



Appeal Decision

Site visit made on 3 September 2019

by Helen B Hockenhull BA (Hons) B. PI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 07TH October 2019

Appeal Ref: APP/W1850/W/19/3229484

Land at Kingcup Cottage, A49 from Dinmore Manor Lane to Aubarrow Lane via Wellington, Wellington, Herefordshire HR4 8DT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Kingspan Timber Solutions and Mrs Myra Thomson against the decision of Herefordshire Council.
 - The application Ref 181754, dated 10 May 2018, was refused by notice dated 7 December 2018.
 - The development proposed is the erection of 10 self-build/custom build dwellings, 5 affordable dwellings and alteration to existing access.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal proposal is in outline with all matters reserved for later approval except for the matters of access and layout.
3. The appeal scheme was originally refused for 4 reasons. Reason for refusal 3 related to the potential impact of the proposal on archaeological remains within the site. Following the submission of a Field Evaluation report, the Council has confirmed that it no longer intends to pursue this reason for refusal, subject to an appropriate condition on any approval requiring an archaeological watching brief. I have considered the appeal on this basis.
4. The appellant has submitted amended plans as part of this appeal. A revised Site Plan, Drawing No. 1831/03 Revision H, illustrates alterations to the siting of Plots 6, 7 and 10 and provides a note that no windows would be proposed in the first-floor rear elevation of Plots 11 and 12. I have had regard to the 'Wheatcroft Principle'¹ and Annex M of the Procedural Guide: Planning appeals-England (March 2016). Irrespective of the merits of the amendments, those previously consulted on the proposal, would not have seen and had the opportunity to comment on them. I cannot therefore be assured that their interests would not be prejudiced by the revised scheme. I have therefore concluded that it would not be appropriate to accept these revisions.
5. A signed and dated Unilateral Undertaking under section 106 of the Town and Country Planning Act 1990 has been submitted by the appellant as part of the

¹ Bernard Wheatcroft Ltd v Secretary of State for the Environment [JPL, 1982, P37]

appeal. The Undertaking contains obligations relating to affordable housing, the provision of self-build /custom build dwellings and open space within the site.

Main Issues

6. The main issues in this case are:

- whether the site would form a suitable location for housing having regard to national and local planning policy;
- the effect of the proposal on the character and appearance of the area;
- whether the proposal would provide satisfactory living conditions for future occupants having regard to noise pollution from the A49.

Reasons

Suitable location for housing

7. The appeal site, just over one hectare in area, comprises the existing Kingcup Cottage and its large grassed curtilage. The property lies in the small hamlet of Wellington Marsh, which includes around 30 dwellings located to the west of the A49.
8. Policy RA2 of the adopted Herefordshire Local Plan Core Strategy 2011-2031 provides guidance on housing in settlements outside Hereford or the market towns. It sets out several settlements where proportionate housing development would be acceptable to maintain and strengthen locally sustainable communities. Wellington Marsh is not identified as such a settlement. Therefore, in principle, the proposal would not comply with the spatial strategy.
9. Wellington marsh is located about 1.5 kilometre from the village of Wellington where there is a primary school, public house, church and a shop.
10. Access to Wellington village on foot can be achieved in two ways. Firstly, using a public footpath to the west of the site. Whilst this is the shorter route, it may not be suitable in inclement weather or for users with lesser mobility or parents with pushchairs. The alternative route is along the A49. However, the footpath along this route is not continuous on both sides of the road, so that a user would have to cross to the other carriageway.
11. I noted on my site visit that signed uncontrolled pedestrian crossing points have been provided just north of the appeal site and to the south of the Wellington Village Centre junction. Whilst this provision improves highway safety for pedestrians, the footpath is fairly narrow, is unlit and does not form an attractive route being close to a busy highway with a speed limit of 50 mph. This would be likely to deter some pedestrians, particularly those with young children walking to and from school.
12. An hourly bus service from Hereford to Leominster runs adjacent to the appeal site. It does not operate in the evening and is less frequent on a Sunday with no Bank Holiday service. This provides an alternative to the car for those wishing to travel to these larger settlements for employment or to access shops and services. However, as a result of its frequency it would not form a convenient service for those going into Wellington village for example to the

local shop or the school. Again, this is likely to encourage future residents of the appeal scheme to use the car. Whilst cycling to Wellington could be an option, bearing in mind the speed and number of vehicles on the A49, including many HGV's, I consider few users would choose this option.

