

DELEGATED DECISION REPORT

APPLICATION NUMBER

200151

Land to the north of Boarsfield, Kingsland, Herefordshire.

CASE OFFICER: Ms Chloe Smart

DATE OF SITE VISIT: February 2020

**Relevant Development
Plan Policies:**

**Herefordshire Local Plan – Core Strategy
Policies:**

SS1 Presumption in favour of sustainable development
SS2 Delivering new homes
SS4 Movement and transportation
SS6 Environmental quality and local distinctiveness
SS7 Addressing climate change
RA1 Rural housing distribution
RA2 Housing in settlements outside Hereford and the market towns
RA3 Herefordshire's countryside
H3 Ensuring an appropriate range and mix of housing
MT1 Traffic Management, highway safety and promoting active travel
LD1 Landscape and townscape
LD2 Biodiversity and geodiversity
LD3 Green Infrastructure
LD4 Historic environment and heritage assets
SD1 Sustainable Design and energy efficiency
SD2 Renewable and low carbon energy
SD3 Sustainable water management and water resources
SD4 Waste water treatment and river water quality

Kingsland Neighbourhood Development Plan

The KNDP was made on 16th October 2017 and forms part of the development plan.

Relevant policies include:

Policy KNDP 1: Promoting a Sustainable Community
Policy KNDP 2: Development Strategy
Policy KNDP 3: Sustainable Design
Policy KNDP 4: Retaining the Rural Character of Kingsland Parish
Policy KNDP 5: Protecting Kingsland's Heritage Assets
Policy KNDP 6: Kingsland Village and Conservation Area

Policy KNDP 8: Highways and Transport Infrastructure
Policy KNDP 9: Kingsland Sewage Treatment Works

NPPF

In particular the following Chapters,

- 2. Achieving sustainable development
- 4. Decision-making
- 5. Delivering a sufficient supply of homes
- 6. Building a strong, competitive economy
- 8. Promoting healthy and safe communities
- 9. Promoting sustainable transport
- 12. Achieving well-designed places
- 15. Conserving and enhancing the natural environment

Relevant Site History: N/A

CONSULTATIONS

	Consulted	No Response	No objection	Qualified Comment	Object
Parish Council	X				X
Transportation	X		X		
Historic Buildings Officer					
Land Drainage	X			X	
Ecologist	X				X
Landscape	X				X
Environmental Health (noise/smell)					
Environmental Health (contamination)					
PROW					
Natural England	X				
Welsh Water	X		X		
Press/ Site Notice	X			2	30
Local Member	X				X

PLANNING OFFICER'S APPRAISAL:

Site description and proposal:

The application site relates to a parcel of land which lies east of Lugg Green Road, Kingsland. It lies north of the village and beyond a residential development known as Boarsfield. The site comprises a total of 0.84 ha of arable agricultural land.

In terms of constraints, the site lies outside of the settlement boundary for the village of Kingsland. It does not fall within the Conservation Area and there are no listed buildings within close proximity. It is within Flood Zone 1 and therefore is at the lowest risk of fluvial flooding.

Full planning permission is sought for the erection of 10 dwellings and associated works which would comprise the following mix of dwellings:

- 2 x 2 bed dwellings;
- 3 x 3 bed dwellings;
- 5 x 4 bed dwellings.

A new access would be created to serve the residential dwellings which would be located on Lugg Green Road. It is proposed that foul sewage would be discharged to the mains sewer.

The application is accompanied by the following:

- Full application form;
- Existing and Proposed Plans;
- Planning Statement;
- Design and Access Statement;
- Transport Statement and Addendum;
- Landscape Visual Assessment and Appendices;
- Landscape Strategy Plan;
- Arboricultural Report; and
- Drainage Strategy.

Representations

Councillor Bowen

Confirmed in telephone calls and email correspondence, content for the application to be refused under delegated powers. If minded to approve requested the application be re-directed to planning committee.

Kingsland Parish Council

Kingsland Parish Council objects to the proposed development for the following reasons:

1. The proposed site is located outside the settlement boundary in the neighbourhood development plan (policy KNDP14). The housing policies in the neighbourhood development plan have delivered 19 percent growth in housing in the parish to date demonstrating that the plan has been genuinely pro-development, far exceeding the housing guideline growth of 14 percent, and therefore the settlement boundary should carry full weight.
2. The development is not considered sustainable so is contrary to policies KNDP1, 2, 6, 9 and 14 of the neighbourhood development plan. The Herefordshire Council Water Cycle Study - Addendum (Feb. 2015) states that Kingsland falls within category 1 and "the assessment suggests there is no current capacity". In November 2019, Welsh Water attended a sewage leak on North Road in the centre of the village that required an extensive clean up. Policy KNDP9 states that developers have to "demonstrate that their proposals will not overload the system or lead to any significant adverse effects on the River Wye SAC".
3. The sewage treatment works is understood to be incapable at present of stripping out phosphates so the parish council believes the moratorium on development (as highlighted in Herefordshire Council's River Lugg Catchment Area Position Statement dated 15 October 2019) should apply to this site. In addition, the phosphates statement stipulates that the water table always needs to be at least two metres below ground, and because the water table at Kingsland is high this needs to be investigated and evidenced.
4. The proposed access to Lugg Green Road is contrary to policy KNDP8 given the speed of traffic on the road and limited visibility on the sharp bend that leads from the bridge. The junction at the Corners crossroads is already extremely narrow and risky, and more traffic should not be directed to the junction.

