



# Appeal Decision

Site visit made on 26 June 2024

by **E Worley BA (Hons) Dip EP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 09 July 2024

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**Appeal Ref: APP/W1850/W/23/3330825**

**Land between Great House and Rose Cottage, Swainshill, Hereford HR4 7QD**

- 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 Mr Phil Lewis against the decision of Herefordshire Council.
  - The application Ref is P230727/F.
  - The development proposed is the erection of 2 no. dwellings and associated works.
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## Decision

1. The appeal is allowed and planning permission is granted for the erection of 2 no. dwellings and associated works at land between Great House and Rose Cottage, Swainshill, Hereford HR4 7QD in accordance with the terms of the application, Ref P230727/F, and the plans submitted with it, subject to the conditions in the attached schedule.

## Main Issue

2. The main issue is the effect of the proposed development on highway safety.

## Reasons

3. The appeal site comprises a parcel of agricultural land which fronts Sugwas Pool Lane. there are residential properties opposite the site and to either side, and an area of woodland to the rear. The proposal would see the construction of 2 detached dwellings, with access to the site proposed from Sugwas Pool Lane, a no through road, which joins the A438 at a bifurcated junction. The proposed development would therefore increase the use of the junction.
4. Given the layout of the bifurcated junction, it is likely that drivers would use Junction 1 rather than Junction 2, which is at an oblique angle, when egressing the lane onto the A438. The Council's main concern is the lack of visibility for vehicles turning right out of Sugwas Pool Lane to join the A438.
5. Manual for Streets (MfS) and Manual for Streets 2 (MfS2) set out nationally accepted standards for visibility. However, as the A438 has a 40mph speed limit, the Design Manual for Roads and Bridges (DMRB) provides more appropriate visibility distances. It recommends that a visibility splay of 2.4m x 120m is applied. Notwithstanding this, the appellant's Automatic Traffic Count (ATC) survey found that the 85th percentile speed for westbound traffic was 43.5mph. This exceeds the speed limit and triggers a requirement for an increased visibility splay of 2.4m x 151.2m to the west of the junction taking account of the actual speeds observed.

6. Drawing No. SK04 Revision A<sup>1</sup> shows that the maximum achievable visibility splay measured to a 1m offset from the kerb line in a westerly direction is 2.4m X 90.4m. While the drawing shows that a greater distance of 113m could be achieved if measured to the centreline, this methodology would only apply to traffic approaching from the left<sup>2</sup> and the shortfall in this case involves traffic approaching the junction from the right. The distance of 90.4m would fall short of the required 2.4m X 151.2m splay, as set out in the DMRB.
7. The Highway Authority (HA) has expressed concern that the 2.4m X 90.4m splay could not be achieved, as it includes a third-party hedge which encroaches onto land which falls within the visibility splay. However, the highway boundary data, which is not disputed by the HA, indicates that the land within the 2.4m X 90.4m visibility splay is within the public highway, whereby the HA could impose hedge cutting.
8. I understand that work to improve the junction was carried out after a fatal collision in 2002, nonetheless, visibility remains substandard, as documented by the detailed analysis by the Council and interested parties. The current circumstances are the subject of concern, and residents contest to several 'near misses' which have occurred in the locality, although it is not clear the types of incidents these include. However, on the basis that they did not result in a collision, this suggests that the road characteristics and conditions are such that an accident was avoided.
9. Personal Injury Accident (PIA) data confirms that no accidents have been recorded within the vicinity for the 5 years up to December 2021 and only 3 within the 10 years preceding that period. In addition, no PIAs were recorded at the bifurcated junction or on Sugwas Pool Lane itself during this time. While only collisions which involve personal injuries are recorded by the police, this nevertheless provides a relevant benchmark. My attention is drawn to an accident in 2015 in the vicinity of the junction and further collisions within the wider area. While specific details of these cases are not before me, there is no clear evidence that they were attributable to the operation of the junction.
10. I accept that it is likely that a high proportion of trips to and from the site would be made by private car to enable future occupiers of the dwellings to access local services and amenities. Nevertheless, given the scale of the development, the proposal would give rise to only a very modest increase in trip generation. The appellant's submissions highlight that the development would generate 1 vehicle trip during both the 60 minute morning and evening peak periods and approximately 8 vehicle trips throughout a 12 hour weekday period.
11. Several interested parties have expressed concern regarding the accuracy of the anticipated number of vehicular movements given the sources, timing, and methodology. Even if I were to accept those figures suggested by others, they do not differ significantly from those put forward by the appellant and would not amount to a material increase in traffic overall. As such, while I acknowledge there have been other recent residential developments on Sugwas Pool Lane, the intensification of the use of the junction and lane, as a consequence of the appeal proposal, would be limited given the scale of the development proposed.

