



Appeal Decision

Site visit made on 27 August 2024

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 August 2024

Appeal Ref: APP/W1850/W/23/3334893

Highfield Cottage, Stoke Prior, Leominster, Herefordshire HR6 0LW

- 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 Crispin Ayshford Sanford against the decision of Herefordshire Council.
 - The application Ref is 221781.
 - The development proposed is a two storey extension and detached cart shed (3 bay garaging), access track and entrance to road to C1055.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Representations made questioned the validity of the appeal based on a version of the Council's decision notice dated 6 June 2023, it was contended that the appeal was made outside of the requisite period. However, the appellant provided a decision notice dated 12 June 2023, and the Council were unable to verify that they issued a decision notice to the appellant dated otherwise. As such, notwithstanding the information on the Council's website, the balance of evidence shows that the appellant received a decision notice dated 12 June 2023 upon which they relied. On that basis the appeal is treated as having been validly made.

Main Issues

3. The main issues are the effect of the proposal on:
 - The character and appearance of the area having regard to the proposed entrance onto the C1055, and;
 - The natural environment having regard to landscape features and protected species.

Reasons

Character and appearance

4. The appeal site comprises a detached stone cottage set in its own grounds and surrounded by fields, standing over 400m west of the C1055. There is no vehicular means of access to the property but a public right of way running through the intervening fields and orchard affords pedestrian access. The dwelling is isolated from other built form and is set close to fields, trees, hedgerows and pockets of woodland. Along the nearest section of the C1055,

the presence of built form is in sporadic clusters suggestive of farmsteads. The road itself is of restricted width, and lined with approximately 2-3 metre high hedgerows on both sides, exhibiting few gaps or entrance points. Cumulatively, these factors mean that the appeal site and immediate context has a strong countryside character in which natural verdant features prevail.

5. The appeal site includes the grounds of Highfield Cottage and a long linear route eastwards across fields and an orchard to join the C1055. The latter broadly follows the route of the public right of way close to field and orchard boundary hedgerows. The unobtrusive presence of the dwelling and verdant, informal character of the grounds and route form part of, and positively contribute towards, the rural character and appearance of the area.
6. In addition to extending the dwelling and providing a garage/cart shed, it is proposed to create a 4m wide vehicular driveway surfaced with gravel to connect to the C1055. It is the proposed access arrangement which the Council considers to be harmful to the character and appearance of the area, and thus is the focus for my determination in respect of this main issue.
7. The proposed access arrangements show a bonded surface such as tarmac for the first 5 metres, and a 2m x 43m visibility splay at the junction with the C1055. This would involve the removal of up to 20m of mature hedgerow from the western side of the C1055. As a result, there would be a sizeable gap created in the largely continuous natural and attractive road-frontage feature, thereby interrupting and diminishing its positive contribution to the appearance of the landscape. It would undermine the sense of natural enclosure currently present on both sides of the road.
8. The introduction of the bonded hard surface and gravel driveway would appear as an obviously manmade intervention which would further dilute the verdant and natural qualities of the area. Moreover, views of the bonded surface and gravel driveway would be immediately apparent from the road and public right of way which would exacerbate the harmful effect.
9. In combination these factors would cause localised harm to the landscape character and rural appearance of the area.
10. The appellant indicates that replacement planting of native hedgerow could be provided to mitigate the loss of the roadside hedgerow. Drawing no 21/HCHR60LW/06 shows new hedgerow planting on a north/south axis within the grounds of Highfield Cottage. However, given its considerable distance to the west and position within private domestic grounds it would not have the same immediacy as the roadside hedgerow relative to the road or public right of way. Accordingly, given this reduced prominence, the degree of mitigation provided to the character and appearance of the area would be limited. Hence, it carries minor favourable weight which would be insufficient to fully address the extent of harm identified.
11. Accordingly, having regard to the proposed entrance onto the C1055 and the consequent loss of hedgerow, I find the proposal would have a harmful effect on the rural and verdant character and appearance of the area. In this respect the proposal would be contrary to policies SS6, SD1 and LD1 of the Herefordshire Local Plan Core Strategy 2011-2031, October 2015 (CS) and policies HFSP1 and HFSP16 of the Humber, Ford and Stoke Prior Neighbourhood Development Plan 2011-2031, May 2016 (NDP). Amongst other

things and when read together, these policies seek to conserve and enhance environmental and natural assets that contribute to the county's distinctiveness and landscape character.

