



Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 13/07/21

gan **J Burston BSc MA MRTPI AIPROW**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 25/01/2022

Appeal Decision

Site visit made on 13/07/21

by **J Burston BSc MA MRTPI AIPROW**

an Inspector appointed by the Welsh Ministers

Date: 25/01/2022

Appeal Ref: APP/E6840/A/21/3273388

Site address: Greenfield, Merthyr Road, Llanfoist NP7 9LN

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 Ikaria Development Ltd. against the decision of Monmouthshire County Council.
 - The application Ref DM/2019/01004, dated 21 June 2019, was refused by notice dated 18 November 2020.
 - The development proposed is described as the “*demolition of the existing dwelling and its replacement with an active living centre providing 18 high quality retirement apartments, communal living space, an extensive landscape strategy (including green roof) with a private landscaped courtyard plus pool and gym facilities.*”
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Ikaria Development Ltd. against Monmouthshire County Council. This application is the subject of a separate Decision.

Procedural Matters

3. I undertook my site visit on the 13 July 2021. On my visit I also viewed the appeal site from neighbouring properties including: ‘Lochaline’, Gypsy Lane; ‘Mandalay’, Gypsy Crescent; and ‘Orchard Lea’, Gypsy Lane.
 4. The description of development as set out on the planning application form is that set out in the banner heading to this decision. However, during the consideration of the application the scheme was amended and the description changed to “*Demolition of a single existing detached dwelling and replacement with 18 retirement apartments, communal living space and a landscaped garden area and courtyard*”. As this description better reflects the development now proposed I have used this in my determination of this appeal.
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5. Following the refusal of planning permission Local Planning Authorities and PEDW have received advice from Natural Resources Wales (NRW) in respect of the River Wye Special Area of Conservation (SAC). This relates to an increased level of phosphates within the protected site which is adversely affecting the integrity of the habitat of the river.
6. In line with established case law and the 'precautionary principle', NRW are advising that applications for certain types of development within the River Wye catchment should be the subject of screening under the Habitat Regulations and, consequently, the undertaking of an Appropriate Assessment prior to any decision to grant planning permission. The Council has advised that this advice may be relevant to this appeal on the basis of the location and type of proposed development. As such I have considered this matter in the determination of this appeal.
7. 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 the Welsh Ministers' well-being objectives of making our cities, towns and villages even better places in which to live and work.

Main Issues

8. The main issues in this appeal are the effect of the proposed development on the:
 - character and appearance of the surrounding area, having particular regard to the Blaenavon World Heritage Site (WHS);
 - Living conditions of neighbouring occupiers, with particular regard to loss of privacy and visual impact; and
 - The impact of the proposal on the integrity on the River Wye Special Area of Conservation (SAC).

Reasons

Character and appearance

9. The appeal site is located on the corner of Merthyr Road and Gypsy Lane and accommodates a large dwelling, set in an extensive plot mainly set to grass with mature hedging and trees along its boundaries. The dwelling stands on the highest part of the site with the access driveway sloping downwards towards Merthyr Road. Further dwellings immediately border the appeal site to the south and west. The character of the area is broadly suburban. However, the sylvan boundaries of the appeal site provide an important breathing space to the built form hereabouts.
10. When approaching the appeal site along Merthyr Road from the northeast I noted a number of industrial buildings as well as a hotel and fast food outlet. Nevertheless, these are screened from Merthyr Road and the residential areas of Llanfoist thus forming a discreet enclave of development. Furthermore, when travelling in this direction the eye is drawn to the dramatic landscape of the Blorenge Hills.
11. The existing dwelling on the site would be demolished and the access relocated. The proposed retirement housing building would be 'L' shaped and located broadly along the north and east site boundaries, with the massing of the building broken up into smaller parts through the use of a more varied roof line. As a consequence of this approach and the gradual increase in height from two storeys to three storeys the proposed building complements the scale of development on both sides of the site.