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<sup>1</sup> Junction 1 – Existing Access Visibility Assessment

<sup>2</sup> Paragraph 7.7.5 of MfS

12. There is no clear evidence to indicate that the existing arrangement, despite its deficiencies, including a shortfall in visibility in a westerly direction, is operating to the detriment of highway safety. Moreover, in light of the modest proportional increase in traffic generation as a result of the proposal, it has not been demonstrated that the intensification of the use of the junction of the scale proposed, would have an adverse impact on highway safety. In addition, I am mindful of the advice in MfS2, which sets out that, while it has often been assumed that a failure to provide visibility at priority junctions in accordance with the values recommended will result in an increased risk of injury collisions, research has found no evidence of this.
13. The Council raise further highway safety concerns regarding the intensification of the use of Sugwas Pool Lane, which is also a public right of way that is popular with walkers, by additional vehicular traffic. The appeal site is located a short distance along the lane from its junction with the A438, any effects would therefore be limited to this stretch of Sugwas Pool Lane. While it varies in width, the section of the carriageway between the site and the junction, is in part, wide enough to allow vehicles to pass, which would limit the potential for conflicting vehicle movements. While I appreciate it is only a snapshot in time, I observed at my site visit the lane was lightly trafficked. There are several private driveways accessing on to Sugwas Pool Lane, and pedestrians and vehicles share the same surfaces. For these reasons and due to the varied width and residential character, together with the presence of speed bumps, it is likely that vehicles travelling along it would be doing so at reduced speeds.
14. As such, given the likely low speed limit and generally low frequency of traffic on Sugwas Pool Lane, drivers entering the lane either from the A438 or the appeal site would be likely to do so cautiously, until they can see any oncoming traffic or pedestrians, or lack thereof. Moreover, any such traffic would be visible to oncoming road users, including both drivers and pedestrians. The same would apply to any vehicles that need to reverse along a stretch of the lane to allow vehicles to pass, including construction vehicles. For these reasons, I am unable to conclude that additional traffic generated by the appeal proposal, in addition to the existing development along the lane, would be harmful to highway or pedestrian safety.
15. My attention is drawn to planning permission for a new dwelling at Sugwas Pool House<sup>3</sup> which was refused by the Council for the same reason as the appeal scheme. However, I do not have full details in respect of the development so I cannot be sure of the circumstances of the case. In any event, I have determined the appeal on its own merits, based on the evidence before me.
16. For the reasons set out above, I find that the scheme would not increase the risk of conflict between road users at the junction or along Sugwas Pool Lane so as to be harmful to highway safety. Accordingly, it would not conflict with Policy MT1 of the Herefordshire Local Plan Core Strategy 2011-2031 (HLP) which requires development proposals to demonstrate that the strategic and local highway network can absorb the traffic impacts of the development without adversely affecting the safe and efficient flow of traffic, and Policy SS7 of the Stretton Sugwas Neighbourhood Development Plan 2019-2031 which requires sites for new housing development, among other things, not to have such an adverse impact on the local road network that it cannot be

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<sup>3</sup> LPA Ref. 231760

satisfactorily mitigated. It would also reflect the aims of the Framework that seek to ensure safe and suitable access can be achieved, and that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