Policy KNDP8 states that development proposals should not “lead to a significant increase in the volume of traffic... at major junctions... and on roads which do not have sufficient capacity”. The parking capacity shown on the plans is not sufficient and visitors will need to park on the highway given the narrow width of the access road within the development. The traffic survey needs to be redone as it was conducted at a time when Lugg Green road was closed to traffic by Balfour Beatty.

5. The housing need is unproven. A nearby development at Boarsfield is believed to have 10 unsold houses on the market. A further development of 10 dwellings is nearing completion on the A4110 opposite Luctonians. Paragraph 4.8.20 of the Core Strategy states that “housing proposals will be expected to reflect the range that is required for the settlement concerned. In relation to proposals that seek specifically to meet identified local housing needs, those proposed developments must be based on appropriate, compelling evidence of how the proposal meets that need. No housing need has been demonstrated in this instance, and the number of large houses proposed is considered disproportionate.

6. Other local services, including the school and doctor’s surgery are understood to be at capacity. The size of the car park at the surgery means that frequently cars are parked on the highway at the approach to the Corners Crossroads junction, which already has very poor visibility, increasing the potential risk for vehicles and pedestrians.

7. Development of the site would blur the settlements of Kingsland and Lugg Green hamlet, which is contrary to Core Strategy policy LD1 and KNDP1, which highlight the need to enhance the “setting of settlements”. According to policy KNDP2, development of prime agricultural land should not be developed “unless land of a lower grade is not available or the need for development outweighs this requirement”. Given the location outside the settlement boundary and demonstrable lack of housing need the proposed site is contrary to KNDP2.

8. The cul-de-sac layout at this location does not “conserve the rural landscape of the parish” as set out in policy KNDP4. The wildlife habitats in the existing hedgerow will be adversely affected by the proposed development outside the settlement boundary. The setting of heritage assets in the centre of Kingsland village will be adversely affected contrary to policy KNDP6, in particular e) “The sense of enclosure within the village historic core formed principally around the staggered crossroads at the Corners Inn... north east to Myrtle Cottage...”.

9. The parish council has noted that access to the agricultural field behind the proposed development is unclear. The drainage strategy document shows access through the site but this detail is not included in the site drawings.

In summary, Kingsland Parish Council considers the proposed development to be contrary to the neighbourhood development plan/ Local Plan Core Strategy, and to have significant constraints which make it unsustainable. The parish council respectfully urges that the planning application is REFUSED.

Landscape

Full comments can be found using the link below:

https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=200151&search=200151

Summary of comments:

- Comments based on site visit and a desktop study;
- Site is outside of the Kingsland settlement boundary (Kingsland Village Policies, 2017), and is contrary to the ambitions of the local community as set out in the Kingsland Neighbourhood

Development Plan, June 2017. There is a preference not to see development built on the edges of the village and to retain the rural character of Kingsland (Policy KNDP4);

- In terms of impacts on landscape character, this development urbanises a country lane; encroaches on agricultural land and merges into a farm settlement. Kingsland's linear evolution along an east-west corridor is no precedent for development following a similar pattern to the north and is therefore contrary to policy LD1 – Landscape and Townscape, in terms of the designs appropriateness for the context and pattern of settlement;
- Should this application proceed, further information would be required to justify the impacts on the landscape character. The main area of concern is the removal of approximately 110 metres of hedgerow (refer to figure 1), for an entrance (with associated visibility splays), and a pedestrian path;
- The applicant does propose to relocate the hedgerow along a new line, however it does not take into account the thorny species (Blackthorn and Hawthorn) contained within this mature hedgerow and the additional setback required to meet Herefordshire Council, Highway Design Guidance for New Development. This widening of the lane together with urbanised infrastructure impacts on the quality of the village setting in a rural landscape and the experience as you arrive and leave the village;
- I agree with the applicant that the overall sensitivity of the development site and local landscape to the proposed development site is medium and not able to achieve a high sensitivity rating that is typically associated with National Parks and Areas of Outstanding Natural Beauty;
- However, I disagree with the applicant that the landscape magnitude of change is minor, given the degree of impact the development has on an established hedgerow (a primary characteristic of the Principal Settlement Farmland) and the breakdown of the rural edge and landscape character with urban infrastructure.

Overall, raises an objection to the proposed development.

Trees

Full comments can be found using the link below:

https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=200151&search=200151

Summary of comments:

No objections to the proposed 10 dwellings.

The site contains one tree a mature Oak of considerable amenity value. The plans show that it has been afforded sufficient space to protect the tree and the drainage strategy also doesn't have appear to have any constraints below ground.

However there is a requirement for a Tree Protection Plan detailing how it shall be protected during development. This will be delivered via a condition.

Finally I have requested that the landscape plan is amended prior to determination so that it can be seen what species will be located where and my amendments are acknowledged.

Conditions

CKA - Retention of Existing Trees

CKB - Protection During Construction

Ecology

The application site lies within the catchment of the River Lugg catchment, which comprises part of the River Wye Special Area of Conservation (SAC); a habitat recognised under the Habitats Regulations, (The Conservation of Habitats and Species Regulations 2017) as being of international importance for its aquatic flora and fauna.

At present the levels of phosphates in the River Lugg exceed the water quality objectives and it is therefore in unfavourable condition. Where a European designated site is considered to be 'failing' its conservation objectives there is limited scope for the approval of development which may have additional damaging effects.

The competent authority (in this case the Local Planning Authority) is required to consider all potential effects (either alone or in combination with other development) of the proposal upon the European site through the Habitat Regulations Assessment process.

