



**APPEAL STATEMENT**

**APPEAL SUBMITTED UNDER SECTION 78 OF THE TOWN AND COUNTRY PLANNING ACT  
1990**

**AGAINST THE COUNTY OF HEREFORDSHIRE COUNCIL REFUSAL OF**

**APPLICATION REFERENCE 200207:**

**OUTLINE PLANNING APPLICATION FOR RESIDENTIAL DEVELOPMENT FOR UP TO 46  
DWELLINGS INCLUDING MEANS OF ACCESS WITH ALL OTHER MATTERS RESERVED.**

**LAND TO THE NORTH OF SOUTHBANK, WITHINGTON, HEREFORD**

**GRID REFERENCE: X 356490, Y 243206**

**DATE: JULY 2020**

## Appeal Statement of Case

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## **1.0 Executive Summary**

- 1.1 The appeal submission relates to the recent refusal of planning permission by Herefordshire Council for planning application ref. 200207. The application sought Outline Planning Permission for residential development of up to 46 dwellings, with access to be considered and all other matters reserved for subsequent approval at land to the north of Southbank, Withington, Hereford, HR1 3SB.
- 1.2 This statement sets out the appellant's case in light of the Council's refusal of Outline Planning Permission for residential development on the appeal site. The appellant's case is such that the submission is considered to constitute Sustainable Development in accordance with NPPF when taken as a whole.
- 1.3 The most important adopted Local Plan policies for the determination of this appeal are considered to be out of date as the Council are unable to demonstrate a five year housing land supply. This appeal statement confirms that there are no policies within the Framework that indicate clearly that Outline Planning Permission should be refused. The Presumption in Favour of Sustainable Development is therefore engaged by Paragraph 11 d (ii) of NPPF (the so-called tilted balance).
- 1.4 The significant social, economic and environmental benefits of the proposed development identified clearly outweigh the limited harm caused by virtue of the proposals conflict with the existing out of date Local Plan policies and the localised urbanising effect of the proposals on this greenfield site.
- 1.5 There are no adverse impacts that would significantly and demonstrably outweigh the benefits of the proposal therefore planning permission should be granted without delay. We therefore respectfully request that the appeal is allowed.

## 2.0 Introduction

- 2.1 AAH Planning Consultants have been commissioned by Land Allocation Ltd ('The Appellant'), to prepare and submit this appeal under section 78 of the Town and Country Planning Act 1990 against Herefordshire Council refusal of outline planning application reference 200207. This statement sets out the appellant's case in light of the Council's refusal of an outline planning application for residential development at the site.
- 2.2 AAH Planning Consultants are members of the Royal Town Planning Institute (RTPI) and the Institute of Environmental Management and Assessment (IEMA). The submission is an Outline Planning Application for residential development with means of access considered on land at Southbank, Withington ('the site'). All other matters are reserved for subsequent approval.
- 2.3 The decision for the planning application was issued on 9<sup>th</sup> June 2020 (Appendix A), which gave the following reasons for refusal:
- 1. The application seeks approval for the erection of up to 46 dwellings in a location that is outside of the settlement boundary for Withington and in accordance with policies RA2 and RA3 of the Herefordshire Local Plan – Core Strategy and policy P2 of the Withington Group Neighbourhood Development Plan is in open countryside. The development fails to meet any of the exceptions specified in policy RA3 of the Herefordshire Local Plan – Core Strategy and is therefore contrary to the Development Plan in terms of the principle of development. In undertaking the test set out in paragraph 11d)ii of the National Planning Policy Framework, in light of the Council's current housing land supply position, and applying the implications of paragraph 14, the identified adverse impacts included in this reason for refusal and the following reasons both significantly and demonstrably outweigh the benefits.*
  - 2. The site lies outside of the settlement boundary and comprises an elevated greenfield site. The proposed vehicular access off the C1130 would require obtrusive engineering works to the eastern side of the existing vegetation lined lane to provide a splayed access. The application has failed to demonstrate that the landscape has positively influenced the development in terms of scale, site selection, protection and enhancement of the rural setting and would result in a development would be incongruous within its surroundings and context and be substantially harmful to this local landscape character. The proposed development would be contrary to the requirements of policies SS6, SD1 and LD1 of the*

*Herefordshire Local Plan – Core Strategy and the requirements of the National Planning Policy Framework.*