12. There is no attempt to replicate the architecture of the surrounding area. Instead, an unapologetically contemporary design is proposed that seeks to create its own sense of place and respond to the unique characteristics of the appeal site. The scheme has been designed around sustainable principles and comprises a distinct building, incorporating timber, brick and part zinc/part 'green' roofing. Whilst different in its design and appearance, the building seeks to respond to the surrounding area, including the Bloreng Hill and the scale of existing neighbouring buildings. Thus, I see no reason why the building should appear excessive in terms of its scale, density or massing given its enclosed, yet spacious, context and the use of the site topography to accommodate various roof heights
13. In terms of urban typology, whilst the scale, massing and density of the proposed buildings would mark a significant change in the appearance of the site, it would nevertheless be in keeping with the evolving character of Llanfoist and would create visual interest on this corner plot, supporting the legibility of the street scene, insofar as the proposed building would provide a more active residential elevation that is in keeping with the nature of the surrounding streets. Whilst I accept that any proposed landscaping would take time to mature and any screening provided by deciduous trees would lessen during winter months, relatively few mature trees would be removed and suitable planning conditions can ensure that standard size trees are planted and maintained.
14. I also acknowledge that the site benefits from outline planning permission for 4 additional detached dwellings. The appellant has provided illustrative plans to demonstrate that the approved scheme would have a greater ridge height than that proposed. However, I am unaware if these plans have been approved and therefore can carry only very limited weight.
15. The overall approach to design would achieve a high quality scheme embracing contemporary architecture. In my view, this is an appropriate approach, having regard to the site's relatively contained nature, surrounded by mature landscaping. The scheme would present a positive visual influence that would complement, rather than compete with, the surrounding architecture. Moreover, Planning Policy Wales, Edition 11 (PPW), states at paragraph 3.16 that planning authorities should "*not attempt to impose a particular architectural taste or style arbitrarily and should avoid inhibiting opportunities for innovative design solutions.*"
16. Given the above, I find that the proposal would not harm the character and appearance of the surrounding area and would be consistent with Monmouthshire Local Development Plan (LDP) policies DES1 (b), (c), (e), (g) and (i) that seek, among other things, to ensure that new development contributes positively to a sense of place, respects its setting, respect built and natural views and panoramas, local distinctiveness and makes the most efficient use of land, and Policy S17 that development shall contribute to creating high quality, attractive and sustainable places. Furthermore, all development proposals must include and promote high quality, sustainable inclusive design which respects local distinctiveness, respects the character of the site and its surroundings in order to protect and enhance the natural, historic and built environments and to create attractive, safe and accessible places.

World Heritage Site

17. The Blaenavon Industrial Landscape was designated as a World Heritage Site (WHS) by UNESCO in 2000 in recognition of the exceptional testimony to the dynamic forces that drove the Industrial Revolution that is told through the areas landscape and heritage assets. In terms of maintaining the integrity of the WHS new development needs to be controlled so as to ensure that the essential values and the important views of the WHS are not diminished. In this respect it is important to appreciate the WHS as a whole.
18. The WHS can be experienced in various ways, from beauty spots, settlements, by travelling the highway network, and through recreational activities including horse riding, cycling and by walking footpaths. As I observed much of the openness of the WHS landscape remains.
19. PPW Paragraph 6.1.22 states that *“World Heritage Sites are international designations recognised for their Outstanding Universal Value, as inscribed by UNESCO. The planning system recognises the need to protect the Outstanding Universal Value of World Heritage Sites in Wales. The impacts of proposed developments on a World Heritage Site and its setting and, where it exists, the World Heritage Site buffer zone and its essential setting, is a material consideration in the determination of any planning application.”*
20. LDP Policy LC2 reinforces the approach set out in PPW stating that *“development within or in the vicinity of the Blaenavon World Heritage Site will only be permitted were it would preserve or enhance the landscape setting and have no serious adverse effect on significant views into and out of the World Heritage Site.”*
21. The appeal site is located outside the WHS and occupies a small fragment of the landscape when viewed from various vantage points within the WHS. In particular the appeal site is visible from the canal corridor. Nevertheless, given the extent of the settlement of Llanfoist, which provides the immediate context of the appeal site, the proposal would be unlikely to be distinguishable from other urban development. Moreover, the visual effect would decrease as the proposed landscaping matures and the ‘green roof’ softens some of the structural elements. Indeed this position is supported by Cadw, who state in their consultation response that *“there will not be an adverse impact on the setting of scheduled monument MM276 or the Blaenavon Industrial Landscape World Heritage Site”*.
22. The WHS Management Plan, referenced by the appellant, recognises the key values and qualities of the site, including the protection of key views that add to the qualities of the heritage environment and protect the visual values of the World Heritage Site. From the evidence before me, and from what I observed on my site visit I do not consider that the views of the WHS from the appeal site contribute to the specific heritage values of the WHS, or its legibility. Moreover, views of key visual landmarks, such as the Bloreng Hills would not be obstructed given the design and layout of the development.
23. Given the above, I find that the proposal would comply with the LDP Policy LC2 as set out above.