Permission can only be granted if there is scientific certainty that no unmitigated phosphate pathways exist and that the HRA process can confirm 'no adverse effect on the integrity of the River Wye SAC'. Natural England; the statutory nature conservation body, advise that recent case law requires effective mitigation to be demonstrated on a case by case basis whilst the River Lugg Nutrient Management Plan is reviewed to ensure greater certainty that this can provide large scale mitigation development in the area.

Therefore at this point in time on the basis of the information provided I find that the proposed development would harm a designated nature conservation site and would therefore conflict with policy SD4 of the Core Strategy which seeks to ensure that development does not undermine the achievement of water quality targets for rivers within the county and policy LD2 which states that development should conserve, restore and enhance biodiversity and geodiversity. Additionally, the proposal would be inconsistent with the provisions in the NPPF in relation to conserving and enhancing the natural environment and would not accord with the Conservation of Habitats Regulations, (The Conservation of Habitats and Species Regulations 2017).

Notes:

It is noted that foul water will be managed through a connection to the local DCWW mains sewer network - Kingsland Waste Water Treatment Works which has an outfall in to the River Lugg hydrological catchment and clearly demonstrates a pathways for additional phosphates to enter the River Lugg SAC. This is currently contrary to Conservation of Habitats and Species Regulations, NPPF and Core Strategy SS6, SD4 and LD2 as outlined in the main comments above.

Notwithstanding the above:

From information supplied and images available there are no immediate ecology related concerns with this proposal. There are no ecological records of important or Protected Species immediately on or adjacent to the site. The applicant and their contractors have their own legal duty of care towards wildlife protection under UK Legislation that applies throughout any demolition and construction process. Any breach of this legal Duty of Care would be a criminal offence. In this instance this LPA has no reasonable cause to require further information as part of the planning application or include a specific ecology protection condition. However a relevant information note is requested:.

Wildlife Protection Informative

The Authority would advise the applicant (and their contractors) that they have a legal Duty of Care as regards wildlife protection. The majority of UK wildlife is subject to some level of legal protection through the Wildlife & Countryside Act (1981 as amended), with enhanced protection for special "protected species" such as Great Crested Newts, all Bat species, Otters, Dormice, Crayfish and reptile species that are present and widespread across the County. All nesting birds are legally protected from disturbance at any time of the year. Care should be taken to plan work and at all times of the year undertake the necessary precautionary checks and develop relevant working methods prior to work commencing. If in any doubt it advised that

advice from a local professional ecology consultant is obtained. Any external lighting shouldn't illuminate any 'natural' boundary feature or increase night time sky illumination (DEFRA/NPPF Dark Skies Guidance 2019/2013).

In line with Conservation of habitats and Species Regulations, NPPF, NERC Act, Core Strategy SS6 and LD2 as well as draft Environment Bill all developments should clearly demonstrate a significant and lasting biodiversity net gain. To secure this a condition requiring a fully detailed plan and specification for proposed biodiversity net gain enhancement features is requested as a Condition

Nature Conservation – Biodiversity and Habitat Enhancement

Prior to any construction above damp proof course levels, a detailed scheme and annotated location plan for proposed biodiversity net gain enhancement features including significant provision for bat roosting, bird nesting, hedgehog homes and movement corridors across the site, amphibian and reptile hibernacula and pollinating insect 'nesting' should be supplied to and acknowledged by the local authority and then implemented in full. The approved scheme shall be maintained hereafter as approved unless otherwise agreed in writing by the local planning authority. No external lighting should illuminate any ecologically sensitive habitats on or off the site, boundary features, watercourses or biodiversity net gain features.

Reason: To ensure that all species are protected and habitats enhanced having regard to the Wildlife and Countryside Act 1981 (as amended), Habitat Regulations 2017, Core Strategy SS6, LD2, National Planning Policy Framework (2019), NERC Act 2006 and Dark Skies Guidance Defra/NPPF 2013/2019.

Housing

There is no requirement to provide affordable housing on this site.

With regards to the open market mix, I would advise that the greatest need is for 3 beds, followed by 2 beds and finally 4 beds. The applicant is proposing an oversupply of 4 beds.

In order to maintain and deliver a sustainable mix of housing the applicant looks to providing the appropriate housing mix for the area.

Highways

Initial Consultation Response

In liaising with BBLP's NRSWA Team, it has been confirmed that the C1039 was closed for the period 03/12/19 – 14/01/20 just to the north of the proposed site. This corresponds with the dates of the traffic survey (10/12/2019 to 16/12/2019), upon which a sizable portion of the transport statement relies, particularly with reference to visibility splays and the like.

It is recommended that the Transport Statement is reviewed in light of this discrepancy in the form of an addendum or similar. Additionally the lack of visibility should be addressed at the junction of the C1039 and B4360 in the context of this development increasing movements on this point of the network.

Following this review/clarification the Highways Team will comment further on the application.

Highways Re-consultation Response

It is noted that the applicants transport planners, CTP have considered the road closure in place during the original transport statement and set out that an updated survey was undertaken for the end of February.

Whilst the northbound speeds exceed the threshold for MfS 2 calculations to be applicable, the available dimension does fall within the 'one step below desirable minimum' band as set out in DMRB for a 40mph design speed. As a result, and considering carefully the character and usage of the highway network at this point it is considered that the splays are acceptable for the scale of the development. These splays should be subject to condition CAB in the event that permission is granted.

In addition CTP have undertaken analysis of the data and applied that analysis to the areas of the assessment that were most likely to result in a point of difference to the traffic situation whilst the road was closed.