3. *The proposal does not demonstrate that the site can be made accessible and facilitate access by a genuine choice of modes of travel, by virtue of its poor pedestrian connectivity to local services and public transport, along with the gradient of the proposed access off the C1130. As such the proposal would fail to meet the requirements of policies SS4 and MT1 of the Herefordshire Local Plan – Core Strategy and the requirements of the National Planning Policy Framework.*
4. *A legal agreement pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) has not been completed. As such, there is no legal mechanism by which the Local Planning Authority can properly secure the delivery, construction and occupation of the proposed affordable dwellings and secure financial contributions towards required community infrastructure. These measures are necessary to make the development acceptable. The absence of an agreement is in conflict with policies SC1, H1 and ID1 Herefordshire Local Plan Core Strategy 2011-2031, the Council's Planning Obligations Supplementary Planning Document (April 2008), policy P6 of the Withington Group Neighbourhood Development Plan and the provisions of the National Planning Policy Framework.*

- 2.4 The Council consider that the impacts arising as a result of the development which would be outside of the development limits of the settlement would be contrary to the relevant policies in the Development Plan and would significantly and demonstrably outweigh the benefits of the scheme such that it would be contrary to the NPPF. The Council also consider that the development would result in substantial landscape harm and would not be accessible by virtue of its poor pedestrian connectivity. The planning officers report is provided at Appendix B.
- 2.5 The application to which this appeal relates forms a resubmission of planning application ref. P191671/O which sought outline planning permission for a residential development up to 50 dwellings. The application was refused planning permission by the Council in 2019.
- 2.6 The appeal is supported by a Landscape Appeal Statement, produced by AAH Planning Consultants, and a Traffic and Transportation Appeal Statement, by Newell Edwards, to address the landscape and accessibility considerations raised as part of the appeal.

### 3.0 Proposed Development and Site Description

- 3.1 The description of the development proposed under planning application ref. 200207 reads as follows:

*Outline Planning Application for Residential Development for up to 46 dwellings including means of access with all other matters reserved.*

- 3.2 The proposed housing development would be located on land to the north of Southbank, Withington, Hereford, HR1 3SB at grid reference: X 356510, Y 243110. The location of the site is illustrated below:



**Image 2.1: Site Location**

- 3.3 The site is situated adjacent to the development limits of the village of Withington bound by the residential properties of Southbank to the south and Withes Road to the north. The site is greenfield and in agricultural use bordered by hedgerows as shown on the image overleaf:



**Image 2.2: Aerial Site Boundary**

- 3.4 Access to the site would be from C1130 via a new access point to the west of the site. The site has a road frontage to the west along the C1130 beyond Little Bank Cottages and to the north along the C1131 beyond the residential property known as the Bank House.
- 3.5 The village has a Primary School, Village Hall, Church, Chapel, Village Store and Post Office. The nearest public house is the Cross Keys at Withington Marsh. Adjacent to the village is an area of public open space, Withington Fields, used for formal and informal recreation. This site accommodates a BMX track, play equipment, football pitches and a Multi-Use Games Area. Whitestone Business Park is located to the south of the village provide employment opportunities to the local population.

## 4.0 Planning Policy and Guidance

### Legislative Background

- 4.1 This section sets out the relevant planning policy relating to the matters that are before the Inspector for consideration in addition to some wider policy context which will assist in considering the appeal site and the role that it has in meeting overall Development Plan objectives.
- 4.2 The appellants reserve their position to make a subsequent comment in the event that the Development plan position alters through the determination process, or the position of the LPA alters.
- 4.3 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires the Local Planning Authority (LPA) to determine planning applications in accordance with the Development Plan unless there are material considerations which 'indicate otherwise'. Section 70(2) of the Town and Country planning Act 1990 provides that in determining applications the LPA: *"shall have regard to the provisions of the Development Plan, so far as material to the application and to any other material considerations."*
- 4.4 The Development Plan for Herefordshire Council consists of Local Plan Core Strategy 2011-2031 adopted in October 2015. These policies carry full weight where they conform to the provisions of the National Planning Policy Framework (NPPF).

