



Appeal Decision

by I Stevens BA (Hons) MCD MBA MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 08/11/2023

Appeal reference: CAS-02710-M3B0F2

Site address: The Wood Yard, Broadaxe, Presteigne, LD8 2LA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Anethos Ltd against the decision of Powys County Council.
 - The application Ref 23/0236/FUL, dated 10 February 2023, was refused by notice dated 5 April 2023.
 - The development proposed is erection of a dwelling and all other associated works.
 - A site visit was made on 24 October 2023.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have taken the description of proposed development from the Council's Decision Notice, as it is more concise than that provided on the Application and Appeal Forms.
3. The Appeal Form indicates that the appeal site is in a green belt/green wedge. The appellant and Council have not referred to this elsewhere in their submissions and I have seen no indication from the evidence that the appeal site is in a green belt/green wedge.
4. On 18 October 2023, the Welsh Government published an update to Chapter 6 of Planning Policy Wales (PPW), which covers green infrastructure, net benefit for biodiversity, the protection afforded to Sites of Special Scientific Interest and trees and woodlands. I have not made a finding on the implications of the new policy change as it would not alter the outcome of the appeal, given that I find the proposal unacceptable on other substantive matters.

Main Issues

5. The main issues are:
 - Whether the proposal would comply with national and local planning policies relating to development in the countryside
 - The effect of the proposal on ecological interests
 - Whether there is sufficient information regarding the means of foul drainage disposal having regard to public health and the environment; and

- The effect of the proposal on the integrity on the River Wye Special Area of Conservation.

Reasons

Development in the countryside

6. The appeal site comprises a parcel of land in an elevated position to the south of Presteigne. The site adjoins an agricultural field on one side, with two local highways running along its other sides and meeting at a corner. It is overgrown with vegetation and is partly covered by an area of hardstanding, with hedgerows and trees defining its boundary adjacent to the highways. The surrounding area is characterised by fields and trees, with an ancient woodland immediately south of the appeal site.
7. In planning policy terms, the appeal site lies in open countryside, outside of the nearest settlement development boundary as defined in Strategic Policy SP5 of the Powys Local Development Plan 2011-2026 (LDP), adopted in April 2018. Policy H1 of the LDP identifies suitable locations for new housing within the Plan's settlement hierarchy. In the open countryside, new housing should meet current national policy on housing in such locations, or relate to a rural building conversion, or involve the renovation of a former abandoned building. The supporting text advises that Policy H1 applies a restrictive approach to housing development in the open countryside and identifies where development will be supported in accordance with national policy and advice. This includes rural enterprise dwellings, one planet development, and the re-use/adaptation of rural buildings.
8. The appeal proposal seeks to build a detached dwelling on a site where there are no other buildings. There is no evidence which indicates the dwelling would form part of an established or proposed rural enterprise, where the provisions of national advice in Technical Advice Note (TAN) 6: Planning for Sustainable Rural Communities (July 2010) apply. While I note that the dwelling would be contemporary in design and use sustainable technology and modern construction techniques, there is no indication that the proposal would satisfy the robust evidence requirements for one planet developments set out in TAN 6.
9. The approach in both LDP policy and TAN 6 is underpinned by PPW, which advises that new building in the open countryside away from existing settlements or areas allocated for development in development plans must continue to be strictly controlled. The appeal site is both physically and visually separate from the Presteigne development boundary, and where there is a restrictive approach towards new build housing development in local planning policy and national planning advice.
10. The appellant refers to the planning history of the site, which has permission for two holiday let dwellings (Local Planning Authority Ref. P/2012/1375). I do not have any further details on the consent, although I note that hardstanding covers part of the area proposed for development. Notwithstanding any alleged visual impact benefits that the proposal may bring compared with the holiday let scheme, the uses are clearly different, as are the respective planning policy provisions. This is reinforced in LDP Strategic Policy SP6, which states that only housing development that complies with the national exceptions policies as set out in PPW and TAN 6 will be permitted in the open countryside.
11. For the reasons I have outlined, the proposal does not comply with the exceptions for development in the open countryside. Indeed, PPW states that new building away from settlements must continue to be strictly controlled, and the fact that a single house on a particular site would be unobtrusive is not, by itself, a good argument in favour of permission; such permissions could be granted too often, to the overall detriment of the

character of an area. I therefore conclude that the proposal does not comply with national and local planning policies regarding development in the countryside. It is therefore contrary to LDP Policies SP6 and H1, and advice in PPW and TAN 6.

