



Appeal Decision

Site visit made on 7 May 2024

by **O Marigold BSc DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 May 2024

Appeal Ref: APP/P1615/W/23/3329921

Land opposite Yorkley Court, Lydney Road, Yorkley

- 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 Jake Griffiths against the decision of Forest of Dean District Council.
 - The application Ref is P0249/22/FUL.
 - The development proposed is creation of a new vehicle access and closure of existing.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the site address from the Council's Decision Notice, which is more accurate than that used in the application form. The appellant has used the revised address in the appeal form and so I am satisfied that no party would be prejudiced by this.

Main Issues

3. The main issues are the effect of the proposal on:
 - the character and appearance of the area, and
 - biodiversity, in particular bats and dormice.

Reasons

Character and Appearance

4. The site consists of land immediately adjacent to and accessed from Lydney Road. The site has been subject to an Enforcement Notice¹ (EN) requiring the cessation of its residential use and the removal of a dwelling, caravan and portable building, amongst other things. The land is not associated with Yorkley Court² and appears to have a nil planning use.
5. The evidence before me is that the roadside site boundary was previously formed of a substantial, thick hedgerow, providing greenery that made a positive contribution to the rural appearance of the area. It also had the benefit of screening the site. However, at the time of my visit, significant works to the hedge had taken place.

¹ Dated 21 December 2017, PINS reference APP/P1615/C/18/3194339.

² Also known as Yorkley Court Gate.

6. The proposal seeks to create a new access onto Lydney Road. This would involve creating an opening in the existing hedgerow and closing off the current access with new and translocated hedging. For highway safety reasons, the new access would require the provision of visibility splays either side of it. These would require much of the hedgerow to be kept at a low height, for a significant length.
7. The roadside hedgerow is now in a much-reduced form. That said, notwithstanding any future maintenance, hedging there may grow back in time, or be replaced, thereby continuing to form an important feature in the rural character of the area. In contrast, the proposal is intended to enable compliance with the EN and to serve any future (albeit unspecified) use of the site. This would therefore mean the roadside hedgerow being kept in a significantly reduced state over a long period or permanently, if it survives such works at all. Consequently, the effects of the proposal would undermine and diminish the rural appearance of the site and its surroundings.
8. For the reasons given above, the proposal would harm the character and appearance of the area. As such, it would be contrary to Policy CSP.1 of the Core Strategy (CS), adopted February 2012, and Policy AP.4 of the Allocations Plan (AP), adopted June 2018, which require respect for local character and important characteristics of the environment. The proposal would also conflict with the similar aims of the National Planning Policy Framework (the Framework). I therefore give this conflict significant negative weight. However, no conflict with the Council's Residential Design Guide has been identified and so this has not been crucial to my decision.

Biodiversity

9. The appellant's Preliminary Ecology Appraisal (PEA) and subsequent Ecologist's Letter³ states that the hedgerow has poor connectivity, is unsuitable for Hazel dormice and contains no priority habitats. The replacement species-rich hedgerow may have benefits to bats, and the Ecologist's Letter states that most bats will cross gaps larger than that proposed. The PEA records a low potential effect on bats, although the hedge is said to provide foraging and commuting for them.
10. However, the Ecologist's Letter refers to visibility splays of two metres whereas the submitted plans show splays of much greater length, and so the effects of the proposal may be greater than envisaged. Moreover, little or no reference is made to the very sensitive location of the area for horseshoe bats and therefore the potential effects on the Wye Valley and Forest of Dean Bat Special Area of Conservation (SAC). There is no dispute that there are records of bats and dormice not too far away from the site.
11. The Council's Ecologist disputes the findings of the appellant's ecologist and sought further information. This included a tree survey, a revised ecological assessment, and a detailed bat mitigation strategy. This has not been provided. I recognise the constraints caused by the seasonal nature of survey work. Even so, notwithstanding the ecological benefits of the proposal, and the works that have taken place, in the absence of this information I am not satisfied that the proposal would have an acceptable effect on ecology.

³ Dated 13 October 2022

12. I therefore conclude that the proposal may well have adverse effects on biodiversity, in particular bats and dormice. Accordingly, it would conflict with CS Policy CSP.1 and AP policies AP.1, AP.7 and AP.8, which require the safeguarding of ecological features and networks, including green infrastructure, and improvements to the environmental conditions of the area. It would also conflict with the similar aims of the Framework. As such, I give this conflict significant negative weight. As no specific conflict with the Planning Practice Guidance and National Design Guide has been made out, these have not been central to my decision.

Other Considerations

13. It is common ground that the current entrance has severely sub-standard visibility. The proposal would therefore provide an improvement, identified by the Highway Authority as a benefit to road safety. However, as the site appears to have a nil use, and no new use is before me, there are likely to be few traffic movements to and from the site.
14. The proposal would assist in the removal of the structures and features on site that are subject to the EN. Nevertheless, this would only require vehicular use of the sub-standard access for a relatively short period, possibly allowing for traffic control on the highway whilst actual removal takes place. Consequently, I give the highway benefits of the proposal only moderate weight.

Other Matters

15. The SAC is protected pursuant to the Conservation of Habitats Regulations 2017 as amended. Had I found no harm in respect of the other issues, as competent authority I would have carried out an Appropriate Assessment in respect of the potential effects of the proposal on the SAC. However, as the balance of considerations is against it on other substantive grounds, this matter need not be considered any further in this case.

Planning Balance and Conclusion

16. For the reasons given, I have found conflict with the Development Plan as a whole. The material considerations in this case do not indicate a decision other than in accordance with the Development Plan. This leads me to conclude that the appeal should be dismissed.

O Marigold

INSPECTOR