It is considered that the combination of the Transport Statement and the updated Transport Addendum is sufficient to demonstrate that the site is acceptable in highways terms. The trip generation on the existing network could not be classed as severe as demanded by paragraph 109 of the NPPF.

The transport statement also sets out that cycle storage is to be provided. Details of this provision are not included and therefore the condition CB2 is recommended in the event that permission is granted.

In the event that permission is granted the conditions listed below are recommended.

CAB – Visibility Splays (as per drawing numbered SK01 in Appendix C of the Transport Addendum)

CAQ – Onsite Roads – Submission of Details

CB2 – Details of Secure Cycle Provision to be Provided.

Welsh Water

Full comments can be found using the link below:

https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=200151&search=200151

We have reviewed the information submitted as part of this application with particular focus on the Drainage Strategy document reference VD19203 and note that the intention is to drain foul water to the mains sewer and surface water via infiltration methods.

We note that within section 3.5 (foul water) that the intention is to build two pumping stations and that these would be private. However, there is a mandatory requirement to offer any drain and/or pumping station, serving two or more dwellings, for adoption under the Water Industry Act. We therefore encourage early dialogue with the applicant to explore options to gravitate flows to the public sewer or limit the number of pump stations required.

We are aware of flooding incidents in the area, however these were as a result of blockages caused by a build of fat/grease in the sewer and we are working with local residents to resolve this matter.

Notwithstanding the above, if you are minded to grant planning permission we request that the following Conditions and Advisory Notes are included within any subsequent consent.

Conditions

No surface water and/or land drainage shall be allowed to connect directly or indirectly with the public sewerage network

Reason: To prevent hydraulic overloading of the public sewerage system, to protect the health and safety of existing residents and ensure no pollution of or detriment to the environment.

Advisory comments also advised.

Land Drainage

Full comments can be found using the link below:

https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=200151&search=200151

Summary of comments:

Whilst we agree with the development and supporting drainage strategy, we recommend the Council clarifies the point below prior to granting planning permission;

- Confirmation of agreement in principle of proposed adoption and maintenance arrangements for the surface water and foul water drainage systems.

However, should the Council be minded to grant planning permission, we recommend that the Applicant submits the information requested above along with the following information requested in suitably worded planning conditions:

- Assessment of risks to the performance of proposed infiltration systems associated with high groundwater levels that may be hydraulically connected to elevated flood levels in the River Lugg.
- Updated soakaway sizing calculations informed by location-specific infiltration testing and soil variability, and confirmation that that base of any proposed infiltration structure is located a minimum of 1m above normal groundwater levels as informed by winter testing. Calculations should use FEH 2013 rainfall data.
- Detailed drawings of the surface water arrangements of pipes, soakaways, permeable pavements and other drainage features.
- Calculations to demonstrate that the proposed surface water drainage system has been designed to prevent the surcharging of any below ground drainage network elements in all events up to an including the 1 in 2 annual probability storm event. Calculations should use FEH 2013 rainfall data.
- Calculations to demonstrate that the proposed surface water management system will prevent any flooding of the site in all events up to an including the 1 in 30 annual probability storm event. Calculations should use FEH 2013 rainfall data.
- Detailed drawing demonstrating the management of surface water runoff during events that may temporarily exceed the capacity of the drainage system.
- Detailed drawings of the foul water drainage strategy showing how foul water from the development will be disposed of and illustrating the location of key drainage features.
- Operation and maintenance manual for all proposed drainage features that are to be adopted and maintained by a third party management company.

Letters of representation

Letters can be viewed using the link below:

https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=200151&search=200151

32 letters of representation have been received in respect of the development proposals. 30 raise an objection to the scheme. No letters of support have been received. The concerns raised can be summarised as follows:

- Contrary to Kingsland Neighbourhood Development Plan – outside settlement boundary, area has performed well;
- Not sustainable development;
- Disregard to the policies of the NDP;
- Area does not need new homes – met identified need in the area;
- Large and out of character with the village – the village is primarily linear;
- Increase in traffic movements, traffic impacts on the locality, highway safety, access concerns;
- Sewage/drainage issues;
- Capacity of local services (including school and surgery);
- Light impacts of the development;
- Impact on adjoining residents;
- Public transport availability limited;
- Pollution issues in Leominster; and
- River Lugg Phosphates issues.

Pre-application discussion:

N/A

Constraints:

River Lugg Catchment (River Wye Special Area of Conservation)

Appraisal:

Policy context

Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states as follows:

“If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”

In this instance the adopted development plan is the Herefordshire Local Plan – Core Strategy (CS) and the ‘made’ Kingsland Neighbourhood Development Plan. The Kingsland Neighbourhood Development Plan was made in October 2017.

The National Planning Policy Framework is also a material consideration.

Policy SS1 of the Herefordshire Local Plan – Core Strategy (CS) sets out proposals will be considered in the context of the ‘presumption in favour of sustainable development’ which is at the heart of national guidance contained within the NPPF.

The policy states:

‘When considering development proposals Herefordshire Council will take a positive approach that reflects the presumption in favour of sustainable development contained within national policy. It will always work proactively to find solutions which mean that proposals can be approved wherever possible and to secure development that improves the social, economic and environmental conditions in Herefordshire.

Planning applications that accord with the policies in this Core Strategy (and, where relevant, with policies in other Development Plan Documents and Neighbourhood Development Plans) will be approved, unless material considerations indicate otherwise.

