



Appeal Decision

Site visit made on 20 May 2025

by J Burston BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd July 2025

Appeal Ref: APP/W1850/W/24/3350526

Site adj. to Arrow Lea, Eardisland, Leominster, Herefordshire, HR6 9BU

- 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 Staples U K Holdings Ltd. against the decision of Herefordshire Council.
 - The application Ref is 223881.
 - The development proposed is 4 No. self-build dwellings with garages.
-

Decision

1. The appeal is dismissed.

Applications for costs

2. The appellant has made an application for the award of costs. This is subject to a separate decision.

Preliminary Matters

3. During the course of the appeal, the appellant has submitted a unilateral undertaking dated 21 May 2025. This includes provision for four serviced plots to be made available for the construction of self-build or custom build houses.
4. Given the time that has elapsed from the submission of the appeal, I wrote to the main parties seeking updated information and comments on several matters, including the latest housing land supply position, the revised version of the National Planning Policy Framework (the Framework) published in December 2024 and updated technical reports submitted by the appellant. Both main parties have had opportunity to comment on these matters and I have taken into account any representations made.
5. The Council's Decision Notice included a reason for refusal relating to highway safety. However, the Council no longer contests this issue.

Main Issues

6. I consider that the main issues in this appeal are:
 - The effect of the development on the character and appearance of the area and whether the proposed development would preserve the setting of the Eardisland Conservation Area (CA);
 - Whether the site is a suitable location for the development having regard to flood risk; and

- The effects of the proposal on the integrity of the River Wye Special Area of Conservation (SAC)

Reasons

Character and Appearance

7. Eardisland is an attractive historic village, recognised by the Conservation Area designation which encompasses the majority of the settlement. Whilst sporadically set out, particularly at its core which exhibits a higher density of development, the majority of the built development fronts a highway. The village is surrounded by fields and orchards, which adds to its pastoral setting.
8. The appeal site is a relatively flat parcel of land to the northeast of the village. It is separated from the properties on the northeastern edge of the village by a mature hedgerow together with a number of trees. The site is bounded by mature hedgerows, with the C1035 highway to the south and an agricultural track to the east.
9. The proposed development would comprise four detached dwellings. These would be sited in a broadly linear pattern running south to north across the site. The submitted plans show that the hedgerows would remain, albeit a section removed to create the required access and visibility splay. The site access has been revised so that the footpath terminates within the 30mph zone.
10. The site is recognisably part of the open countryside that lies beyond the existing built development on the C1035 and village 'gateway' features. When on the road directly in front of the site, the houses in the village to the west are not particularly prominent as they are in sizeable gardens with heavy tree cover and / or mature hedges. Furthermore, this arrangement means they are perceived to be at a low density and give the settlement a soft edge that merges into the rural landscape around.
11. As a result, the well-spaced and generously landscaped plots integrate well with the surrounding rural landscape. Moreover, although the site has no recreational value or historic associations it nonetheless makes a positive contribution to this rural setting through its openness, its landscaping and what it adds to the tranquillity of the locality.
12. The proposed development would visually extend built development into the open countryside and although views of the proposed development would be relatively localised, it would be clearly visible from the public highway on the approach to the village from the east and when leaving the village. The development would fundamentally change the character and appearance of the site from agricultural fields with mature hedging that played a part in containing the village, to a scheme that would not only extend the village but would conflict with the existing informal low-density edge to the settlement and undermine the sense of tranquillity of the area.
13. Although designed to be attractive and to exhibit a design style similar to the dwellings in the wider village, four dwellings reaching back in a row will appear suburban in character and would fail to assimilate comfortably into the existing loosely knit grain of development in the village. Furthermore, the domestic curtilages, parked vehicles, activities associated with a residential use and the need

to provide access and visibility splays would further exacerbate the urbanising effect.