Living conditions of neighbouring occupiers, with particular regard to privacy and visual impact

24. The private view from a window is not of itself regarded as a planning matter and there is no ‘right to a view’. However, some proposals can change a view to such an extent that the residential amenities enjoyed by existing occupants would be significantly eroded. In this respect, significant concerns have been raised in relation to the effect of the proposal on the occupants of existing dwellings immediately to the north and south of the site along

Merthyr Road, Gypsy Lane and Gypsy Crescent. The Council's case, as summarised in the reason for refusal, is that there would be a loss of outlook and privacy.

25. It is clear from my site visit that the outlook from the neighbouring existing properties would change significantly. Views of a mature landscaped garden would be curtailed and a significant number of windows and balconies, many of which would be single aspect, would face the existing properties. This would not only affect habitable rooms but also outdoor areas.
26. The closest property is 'Mayalin' on Merthyr Road. Given the above, I have little doubt that the sense of being overlooked as well as the levels of privacy would change but the key question is whether significant harm would be caused to residential amenity or would the resulting grain of development and associated levels of privacy be appropriate and reasonable to expect at this location bearing in mind the appeal site's suburban location.
27. The proposed building would be 'L' shaped, situated adjacent to the north and east boundaries. The flank elevation of the closest part of the building to 'Mayalin' would have limited bathroom windows, although the remainder of the building is orientated so that the windows face towards the garden area for that property. The orientation and separation distances between the development and the shared boundary would prevent any direct loss of privacy to habitable rooms within 'Mayalin', there would be a perception of being overlooked particularly from the balcony areas. However, opportunities for landscaping including the retention of existing trees along the shared boundary do exist, and I see no reason why a suitable landscaping scheme could not come forward, such as that shown on the accompanying plans, to curtail the degree to which overlooking is perceived.
28. Orchard Lea lies adjacent to the appeal site along its Gypsy Lane boundary. In terms of outlook, I noted from my site visit a number of windows within Orchard Lea face towards the appeal site, including those belonging to bedrooms and a first floor balcony. The proposed two-storey building would be within the views from the neighbour's window. However, I consider that the proposed building, of a similar height to that existing at present, would not be so proximate as to significantly obstruct the outlook of Orchard Lea.
29. Whilst I acknowledge the proposal as a whole would result in a major change in the locality, the scale of this change in proximity to Orchard Lea would not be so significant as to cause adverse impacts on the privacy of the neighbouring occupiers, particularly given the tall hedgerow along the shared boundary which provides a good level of intervening screening and the orientation of the wing of the building closest to Orchard Lea. That said, the installation of additional tree planting along this boundary would assist in avoiding any perception of overlooking.
30. Lochaline is located to the south of the appeal site and is the neighbouring property to Orchard Lea. Similarly to Orchard Lea the proposed development would be more prominent than the existing building but the overall scale, mass and height relative to the ground level in Lochaline would not appear excessive or significantly impact upon the outlook of existing occupiers at the distance involved. Again the intervening existing and proposed soft landscaping would result in no harmful loss of privacy.
31. Mandalay is located to the southwest of the appeal site on Gypsy Crescent. From the rear elevation and garden of Mandalay a view of the appeal site can be sought. I have no doubt that the proposal would change the view enjoyed by existing residents. Nevertheless, I do not consider it would be significantly eroded, given the sensitive use of materials and the proposed landscaping, which can be controlled by planning conditions.

