



Appeal Decision

by N Jones BA (Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 03/10/2023

Appeal reference: CAS-02512-R3S1V0

Site address: Soar Chapel, Llanarmon Road, Glyn Ceiriog, Llangollen, LL20 7NF

- 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 Mr Dave Woods against the decision of Wrexham County Borough Council
 - The application Ref LGC P/2021/0996 dated 13 October 2021, was refused by notice dated 29 July 2022.
 - The development proposed is the proposed conversion & change of use of former chapel (D1) to 4no.bed residential dwellinghouse (C3).
 - A site visit was made on 19 September 2023.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Natural Resources Wales (NRW) updated its 'Advice to planning authorities for planning applications affecting phosphorus sensitive river Special Areas of Conservation' (Version 3) in August 2023 during consideration of the appeal. Having regard to the facts of the case, I am satisfied that the updated advice does not raise any new matters of significance, and I have taken it into account in my decision.
3. The Council's decision is based on Planning Policy Wales (Edition 11) (PPW) and Policy EC6, dealing with Biodiversity Conservation, of the Wrexham Unitary Development Plan (1996-2011) (UDP). Although it is time expired, the UDP remains the development plan. Section 38(6) of the Planning and Compulsory Purchase Act 2004 (PCPA) requires that regard is to be had to the development plan unless material considerations indicate otherwise.
4. The Council's statement refers to the yet unadopted Wrexham Local Development Plan 2 (2013-2028) (LDP) Policy NE6 dealing with Waste Water Treatment and River Water Quality. and requests that it be given material weight in the consideration of the appeal. Nevertheless, LDP Policy NE6, amongst other things, refers to the Dee Catchment Phosphorus Reduction Strategy (DCPRS) but I have not been provided with a copy of that document or been informed of its status. I am therefore unable to use it in my decision. I have therefore considered the appeal in the light of PPW's up to date advice and I do not consider that this would prejudice any party.

Main Issue

5. The Council's sole reason for refusal was that it considered that the proposed development would result in an increase in phosphate levels to the River Dee and Bala Lake Special Area of Conservation ('the SAC'), that forms part of the National Sites Network, which would be likely to result in damaging effects to the SAC. There is no other matter at dispute between the parties. The main issue therefore is the effect of the proposed development on the SAC.

Reasons

6. The appeal site is a vacant former chapel building located in an elevated position within the village confines. The proposal is to change its use to a 4-bedroom dwelling. Parking space would be provided on land on the opposite side of the road.
7. The appeal site lies within the catchment of the SAC. NRW sets conservation objectives for the SAC, including phosphorus targets. In 2021, it published the results of its Compliance Assessment of Welsh River Special Areas of Conservation against Phosphorus Targets. Part of the SAC is currently failing to meet those targets. The proposal would connect foul drainage to the public sewerage system which would discharge into the Glyn Ceiriog Wastewater Treatment Works (WwTW). The Council confirms that the treatment of effluent at the WwTW does not include phosphorus removal. The proposal has the potential to be a source of additional phosphorus and there is a pathway for impact on the SAC from the scheme. Consequently, it cannot be screened out of the requirement for a Habitats Regulations Assessment (HRA) under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations). The HRA is attached as an Annex.
8. For the reasons set out in the HRA, I am unable to conclude beyond reasonable scientific doubt that the development would not have a significant adverse effect on the integrity of the SAC. The proposal would therefore conflict with advice on the protection of the National Sites Network in PPW which states that planning authorities must have regard to the relative significance of international, national, and local designations in considering the weight to be attached to nature conservation interests (para. 6.4.11). It states that development should be refused where there are adverse impacts on the features for which a site has been designated (para. 6.4.14).

Other Matters

9. The Council raises no concerns regarding the principle of the proposed residential conversion scheme within the settlement. Given its location amongst existing built development and the minimal external alterations proposed, the scheme would be compatible with the character and appearance of the area, including the designated Area of Outstanding Natural Beauty (AONB). Owing to the relative site levels, separation, intervening boundary features and position of openings in neighbouring dwellings, the proposal would not have unacceptable effects on the living conditions of neighbouring occupiers. Appropriate parking provision would be achieved, and the effects of construction traffic could be managed through a planning condition. There would be no unacceptable effects on protected species subject to mitigation.

Conclusion

10. For the above reasons and having regard to all matters raised, the appeal is dismissed.
11. 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 this decision is in

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accordance with the Act's sustainable principle through contribution towards one or more of the Welsh Minister's wellbeing objectives as required by section 8 of the Act.

N Jones

Inspector

Annex: Habitats Regulations Assessment

Preliminary Matters

1. In accordance with Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended) ('the Regulations'), the purpose of this Appropriate Assessment (AA) is to report on the impacts of the scheme on the River Dee and Bala Lake Special Area of Conservation (the SAC), which forms part of the National Sites Network. As required by Regulation 63(3) of the Regulations I have had regard to the comments of Natural Resources Wales (NRW) provided to the Council and to Planning and Environment Decisions Wales.