13. The appellant draws my attention to paragraph 103 of the National Planning Policy Framework (the Framework) which advises that significant new development should be focussed on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. It goes on to state that the opportunity to maximise sustainable transport solutions will vary between urban and rural areas. Clearly national policy recognises that public transport is likely to be more limited in rural locations.
14. I have been referred to a number of appeal decisions where residential development has been allowed recognising that boosting the supply of housing should not always be discounted because of poor accessibility and reliance on the car. Whilst I have taken account of these decisions, each scheme should be considered on its merits in light of its individual context.
15. Turning to this case, I acknowledge that public transport, walking and cycling would provide options other than the car for some trips. However, having regard to the nature of the routes and the frequency of services, I consider it likely that such trips would be limited, and most journeys would be taken by car. A development of the scale proposed, 15 dwellings, with the likely number of trips that would be generated, would not encourage a pattern of growth reducing the need to travel.
16. Accordingly, the appeal scheme would conflict with Policy MT1 of the CS and section 9 of the Framework, which seek to promote sustainable modes of travel.

Character and appearance

17. Wellington Marsh forms a small hamlet extending along Marsh Lane to the west of the A49 with other dwellings fronting the highway. It is physically and visually separate from Wellington surrounded by open countryside.
18. The appeal site lies immediately south of properties on Marsh Lane and to the north of Manor House Farm. It cannot therefore be described as isolated from other housing. Furthermore, the site does not extend any further west than the existing properties on Marsh Lane. I agree with the Inspector who dealt with the previous appeal² on the site, that it is well related to the existing dwellings in the hamlet.
19. Notwithstanding the above, the appeal scheme would increase the number of dwellings in Wellington Marsh by about 40%. This would be disproportionate, resulting in a significant enlargement of the hamlet and a settlement pattern adversely affecting the character and appearance of the area.
20. The appellant has brought my attention to the Herefordshire Landscape Character Assessment 2009. The appeal site is located in the Principal Settled Farmlands character area, characterised by a dispersed settlement pattern of farmsteads and hamlets capable of accommodating limited new development.

² Appeal ref APP/W1850/W/15/3141403

However, in the context of Wellington Marsh I do not consider that a scheme for 15 additional new dwellings, significantly increasing the size of the settlement, would constitute limited development.

21. The appeal site is well contained by existing hedgerows and trees on its boundaries and is not located in an area of statutory landscape protection. Whilst landscaping forms a reserved matter, I do not doubt that additional planting would further screen the development reducing its impact on the character of the landscape.
22. Nevertheless, the scale of the development proposed would not take account of the character and setting of the settlement or its form and layout. It would therefore fail to comply with Policies RA2 and LD1 of the Core Strategy. It would also conflict with paragraph 170 of the Framework which requires planning decisions to contribute to enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside.

Living Conditions

23. The Council's fourth reason for refusal relates to the impact of road traffic noise on the amenity and living conditions of future occupiers of the proposed five affordable dwellings, located to the east of the site close to the A49.
24. The Appellant has questioned the rationale behind this reason for refusal given that the previous appeal on the site was not required to prepare a noise assessment. I am also referred to a number of other developments for houses close to the A49 where such an assessment has not been sought. I do not have the full details of these other schemes before me to assess their comparability with the appeal proposal. In any event these other developments pre date the noise advice in the current Framework and the revised Planning Practice Guidance. I therefore give them little weight.
25. The updated noise assessment submitted to accompany the appeal submission, outlines that Plots 1-5 would be at medium risk for daytime noise and medium to high risk of night-time noise. The Professional Practice Guidance on Planning and Noise for new residential development (ProPG) sets out that for a medium risk development the potential effect without mitigation shows an increasing risk of adverse effect.
26. The noise assessment report goes on to recommend various mitigation measures to address the issue. This includes setting dwellings 18 metres back from the road, gable ends with no windows facing the roads and 2-metre-high garden fences. Bedrooms are expected to be at a high risk of traffic noise at night and therefore fan assisted ventilation is recommended so that windows could remain closed. In terms of external amenity areas, ProPG recommends noise levels should ideally not be above the range 50-55dB. The report suggests that even with the provision of acoustic fences, noise levels would still achieve the lower end of this range. Whilst internal noise levels may achieve the standards with artificial ventilation systems, the external noise levels with mitigation would still be high. Accordingly, I consider that the living conditions of future occupiers would be adversely affected.
27. I accept that the recommended noise levels with windows open and in external garden areas may not always be achievable in all developments. However, Planning Practice Guidance states that good acoustic design needs to be

considered early in the planning process to ensure that the most appropriate and cost-effective solutions are identified from the outset. The Council have argued that in the appeal case, the acoustic environment has not been considered in the design and layout of the scheme. I concur with this view.