14. The CA encompasses both the medieval core of the village, which contains a number of historic buildings and a Scheduled Ancient Monument, and its rural setting. In this regard it recognises the agricultural origins of the settlement and the contribution the open setting of the historic core makes to its significance. The CA appraisal identifies the viewpoint along Leominster Road as a key view of the asset and this is also recognised in the Eardisland Neighbourhood Plan 2016.
15. The proposal would lead to the built development of the site, the scale and massing of which would form a strong presence at this village gateway location. Whilst traditional materials and features are proposed, the erosion of the open character of the site would nonetheless lead to the loss of an important part of the existing open landscape around the historic core of the CA. The adverse effect on its rural setting would have an adverse effect on the significance of the CA considered as a whole.
16. In reaching this conclusion, I have taken into account the two appeal decisions brought to my attention by the appellant. However, the cases are located in a different settlement from the appeal site and therefore the circumstances surrounding character and appearance would differ substantially.
17. The proposed development, by virtue of resulting in incongruous development within an essentially open and rural site which contributes positively towards landscape character, would have a significant detrimental effect on the character and appearance of the area. The proposed development would therefore conflict with Policies SS6, SD1, LD1 and RA2 of the Herefordshire Local Plan Core Strategy (the HCS). These policies require proposals, amongst other matters, to conserve and enhance those environmental assets that contribute towards the County's distinctiveness, in particular its settlement pattern; maintain local distinctiveness; and make a positive contribution to the surrounding environment. The proposal would also be contrary to the Eardisland Neighbourhood Plan 2016 (ENP) Policies E1, E3 and E9 that require proposals, amongst other matters, to respect the rural nature, unique architectural character and special ambience of the parish and that the density of development is appropriate and proportionate to its surroundings.
18. It would also conflict with the design objectives in paragraph 135 (c) and (d) of the Framework, which states that decisions should ensure that developments are sympathetic to local character and history, including the surrounding built environment and landscape setting and that they establish or maintain a strong sense of place.
19. Furthermore, the HCS policy LD4 establishes that proposals affecting heritage assets and the wider historic environment should protect, conserve, and where possible enhance heritage assets and their settings in a manner appropriate to their significance. The ENP Policy E2 similarly states that all new development will be required to preserve and enhance the positive attributes of heritage assets and their settings.
20. Given that the development would not be located within the CA itself, I consider the harm to be less than substantial. Whilst the Framework does not set out a spectrum of less than substantial harm, I consider the harm to be at the lower end of less

than substantial, but nevertheless of considerable importance and weight. Paragraph 213 of the Framework states that any harm to, or loss of significance of a designated heritage asset through its alteration or destruction, or from development within its setting, should require clear and convincing justification. I go on to consider this harm against the public benefits in the 'planning balance' below.

Flood risk

21. The Environment Agency confirmed that the site is located within Flood Zones 1, 2 and 3 of the River Arrow. The appellant's Foul Water and Surface Drainage Revision report, dated 16 March 2023, states that there would not be any above ground level construction work within Flood Zone 3 and 2 and that finished floor levels would be set to 85.05mAOD which is 600mm above the peak 100 year plus 20%CC flood level. The Council and the Environment Agency have confirmed that such matters can be controlled by suitable planning conditions.
22. Nevertheless, as confirmed in the Corner Water Consulting 'Response to Planning Refusal', dated August 2024, the proposed site access crosses land affected by Flood Zone 3. In the 100-year plus Climate Change event should a person leave the site at the peak of the design storm then there will be up to 0.5 metres (depth) of static water in the lane over a length of 62 metres. Accordingly, an emergency evacuation plan would be required to ensure safe access/egress during a flood event.
23. In such a storm event, future occupiers would have little option but to rely almost entirely on the Environment Agency's flood warning scheme, and if this failed or if flooding occurred whilst they were asleep, they could potentially become stranded and require emergency assistance.
24. The appellant also comments in the aforementioned 'Response to Planning Refusal' that *"the skills of the parish council flood wardens, should be sufficient to ensure that all occupants of the site are fully aware of the possibility of flooding at some point in the future."* In this regard I note that Eardisland Parish Council stated in their letter of objection, dated 27 January 2023, that *"the Eardisland Flood Response Group are volunteers funded by the Parish Council in order to provide basic advice, protection and support for existing residents and businesses facing the current flood risk. EFRP are not a formal flood safety group and cannot provide any official help or assistance as part of an emergency plan for new dwellings."*
25. I accept the appellant's comment that there is a potential escape route on foot which could be used to the east of the site boundary, where occupants would head north, approximately 500 metres along an un-metalled track to Lyme Farm. However, this would be difficult to walk along if rutted and/or muddy, particularly for young children or the elderly. Furthermore, it has not been made clear whether the proposed route is a public right of way or that the permission of the landowner had been sought and secured by a legal agreement, and, once you have reached an adopted highway, some 200 metres west of Lyme Farm you would be reliant on other people to assist you to reach a 'safe house' or similar, which adds to my concern.
26. Without an access or escape route that could be used safely, conveniently and without trespass during flood conditions, the risk posed to future occupiers and any flood wardens or emergency services would not be fully mitigated and there would be unacceptable residual effects