Screening

2. The screening process applies to developments within river SAC water body catchments and non-SAC tributaries flowing into them.
3. The entry in the register of European sites for Wales identifies the habitat and species that are the primary reason for the SAC's designation as water courses of plain to montane levels within the *Ranunculion fluitantis* and *Callitriche-Batrachion* vegetation, Atlantic salmon, and floating water-plantain. Present as qualifying features of the SAC are Sea lamprey, Brook lamprey, River lamprey, Bullhead and otter. The SAC Core Management Plan (CMP) sets out the vision and conservation objectives for the SAC.
4. The effect of a project is considered significant if it would undermine the conservation objectives of the SAC and is assessed against the prevailing environmental conditions of the SAC. NRW advice is that the River Dee has a 38% failure rate against its water quality objective. The proposal would connect foul drainage to the public sewerage system which would discharge into the Glyn Ceiriog Waste Water Treatment Works (WwTW). Discharges from the WwTW, which does not provide phosphorus removal, would be released into the River Ceiriog, a tributary of the SAC. NRW advise that 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.
5. Likely significant effects from the project on the River Dee and Bala Lake SAC cannot therefore be ruled out as the proposal is a source of additional wastewater and phosphorus with a pathway for impacts on the SAC. Accordingly, an AA is necessary.

Appropriate Assessment

6. The SAC CMP sets out the vision for the site that it is maintained at, or where necessary restored to, high ecological status with all its features at favourable conservation status (FCS). As it acknowledges that water is fundamental to a riverine SAC, its vision includes that the quality of water, amongst other matters, 'will be maintained or adjusted to a level necessary to maintain the features in favourable condition for the foreseeable future'. The CMP also sets out the conservation objectives for the SAC to ensure the vision is achieved. Although not itself a designated feature, the ecological status of the water course is recognised as a major factor in determining FCS for all the site features. For the watercourse to achieve FCS, ten listed objectives must be met, including no deterioration in water quality and levels of nutrients, including phosphates, will be kept below agreed

levels. Conservation objectives for many of the qualifying features to achieve FCS in their own right require that the parameters defined in the vision for the watercourse are met.

7. The Council states that the treatment of effluent at the WwTW does not include phosphorus removal. NRW's updated advice indicates that it is undertaking a review of environmental permits for WwTWs against revised phosphate targets set out in the conservation objectives for the SAC. It confirms that the technical work carried out to determine revised phosphorus limits and subsequent variation of permits will allow phosphorus impacts of future mains connections to be more efficiently assessed. The permit for Glyn Ceiriog WwTW has been sent to the water company for operator review. This in turn will inform the confirmation of phosphorous limit or any subsequent variation of the environmental permit at the WwTW. However, there is no timescale for this work or any certainty that the permit will not require further variation.
8. I have taken into account the appellant's assertions in relation to betterment based on the congregation and level of activity at the chapel in comparison with the proposed residential use. I also note that phosphate discharges from the chapel may have been increased as some members of the congregation from within the existing catchment may have been occupiers of dwellings served by septic tanks which would not themselves have contributed to phosphorus discharges into the SAC. However, no cogent evidence of the level of previous use is provided. Moreover, the appellant confirms that the chapel has been vacant since February 2018. Phosphorus discharges from the building would therefore be negligible. The appeal proposal is for a large family dwelling which could be continuously occupied.
9. I have also had regard to the appellant's contention that alternative uses within the same use class could be undertaken as permitted development which would also discharge significantly more phosphorus than the appeal proposal. However, in order for this to be considered a credible fall-back position, such alternative developments fall to be assessed on whether there is a realistic prospect of them taking place. There is no evidence beyond a theoretical calculation of comparative phosphorus discharges to indicate that any alternative D1 use of the building is likely to occur. I therefore give the alleged fall-back limited weight.
10. Accordingly, taking a precautionary approach, the untreated discharge from the project is likely to further harm the site's ecological function and physical environment, compromising achievement of FCA for many of its qualifying features and preventing or disrupting water quality restoration works. Although the appellants assert a willingness to accept the payment of a financial contribution as an obligation attached to a planning permission towards measures to address phosphorous discharges, no direct proposals are advanced as part of the project and no mechanism to allow for such a payment has been submitted.
11. As I am unable to conclude that there would be no adverse effects on the site's integrity as a consequence of the project alone, it is not necessary for me to consider in-combination effects.

Assessment of Imperative Reasons of Overriding Public Interest (IROPI)

12. I cannot exclude adverse effects on the integrity of the SAC; therefore, I can only grant consent if there are no alternative solutions with a lesser effect on the features of the site, IROPI and compensatory measures can be put in place.

13. There are no alternative solutions before me and given the nature and scale of the development or project, IROPI does not apply either.

Conclusion

14. For the reasons given, I conclude that I am unable to rule out all reasonable scientific doubt of an adverse effect on the site's integrity. The proposed development therefore fails to comply with the Regulations and planning permission should be refused.

N Jones

Inspector