32. The Council makes reference to the impact of the proposal on the living conditions of the existing occupiers of the houses on the opposite side of Merthyr Road to the appeal site, insofar that given the scale of the proposal that separation distances should be increased from that normally considered acceptable. I acknowledge that the proposal would introduce a large building that would occupy some parts of the site that are not currently built upon, a number of windows within the proposal would face towards these houses and that the houses along Merthyr Road are located on lower ground than the appeal site.
33. However, the proposed building would be set back from the boundary providing adequate space for landscaping which would increase privacy. The design of the ridgeline of the proposed building and material choices break up the mass of the structure, which would ensure that the building would not appear dominant or overbearing on the occupants of Merthyr Road. Whilst outlook would be altered, the changed view would not be harmful to living conditions. Accordingly, I consider that the separation distances are appropriate in this case.
34. All other properties are further still from the proposal, would have less direct views of the buildings and would have greater intervening space in which to accommodate landscaping, both new and retained, that would filter and soften. As a result, no overbearing, overlooking or other harm would result to any other neighbouring occupants.
35. Drawing matters together, no significant harm would be caused to the living conditions of nearby residents with respect to privacy and outlook. Therefore, the proposal would be consistent with LDP Policy DES1 (d) that seeks to ensure that development achieves appropriate levels of privacy and amenity to existing occupiers.

The effect on the SAC

36. The River Wye is a Special Area of Conservation (SAC) and is protected under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). Natural Resources Wales (NRW) has set new phosphate standards for the River Wye SAC following the revised Common Standards Monitoring guidance updated in 2016 by the Joint Nature Conservation Committee (JNCC). A compliance assessment, conducted by NRW, against these standards found widespread failures on the River Wye.
37. Accordingly, new development within any part of the catchment which will increase the amount or concentration of wastewater effluent or organic materials discharged directly or indirectly into the catchment's waterbodies has the potential to increase phosphate levels within those waterbodies.
38. Whilst a third of the waterbodies within the catchment satisfied the standards, the headroom within these waterbodies to accommodate increased levels of phosphates is limited. If phosphate levels are allowed to rise, the water bodies are at risk of failing the standard. Additionally, for failing sections of the catchment there is no headroom and further increases in phosphate will further worsen the condition of the SAC.
39. NRW therefore recommend that any proposed new development that might otherwise result in increasing the amount of phosphate within the SAC either by direct or indirect discharges must be able to demonstrate phosphate neutrality or betterment.
40. Nutrient Neutrality is where mitigation measures or avoidance included within the planning application can counterbalance any phosphate increase attributed to the proposed development or would lead to betterment. Neutrality will need to be demonstrated with certainty. The development will need to show that it avoids harm to the protected site or provide the level of mitigation required to ensure that there are no adverse effects.

41. The River Wye SAC Nutrient Management Plan states that nationally the main source of phosphates in rivers is thought to be from agriculture and sewage effluent. From the appeal site, foul drainage would pass through the lateral sewer to the Llanfoist Waste Water Treatment Works (WWTW), which after treatment discharges to the River Wye. Dwr Cymru confirmed that this WWTW does not use chemical dosing or specifically removes or monitors phosphates in either influent or effluent.
42. The proposed development would increase sewage discharge to a WWTW that does not remove phosphates. Thus without any mitigation the proposed development would result in an increase in phosphate levels in the River Wye SAC, which is vulnerable to changes in nutrient loading. Therefore an Appropriate Assessment (AA) is required. The AA is set out in the Annex to this decision.
43. The AA concludes that, even with mitigation measures in place, the development would adversely affect the integrity of the SAC. As such I can conclude the proposal would have a likely significant effect on the integrity of the SAC. It would therefore be contrary to the Habitats Regulations and PPW, and would fail to comply with LDP Policies EP1 that seeks to ensure that development proposals that would cause or result in an unacceptable risk/harm to interests of nature conservation due to water pollution will not be permitted, and Policy S13 that states, amongst other matters, that development proposals must protect, positively manage and enhance biodiversity including designated and non-designated sites, and habitats and species of importance.

