



Appeal Decision

Site visit made on 20 March 2025

by **C Butcher BSc MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19 May 2025

Appeal Ref: APP/W1850/W/24/3346563

Stokes Hill, Stoke Lacy, Herefordshire HR7 4RE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Michael Moran against the decision of Herefordshire Council.
 - The application Ref 232197, dated 21 July 2023, was refused by notice dated 22 March 2024.
 - The application sought planning permission for the retention of barn for use as cinema room and gym, and retention of stables for use as ancillary residential annex both in association with the dwelling house, without complying with a condition attached to planning permission Ref 193982, dated 25 January 2021.
 - The condition in dispute is No. 4 which states that: The building and uses hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as Stokes Hill.
 - The reason given for the condition is: It would be contrary to Policies SD1, RA5, LD2 and SD4 of the Herefordshire Local Plan – Core Strategy to grant planning permission for a separate dwelling in this location in light of residential amenity and required certainty that there are no unmitigated pathways for phosphates to enter the hydrological catchment of the River Lugg Special Area of Conservation.
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Decision

1. The appeal is allowed and planning permission is granted for the retention of barn for use as cinema room and gym, and retention of stables for use as ancillary residential annex both in association with the dwelling house at Stokes Hill, Stoke Lacy, Herefordshire HR7 4RE in accordance with the application Ref 232197, without compliance with condition number 4 previously imposed on planning permission Ref 193982, dated 25 January 2021, and subject to the conditions in the attached schedule.

Background and Main Issue

2. The building, known as The Stables, was granted permission for use as a residential annexe in 2021. The appellant's evidence makes it clear that the building has subsequently been used for tourism purposes, in breach of that permission.
3. Based on the Council's reason for refusal, the main issue is the effect of the proposed change of use on the integrity of the River Wye Special Area of Conservation (SAC).

Reasons

4. The appeal site lies within the hydrological catchment of the River Wye SAC, which includes the lower stretches of the River Lugg. The river system supports a number of important species, including white-clawed crayfish, sea lamprey, brook

lamprey, river lamprey, twaite shad, Atlantic salmon, freshwater pearl mussel, bullhead and otter.

5. The proposal is to remove condition 4 to enable The Stables to be used for tourism purposes. The council has suggested that this would lead to a more intensive use than is currently the case, and that this could harm the integrity of the SAC through an increase in the discharge of phosphates into the river system. It is necessary for me, as the competent authority, to conduct an Appropriate Assessment in relation to the effect of the proposal on the integrity of the SAC.
6. I have carefully considered the Council's evidence as well as that of the appellant. Out of an abundance of caution I have also sought the views of Natural England and have since canvassed the opinions of the main parties on their response. Ultimately, the position set out by Natural England is that the competent authority must be satisfied with any calculations or conclusions made in relation to phosphate discharge.
7. I am aware that the building currently has permission to be used as a residential annexe without restriction. As such, friends and family of the appellant could quite readily use the building all year round. However, as the competent authority, I must adopt a precautionary approach. With this in mind, it is very possible, indeed perhaps likely, that the proposed change of use could lead to a more intensive use of the building. If this were the case, it would result in an increase in phosphate discharge which, in combination with other developments in the wider area, would have a likely significant effect on the SAC.
8. In order to address this matter, the appellant has provided a nutrient mitigation report prepared by H+H Drainage in January 2025 (hereafter referred to as the drainage strategy). The strategy provides an assessment of the likely increase in phosphate discharge and sets out proposed mitigation in the form of an upgrade to the existing septic tank that serves Stokes Hill. The report concludes that, subject to these works, discharge of phosphates would be reduced overall. I can see no reason to disagree with the assumptions made within the strategy, or dispute the conclusions reached.
9. I do note that the Council's ecologist has stated that the input with regards to water use is incorrect. However, a condition to limit water use to 110 litres per person per day is necessary in any event to conform with Policy SD3 of the Herefordshire Local Plan Core Strategy 2011 – 2031 (the LP). I do also recognise that the required works would come at a financial cost to the appellant, and that they may prefer a permission that requires an upgrade to the septic tank that serves The Stables building itself. However, the drainage strategy does not outline this is an option and I can only make my decision based on the evidence before me. The associated financial cost, and any disruption in terms of existing planting, does not change the fact that these works are identified as being necessary in order to provide certainty with regards to the integrity of the SAC.
10. As a result, subject to the imposition of conditions to require the upgrade of the septic tank, and to limit occupancy to two people in accordance with the drainage strategy, I find that the scheme would not result in an increase in phosphate discharge and therefore it would not harm the integrity of the SAC. The proposal would therefore conform with LP Policies SS1, RA6, SD3, LD2 and SD4, as well as Policy SL2 of the Stoke Lacy Neighbourhood Plan, 2022. Taken together, the

