

Appeal Decision

Site visit made on 3 June 2024

by Tamsin Law BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th September 2024

Appeal Ref: APP/W1850/W/23/3335910

Chasewood Meadow, Fernbank Road, Ross-on-Wye, HR9 5QG

- 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 Villamil Properties Ltd against the decision of Herefordshire Council.
 - The application Ref is 224260.
 - The development proposed is described as "erection of 5 no. dwellings and associated works."
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 5 no. dwellings and associated works at Chasewood Meadow, Fernbank Road, Ross-on-Wye, HR9 5QG in accordance with the terms of the application, Ref 224260, subject to the conditions in the attached schedule.

Preliminary Matters

2. The Council refused planning permission for four reasons. The fourth reason for refusal related to highway safety. In their submission the Council revised its position, as a result, they withdrew their defence of the reason for refusal relating to highway safety and this was not pursued by them.
3. On 22 November 2023, all designated Areas of Outstanding Natural Beauty (AONB) in England and Wales became "National Landscapes". The legal designation and policy status of AONBs are unchanged, but I have replaced reference to the Wye Valley AONB with the Wye Valley National Landscape (WVNL) in my decision to reflect this change.

Main Issues

4. The main issues are;
 - The effect of the proposed development on the character and appearance of the area with particular regard to the extent it would affect the WVNL; and
 - The effect of the proposed development on biodiversity and with particular regard to the Chase Wood and Merrivale Meadows Special Wildlife Site.

Reasons

Character and Appearance

5. The appeal site is an irregular shaped piece of undeveloped land bound by agricultural land, woodland, a residential site under construction and existing residential dwellings at Woodmeadow Road. The appeal site is located at the edge of the settlement and is predominantly residential in nature, characterised by low density two storey detached dwellings finished in buff and red brick. Dwellings are set back from the road behind grassed verges, stone walls and mature hedgerows giving the area a verdant rural character. Whilst the road leading to the site largely comprises linear development, cul-de-sac are provided at Woodmeadow Road and Okell Drive, to the south west and opposite the appeal site.
6. The appeal site slopes gently away from the settlement, rising towards Chase Wood Meadows and Merrivale Special Wildlife Site (SWS), a band of woodland that bound the site. The woodland forms part of the distinctive features and special qualities noted in this part of the WVNLP, which includes hedgerows define field boundaries, arable and horticultural farming, linear settlement pattern and open aspect with medium distance views.
7. Section 85(1) of the Countryside and Rights of Way Act 2000 as amended (the '2000 Act') places a duty upon me to have regard to the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty. paragraph 182 of the National Planning Policy Framework (the Framework) sets out that 'great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty which have the highest status of protection in relation to these issues.' It further sets out how 'the scale and extent of development within all these designated areas should be limited, while development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas.'
8. As noted above, the pattern of development in the immediate area is also not without variety. Although along Fernbank Road properties tend to be arranged in single plot depth, that is not the case at Woodmeadow Road and Okell Drive. Whilst not strictly a cul-de-sac, in conjunction with the site under construction, in wider views, it would appear as a cul-de-sac. The low-density nature of the proposal along with the retention of the roadside hedge and additional landscaping, would ensure the area retains its comfortable transition from the settlement to the countryside which currently exists.
9. The design and materials of the proposed dwellings would be in keeping with neighbouring properties, and many properties elsewhere in Ross-on-Wye. Whilst the maximum height of properties would respect those of nearby dwellings, they will be located at a higher level than the site under construction and dwellings on Woodmeadow Road. The proposed development would therefore be more visible when travelling along Fernbank Road and in views towards the site. Nevertheless, in these views the proposed development would be seen in conjunction with the wider residential development of Ross-on-Wye. The strong backdrop of trees at Chase Wood and Merrivale SWS would be retained and would remain a visible and distinctive feature of the area.

10. In this context, the proposed development would appear as a minor extension to the settlement and in views from the surrounding area it would be seen in connection with nearby residential dwelling and viewed as a continuation of the rising residential development of Woodmeadow Drive. Whilst the proposal would be closer to Chase Wood and Merrivale SWS, it would not encroach on the woodland, which would appear as a distinctive boundary to the site and settlement. Whilst there would be a change to this area of land, it is a small area. Relative to the character of the area and the built environment the impact of the proposal on the WVNL would be limited.
11. Whilst there may be instances where effects in respect of landscape and scenic beauty may provide a clear reason for refusing development, that, however, would not occur here for the above reasons.
12. For these reasons, I conclude on this issue that the appeal proposal would not harm the character and appearance of the area or the scenic qualities of the WVNL. As such, the proposal would be consistent with Policies SD1, LD1 and SS6 of the Herefordshire Local Plan – Core Strategy (2015) (CS) and Policy EN1 of the Ross-on-Wye Neighbourhood Development Plan (2020) (NDP) which seek, amongst other things, to ensure that developments demonstrate that the character of the landscape and townscape has positively influenced the design, scale, nature and makes a positive contribution to the character of Ross-on-Wye.

