



Appeal Decision

Site visit made on 14 January 2025

by **M Aqbal BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 March 2025

Appeal Ref: APP/W1850/W/24/3343795

Site is located on the northern side of the C1297 and the eastern boundary of Haugh Woods.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Ms. Hutchinson against the decision of Herefordshire Council.
 - The application Ref is 220525.
 - The development proposed seeks outline permission (all matters reserved except drainage) for the re-erection of a replacement dwelling.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application is described as outline with all matters reserved except drainage. By definition drainage is not one of the reserved matters, which are access, appearance, landscaping, layout and scale. Accordingly, I have taken account of the drainage details in determining this appeal but have treated any details for the reserved matters as illustrative.
3. In reaching my decision, I have considered the revised version of the National Planning Policy Framework (as amended) that was published in December 2024 ('the Framework').

Main Issues

4. The main issues are:
 - i) Whether the appeal site is in a suitable location for housing having regard to the development plan; and
 - ii) The effect of the proposal on the integrity of the River Wye Special Area of Conservation ('SAC').

Reasons

Location for housing

5. Policy RA2 of the Herefordshire Local Plan, Core Strategy 2011 – 2031 ('CS') says 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. The proposal is for a dwelling outside of any development plan settlement

boundary and therefore for the purposes of the development plan this is located within the open countryside.

6. Accordingly, the proposal falls to be considered under Policy RA3 of the CS. The supporting text to this Policy explains that outside of the settlements new housing will be restricted to avoid unsustainable patterns of development and to exceptions listed in Policy RA3 of the CS. These include exception 3, which supports: the replacement of an existing dwelling (with a lawful residential use) that is comparable in size and scale with and is located in a lawful domestic curtilage of the existing dwelling.
7. The explanatory text to the above Policy says that: 'Replacement dwellings will only be permitted provided that the existing building has established and continued residential rights and has not been abandoned.'
8. In summary, based on the submissions, the appellant asserts that historically the appeal site was occupied by a dwelling which was destroyed in the late 1950s and therefore the appeal site benefits from a lawful residential use. The Council do not have any evidence at present to dispute that the appeal site does not continue to have a residential use.
9. However, even if I were to accept that the appeal site has a lawful residential use, in my view, exception 3 of Policy RA3 of the CS, because of its wording is clearly predicated upon an existing dwelling / building, which has a residential lawful use being present upon the appeal site.
10. In this case there is no 'existing dwelling.' Although there is a structure / building at the appeal site, this does not have established and continued residential rights. As such, the proposal is not supported by Policy RA3 of the CS. Accordingly, in my view, this Policy would also not allow a replacement dwelling whereby an existing dwelling is entirely razed by a catastrophic event (such as a fire) and an application for a replacement dwelling is submitted the day after, in the example cited by the appellant. Irrespective, such circumstances are not before me and it would be a matter for the decision maker whether the specific circumstances are material considerations which support a decision contrary to the development plan.
11. Policy FW11 of the Fownhope Neighbourhood Plan ('NP') limits development in areas outside the adopted Fownhope Settlement Boundary, to certain types, which includes replacement of existing dwellings. However, because no dwelling exists on the appeal site, the proposal does not constitute a replacement dwelling. Nor does this proposal qualify under any of the other types of development supported by this Policy.
12. The appeal site is not isolated in terms of the definition within the Framework. Nonetheless, the meaning behind the Framework is not that any site which is not isolated is suitable for development. Furthermore, I am not aware of any basic level of services and facilities that are available or access to bus services to any nearby settlements. There would therefore be a reliance on the private motor vehicle to access a wider range of services and facilities to meet day to day needs. The site's development as proposed would therefore promote unsustainable patterns of development contrary to the Council's strategy for the location for new development set out in the development plan.

13. For the above reasons, the appeal site is not in a suitable location for housing and is contrary to CS Policy RA3 and NP Policy FW11. Accordingly, the proposal is also contrary to CS Policy SS1, which amongst other things supports proposals which accord with the development plan.

River Wye SAC

14. The site lies within the hydrological catchment area of the River Wye SAC, which is currently considered to be failing its conservation objectives. The nature of the proposed development (when unmitigated) is considered to result in a 'likely significant effect' on the integrity of the site as there will be an increase in phosphates being discharged as part of any foul water drainage.
15. Where a site, in this case the River Wye SAC, is considered to be 'failing' its conservation objectives, the competent authority is 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.
16. Accordingly, as the decision maker and competent authority, I must consider mitigation measures intended to avoid or reduce the harmful effects on a protected site within the framework of an Appropriate Assessment ('AA').
17. In this case the appellant is proposing to use a sealed cesspit for the proposed dwelling. This would comprise a sealed underground tank to store the sewage before removal by a tanker.
18. Policy SD4 of the CS does not preclude the use of cesspools. In this case there is nothing to suggest that there is any alternative to the use of a cesspool. Nonetheless, I understand the Council's concerns about the difficulty of managing disposal locations for waste from cesspools in the interests of safeguarding against any adverse effects on any designated nature conservation site. In particular, the lack of scientific certainty regarding the management of untreated waste when it is removed from the site. Hence, such arrangements would need to be in place to inform the AA and therefore cannot be relied on through conditions.
19. Although some information about the location and capacity of the cesspit has been provided there is insufficient information about managing the disposal locations and any monitoring of this.
20. Whilst the Council may have supported applications by condition or a legally binding contract from a registered waste provider for the safe removal and disposal of the foul waste, I have limited information on the evidence provided to the Council in such cases. Irrespective, as the decision maker, I need to be certain of the proposed arrangements in respect of the scheme before me and at this outline stage.
21. 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.
22. Therefore, the proposal is in conflict with CS Policies SD3, SD4 and LD2. Together these Policies do not permit development that would harm environmental assets including sites of European importance or undermine water quality objectives.

Other considerations

23. On the information before me, the Council is currently unable to demonstrate a 5-year supply of housing land, with the current level of housing land supply being about 3.09 years. Therefore, Paragraph 11d) of the Framework is engaged. However, because the proposal would harm the integrity of a habitats site, this provides a clear reason for refusing the development proposed and therefore the presumption in favour of sustainable development does not apply.

Other Matters

24. The lack of any harm in respect of flooding, protected species and the potential to provide a net gain in biodiversity enhancement are expectations for most new development proposals of this type. As such, these are afforded limited weight.
25. Nevertheless, even if I accept the appellant's assertion that the proposal would be an infill plot, and one which has historically included a dwelling and that this would be an addition to the Council's windfall allowance, the provision of a single dwelling would only make a limited contribution to boosting the Council's housing supply and this does not outweigh the harm I have already identified.
26. Whilst the appellant has suggested providing a Self Build / Custom Build plot at the appeal site, such a proposal is not before me.
27. Accordingly, the above considerations are not sufficient to mean that the proposal should be determined otherwise than in accordance with the development plan.

Conclusion

28. For the above reasons, I conclude that the appeal should be dismissed.

M Aqbal

INSPECTOR