



Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 28 Mehefin 2022

gan N Jones BA (Hons) MSc MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 30/08/2022

Appeal Decision

Site visit made on 28 June 2022

By N Jones BA (Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Date: 30/08/2022

Appeal Ref: CAS-01668-J9J9L2

Site address: Land adjacent to Bronydd Access, High Street, Glyn Ceiriog, Wrexham, LL20 7EH

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- 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 & Mrs Covington against the decision of Wrexham County Borough Council.
 - The development proposed is erection of a single 3 bedroom dwelling house.
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Decision

1. The appeal is dismissed.

Procedural Matter

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 July 2022 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.

Background and Main Issue

3. The Council's sole reason for refusal was that it considered insufficient information had been submitted to demonstrate that the proposed development would not result in an increase in phosphate levels to the River Dee and Bala Lake Special Area of Conservation ('the SAC'), a European protected site. There is no other matter at dispute between the main parties. The main issue therefore is the effect of the proposed development on the SAC.

Reasons

4. The appeal site is located largely within the settlement limits of Glyn Ceiriog, as defined in Policy PS1 of the Wrexham Unitary Development Plan 1996-2011 (UDP). Although time

expired, the UDP remains the development plan for the area, and I am satisfied that its policies are consistent with national planning policies in relation to this appeal. The appeal site is a vacant parcel of land on an incline behind dwellings fronting High Street. It is accessed off an elevated existing trackway, also forming part of a public footpath, above which the land rises steeply as a wooded embankment.

5. 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). Dwr Cymru Welsh Water (DCWW) 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.
6. 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 European sites in Planning Policy Wales (Edition 11) and UDP Policy EC6.

Other Matters

7. I have had regard to concerns relating to the character and appearance of the area and the living conditions of neighbouring occupiers. The scale, gabled form and external materials of the proposal would broadly respond to, and would be viewed in, the context of similar built development in both nearby and more distant views. Whilst it would be situated on rising ground, its roofline would not protrude above the wooded ridge enclosing the site to the north, forming part of the Special Landscape Area.
8. The two first floor habitable room windows of the proposed dwelling would be obscurely glazed. The Juliette balcony would look towards the rear of No.'s 1, 2 and 3 High Street rather than directly towards closest neighbours at Tan y Marian and Glyn Cottage. Given the separation distance, I am satisfied there would be no appreciable harm to living conditions. Views from proposed ground floor windows would be largely obscured by intended boundary treatments. An obscurely glazed screen on the proposed side balcony would direct some views across gardens. However, similar views are already available from between existing gardens and from the street and footpath. The proposal would not therefore unacceptably increase overlooking. Given its scale and distance from neighbouring dwellings, the proposal would not appear overbearing.
9. I have had regard to Article 1 of the First Protocol of the Human Rights Act 1998 in relation to the protection of property and Article 8 in relation to the right for respect for private and family life. Rights under Article 1 of the First Protocol and Article 8 are qualified rights. Given my decision to dismiss the appeal on other grounds, there would be no interference with those rights in this case.
10. I have noted residents' concerns about underlying slate waste and construction impacts on unstable ground. However, whilst a condition requiring site investigation and remediation could be imposed where unstable ground characteristics were shown to exist, the Council's Contaminated Land Officer raised no concerns and little evidence has been submitted to demonstrate that the appeal scheme would lead to unacceptable effects.

Similar requirements could be put in place through condition in relation to any invasive species present on the site.

11. The Council acknowledges that visibility onto High Street is impeded by existing development and parked cars. Nevertheless, its Highway Authority considers the achievable visibility splays acceptable and does not object to the additional traffic from a single dwelling, given low traffic volumes and speed locally. I saw no reason to disagree during my site visit. Construction traffic impacts would be relatively short-lived and could be controlled by planning condition. Little evidence is provided in relation to concerns that drainage infrastructure would be unable to cope with the flows from the scheme. DCWW have suggested a condition to ensure the public sewerage system is not overloaded and I am satisfied that this could be applied. In relation to effects on trees and protected species, neither the Council's Arboricultural Officer or Ecologist, nor NRW, raised objections subject to appropriate safeguards. I am satisfied that reasonable and proportionate mitigation and management measures could be controlled through conditions.

Conclusions

12. Notwithstanding my findings under Other Matters, the harm likely to arise to the SAC provides compelling grounds to dismiss the appeal. For the above reasons and having regard to all matters raised, the appeal is dismissed.
13. 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 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.

Nia 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 is a European protected site. 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.
2. My attention is drawn to the proposal's location within both the extant Wrexham Unitary Development Plan (UDP) and the emerging Wrexham Local Development Plan (LDP) settlement limit for Glyn Ceiriog, where development is expected to occur, and should therefore be included within the AA for the LDP. However, the AA is an assessment of the effects and implications of the project on the site's conservation objectives based on best scientific knowledge. An AA in relation to the LDP as a plan therefore would not obviate the need, under the Regulations, to separately assess whether the appeal proposal as a project would adversely affect the integrity of the SAC. I note that a Dee Catchment Phosphorus Reduction Strategy (Consultation Draft November 2021) has been produced, setting out an approach to allow development provided for in the LDP to take place whilst avoiding adverse effects on the integrity of the SAC. However, it remains a draft consultation document to which I can attribute limited weight.

Screening

3. The screening process applies to developments within river SAC water body catchments and non-SAC tributaries flowing into them.
4. 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.
5. 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. 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. Dwr Cymru Welsh Water (DCWW) has confirmed that the treatment of effluent at the WwTW does not include phosphorus removal and that it has no plans in its current Asset Management Plan to upgrade treatment. In addition, until a water quality modelling exercise is completed, it cannot confirm that future investment will take place. There is therefore no certainty that the WwTW will be upgraded in the near future. NRW's updated advice indicates that a review of environmental permits for WwTWs is to be carried out against revised phosphate targets set out in the conservation objectives for the SAC. Similarly, however, there is no timescale for this review in this particular case. It is suggested that the wastewater discharge from a single dwelling accommodating only up to five occupants would be insignificant, but there is no technical evidence to support this assertion. As NRW advise, there is no information that quantifies how the additional flow and phosphorous loading entering the WwTW affects the phosphorous concentration in the WwTW outflow and how that in turn would affect concentrations in the River Ceiriog ('Ceiriog – confluence Dee to Teirw' waterbody). As it stands therefore, the proposal would discharge additional phosphorus into the SAC with no objective analysis to determine its likely effects.
8. The appellants point out that the only part of the waterbody that is currently failing to meet NRW standards is the River Dee – Ceiriog to Alwen section, upstream of the proposal and the WwTW discharge point. However, to avoid adverse effects on integrity, the conservation status of the SAC must not be further harmed or the ability to restore it to a favourable condition made more difficult. In the absence of quantifiable evidence, the effects of the proposal on phosphorus concentrations cannot be assessed. 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 acknowledge various mitigation methods may be available, including nutrient neutrality and developer financial contributions towards alleviation schemes, no direct proposals are advanced as part of the project.
9. 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.

Derogation

10. I have had regard to the benefits of the proposal in assisting the sustainability of a rural settlement and its contribution to housing supply. However, even should there be no realistic alternatives for the project, given the limited contribution that a single dwelling

would make to housing supply or rural sustainability, such benefits fall far short of constituting imperative reasons of overriding public interest.

Conclusion

11. 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.

Nia Jones

Inspector