### The Development Plan – Herefordshire Local Plan Core Strategy

- 4.5 The Herefordshire Unitary Development Plan (UDP) was adopted on 23 March 2007 and guided development within the county until all of the policies (except those for Minerals and Waste) were superseded by the adoption of the Local Plan Core Strategy in October 2015 which now forms the Development Plan for the area. The most relevant policies are considered to be:
- SS1 Presumption in Favour of Sustainable Development
  - RA1 Rural Housing Distribution
  - RA2 Housing in settlements outside Hereford and the Market Towns
  - MT1 Traffic Management, Highway Safety and Promoting Active Travel



- H1 Affordable Housing
- LD1 Landscape and Townscape
- LD2 Biodiversity and Geodiversity
- LD4 Historic Environment and Heritage Assets
- OS1 Requirement for Open Space, Sports and Recreation Facilities
- OS2 Meeting Open Space, Sports and Recreation Needs
- SD1 Sustainable Design and Energy Efficiency
- SD3 Sustainable Water Management and Water Resources

#### The Emerging Plan

- 4.6 The Council are currently in the early stages of undertaking a partial review of the Core Strategy with full details on the review and public consultations likely to take place in 2020.
- 4.7 The Rural Areas Site Allocations DPD reached Issues and Options stage in 2017 and the next stage in the preparation of the Rural Areas Site Allocation DPD will be a public consultation on settlement boundaries and site allocation options within those settlements included within the plan. However, the DPD is seeking to provide a policy framework and growth proposals to support the delivery of the Herefordshire Core Strategy for those market towns or parishes which are not included within a neighbourhood development plan. It is anticipated in the current Local Development Scheme that submission will be Autumn 2019 with adoption in Spring 2020.
- 4.8 The Hereford Area Plan (HAP) will set out detailed proposals to ensure the delivery of the targets for the city in the adopted Core Strategy. It will include policies and proposals for growth of Hereford including specific proposals for housing, employment and urban regeneration. It is anticipated in the current Local Development Scheme that consultation will take place on the preferred options Winter 2018, with submission Summer 2019 and adoption Spring 2020.

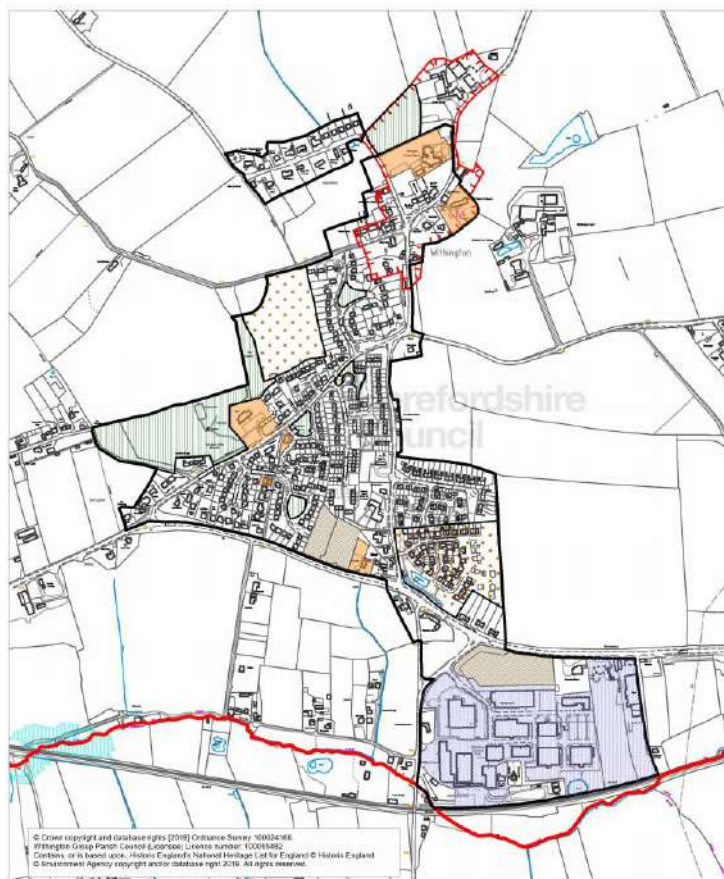
#### The Neighbourhood Plan

4.9 The Withington Group Neighbourhood Development Plan was made on 11 October 2019. It now forms part of the Development Plan for Herefordshire. The Neighbourhood Plan (NP) allocates two residential sites as follows:

- Land adjacent to Whitestone Baptist Chapel for 33 new dwellings
- Land on the south side of the A4103 at Whitestone for an 80 unit Care Home

4.10 Both have Planning Permission and the NP comments that the reason for allocation is that little progress has been made on these sites. The NP, however, accepts that further windfall or small scale developments will come forward despite the minimum proportionate growth levels specified within the Core Strategy having been exceeded and that a moratorium on housing growth as not realistic.