Ecological interests

12. Given the overgrown nature of the appeal site and its location in open countryside adjacent to an ancient woodland, I consider it necessary to address any ecological issues of local importance. Indeed, PPW advises that planning authorities should ensure that features and elements of biodiversity or green infrastructure value are retained on site, and enhanced or created wherever possible, by adopting best practice site design and green infrastructure principles. It adds that the provision of up-to-date ecological survey information will assist in this process. Notwithstanding the proposal's inclusion of biodiversity enhancement measures such as a meadow zone and green flat roof, there is a lack of information on the baseline ecological conditions which could influence the overall measures proposed.
13. I am therefore unable to come to a positive finding that the proposed development would satisfy ecological interests. Contrary to the appellant's suggestion, it is not normally appropriate to provide a more detailed assessment of potential impacts on protected species through the means of a planning condition, requiring details to be submitted at a later date. National Advice in TAN 5: Nature Conservation and Planning (September 2009), says as much, because the issues will be material to the determination of whether planning permission should be granted. Neither does the previous grant of planning permission negate the need for an up-to-date survey in accordance with current policy and guidance.
14. The proposal therefore fails to comply with LDP Policy DM2, advice in TAN 5 and the Council's Biodiversity and Geodiversity Supplementary Planning Guidance, adopted in October 2018.

Foul drainage

15. The Application Form states that foul sewage disposal would be through a septic tank. It is understood that the foul drainage system is in place. However, no details have been provided on the specification, capacity, and condition of the existing system, to demonstrate that it could accommodate the rate of discharge and foul effluent loading from the proposed development, without causing pollution, health hazards or a nuisance. Such information is necessary given that PPW advises non-mains sewage proposals should be subject to an assessment of their effects on the environment, amenity, and public health in the locality, prior to the determination of the planning application.
16. Welsh Government Circular 008/2018 (July 2018) advises that the responsibility for demonstrating a new development is effectively served by a sewerage system rests with the developer, who should make a full assessment of the suitability of any proposals for non-mains sewerage systems at the project design stage. It adds that applications for planning permission should be supported by a full assessment of the proposed use of septic tanks, to confirm the adverse effects referred to in the Circular will not arise.
17. No such assessment has been provided with the application. While the appellant would be happy to accept a planning condition requiring details to be submitted at a later date, without establishing beforehand whether the form of private sewerage disposal would be suitable, in this instance it would not be appropriate to impose a condition. In the absence of necessary information, I am unable to conclude that the proposal would not have an adverse effect on public health or the environment, as sought by the utility services provision criteria of LDP Policy DM13, advice in PPW, and advice in Circular 008/2018.

River Wye Special Area of Conservation

18. The appeal site is within the catchment of the River Wye Special Area of Conservation (SAC), protected under the Conservation of Habitats and Species Regulations 2017, as amended (the 'Habitats Regulations'). Natural Resources Wales (NRW) has set new phosphate standards for the riverine SACs, where evidence indicated a widespread or severe failure to meet revised water quality targets for phosphorous in SACs, including the River Wye SAC.
19. Consequently, NRW considers any proposed development that might increase the amount of phosphate (or phosphorus) within a river SAC catchment could lead to damaging effects to the SAC. NRW issued planning advice (updated August 2023) requiring further details on sewerage treatment systems, and only where it can be shown that the systems meet several criteria, then proposals will not have a detrimental impact upon the River Wye SAC.
20. The nature of proposed development has the potential to increase the amount of phosphorous being discharged from the site, and consequently into the SAC. A significant effect on the SAC cannot therefore be ruled out. Consequently, the decision maker as the competent authority is required to carry out an appropriate assessment to determine whether the proposal is likely to have a significant effect on the SAC. As the decision maker in this appeal, this responsibility falls on me. However, there is insufficient information before me in terms of the levels of phosphates produced from the proposed development, to carry out a screening under the Habitats Regulations.
21. As I have found the proposal to be unacceptable on other grounds, I have not sought the views of parties, including NRW, to inform the screening. Even if the effects of sewage discharge on the River Wye SAC were found to be acceptable, this would not outweigh my conclusions on other grounds. In the absence of such information, I am unable to conclude that the development would not have any adverse effects on the River Wye SAC, contrary to LDP Policies SP7 and DM2.

Conclusion

22. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.
23. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well-Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards one or more of the Welsh Ministers' well-being objectives.

I Stevens

INSPECTOR