Where there are no policies relevant to the application or the relevant policies are out of date at the time of making the decision then the Council will grant permission unless material considerations indicate otherwise – taking account whether:

- a) Any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in national policy taken as a whole; or*
- b) Specific elements of national policy indicate that development should be restricted.'*

It is acknowledged at this moment in time, the Council is unable to demonstrate a five year housing land supply. Paragraph 11d of the Framework echoes the above in that it advises the following in respect of decision making:

'Where there are no relevant development plan policies, or the policies which are most important for determining the application are out of date, granting permission unless:

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development; or*
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.*

Additionally, paragraph 14 of the Framework also states the following:

'In situations where the presumption (at paragraph 11d) applies to applications involving the provision of housing, the adverse impact of allowing that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits, provided all of the following apply:

- a) the neighbourhood plan became part of the development plan two years or less before the date on which the decision is made;*
- b) the neighbourhood plan contains policies and allocations to meet its identified housing requirement;*
- c) the local planning authority has at least a three year supply of deliverable housing sites (against its five year housing supply requirement, including the appropriate buffer as set out in paragraph 73); and*
- d) the local planning authority's delivery was at least 45% of that required over the previous three years.'*

Principle of development

In locational terms, Paragraph 79 of the Framework seeks to restrict development in isolated locations, but does acknowledge in rural locations it may be the case that development in one village supports the services in another village nearby. That said, the adoption of the Core Strategy represents a shift in policy that recognises proportionate growth is required in rural areas for social and economic purposes. It is with this in mind that the proposal is assessed under the Core Strategy policies alongside the Framework.

Policies SS2 (Delivering new homes) and SS3 (Releasing land for residential development) of the CS clearly set out the need to ensure sufficient housing land delivery across the County. In order to meet the targets of the CS the Council will need to continue to support housing growth by granting planning permissions where developments meet with the policies of the CS, (and, where relevant with policies in other Development Plan Documents and Neighbourhood Development Plans). Policy SS2 states that a supply of deliverable and developable land will be identified to secure the delivery of a minimum of 16,500 homes in Herefordshire between 2011 and 2031 to meet market and affordable housing need. 6,500 of these will be in Hereford, where it is recognised that there is a wide range of services and consequently it is the main focus for development.

Outside of Hereford City, and the market towns, CS Policy RA1 identifies that Herefordshire Rural areas will need to find a minimum of 5,300 new dwellings between 2011 and 2031 to contribute towards the county's housing needs. The dwellings will be broadly distributed across the seven Housing Market Areas (HMA's).

Kingsland falls within the Leominster HMA where there is an indicative housing growth target of 14%, which equates to 730 dwellings. Policy RA2 relates to housing in settlements outside of the market towns. The accompanying text to this policy confirms Neighbourhood Development Plans will allocate new housing or otherwise demonstrate delivery to provide required levels of housing. In the period leading up to the definition of settlement boundaries, applications will be assessed against their relationship to the built form of the settlement.

Kingsland is identified as a Figure 4.14 settlement in the Core Strategy which will be the main focus of proportionate housing growth. The Kingsland NDP was made on the 16th October 2017.

Policy KNDP2 sets out the development strategy for the area and identifies Kingsland, Shirlheath and Cobnash will be the main focus of development within the Parish. A settlement boundary is defined for the village of Kingsland where development should take place. The policy goes on to say, development outside of the settlements should be exceptional and in accordance with relevant policies set out in the development plan, particularly RA3.

An extract of the Kingsland Village Neighbourhood Development Plan policies map is included below which shows the defined settlement boundary for the area.



The settlement boundary follows the edge of the Boarsfield development. The site lies north of the settlement boundary and as such residential development would be contrary to Policy RA2 of the

Herefordshire Local Plan Core Strategy and KNDP2 of the Kingsland Neighbourhood Development Plan. The proposals do not fall within any of the seven criteria specified in Policy RA3 of the Core Strategy.

As such, the principle of residential development is contrary to both the Core Strategy and the Neighbourhood Development Plan.

Landscape

A key objective of both the Core Strategy and the Kingsland Neighbourhood Development Plan is to protect landscape character. Core Strategy Policy LD1 requires that development proposals demonstrate the character of the landscape and townscape has positively influenced the design, scale, nature and site selection, protection and enhancement of the setting of settlements and designated areas.

Policy KNDP4 also deals with retaining the rural character of Kingsland Village. In order to ensure development contributes positively to the area's rural character, proposals should:

- a) Conserve the landscape character, and where possible, restore or enhance this character;
- b) Contribute towards the ecological network of the area – supporting biodiversity value of wildlife sites and appropriate protection in accordance with Core Strategy Policy LD2;
- c) Take every opportunity to extend tree and hedgerow cover (indigenous species);
- d) Retain landscape features such as trees, woodlands, grass verges, orchards and hedgerows, unless the need for, and benefits of, the development clearly outweighs the loss;
- e) Ensure key landscape features of important views should be able to be continued to be enjoyed;
- f) Conserve the character and setting of historic and traditional rural buildings, the historic landscape and archaeological sites.

The application is accompanied by a Landscape Visual Assessment and accompanying Landscape Strategy Plan. The assessment submitted to accompany the application concludes the development would *'respect and enhance the landscape character of the surrounding area and this entrance approach to the settlement'*.

The Council's Landscape Officer has provided a detailed consultation response in respect of the proposals, which has been informed by a review of the application material submitted, a site visit and a desktop appraisal.

The comments highlight the site lies outside of the settlement boundary and there is a preference through Policy KNDP4 not to see development built on the edges of the village in order to retain the rural character of Kingsland.