27. Whilst the appellant contends that the proposed dwellings would provide a comfortable and safe refuge no evidence has been provided that essential services such as electricity, gas, telecommunications, water supply and sewerage would not be compromised at the properties during a flood event, irrespective of its duration. In any event I am not persuaded that this precludes the need for an adequate evacuation route.
28. In coming to my decision, I have paid regard to the site-specific flood risk assessments; the appellant's design features intended to mitigate the consequences of the appeal site becoming inundated and the comments of the Environment Agency. However, they do not overcome my concerns in respect of this matter.
29. Taking all of this into account the proposed development would conflict with HCS Policy SD3(2) which, amongst other things, requires developments to reduce flood risk.

The effects of the proposal on the integrity of the River Wye Special Area of Conservation (SAC)

30. The development lies within the hydrological catchment of the River Lugg Site of Special Scientific Interest, which comprises part of the River Wye SAC; a habitat recognised under the Habitats Regulations, (The Conservation of Habitats and Species Regulations 2017, as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019' (the 'Habitats Regulations')) as being of international importance for its aquatic flora and fauna. The SAC has been identified as being in unfavourable conservation status.
31. A likely significant effect on the SAC would occur from the residential development in this appeal alone, or in combination with other development, where increased phosphates from foul wastewater entering the River Lugg catchment would exacerbate eutrophication harmful to this habitat and species, where Natural England (NE) advise the need for nutrient neutrality from new developments.
32. In this respect I have considered the proposal in its entirety rather than as 4 individual 'projects' which would result in a phosphorus output above the 'not significant' guidelines established by NE (as set out in '*Package Treatment Plants and Small Scale Impacts in the Lugg Catchment*', *Herefordshire Council - Interim Guidelines*" revision 2 dated 17 March 2023) and accepted by the appellant.
33. The NE standing advice suggests that one way to address this issue is for new development to achieve 'nutrient neutrality' by incorporating mitigation measures so that it does not increase the level of certain pollutants entering the SAC. Given my findings of a likely significant effect on the SAC, as the competent authority, I am required to undertake an Appropriate Assessment (AA) which includes taking account of any proposed mitigation measures.

Appropriate Assessment

34. The appellant has put forward an Orchard Strategy by way of mitigation. It is stated that this follows a national approach agreed by NE. The Orchards planted downstream of the drainage fields proposed on each dwelling would, in essence, act to remove any additional phosphorus exported to the environment. The appellant proposes to plant a number of apple and walnut trees designed for the

appeal site, which would meet the Council's and NE's requirements for location, spacing and minimum size at planting.

35. The appellant has put forward a number of developments, including one in Somerset and three in Herefordshire, which have used a similar approach to achieve nutrient neutrality. Whilst in those case NE accepted the approach, I cannot be confident that the circumstances of these cases are exactly the same to warrant the same conclusions to be made. For example, the Council has stated that the Herefordshire scheme (planning application reference 200705 refers) involved planting the orchard within an area of set aside rather than within private gardens.
36. The appellant asserts that the Somerset development (planning application reference 36/21/0017 refers) does provide for trees within private gardens, however, it is a bespoke scheme that considers a different catchment and SAC/SPA, furthermore, there would be differing background circumstances that would have been considered when preparing the Habitat Regulation Assessment.
37. The second Herefordshire scheme (planning application reference 223381 refers) included the planting of a willow bed and orchard, and I do not know if this scheme was for a self-build development and as such is not directly comparable to the proposal before me.
38. The third Herefordshire scheme (planning application reference 223512 refers) included the mitigation planting of an orchard, subject to a legal agreement. However, due to complications with the Unilateral Undertaking it has not yet progressed.
39. In principle the associated calculations within the evidence indicate that the mitigation approach would achieve nutrient neutrality. However, I am concerned that in practice the mitigation would be a hinderance to the living conditions of future occupiers given that the trees would be located in the rear gardens and once they had reached maturity, particularly the proposed walnut trees, would overshadow elements of both their own and neighbouring gardens. Furthermore, leaf and fruit fall and root damage may also present concerns leading to pressure to have the trees removed.
40. Whilst I accept careful management of the trees may reduce such problems and could be controlled by a suitably worded planning condition, the ongoing planting, surveying and management of the mitigation would be the requirement of any future self-builder and as such should be controlled by a legally binding agreement, with restrictions placed on the title deeds. In this respect I acknowledge that the appellant would be willing to enter into an agreement with the Council, however I do not have such a document before me and as I am dismissing the appeal for other reasons, I have not requested one to be provided.
41. Accordingly, without such security, there is no mitigation proposed that would satisfy me that the development would not result in an increase of wastewater that would adversely affect the SAC.
42. It is therefore not possible for me to conclude that the development would be nutrient neutral in its impacts. It is NE's advice to be as precautionary as possible when addressing uncertainty.