Other matters

44. The effect of the proposal on highway and pedestrian safety is not a matter contested by the Council, however it is a matter of concern to local residents. Monmouthshire County Council, in its capacity as highway authority, is satisfied that safe access on to Gypsy Lane can be made from the site and that the additional traffic arising from the proposed development can be accommodated on the local road network without causing a significant impact.
45. It is clear from the evidence provided that the local highway network has the capacity to accommodate the predicted traffic that would be generated from the proposed development. There is also no evidence to suggest that any cumulative impacts on the road network would be significant.
46. With regard to pedestrian safety, the proposed site access arrangement show that a pedestrian footway would be maintained on both sides of access with Gypsy Lane to maintain the existing footway network. The local highway/pedestrian network benefit from an acceptable surface and street lighting. Given the relatively straight alignment of Gypsy Lane at the vehicle access point the footway provides good frontage surveillance for pedestrians. Therefore, I do not consider that the proposed development would be detrimental to highway safety or pedestrian safety or the free flow of traffic on the local highway network.
47. Both the appellant and the Council agree that a significant proportion of the County demographics comprise older age groups and the provision of housing for those groups should be considered a priority. However I have no substantive evidence to confirm the housing needs of these groups and any shortfall within the area or that the type of development proposed would meet those needs. As such, I afford the sustainable delivery of housing moderate weight.

48. In reaching this opinion I note that there are other residential developments currently under construction in Llanfoist and that local residents consider that there is no need for further housing. Nevertheless, there is no policy requirement to demonstrate a need for housing within a settlement boundary and the proposal would support the Welsh Government's ambition, as set out in PPW, of sustainable placemaking.

Planning Obligation

49. A completed planning obligation has been submitted that would ensure the delivery of affordable housing. Overall, I find that the provisions of the agreement are reasonable and necessary in order to make the development acceptable. I conclude that the statutory tests are met and that the provisions of the planning agreement are required to allow the appeal.

Planning Balance and Conclusion

50. I am required to determine this proposal in accordance with the development plan, unless material considerations indicate otherwise. The starting point is therefore the development plan. I have found the development would comply with the development plan policies relating to the character and appearance of the area, neighbouring occupiers living conditions and highway safety. These matters are neutral in the final balance as this is expected of all developments.

51. An Appropriate Assessment has been carried out and concludes that that the proposed development would have a significant adverse effect on the integrity of the River Wye SAC and therefore planning permission should be withheld. As such the scheme would conflict with LDP Policies EP1 and Policy S13 and I attach great weight to the policies which seek to protect international and national protected sites because of the importance of those sites for nature conservation. Thus the appeal scheme should be regarded as being in conflict with the development plan when taken as a whole, despite the matters where I have identified policy compliance.

52. It is therefore necessary to consider whether there are other material considerations that indicate a decision other than in accordance with the development plan. The proposal would contribute to market and affordable housing delivery and to the local economy which weighs moderately in favour of the appeal. However, this does not outweigh the conflict with the development plan that I have identified.

53. Accordingly, from the evidence before me and taking into account all other matters raised, the proposal is contrary to the development plan taken as a whole, and as such I dismiss the appeal.

J Burston

INSPECTOR

Habitat Regulations Assessment

Background

1. In January 2021 Natural Resources Wales (NRW) published the results of its Compliance Assessment of Welsh River Special Areas of Conservation (SAC) against Phosphorus Targets. The site lies within the catchment of the River Wye SAC which is currently failing to meet the phosphates targets. The drainage from the development would flow into the river or its tributaries. The descriptions of the site and the proposal are set out in the substantive decision.
2. The need for Habitats Regulations Assessment (HRA) is set out within Article 6 of the EC Habitats Directive 1992, which is transposed into British Law by the Conservation of Habitats and Species Regulations 2017 (the Regulations). The Inspector, as competent authority with respect to the Regulations, will need to decide whether 'likely significant effects' alone or in-combination with other plans or projects, can be ruled out based on the information provided by the parties. The competent authority may agree to the project only after ascertaining that it will not adversely affect the integrity of the European site.
3. Whilst the Regulations provide strict protection, they are not a prohibition on new development or activities. Instead, they involve a case-by-case examination of the implications for each European protected site, its qualifying features and its conservation objectives. There is no statutory method for undertaking an HRA and the approach can vary on a case-by-case basis. Nonetheless, guidance issued from the European Commission sets out a four-stage assessment process involving Screening; Appropriate Assessment (AA); Assessment of Alternatives and Imperative Reasons of Overriding Public Interest (IROPI). AA considers the implications of the proposal for the European site in view of its conservation objectives. Steps 3 and 4 are collectively known as derogation.
4. The purpose of this HRA is to report on the impacts of the scheme on the River Wye SAC, which is a European protected site. Conscious of the requirements of Regulation 63(3) and 63(4) of the Regulations regard has been had to the representations of Natural Resources Wales (NRW), the Local Planning Authority, the appellant and the general public in carrying out this assessment.