In terms of the impact of the proposals, it is considered the scheme would urbanise a country lane; encroach on agricultural land and merge into a farm settlement. It is also highlighted that Kingsland's linear evolution along an east-west corridor is no precedent for development following a similar pattern to the north.

In terms of the overall sensitivity of the site and the local landscape to the proposed development, the Landscape Officer is in agreement this is medium and not able to achieve a high sensitivity rating that is typically associated with National Parks and Areas of Outstanding Natural Beauty. However, the Landscape Officer does not agree that the landscape magnitude of change is minor. This is due to the degree of impact the development has on an established hedgerow (a primary characteristic of the

Principal Settlement Farmland) and the breakdown of the rural edge and landscape character with urban infrastructure.

In light of this it is considered the proposals are contrary to Core Strategy Policy LD1 in terms of the impact of the scheme on the context and pattern of the settlement. It would also fail to conserve the landscape character of the village in the context of KNDP4.

Heritage

The site does not fall within the Kingsland Conservation Area which is some distance south, beyond the Boarsfield development. There are also no listed buildings within close proximity. Due to the distance of the proposals from the Conservation Area and the site's separation from the Conservation Area by way of the Boarsfield residential development it is not considered it would harm its setting or the setting of any designated heritage assets.

Ecology

River Lugg SAC and Habitat Regulations

The application site lies within the catchment of the River Lugg sub catchment, which comprises part of the River Wye Special Area of Conservation (SAC); a habitat recognised under the Habitats Regulations, (The Conservation of Habitats and Species Regulations 2017) as being of international importance for its aquatic flora and fauna.

At present the levels of phosphates in the River Lugg exceed the water quality objectives and it is therefore in unfavourable condition. Where a European designated site is considered to be 'failing' its conservation objectives there is limited scope for the approval of development which may have additional damaging effects.

The competent authority (in this case the Local Planning Authority) is required to consider all potential effects (either alone or in combination with other development) of the proposal upon the European site through the Habitat Regulations Assessment process.

Permission can only be granted if there is scientific certainty that no unmitigated phosphate pathways exist and that the HRA process can confirm 'no adverse effect on the integrity of the River Wye SAC'. Natural England; the statutory nature conservation body, advise that recent case law requires effective mitigation to be demonstrated on a case by case basis whilst the River Lugg Nutrient Management Plan is reviewed to ensure greater certainty that this can provide large scale mitigation development in the area.

Therefore at this point in time on the basis of the information provided the Council's Ecology Officer finds that the proposed development would harm a designated nature conservation site and would therefore conflict with policy SD4 of the Core Strategy which seeks to ensure that development does not undermine the achievement of water quality targets for rivers within the county and policy LD2 which states that development should conserve, restore and enhance biodiversity and geodiversity. Additionally, the proposal would be inconsistent with the provisions in the framework in relation to conserving and enhancing the natural environment and would not accord with the Conservation of Habitats Regulations, (The Conservation of Habitats and Species Regulations 2017).

It is noted that foul water will be managed through a connection to the local DCWW mains sewer network. Kingsland Waste Water Treatment Works has an outfall in to the River Lugg hydrological catchment and clearly demonstrates pathways for additional phosphates to enter the River Lugg SAC.

This is contrary to Conservation of Habitats and Species Regulations, NPPF and Core Strategy SS6, SD4 and LD2 as outlined in the main comments above.

Protected Species and Biodiversity

In respect of other ecological matters, the Ecology Officer has confirmed that based on the information provided there are no immediate ecology related concerns with this proposal. There are no ecological records of important or Protected Species immediately on or adjacent to the site.

The applicant and contractors do have their own legal duty of care towards wildlife protection under legislation. An informative has been suggested to draw attention to that requirement.

Conditions have also been suggested to ensure biodiversity net gain.

Flooding and Drainage

There is no requirement for the application to be accompanied by a Flood Risk Assessment. It is however accompanied by a Drainage Strategy Plan which has been reviewed by the Council's Land Drainage Officer and Welsh Water.

The proposal is to drain foul water to the mains sewer and surface water via infiltration methods. The intention is to build two pumping stations. Land Drainage confirm they are supportive of the drainage strategy. Various additional drainage information would still be required in respect of the proposals as listed in the drainage comments, however this could be secured through a suitably worded planning condition.

It has been recommended that confirmation of 'in principle' agreement of proposed adoption and maintenance arrangements for the foul and surface water drainage systems is obtained prior to determination. Welsh Water also point out there is a requirement to offer any drain and/or pumping station serving two or more dwellings for adoption under the Water Industry Act. It is considered this element could also be conditioned however, as advised by Welsh Water, early discussions would be beneficial.

It is acknowledged a number of submitted letters of representation raise concerns in terms of drainage and the sewage capacity in the area. Welsh Water has confirmed sewage issues in the area are as a result of a build up of fat and grease in the system and that it is currently working with local residents to deal with this issue.

Highways

Submitted letters of representation raise a number of concerns in respect of highway matters. Those include the impact of the proposals on the local highway network and the proposed vehicular access to the development.

Core Strategy Policy MT1 deals with traffic management, highway safety and promoting active travel. It identifies proposals should incorporate a number of requirements including demonstrating the local highway network can absorb the traffic impacts of a development and ensuring developments are designed and laid out to achieve safe entrance and exit, together with appropriate manoeuvring space.

The application is accompanied by a Transport Statement. The Transportation Manager provided an initial response confirming at the time the traffic survey was carried out, the C1039 was closed just to

the north of the proposed site. It was therefore recommended the accompanying evidence was reviewed in light of this discrepancy.