28. In summary, the scheme fails to provide a good standard of amenity for the future occupiers of Plots 1-5. Whilst I acknowledge that there are other dwellings close to the A49 which will be affected by traffic noise, these pre date the current guidance and standards. I consider that the scheme fails to comply with Policy W5 (d) of the Wellington Neighbourhood Plan (WNDP), Policy SD1 of the Core Strategy and paragraph 180 of the Framework which aim to ensure that new development is appropriate for its location, mitigating and reducing to a minimum the potential adverse impacts resulting from noise.

Other matters

Habitats Regulation Assessment

29. The appeal site lies in the River Lugg sub catchment of the River Wye Special Protection Area (SPA), a European protected site. The river currently suffers from water pollution and levels of phosphates in the River Lugg sub catchment exceed the conservation objective of the SPA.
30. The implications of a recent judgement³, known as the Dutch Nitrogen case, are that where a European conservation site is failing its water quality objectives, there is no or little scope for the approval of further damaging effects, in other words additional development.
31. Natural England issued a 'holding letter' in July 2019 stating that they were reviewing their position and would be unable to respond to consultations until this had been undertaken. The Council have indicated they are in a similar position, seeking further legal advice and are unable to approve planning applications in the River Lugg catchment at the current time.
32. SPA's are protected by the Conservation of Habitats and Species Regulations 2010 (as amended). In order for development to be acceptable, these regulations require it to be demonstrated that a proposal would have no likely significant effect on the SPA, either alone or in combination with other projects. If it cannot, mitigation or avoidance measures must be proposed to remove the impact, or the proposal should be refused.
33. I note that the intention of the appellant to provide a further drainage report for the Council to undertake an Appropriate Assessment (AA) and assess the likely impact of the proposal on the integrity of the SPA. If the appeal scheme was acceptable in all other respects, I would seek further information to enable me, as the competent authority in this case, to undertake my own AA. However, as I am dismissing the appeal for other reasons, I do not need to consider this matter further.

Planning balance

34. The Council have confirmed that they cannot currently demonstrate a 5-year supply of housing land. The housing policies of the Core Strategy, including Policy RA2 and RA3, policies most relevant to the determination of this appeal

³ Cooperatie Mobilisation Joined cases C-293/17 and C-294/17

- are therefore out of date. Accordingly, paragraph 11 of the Framework sets out that planning permission should be granted unless any adverse impacts of doing so would significantly or demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
35. The WNDP was made in July 2016. The Plan is therefore more than 2 years old. The criteria of paragraph 14 of the Framework do not therefore apply.
36. The Council has argued that despite not having a 5-year housing land supply considerable weight can be attributed to both the Neighbourhood Plan and Core Strategy policies as they are consistent with the Framework. This view is supported by 2 appeals on a site in Munderfield.⁴ I agree that as these policies seek to manage sustainable housing within the countryside, they are consistent with the Framework objectives. However, whilst the WNDP has made provision to meet its growth within the plan period, the Council have advised that the housing land supply for the borough is currently over 4 years (April 2019). This is a significant shortfall and therefore I attach moderate weight to these policies.
37. Turning to the benefits of the scheme, the proposal would clearly contribute to housing supply and the 5 proposed affordable units would assist to meet local housing need. I give significant weight to these social benefits.
38. The scheme would also provide 10 self-build / custom build homes secured through a Unilateral Undertaking. This provision is supported by the Framework in order to provide a mix of dwellings of different size, type and tenure.
39. The Self Build and Custom Housebuilding Act 2015 puts a duty on local authorities to have regard to the Self build register and to give enough suitable development permissions to meet the identified need. The Council has confirmed that there are sufficient self-build permissions in Herefordshire to meet the demand of those on the register. Whilst the appeal scheme would contribute to the supply of self-build plots, as a result of the conflict I have identified with development plan policies, it would not form a suitable development. I therefore give limited weight to this in the assessment of the proposal.
40. In terms of economic benefits, the scheme would provide temporary employment during construction and help to maintain the services and facilities in Wellington and other nearby settlements. These factors weigh in favour of the development.
41. Turning to adverse impacts, I have found that the scheme would be contrary to the spatial strategy set out in the development plan and fail to provide a sustainable pattern of development. It would also cause harm to the character and appearance of the small hamlet of Wellington Marsh and fail to provide a good standard of amenity for future occupants. These factors weigh significantly against the proposal.
42. Taken together, I consider that the adverse impacts of the scheme would significantly and demonstrably outweigh the benefits, when assessed against the Framework taken as a whole. The presumption in favour of sustainable development does not therefore apply.

⁴ APP/W1850/W/18/3218215 and 3218036

Conclusion

43. For the reasons given above, and having had regard to all other matters raised, I dismiss this appeal.

Helen Hockenhull

INSPECTOR