Integrity of the Features of the River Wye SAC

5. The appeal site lies within the catchment of the River Wye SAC. The site is designated under article 4(4) of the Directive (92/43/EEC) as it hosts the following habitats listed in Annex I: Transition mires and quaking bogs; and Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation. In terms of qualifying species the SAC lists: Allis shad *Alosa alosa*; Atlantic salmon *Salmo salar*; Brook lamprey *Lampetra planeri*; Bullhead *Cottus gobio*; Otter *Lutra lutra*; River lamprey *Lampetra fluviatilis*; Sea lamprey *Petromyzon marinus*; Twaite shad *Alosa fallax*; and White-clawed (or Atlantic stream) crayfish *Austropotamobius pallipes*. 1 Assessment of plans and projects significantly affecting Natura 2000 sites' (2001).
6. The Conservation Objectives for the River Wye SAC include, amongst other considerations, that the ecological status of the water environment should be sufficient to maintain a stable or increasing population of each feature. This will include elements of water quantity and quality, physical habitat and community composition and structure.

7. The issues associated with maintaining the sites integrity include: water levels and flow, water quality, eutrophication (nitrogen enrichment), sedimentation, disturbance and species maintenance; and water quality targets follow those in the revised Common Standards Monitoring Guidance for Rivers (JNCC 2016).

Screening

8. The proposal includes the connection of the foul water from the proposed development to the main sewerage system, managed by Dwr Cymru. Dwr Cymru have confirmed that the Waste Water Treatment Works (WWTW), to which the foul water would flow, does not have a phosphate permit, hence it does not remove phosphates from the wastewater it processes. Accordingly, the discharge from the WWTW into the River Wye would provide a pathway for phosphates to enter the designated SAC. Given that the headroom within these River Wye waterbodies to accommodate increased levels of phosphates 'is limited is failing or close to failing', without appropriate mitigation and taking into account the 'precautionary principle', this proposal would be likely to have a significant effect on the conservation objectives of this European site.
9. Recent caselaw has confirmed that the screening process must exclude any proposed mitigation measures (other than embedded mitigation). Mitigation can be taken into account as part of the AA.
10. Applying the NRW advice, the project does not fall within the types of developments that can be screened out as not likely to have a significant effect on the SAC in relation to phosphorus inputs because it is likely to be a source of additional phosphorus and there is a pathway for impacts.
11. The project cannot therefore be screened out as not likely to have a significant effect on the SAC, nor is it functionally linked to the European site. From the evidence before me, I conclude that there would be likely significant effects arising from this development and therefore an AA is required.

Appropriate Assessment

12. As Likely Significant Effects cannot be excluded, then, in accordance with the Habitats Regulations, the competent authority must undertake an Appropriate Assessment (AA).
13. The appellant has put forward a mitigation measure that is contended would enable it to be ascertained that the proposal would not adversely affect the integrity of the site. In some circumstances, the decision-taker must consider the way in which it is proposed to carry out the project and whether conditions or other restrictions would help to ensure that site integrity is not adversely affected. In practice, this means identifying the potential risks and putting in place a legally enforceable framework with the aim of preventing the risks from materialising.
14. The appellant proposes to use a Private Treatment Plant (PTP) to chemically dose the foul waters prior to it being discharged to the public sewer. A Phosphate Review Technical Note, dated 13 October 2021 (PRTN) was submitted by the appellant which sets out the worst case scenario in terms of phosphate discharge from the proposed development, which equates to 9.86kg/year (worst case scenario). The existing discharge from the appeal site is approximated at 0.66kg/year. Therefore any proposed PTP would need to treat a minimum of 9.2kg/year of phosphorus discharge. These figures have not been challenged by consultees.