relevant aspects of these policies seek to ensure that development is sustainable, and that river systems and ecology are protected, including the River Wye SAC, while also supporting proposals that enhance the rural economy as long as they do not undermine water quality targets.

Conditions

11. I have re-imposed the remaining conditions that were included as part of the original permission. If any have since been discharged, then this is a matter that can be resolved between the two main parties. I have imposed conditions to restrict occupancy to two people and to require an upgrade to the septic tank. In addition, I have imposed a condition in relation to water usage in order to comply with LP Policy SD3 and to conform with the calculations contained within the drainage strategy.

Conclusion

12. The proposal is in accordance with the development plan when considered as a whole. Having had regard to all matters raised, I conclude that the appeal should be allowed.

C Butcher

INSPECTOR

Schedule of Conditions

- 1) The development shall be carried out strictly in accordance with the approved plans, except where otherwise stipulated by conditions attached to this permission. The following drawing numbers constitute the approved plans:
 - HA35188_P10_A (Location and Block Plan) dated Nov 2019;
 - SA 35127 (01) (Existing measured building survey) dated 22/10/2019;
 - SA 35127 (02) (Existing measured building survey) dated 22/10/2019;
 - SA 35127 (03) (Existing measured building survey) dated 22/10/2019;
 - SA 35127 (04) (Existing measured building survey) dated 22/10/2019;
 - SA 35127 (05) (Existing measured building survey) dated 22/10/2019.
- 2) Within 3 months of the date of this decision notice, evidence (such as photos/signed Ecological Clerk of Works completion statement) of the suitably placed installation within the site boundary or land under the applicant's control of biodiversity net gain enhancement features such as robust habitat boxes/homes that includes provision to support bird nesting, bat roosting and pollinating insects/invertebrates should be supplied to and acknowledged by the local authority; and shall be maintained hereafter as approved unless otherwise agreed in writing by the local planning authority. No external lighting should increase any illumination levels around any biodiversity net gain feature.
- 3) All users of the development hereby approved shall solely access the site using the existing private access drive off the C1117.
- 4) The barn and stables approved under this decision notice and the dwelling known as Stokes Hill, Stoke Lacy, Bromyard, HR7 4RE shall not be sold, leased or let separately from each other.
- 5) The dwelling hereby approved shall not be occupied until the existing septic tank has been removed and replaced with connection to a new package treatment plant (PTP) discharging to a drainage field, as detailed in the supplied drainage report by H&H Drainage (January 2025). The approved arrangements shall thereafter be maintained for the lifetime of the development, unless otherwise approved in writing by the Local Planning Authority. Any future replacement of the new PTP is subject to a requirement to achieve the same effluent phosphorus concentration or better.
- 6) At no time shall more than a total of two people (including adults and children) occupy the building known as The Stables. Auditable records of all occupancy of the holiday unit approved under this planning permission shall be kept by the owner of the accommodation; and following a reasonable request these records shall be made available at any time during the lifetime of the development to any authorised officer of the Local Planning Authority.
- 7) The development hereby permitted shall not be occupied for tourism purposes until the Building Regulations optional requirement of a water consumption rate of no more than 110 litres per person per day has been complied with.