### **Other Matters**

17. Even if the housing target for the local area has been exceeded, this would not preclude further residential development of the type proposed.
18. The Council is satisfied that the submitted Flood Risk Assessment and Drainage Strategy includes appropriate measures to ensure that the development would not be at risk of flooding or exacerbate any existing flooding issues. There is no substantive evidence that the methodology adopted was incorrect or that the assessment is flawed, so as to draw me to a different conclusion.
19. Subject to the imposition of planning conditions, appropriate mitigation and enhancement measures could be secured to ensure that ecological interests would be satisfied.
20. Interested parties have raised concern regarding the effect of the development on the rural character and appearance of the area, and the design and appearance of the proposed dwellings. However, the Council has not objected to the proposal on these grounds, subject to a condition to agree the external materials to be used. Moreover, given the existing layout of the residential development and the mix of dwellings of different sizes and designs along the lane, I have no reason to reach a different view.
21. The proposed dwellings would be set back from the front boundary of the site, with intervening front gardens, parking and carriageway between the windows in the front elevations of the dwellings and the residential properties on the opposite side of Sugwas Pool Lane which face towards the appeal site. As such, the proposal would not give rise to a demonstrable loss of privacy or appear unduly dominating. The development would therefore not interfere with the occupiers of the neighbouring properties right to respect for their private family life and home.
22. While I acknowledge concern expressed by local residents, there is no clear evidence that the proposal would lead to any undue pressure on existing infrastructure, including the school and pumping station.
23. Furthermore, the maintenance costs relating to the lane is a civil matter that falls outside of the planning regime.

### **Appropriate Assessment**

24. The site is within the hydrological catchment of the River Wye Special Area of Conservation (SAC), designated for its qualifying species of aquatic flora and fauna. There is potential for the development, through additional foul and surface water flows, in combination with other developments, to result in adverse effects on the integrity of the SAC through additional nutrient loading and other contaminants.
25. Natural England advise that mitigation in the form of suitable foul water and surface water disposal and a Construction Environmental Management Plan

(CEMP), to include details as to how construction works will prevent damage to the SAC, can avoid such adverse effects. In this case, such measures can be secured through planning conditions. Following appropriate assessment under the Conservation of Habitats and Species Regulations 2017, I am, therefore, satisfied that adverse effects on the integrity of the SAC will be avoided.

### **Conditions**

26. The conditions set out in the accompanying schedule are based on those suggested by the Council in their appeal statement should the appeal be allowed. Where I agree the conditions are necessary, I have amended the wording, in the interests of precision and clarity, and to comply with advice in the Planning Practice Guidance. In addition to the standard condition controlling the timescale within which the development must commence, a condition is required to specify the relevant plans, in the interests of certainty.
27. Notwithstanding the details shown on the submitted plans, a condition to agree the external materials is necessary to safeguard the character and appearance of the area, as is a condition to require the implementation of the approved landscaping scheme. In the interests of highway safety, a condition is necessary to set back any access gates from the edge of the carriageway, as well as conditions to agree details of the vehicular access and parking/turning provision to serve the development. To encourage the use of sustainable transport modes, details of cycle parking is necessary.
28. In order to conserve and enhance protected and priority species and allow the Council to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 (Priority habitats & species) and in accordance with the Framework, conditions are necessary to control external lighting, to ensure the development is carried out in accordance with the submitted Phase 1 Extended Ecological Survey, and in relation to the disposal of surface and foul water. For the same reason, a condition to secure a Construction Environmental Management Plan is necessary. This is a pre-commencement condition because the protection measures need to be agreed before any works on site take place.
29. A condition to agree details of measures to promote efficient use of water are required in accordance with Policy SD3 of the HLP.
30. Given my findings in relation to the existing visibility at the junction of Sugwas Pool Lane and the A438, a condition to require the provision of visibility splays is not necessary.