Natural environment

12. Paragraph 186 of the National Planning Policy Framework (the Framework) sets out principles that should be applied when determining planning applications. It states that if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated or as a last resort, compensated for, then planning permission should be refused. Hence, it establishes a mitigation hierarchy which firstly seeks to avoid harm to biodiversity, and by association the habitats that support it.
13. Given the isolated position of the appeal property surrounded by countryside with hedgerows, trees and an orchard in proximity, it is highly likely that there are habitats within and close to the site that are suitable to support a range of flora and fauna. The information before me suggests that Highfield Cottage has been little used for lengthy periods, which combined with the absence of vehicular access increases the likelihood that the appeal site and surrounding area could be used by bats. Nearby countryside includes a mix of woodland pockets, open land, and hedgerows. Such habitat may support or be used by populations of dormice and badger. Bats, dormice and badger are protected species.
14. PPG¹ reinforces that planning authorities need to consider the potential impacts of development on protected and priority species, and the scope to avoid or mitigate any impacts when considering planning applications. The proposals involve extension and alterations to the dwelling itself and the introduction of a cart shed within its grounds. Furthermore, a long, gravelled driveway is proposed alongside boundary hedgerows to fields and an orchard. Hence, the physical encroachment of the development, associated vehicular activity and probable disturbance from construction means there is a reasonable likelihood of harm to a habitat supporting a protected species arising from the development.
15. However, in the absence of ecological survey evidence, the nature and scale of any harm is not identified. It follows that there is no certainty as to whether appropriate safeguards are proposed, or are indeed possible, to adequately mitigate for the likely harm. This is not a matter that can be appropriately made the subject of a condition, as the principle of the development would have already been permitted. To do otherwise would conflict with advice in paragraph 99 of Circular 06/2005 Biodiversity and Geological Conservation which states that it is essential that the presence or otherwise of protected species and the extent that they may be affected is established before any planning permission is granted.
16. In addition, the route of the proposed driveway passes through an established orchard area and close to an oak tree. The information provided² indicates that the orchard use is a long standing one dating from the 1800s, and the submitted tree report³ confirms the presence of orchard fruit trees, with a mix

¹ Paragraph: 016 Reference ID: 8-016-20190721

² Consultation Response from Council's Principal Natural Environment Officer

³ Tree Report prepared by Cedarwood Tree Consultants, dated June 2023

of older and younger specimens. Overall, the orchard habitat is well established and therefore, is likely to hold considerable biodiversity value both in terms of the fruit trees but also associated fauna and ground flora.

17. It is stated that the driveway would pass in a space⁴ between two rows of trees and that the older specimens are in decline with potential for enhancement. However, the fruit trees are not mapped in detail along the route and so it is not clearly shown none would be adversely affected. Neither are the likely effects on other aspects of the orchard habitat considered. Moreover, the nature and location for significant additional planting⁵ is not indicated. Thus overall, I am not persuaded that the physical incursion and disturbance from the use of the vehicular driveway would avoid harm to the biodiversity of the orchard habitat, or alternatively, adequately mitigate against the probable adverse impact.
18. The oak tree is described in the tree report as a heritage oak and categorised as a late-mature specimen of some 7 metres in height, with an estimated 20-40 years of expected life remaining. The tree has a hollow trunk and several substantial branches showing good vigour. My observations were that it comprises a characterful tree with visual value and qualities that make a significant positive contribution that is important to the landscape character of the area. This can be appreciated along the adjacent public right of way. As a longstanding natural feature, it is also likely to be of notable biodiversity value as a habitat in its own right. The value of the tree is reinforced by its registration on the Woodland Trust's Ancient Tree Inventory⁶ and has recently been made the subject of a Tree Preservation Order (TPO)⁷.
19. The access route takes a wider berth around the base of the oak tree, and it is asserted that there would be sufficient space to avoid ground compaction beyond what has already happened within the field. Nevertheless, the root protection area (RPA) radius is stated to be 15m and it is acknowledged that the driveway would encroach into it⁸. It is not fully explained why such encroachment could not be avoided in line with the mitigation hierarchy in the Framework.
20. Moreover, the RPA is not plotted on the proposed site plan. From the information that is available, it is highly probable that the route of the driveway would cut across a considerable proportion of the RPA on the south side of the tree. The section of the proposed track⁹ provided refers to a compacted formation and well compacted base. Overall, there is little substantive evidence to demonstrate that this would be no greater than has previously happened within the cultivated agricultural field, nor that aerating and mulching the ground at the base of the tree would sufficiently mitigate against likely harm. The generic references to tree-protection systems and protective mesh to be used 'where and if necessary' in the Design and Access Statement do little to convince me otherwise.
21. Consequently, I am not persuaded that the proposed driveway would avoid or adequately mitigate against probable root damage to an important tree. Hence,

