Policy RA2 of the CS is a non-strategic policy as it refers to specific areas and on the information before me pre-dates Policy LG6 of the LNDP. Therefore, having regard to Paragraph 30 of the National Planning Policy Framework ('the Framework') Policy LG6 of the LNDP takes precedence.
8. Drawing together the matters outlined above, the appeal site is located outside the settlement of Luston and for planning policy purposes is within the countryside. Consequently, Policy RA3 of the CS is engaged, which limits new housing outside settlements for certain types. The proposal does not fall within any of the specified types.
9. Although Policy LG7 of the NDP specifically relates to Ashton, Eyton and Moreton, this does say that: 'Exceptionally housing development outside the settlements of Luston, Ashton, Eyton and Moreton will be supported where it satisfies Core Strategy Policies RA3, RA4 or RA5. There is nothing in the evidence to suggest that the proposal is supported by CS policies RA4 and RA5.'
10. The appellants have drawn my attention to planning permission for development immediately opposite on land outside the development boundary. Nevertheless, I have insufficient information in respect of this to draw any comparisons.
11. In light of the above reasons, the location of the appeal site is not supported for housing and would be in conflict with both Policy LG6 of the LNDP and Policy RA3 of the CS.

Heritage assets

12. The appeal site comprises an undeveloped paddock which forms part of the land holding to Tudor House a Grade II listed building, and is located to the rear of two dwellings (Sunnymead and Highfield) which face onto the B4361. The appeal site is within the Luston Conservation Area ('CA').
13. Along the appeal site's northern boundary and adjacent to Tudor House is a public footpath.
14. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special regard to the desirability of preserving listed buildings and their setting. Section 72(1) of the same act imposes a requirement that special attention should be paid to the desirability that the character or appearance of the conservation area should be preserved or enhanced.

15. Tudor House is an example of a high-quality timber framed former farmhouse, which sits in a sizeable plot. As already stated, the appeal site is a paddock to this property. Whilst there is a boundary treatment between Tudor House and the appeal site, sections of this are low or open. As such there is a degree of intervisibility between them. Therefore, the appeal site has a physical and visual relationship to Tudor House and forms part of its setting. Plots of land surrounding Tudor House have been developed. Even so, the appeal site continues to reflect the low-density historic arrangement in the immediate vicinity of Tudor House and reinforces its historic character as a farm building with open land surrounding this.
16. The Luston CA largely incorporates the built form of the village. This comprises a variety of designs and ages of buildings with varying degrees of set back from the associated roads. Because of its architecture and history, Tudor House also contributes to the significance of the CA.
17. Along its eastern boundary, the CA encompasses paddocks and fields, such as the appeal site which lie between the built up parts of the settlement and the more open areas of countryside, which comprises substantially larger fields. Within the CA, plots such as the appeal site provide a useful transition from the built up parts of the settlement and reinforce its rural setting.
18. I acknowledge that the proposed layout reflects the wider settlement pattern, which includes examples of back land development and that the design of the proposed dwellings reflects the varied vernacular of the settlement. Despite this, and although the proposal is for a bungalow and a dormer bungalow, these incorporate detached garages and therefore would be sizeable. Whilst some of the paddock is shown as being free of built development, this is to be subdivided and would form part of the gardens to the proposed dwellings.
19. As such, the proposal would result in the loss of the paddock which would, in part, erode the rural setting of the settlement and significance of the CA.
20. The proposed dwellings, due to their scale and siting would encroach on the paddock to Tudor House, which forms part of its setting and significance as a historic farm building. In particular, the appeal site and Tudor House are open to views from the public footpath. From along the public footpath, the proposed development would undermine and dilute the experience of Tudor House and its surroundings.
21. Therefore, the proposal would cause less than substantial harm to the significance of the Luston CA and setting of the Grade II listed Tudor House.
22. Consequently, the proposal conflicts with Policy LG2 of the LNDP. Amongst other things, this Policy requires that development respects the character and setting of the Luston CA. The proposal also conflicts with CS Policies SS6, LD1 and LD4. Together, these seek to protect, conserve and where possible enhance heritage assets.

Highway safety

23. The proposed scheme would utilise the existing field access off the B4361. This runs along the northern boundary with Sunnymead and is only of a sufficient width to accommodate a single vehicle. In the absence of any strong evidence to the contrary, it is reasonable to suppose that two new family sized dwellings

- would result in the regular use and intensification of the existing access. The route of the aforementioned public footpath is also along this access.
24. As part of the appeal submissions, a 7 day speed survey has been undertaken to calculate the visibility distances required in each direction. Based on these calculations the visibility in a southern direction would fall short of the required distance. Adequate visibility splays are required at the access so that drivers in vehicles emerging from it can see any potential hazards in time to slow down and stop comfortably.
 25. In addition, no pedestrian visibility is achievable to and from the proposed access. Furthermore, because the access is constrained, this has the potential to create conflict. For example, an incoming vehicle having to reverse onto the highway to accommodate an outbound vehicle.
 26. The Council asserts that there is insufficient space / width on approach to the site to facilitate access for emergency vehicles. This matter has not been clearly addressed.
 27. Although the appellants assert that the proposed access is safer than one opposite, this is no justification for supporting a substandard access for new development.
 28. For the above reasons, the existing access arrangement is unacceptable for the proposal. This fails to accord with Policy MT1 of the CS, which requires amongst other things that developments are designed and laid out to have appropriate operational and manoeuvring space, and without adversely affecting the safe and efficient flow of traffic on the highway network. I also find conflict with Policy LG6 of the LNDP, which amongst other things seeks to ensure that appropriate and safe access can be achieved. Accordingly, it has not been shown that the residual cumulative impacts on the road network would not be severe, in accordance with the Framework.