Further information has been submitted by the applicant which also includes an updated survey for the end of February, albeit the Transportation Manager does acknowledge the road closure was considered in the original transport statement.

The Transportation Manager confirms the following:

'Whilst the northbound speeds exceed the threshold for MfS 2 calculations to be applicable, the available dimension does fall within the 'one step below desirable minimum' band as set out in DMRB for a 40mph design speed. As a result, and considering carefully the character and usage of the highway network at this point it is considered that the splays are acceptable for the scale of the development. These splays should be subject to condition CAB in the event that permission is granted.'

In addition CTP [the applicant's Transport Consultants] have undertaken analysis of the data and applied that analysis to the areas of the assessment that were most likely to result in a point of difference to the traffic situation whilst the road was closed.

It is considered that the combination of the Transport Statement and the updated Transport Addendum is sufficient to demonstrate that the site is acceptable in highways terms. The trip generation on the existing network could not be classed as severe as demanded by paragraph 109 of the NPPF.

The transport statement also sets out that cycle storage is to be provided. Details of this provision are not included and therefore the condition CB2 is recommended in the event that permission is granted.'

In addition to the above, conditions are also requested in respect of CAB and CAQ. Whilst it is noted local residents raise concerns regarding the highway impacts of the development, consultation with the Highways Authority confirms that based on the evidence provided the proposal is acceptable in highway terms.

The applicant has satisfactorily demonstrated the scheme would meet the requirements of Core Strategy Policy MT1 and Policy KNDP8 of the Kingsland Neighbourhood Development Plan.

Housing Mix

Core Strategy Policy H3 seeks to ensure an appropriate range and mix of housing units which can contribute to the creation of balanced and inclusive communities. The mix should be informed by the latest housing market assessment.

The proposed housing mix comprises 2 x 2 bedroom dwellings, 3 x 3 bedroom dwellings and 5 x 4 bedroom dwellings. Due to the number of dwellings proposed there is no requirement for the provision of affordable housing in this instance.

The Housing Officer has been consulted on the proposals and confirms the greatest need in the area is for 3 bedroom properties, followed by 2 bedroom and then finally, 4 bedroom. The current mix provides a higher proportion of 4 bedroom dwellings. The proposals are not compliant with the housing market assessment in that the scheme is providing a higher proportion of 4 bedrooms, however it is recognised this is a relatively small scale residential scheme in the context of H3.

The preference would be to amend the mix to increase the number of 2 bedroom dwellings, however it is considered the housing mix could be finalised by way of a condition.

Design and Layout

Core Strategy Policy SD1 requires new buildings to be designed to maintain local distinctiveness through incorporating local architectural detailing and respecting scale, height, proportions and massing. Neighbourhood Development Plan Policy KNDP6 also provides comprehensive advice in design matters. It states layouts should reflect village character, and also height, size, massing and scale of buildings of surrounding development. Additionally, the choice of materials for development should be sensitive.

In terms of layout, six units are proposed along the frontage of the site which includes four detached dwellings and a pair of semi-detached. The remaining four detached units are positioned at the rear of the site. Tree planting is proposed to the northern end of the site and also the large oak tree which is located broadly centrally within the site is to be retained. All dwellings are to be two storey in scale, with pitched roofs. Projecting gables are proposed to the rear of some of the units and also detailing such as chimneys and large glazing is incorporated in the design approach. Materials include brick at ground floor level, horizontal timber cladding at first floor and slate roofs.

This section focusses purely on the design elements of the proposal, notwithstanding concerns in respect of the principle of residential development in this location and landscape impact. The Parish Council raise concerns regarding the cul-de-sac layout of the development. The proposed layout, height, size and massing is considered to respect the adjacent Boarsfield development. The design approach for the dwellings is fairly contemporary although it does pick up on the traditional local vernacular through materials and detailing such as chimneys. Glazing, the use of a variety of materials and projecting gables helps add interest to the elevations. The layout and design would not give rise to any amenity concerns in terms of unacceptable overlooking, loss of light or overbearing impacts on existing adjacent residents.

Overall, the design approach is considered to meet the requirements of Policies SD1 and KNDP6.

Weight to be attributed to the Development Plan and Planning Conclusions

Applications for planning permission are to be determined in accordance with the development plan unless material considerations indicate otherwise. As set out, this comprises the Herefordshire Local Plan – Core Strategy and the Kingsland Neighbourhood Development Plan.

The submitted Planning Statement concludes *‘as the Council cannot demonstrate a framework compliant supply of housing land, important policies for determining the application are out of date whereby Paragraph 11d is engaged’*. It sets out there are *‘no restrictive policies of the type referred to in footnote 9 of the framework’* (*sic footnote 6).

To recap, Paragraph 11 of the Framework places a presumption in favour of sustainable development. For decision taking this means:

- c) approving development proposals that accord with an up-to-date development plan without delay; or
- d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out of date, granting planning permission unless:
 - i. the application of policies in this Framework that protect assets of particular importance provides a clear reason for refusing the development proposed; or

- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

It is recognised the Council is currently unable to demonstrate a five year supply of deliverable housing and that the Kingsland Neighbourhood Development Plan became part of the development plan more than two years ago.