43. Having regard to the nature of the proposed development and the increased risk which would stem from the additional waste water as a result of the proposed use, I consider that in the absence of suitable mitigation measures the appeal scheme would present likely significant effects on the River Wye SAC which, either alone or in combination with other plans and projects, could adversely affect the integrity of this protected site.
44. No alternative solutions that would have a lesser effect, or avoid an adverse effect, have been provided. Therefore, the Habitats Regulations state that permission must not be granted, unless there are imperative reasons of overriding public interest. Given the scale of the proposal, I do not consider the provision of four dwellings would represent such an overriding public interest in this case.
45. Accordingly, there would be conflict with Policies SS1, SS6, LD2 and LD4 of the HCS and Policies E1(k) and E9(h) of the ENP. These policies together seek, amongst other matters, to ensure development proposals conserve and enhance biodiversity, especially SACs and that any likely significant effect on the River Wye SAC is avoided or adequately mitigated.

Other Matters

Planning obligation

46. The appellant's unilateral undertaking includes provision for self-build housing. Where relevant and appropriate, I have considered the obligation in my assessment of benefits in the planning balance below, but otherwise it has not been necessary to consider the detail of the obligations in any further detail due to my overall conclusions in the determination of this appeal.

Ecological Surveys

47. The Council's Ecologist has stated that the Preliminary Ecological Assessment, dated September 2021, which accompanied the planning application, is now out of date. As such, concerns have been raised relating to the hedgerow on site and the mature Sycamore tree on the north of the site which has bat roosting potential. Furthermore, no information has been supplied on the potential impact of development and construction works on existing trees and hedgerows.
48. As I am refusing the appeal on other substantive grounds, I have not considered this matter further. However, it should be noted that Circular 06/2005 (Biodiversity and Geological Conservation – Statutory Obligations and Their Impact Within the Planning System) states at paragraph 99 that *"It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances."*

Scheme benefits

49. The proposal would provide for 4 new dwellings which would be self-build. The scheme also appears to be capable of being implemented reasonably quickly. On the basis of the housing supply position presented by the appellant where there would be a shortfall, the development would make a small but valuable contribution

towards the particular need for self-build housing. These benefits carry considerable positive weight.

50. During the construction period there would be likely to be some benefits to the local economy carrying modest positive weight.

The Planning Balance

51. The Council is unable to demonstrate a five-year supply of deliverable housing sites with only 3.06 years supply, as set out in its Five Year Housing Land Supply (2024 – 2029) Annual Position Statement at 1 April 2024, revised January 2025. In such circumstances, paragraph 11 d) of the Framework is engaged.
52. However, I have concluded that the proposal would cause a significant harm to the SAC, where paragraph 195 of the Framework states that in such circumstances, the presumption in favour of sustainability does not apply. There is, therefore, no need to refer to the test in paragraph 11 d) ii) of the Framework.
53. The proposed development would also result in significant harm to the character and appearance of the area, less than substantial harm to the setting of the Conservation Area and harm to future residents given the lack of a suitable emergency evacuation plan.
54. Notwithstanding this, and despite the contribution towards self-build housing and other benefits noted above, the identified harm, along with the conflict with the relevant policies as set out in my main issues, leads me to the conclusion that that there would be conflict with the development plan when considered as a whole and there are no other material considerations of sufficient weight to indicate a decision should be made other than in accordance with the development plan.

Conclusion

55. For the reasons given above, and taking into account all matters raised, the appeal should be dismissed.

J Burston

INSPECTOR