Integrity of the River Wye SAC

29. The appeal site lies within the hydrological catchment of the River Lugg, which comprises part of the River Wye SAC; a habitat recognised under the Conservation of Habitats and Species Regulations 2017, as amended as being of international importance for its aquatic flora and fauna.
30. At present the levels of phosphates in the River Lugg exceed the water quality objectives and it is therefore in an unfavourable condition. Where a European designated site is considered to be 'failing' its conservation objectives there is limited scope for the approval of development which may have additional damaging effects.
31. As the competent authority, I am required to consider all potential effects (either alone or in combination with other development) of the proposal upon the European site through the Habitat Regulations Assessment process.
32. The proposal is for creation of two new dwellings with associated new-additional foul water flows created (Nutrient Pathways). Based on their most recent submissions, the appellants intend to provide a private treatment plant to deliver a nutrient neutral or better drainage system. The use of phosphates credits has also been suggested. Whilst the site area may be adequate to

provide a private treatment plant, I have limited details about this and the use and availability of phosphate credits.

33. As such, insufficient evidence has been submitted with the appeal to permit me to undertake the AA and assess the adequacy and effectiveness of the proposed foul water management system.
34. In light of the above, I do not have sufficient certainty that the identified arrangements would avoid adverse effects on the integrity of the River Wye SAC via the discharge of phosphates into the River Lugg. As such, I am unable to conclude that the development would not result in harm to the River Wye SAC.
35. For the above reasons, the proposal is in conflict with Policies LD2, SD3 and SD4 of the CS. Together, these Policies do not permit development that would harm environmental assets including habitats sites or undermine water quality objectives.

Other considerations

36. The submitted Unilateral Undertaking ('UU') includes an obligation to ensure that the proposal would deliver two serviced residential plots, in accordance with the Self Build and Custom Housebuilding Act 2015 ('the Act').
37. The Act requires local planning authorities to establish and publicise a local register of custom-builders who wish to acquire suitable land to build their own home. The Housing and Planning Act 2016 sets out that local planning authorities have a duty to grant planning permission in respect of enough serviced plots of land to meet the demand for self-build and custom housebuilding in the authority's area arising in each base period.
38. On the information before me the Council's position as to whether it is meeting this requirement is unclear.
39. The Framework also advises that small and medium sized sites can make an important contribution to meeting the housing requirement of an area, and are often built-out relatively quickly. To promote the development of a good mix of sites local planning authorities should, amongst other things: seek opportunities, through policies and decisions, to support small sites to come forward for community-led development for housing and self-build and custom-build housing.
40. Accordingly, and having taken account of the appeal decisions submitted by the appellant, I conclude that there is insufficient evidence to demonstrate that the Council is meeting its obligations under The Act. In such circumstances, and because the proposed development would deliver self-build and custom housing. This, along with any associated economic and social benefits carry significant weight in favour of the proposal.
41. Based on the UU, the proposed dwellings would be available to anyone on the Council's register for this type of development. This could include the appellants who for personal and medical reasons intend to downsize from their respective family homes and remain within the village. Furthermore, this is likely to release the existing accommodation for families. The proposal would also positively contribute towards the Council's 5-year housing land supply and

this would boost the delivery of homes. These factors also weigh in favour of the proposal.

42. The submissions suggest that the proposed accommodation is for disabled person(s). In my assessment of this aspect of the appeal I am mindful of the Public Sector Equality Duty ('PSED') arising from section 149 of the Equalities Act 2010 (the Act 2010). The Act 2010 requires me to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Amongst other things, for the purposes of the Act 2010 protected characteristics include disability.
43. Nevertheless, it does not follow from the PSED that the appeal should succeed. In particular, because there is nothing before me to indicate why another form of development could not provide for the appellants' needs without causing the harms that I have identified, including to heritage assets and the River Wye SAC.
44. The appellants advise that housing on one of the allocated sites in the LNDP is unlikely to come forward and that the number of dwellings would be reduced on another because of constraints. However, on the level of information before me, I cannot be certain of this. Therefore, this attracts limited weight.

Planning balances

45. The location of the proposal is not supported for housing under the development plan. There would also be less than substantial harm to the significance of a listed building and the conservation area. It has also not been shown that the existing access would be safe for all users. Furthermore, the development would result in harm to the integrity of the River Wye SAC.
46. With regard to the heritage assets, the Framework states that great weight should be given to an asset's conservation, with any harm to the significance of a designated heritage asset, including from development within its setting, requiring clear and convincing justification. Moreover, if less than substantial harm is caused to the significance of any asset, that harm should be weighed against the public benefits in what I shall call the heritage balance.
47. A second balance is found in section 38(6) of the Planning and Compulsory Purchase Act 2004, which says development should be in accordance with the development plan unless material considerations indicate otherwise (the planning balance).
48. I accept that the benefits are matters to which significant weight is attached. On the other hand, I have found less than substantial harm would be caused to the significance of Luston CA and the setting of the Grade II listed Tudor House, and I do not consider the benefits associated with the proposal to be sufficiently forceful to outweigh the less than substantial harm that I have identified and the great weight that must be given to the conservation of heritage assets. I therefore conclude that the proposal conflicts with the aims of the Framework for conserving and enhancing the historic environment.
49. Given my findings in relation to heritage matters and the integrity of the River Wye SAC, then under paragraph 11di) and Footnote 7 of the Framework,

irrespective that the Council has no policy in relation to the self-build housing, the presumption in favour of sustainable development does not apply.

50. Overall, even if all the above factors in favour of the proposal are taken together, to my mind they are not clearly and demonstrably outweighed by the harm I have identified, and so do not justify a decision otherwise than in accordance with the development plan.

Conclusion

51. Accordingly, for the reasons stated, I conclude the appeal should be dismissed.

M Aqbal

INSPECTOR