That said, the housing delivery figures for the Parish confirm that as of April 2019, the area was 27 dwellings over the minimum delivery target. This is based on a proportional growth target of 65, a total of 50 dwellings built (as at April 2019) and further commitments of 42 dwellings. It is recognised that the target is a minimum, however, despite the out of date nature, the Parish is clearly performing well and is exceeding its housing requirements. As such, the housing policies within the NDP are still considered to carry weight and are the most important to determining this application, noting the settlement boundary also seeks to conserve the historic and landscape character of the village.

Furthermore, in respect of Paragraph 11 of the Framework, whilst the applicant's conclusions are noted, the site lies within the River Lugg sub catchment area which comprises part of the River Wye Special Area of Conservation. As confirmed by the Council's Ecologist, at present the levels of phosphates in the River Lugg exceed the water quality objectives and it is therefore in unfavourable condition. As such, the Local Planning Authority is unable to conclude that the development would not have an adverse effect on the integrity of the River Lugg/River Wye SAC and the proposal has subsequently failed the required Appropriate Assessment.

Paragraph 177 of the framework is clear that the presumption in favour of sustainable development does not apply where the project is likely to have a significant effect on a habitats site, unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site. Paragraph 11d of the Framework, known as 'the tilted balance' is therefore not engaged in this instance. Subsequently, Paragraph 14 of the Framework, which applies in circumstances where the presumption applies to applications, also does not apply.

It is noted the Council is currently working to address wider phosphate issues in the River Lugg through collaborative working with various other stakeholders. It is also acknowledged the application site is just outside of the settlement boundary for Kingsland, however a key objective of the Core Strategy and the Kingsland NDP is to conserve landscape character. The proposed development would be contrary to development plan policies SS6, LD1, KNDP2 and KNDP4 in that it would result in material harm to the landscape character of the village and represents an unacceptable encroachment into the open countryside.

Overall, notwithstanding the fact that the tilted balance does not apply in this instance, it is recognised there would be moderate economic and social benefits derived from the construction of 10 dwellings and associated infrastructure. That said, for the reasons set out above, there are significant environmental concerns as a result of the proposal being unjustified unsustainable residential development contrary to the development plan which would result in material harm to the landscape character of the village and open countryside. Additionally, the scheme would adversely impact on the River Wye SAC.

It is recognised the proposals comply with certain policy requirements set out in the development plan, namely heritage, drainage and its impact on the local highway network, subject to the inclusion of various conditions. However, for the reasons discussed above, the proposal would be contrary to the development plan and there are no material considerations which would indicate permission should otherwise be granted.

The recommendation is therefore to refuse this application for the refusal reasons set out below.

RECOMMENDATION:

PERMIT

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REFUSE

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REASONS FOR REFUSAL:

1. The proposal represents unjustified unsustainable new residential development in an open countryside location, outside of the defined settlement boundary within the Kingsland Village Neighbourhood Development Plan. As such, the residential development is contrary to Policies SS1, SS7, SD1, RA2 and RA3 of the Herefordshire Local Plan Core Strategy, together with Kingsland Neighbourhood Development Plan Policies KNDP1 and KNDP2. The proposal is also contrary to the relevant aims and objectives of the National Planning Policy Framework.
2. The proposal would result in material harm to the landscape character of the village. Kingsland's linear evolution is no precedent for development following a similar pattern to the north. It is considered the scheme would urbanise a country land and unacceptably extend the built form into the open countryside and fail to retain the landscape character of Kingsland. In doing so, the development is contrary to Policies SS6 and LD1 of the Herefordshire Local Plan – Core Strategy and Policies KNDP1 and KNDP4 of the Kingsland Neighbourhood Development Plan. The proposal is also contrary to the relevant aims and objectives of the National Planning Policy Framework.
3. The application site lies within the River Lugg sub-catchment of the River Wye Special Area of Conservation (SAC) and the nature of the proposal triggers the requirement for a Habitat Regulations Assessment to be undertaken. Under the Regulations there is a requirement to establish with certainty, and beyond all reasonable scientific doubt, that there will not be any adverse effect on the integrity of the River Wye SAC. The River Lugg sub-catchment suffers from the effects of point source and diffuse water pollution and phosphate levels in the river have already exceeded conservation objectives. The proposal in this case would generate additional foul water and phosphates which would be communicated to the mains sewer network for Kingsland. The discharge of treated water from the treatment works will contain residual phosphates which means there is a pathway for impact upon water quality in the River Lugg. As such, the Local Planning Authority is unable to conclude that the development would not have an adverse effect on the integrity of the River Lugg/River Wye SAC and the proposal has subsequently failed the required Appropriate Assessment. The proposal is subsequently contrary to The Conservation of Species and Habitats Regulations 2017; Policies LD2 and SD4 of the Herefordshire Local Plan Core Strategy, Policy KNDP9 of the Kingsland Neighbourhood Development Plan; the Natural Environment and Rural Communities (NERC) Act 2006 and the guidance set out at paragraphs 174 to 177 of the National Planning Policy Framework.

Informatives

1. The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against local and national planning policy and any other material considerations. However, the issues are so fundamental to the proposal that it is not possible to negotiate a satisfactory way forward, as the proposal is unacceptable in principle. The applicants did not seek pre- application advice. Due to the harm which has been clearly identified within the reasons for the refusal, approval is not possible.

Signed: 

Dated: 7th April 2020

- Pre-commencement conditions agreed with applicant / agent:
- Ward Councillor contact made?
- Redirection request received?
- Extension of time obtained (if necessary) and PA6 added?
- Does any part of this report require redaction?

n/a
y
N
n/a
N

TEAM LEADER'S COMMENTS:

DECISION:

PERMIT

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REFUSE

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Signed:

..... Dated: 9th April 2020.....