15. The type of PTP proposed is a '40 PE Klaro XL'. The Klaro wastewater treatment plant uses sequencing batch reactor (SBR) technology to effectively and efficiently treat waste. It features two chambers - one to hold back the solids, and the other to treat the wastewater using an aeration process. Microorganisms biologically clean the water, allowing sludge to sink to the bottom and a clarified water zone to form at the top. Sludge removal is required, with the chamber having a capacity for up to 12 months. The sludge would need to be removed by a specialised contractor and disposed of at a licensed site.

The manufacturer information states that the PTP removes phosphorus at an efficiency of 94.5%. This would equate to a residual discharge of 0.5423kg/yr, thus better than neutrality. The appellant also provided a number of examples of the PTP in operation and the accompanying test certificates in order to demonstrate the efficacy of the system. I note that one example was used at Loch Leven, which is a Special Protection Area with stringent phosphate and nitrate discharge requirements. Moreover, NRW have confirmed that the certification of the system has been provided by a recognised body which would be reasonable to rely upon. Nevertheless, the schemes referred to do not provide long term testing results to demonstrate that the integrity of the SAC is not negatively affected over the lifetime of the development.

16. NRW advises that PTPs require ongoing management and maintenance to ensure their continued efficiency and that the competent authority would need to be satisfied that the long term monitoring and management measures would be sufficiently secured.
17. Notwithstanding the appellant's suggested condition, there is no certainty at this stage over the course of management that would be taken, particularly in the case of PTP failure. Without details, including maintenance funding over the lifetime of the development, or any other evidence that could persuade me that the development would not affect the SAC, then there is a considerable amount of uncertainty remaining and I must take a cautionary approach. A condition, in my opinion, given the multiple ownership of the development, would not provide a robust or precise approach which could lead to enforcement difficulties. Whilst the appellant also suggested that the company that supplied the plant would also be able to provide a maintenance service, there is no certainty that this would happen, such as a legal agreement.
18. I note that Dwr Cymru have confirmed in their letter dated 10 December 2021, that "*On the basis that the proposed apartments are under a single curtilage, a single phosphate treatment plant (PTP) serving the development would be sufficient. As the lateral sewer to be adopted is downstream of the PTP, we have no concerns.*" However, this does not overcome my above concerns.
19. Accordingly, I do not think that the evidence provides sufficient certainty that the proposed PTP would deliver nutrient neutrality over the lifetime of the development. Having regard to the precautionary principle, I cannot exclude the risk of a significant effect on the conservation objectives of the designated site. It may be the case that the contribution that this proposal would make to nutrient enrichment at the designated site may be small, however, it is also necessary to consider the proposals alone and in combination with other plans and projects.
20. Therefore, it has not been shown that the appeal scheme would achieve nutrient neutrality. I cannot exclude the risk that the proposals would adversely affect the integrity of the River Wye SAC and I do not consider that the risk could be adequately addressed by way of planning conditions. In such circumstances, the Habitats Regulations would indicate that planning permission should be refused, unless there were no alternative solutions that would avoid an adverse effect and there were imperative reasons of overriding public

importance. There was no evidence on alternatives or imperative reasons of overriding public importance and it is unlikely that this housing scheme would meet those high tests. Accordingly, I have not sought further evidence on those matters.

AA Conclusion

21. I have taken into account all the available evidence and have adopted the precautionary principle in carrying out this assessment. It is determined that the risks to the integrity of the qualifying interests and conservation objectives of the River Wye SAC have not been addressed by appropriate mitigation.
22. Accordingly, I conclude that the proposed development would have a significant adverse effect on the ecological integrity of the European Site and therefore planning permission cannot be granted. This conclusion is predicated on the circumstances of the case based on the site's unique context and situation and the particulars of the mitigation offered.

J Burston

INSPECTOR