Biodiversity

13. The Council's concerns relate to the proximity of the appeal site to the Chase Wood and Merrivale SWS, the loss of irreplaceable habitat and dormice.
14. The appeal is supported by a number of technical documents including a Preliminary Ecological Assessment with Preliminary Root Assessment (PEA), Arboricultural Survey and impact Assessment (AIA), Ecological Mitigation and Enhancement Strategy and Biodiversity Net Gain Assessment. These concluded that the area of woodland closest to the appeal site was of poor condition and comprised mainly non-native conifer species with the field layer being dominated by bracken. The area of woodland surveyed, some 2 hectares, is therefore classified as 'other woodland: mixed – mainly conifer' and not ancient woodland or lowland deciduous woodland and therefore not classed as priority habitat as per the Natural Environment and Rural Communities Act 2006 (the NERC Act).
15. I have not been provided with any guidance from the Council in relation to what they consider to be appropriate buffer zones from SWSs. Nevertheless, I understand their concerns in relation to potential impact on the SWS in relation to proximity of residential dwellings. The proposed development would include a 5-metre buffer along the rear gardens of the closest dwellings. Currently this area of land is grassed over and, as part of the proposal, an area of native grassland would be planted within the buffer to create an enhanced woodland edge. The buffer would be fenced off from the residential gardens, ensuring that there would be no access from residents of the proposed development and domestic paraphernalia would remain within the garden areas and would not encroach on the buffer.

16. I have had regard to the concerns relating to the introduction of predators, such as domestic cats, in close proximity to the SWS, with particular regards to dormice. However, the submitted surveys concluded that woodland there was little foraging or sheltering opportunities for dormice and there was a lack of ground flora and fauna and deciduous woodland species. The 2 hectares closest to the appeal site would not therefore offer appropriate habitat for dormice. Whilst ancient woodland, in excess of 250 metres from the appeal site, would offer suitable habitat, the appellants survey states that dormice typically occupy a home range of 50 metres, as such would unlikely travel to the poor habitat adjoining the appeal site. The Council have not provided evidence to dispute this and I have no reason to disagree.
17. The proposed development would not encroach on to the SWS and an enhanced woodland edge buffer would be created. Subject to a condition requiring the landscaping to be completed I am content that the proposed development would not have a harmful impact on the SWS and associated species and habitats.
18. Furthermore, the proposed development would introduce additional tree planting, wildflower meadow creation, and landscaping. This would create an approximate biodiversity net gain of 33%. Whilst full details of these have not been provided this could be provided as part of the landscaping condition.
19. For these reasons, the proposed development would not harm biodiversity. As such the proposal is consistent with CS Policies LD1, LD2, LD3, SS1 and SS6 which seek, amongst other things, to ensure proposals conserve, restore and enhance biodiversity.

Other Matters

20. The site is located within the River Wye Special Area of Conservation's (SAC) zone of influence, specifically relating to its drainage catchment and close to the Wye Valley and Forest of Dean Bat SAC and Wye Valley Woodland SAC. Given the location of the site within the SAC's drainage catchment without suitable surface and foul water management there could be a likely significant effect on water quality.
21. The Council, in their role as competent authority when dealing with the original application at the site, pursuant to the Habitats Regulations, carried out an Appropriate Assessment (AA). The outcome of the Council's AA confirmed that the discharge of foul and surface water could be adequately mitigated by way of planning condition, which would require connection of both foul and surface water to the Lower Cleeve Wastewater Treatment Works and adoption of drainage by Welsh Water. Furthermore, they consider that a lighting condition could control impacts on bats and foraging routes.
22. As the competent authority, it is necessary for me to conduct an AA in relation to the effect of the development on the integrity of the SAC. With this in mind, without a suitable foul drainage or lighting strategy in place and in isolation, the proposal would have the potential to adversely affect the integrity of the SAC.