⁴ Paragraph 2.3 and Appendix III, Appellant's Tree Report

⁵ Paragraph 4.2, Appellant's Tree Report

⁶ Council's Tree Officer Consultation Response

⁷ Reference TPO 677

⁸ Appendix III, Appellant's Tree Report

⁹ Drawing no. 21/HCHR60LW/06

the development would unjustifiably threaten the health and remaining longevity of a longstanding natural feature. Owing to this, the proposals would fail to recognise the intrinsic character and beauty of the countryside, including that of trees as required by paragraph 180(b) of the Framework.

22. The recent TPO covers another oak tree to the west which is also close to the route of the proposed driveway. This tree does not feature in the submitted tree report, but it was written prior to the serving of the TPO. Nevertheless, based on the information provided, it is not clearly shown that harm to the RPA of this tree would be avoided. Given my other concerns, it was unnecessary to seek the further views of the parties following the serving of the TPO in relation to this tree as it was unlikely to be determinative.
23. As already outlined in the first main issue, up to 20 metres of mature roadside hedgerow would be removed to provide visibility splays. The tree report explains¹⁰ that the section identified for removal does not score highly based on the Tree Council guidance for hedgerow quality. It also states that it lacks the height and hedgerow trees needed for bat roosts and observation posts beneficial for bats and birds. It also lacks nectar plants. Hence, it concludes it has limited ecological value¹¹ and a new hedgerow could enhance wildlife habitat.
24. Details of replacement planting are limited, but the position shown on the submitted drawing lies a considerable distance away within the grounds of Highfield Cottage. I acknowledge that details of the species and management of such a replacement hedge could be controlled to maximise biodiversity value. However, in the absence of a comprehensive ecological assessment, I am not convinced that the role of the roadside hedgerow as green infrastructure has been fully assessed. Amongst other things, policy LD3 of the LP states that development proposals should identify and retain existing green infrastructure corridors and linkages. Hedgerows are listed as possible examples of such infrastructure.
25. It is not shown that the roadside hedgerow does not form part of a wider series of green corridors and linkages. A sizeable gap would be created by the proposed access arrangements which could disrupt the usability of such a green corridor by wildlife. Moreover, I cannot be assured that the position of replacement planting so far away would necessarily provide adequate mitigation in this respect.
26. Overall, the harm from these combined factors leads me to find that the proposal would have an unacceptably harmful effect on the natural environment having regard to landscape features and protected species. Therefore, it would be contrary to policies SS6, LD1, LD2 and LD3 of the CS and policies HFSP1 and HFSP16 of the NDP. Taken together these policies seek to conserve the natural environment and protect and enhance biodiversity.

Other Matters

27. Reference is made to two accesses serving the appeal property and the ability to use private rights of way. With reference to caselaw, the appellant asserts that access rights associated with the property have not been abandoned but asks for confirmation that there has been no abandonment of any right of way.

¹⁰ Paragraph 4.2, Appellant's Tree Report

¹¹ Paragraph 6.2, Appellant's Tree Report

However, matters relating to legal land rights and private rights of access fall outside the remit and authority of my determination, which is restricted to the planning merits of the development proposed. My decision does not alter civil law matters of property ownership and I make no comment on it.

28. It is further asserted that if the C1055 were not classified, then the proposed access would be covered by permitted development rights. Be that as it may, it is not established that the proposals, including the access arrangements, do not need planning permission and hypothetical different scenarios have had no bearing on my determination.
29. The proposed elevations drawing provided (drawing no. 21/HCHR60LW/01) shows inconsistent overall roof ridge heights such that the front and rear elevations do not correlate with the side elevations. It is therefore unclear whether the existing roof ridge height would be raised as a result of the proposals. However, given my concerns in relation to the main issues, this is not a matter likely to be determinative to the outcome of my decision, and so it was unnecessary to pursue it further with the main parties.

Conclusion

30. Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. There are no other considerations that would justify taking a decision other than in accordance with the development plan. Therefore, for the reasons given above I conclude that the appeal should be dismissed.

Helen O'Connor

INSPECTOR