### **Conclusion**

31. For the reasons given, the appeal should be allowed.

*E Worley*

INSPECTOR

## **Schedule**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: EX 0001 P02 Site Location Plan; PL0002 P02 Proposed Block Plan; PL3000 P03 Proposed Site Plan; PL3100 P04 Plot 1\_ Proposed Floor Plans; PL3101 P02 Plot 1\_ Proposed Floor Plans; PL3200 P04 Plot 1\_ Proposed Elevations; PL3201 P02 Plot 2\_ Proposed Elevations; PL3202 P01 Proposed Street Scene; PL 3300 - P04 - Plot 1\_ Proposed Sections A-A and B-B; PL3301 P02 Plot 2\_ Proposed Sections A-A and B-B.
- 3) Notwithstanding the details shown on the submitted plans, no development above ground level shall take place until details of the materials to be used in the construction of the external surfaces of the dwellings hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and shall be retained as such thereafter.
- 4) Any new access gates/doors shall be set back 5 metres from the adjoining carriageway edge and shall be made to open inwards only.
- 5) The development hereby permitted shall not be occupied until the means of access for vehicles has been constructed in accordance with details to be submitted to and approved in writing by the local planning authority. The access shall be retained thereafter.
- 6) The development hereby permitted shall not be occupied until an area for the parking and turning of vehicles to serve each dwelling has been constructed in accordance with details to be submitted to and approved in writing by the local planning authority. These areas shall be kept clear of obstruction and available for such uses in perpetuity thereafter.
- 7) Prior to the first occupation of the development hereby permitted a scheme showing details of covered and secure cycle parking facilities to serve each dwelling shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented before the development is occupied and, thereafter, shall be maintained and kept available for the purpose specified in perpetuity.
- 8) Any external lighting installed or operated on the site shall be low power (under 550 Lumens/5 watts and <3000 Kelvin), 'warm' LED lighting in directional down-lighting luminaires on motion operated and time-limited switches only. Prior to the installation of any other external lighting on the site, details of the design, location, and the intensity of illumination of the lighting shall be submitted to and approved in writing by the local planning authority. Only the approved lighting shall be installed and shall be maintained in accordance with the approved details.
- 9) Unless otherwise approved in writing by the local planning authority, all foul water created by the development hereby approved shall discharge through



connection to the local 'Hereford-Eign' mains sewer system managed by Welsh Water.

- 10) Unless otherwise approved in writing by the local planning authority, all surface water shall discharge through a suitably sized soakaway infiltration system, details of which shall be submitted to and agreed in writing by the local planning authority. The system shall be implemented in full accordance with the approved details and shall be retained as such thereafter in perpetuity.
- 11) The ecological protection, mitigation, compensation and working methods scheme including the biodiversity enhancements, as recommended in the Phase 1 Extended Ecological Survey by HEC dated December 2022 shall be implemented and thereafter maintained in full, unless otherwise approved in writing by the local planning authority.
- 12) Prior to the commencement of the development, including site clearance or demolition, or equipment and materials being moved on to site, a Construction Environmental Management Plan (CEMP) including a fully detailed and specified Ecological Working Method Statement and details of an appointed Ecological Clerk of Works, shall be submitted to, and approved in writing by the local planning authority. The approved CEMP shall be implemented and remain in place until all work is complete on site and all equipment and spare materials have been removed, unless otherwise agreed in writing by the local planning authority.
- 13) All planting, seeding or turf laying comprised in the approved details of landscaping as shown on drawing no.PL3000 P03 shall be carried out in the first planting and seeding season following the occupation of the buildings or the completion of the development, whichever is the sooner: and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 14) Prior to the first occupation of the development a scheme demonstrating measures for the efficient use of water as per the optional technical standards contained within Policy SD3 of the Herefordshire Local Plan Core Strategy shall be submitted to and approved in writing by the local planning authority. The approved measures shall be fully implemented prior to the first occupation of the dwellings and shall be retained thereafter in perpetuity.

**\*\*\*\*\* end of conditions\*\*\*\*\***