23. The Habitats Regulations require that permission may only be granted after having ascertained that it will not affect the integrity of the European site. I may give consideration 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 sites. The Council have provided conditions that they consider would mitigate any effects on the SACs.
24. I have consulted with Natural England on these conditions. Who have confirmed that the proposed conditions would be sufficient to prevent adverse effect on the integrity of the SACs. I am satisfied that, subject to the imposition of the conditions, the proposal would not have significant adverse effects on the SACs. There is no evidence that a planning obligation is necessary in this case, and therefore a planning conditions represent an appropriate mechanism for securing mitigation measures.
25. Overall, whilst the proposed development has the potential to harm the SACs, the measures controlled by planning conditions would ensure the proposal did not have significant adverse effects on the integrity of the SACs.
26. The proposed development would utilise and access currently under construction for the adjoining residential development. During my site visit I noted that Fairbank Road was a fairly straight but narrow road. I witnessed during my site visit cars manoeuvring on to verges and informal passing places (access drives) when they met cars travelling the lane.
27. Whilst the proposed development would increase the numbers of vehicles using the access and Fairbank Road, it is a fairly straight road with good visibility in both directions from the proposed access. The good visibility would ensure that drivers would also be able to see any oncoming pedestrians travelling along the pavement. As such, the proposed development would not have a harmful impact on highway safety.
28. A construction management plan, including traffic movements would ensure that noise and disturbance related to the construction of the proposal would not have a harmful impact on neighbouring occupiers. Whilst there would be additional light and noise from future dwellings and occupiers, this would not be related to the use of the proposal as dwellinghouses and similar to the noise and light from other nearby dwellings. This would not be out of keeping with levels of noise and lighting from residential areas.

Conditions

29. Conditions controlling the time for implementation of the permission and listing the approved plans are required in the interests of certainty. To safeguard the integrity of the SACs conditions relating to foul and surface water drainage and lighting are necessary.
30. To protect environmental interests, conditions are required to secure, construction and landscaping. To ensure water efficiency measures are incorporated a condition relating to water conservation is necessary.
31. Details of the materials to be used are provided on the approved drawings. I have therefore not imposed this condition.

32. I have made some other changes to the Council's suggested conditions to avoid duplication and in the interests of consistency and clarity, and to ensure compliance with the Framework and Planning Practice Guidance.

Conclusion

33. For the reasons given above the appeal should be allowed.

Tamsin Law

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan drawing no. 100, Proposed Planning Layout drawing no. 101, 2/3 Bed House Proposed Floor Plan drawing no. 110, 2/3 Bed House Proposed Elevations drawing no. 111, 4 Bed House Proposed Floor Plans drawing no. 120, 4 Bed House Proposed Elevations drawing no. 121, 1 Car Garage Proposed Plans and Elevations drawing no. 130, 2 Car Garage Proposed Plans and Elevations drawing no. 131, and Detailed Soft Landscape Proposals drawing no. P20- 1846_01-D.
- 3) All foul water shall discharge to the local Welsh Water mains sewer network managed through the Lower Cleeve Wastewater Treatment Works.
- 4) All surface water created by the development shall discharge to on-site Sustainable Drainage Systems with final outfall to the local shared mains sewer system network managed through the Lower Cleeve Wastewater Treatment Works. All shared surface water management features shall be adopted and managed by Welsh Water.
- 5) Prior to the first occupation of any dwelling hereby permitted the driveway and/or vehicular turning area shall be consolidated and surfaced at a gradient not steeper than 1 in 8. Private drainage arrangements must be made to prevent run-off from the driveway discharging onto the highway. Details of the driveway, vehicular turning area and drainage arrangements shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of any works in relation to the driveway/vehicle turning area.
- 6) Prior to the first occupation of any dwelling hereby permitted an area for car parking shall be laid out within the curtilage of that property, in accordance with the approved plans, in accordance with details to be submitted to and approved in writing by the Local Planning Authority and those areas shall not thereafter be used for any other purpose than the parking of vehicles.
- 7) Development shall not begin until details and location of the following have been submitted to and approved in writing by the Local Planning Authority, and which shall be operated and maintained during construction of the development hereby approved:
 - i. A method for ensuring mud is not deposited onto the Public Highway Construction traffic access location.
 - ii. Parking for site operatives

iii. Construction Traffic Management Plan

The development shall be carried out in accordance with the approved details for the duration of the construction of the development.

- 8) All planting, seeding or turf laying in the approved landscaping scheme (P20- 1846_01-D) 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 5 years of planting will be replaced in accordance with the approved plans.
- 9) Before the development hereby permitted is first occupied or brought into use, a schedule of landscape maintenance for a period of 10 years shall be submitted to and approved in writing by the Local Planning Authority. Maintenance shall be carried out in accordance with this approved schedule.
- 10) During the construction phase and post development, all artificial lighting must be minimal and low-level. No external lighting shall be provided other than the maximum of one external LED down-lighter above or beside each external door (and below eaves height) with a Corrected Colour Temperature not exceeding 2700K and brightness under 500 lumens. Every such light shall be directed downwards with a 0-degree tilt angle and 0% upward light ratio and shall be controlled by means of a PIR sensor with a maximum over-run time of 1 minute. The lighting shall be maintained thereafter in accordance with these details.
- 11) Prior to the first occupation of the development a scheme demonstrating measures for the efficient use of water shall be submitted to and approved in writing by the local planning authority and implemented as approved.