4.11 The following extract is taken from the Neighbourhood Pan Proposals Map:



**Image 3.1: Neighbourhood Plan Proposals Map**

4.12 As can be seen, the site is located outside of, but immediately adjacent to the settlement boundary of Withington.

#### Five Year Supply Position

- 4.13 The most recent information with regards to the five-year housing land supply (5YHLS) of Herefordshire Council is contained within the Annual Position Statement at 1st April 2019, which details a 4.05-year supply.
- 4.14 Given the above, the policies most relevant to this application are considered out of date meaning that Paragraph 11 of the NPPF and the 'Tilted Balance' is engaged. The implications of this and those policies which are most relevant are discussed throughout this statement.

#### **National Planning Policy Framework (NPPF)**

- 4.15 The latest NPPF was published in February 2019 and sets out the Government's planning policies for England and how these are expected to be applied. The NPPF 2019 provides the latest version of the document and reflects the most up to date position of the Government on a range of matters. Prior to the 2019 publication of the NPPF it was preceded by a revised national policy in July 2018, some 6 years after its first publication in March 2012.
- 4.17 The Introduction to the NPPF 2019 reiterates that applications for planning permission should be determined in accordance with the development plan, unless material considerations indicate otherwise; that the NPPF is a material consideration in planning decisions; and that the Framework should be read as a whole.

#### **The Presumption in Favour of Sustainable Development**

- 4.18 The NPPF states that the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 8 states that achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across the different objectives). These objectives are:
- a) an economic objective;
  - b) a social objective; and
  - c) an environmental objective.
- 4.19 Paragraph 11 of the NPPF provides the presumption in favour of sustainable development (replacing Para. 14 of the previous NPPF). For decision-taking, this states:

*"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 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 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.”*

### **The Decision-Taking Process**

- 4.20 The NPPF further re-affirms the statutory role of the development plan and material considerations in decision-taking (paragraph 47). The Framework also clearly sets out that:

*“The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making.”*  
(paragraph 2).

- 4.21 The NPPF states at paragraph 38 that planning should be a creative exercise rather than being focused on scrutiny, stating that:

*“Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permissions in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.”*

### **Delivering a Sufficient Supply of Homes**

- 4.22 Paragraph 59 sets out the support for the Government’s objective to *significantly boost* the supply of homes and that land with planning permission is developed without delay.
- 4.23 Paragraphs 73 – 76 relates to ‘Maintaining supply and delivery’, with Paragraph 74 stating that a five-year supply of deliverable housing sites must be demonstrated. This is to ensure that a constant shorter-term supply of new homes is maintained by an authority. Where an

authority cannot demonstrate a five-year supply of deliverable housing land, the presumption in favour of sustainable development applies.

- 4.24 The NPPF also sets out the policy framework surrounding a raft of considerations that need to be considered in regard to achieving sustainable development. The relevant policies are identified in the preceding paragraphs.

#### **Developer Contributions**

- 4.25 Paragraph 34 states that plans should set out the contributions expected from development which should include setting levels and types of affordable housing provision along with other infrastructure (such as that needed for education, health, transport, flood and water management, green and digital infrastructure). Paragraph 56 then reiterates the statutory tests of Regulation 122 (2) of the Community Infrastructure Levy Regulations 2010 regarding securing planning obligations as in proposed contributions need to be

- a) necessary;
- b) directly related to the development; and
- c) fairly and reasonably related in scale and kind.

#### **Promoting Healthy and Safe Communities**

- 4.26 Section 8 of the NPPF states in paragraph 94 that it is important that a sufficient choice of school places is available to meet the needs of new and existing communities with local planning authorities charged to take a proactive, positive and collaborative approach to meeting this requirement. In regard to health provision, paragraph 92 sets out the need to provide the social, recreational and cultural facilities and services the community need setting out 5 criteria to consider including planning positively for the provision of community facilities and other local services to enhance the sustainability of communities and residential environments.

#### **Promoting Sustainable Transport**

- 4.27 Sustainable transport is addressed in Section 9. Paragraph 108 seeks to ensure new development can:

*Create appropriate opportunities to promote sustainable transport modes, given the type of development and its location;*

*Provide safe and suitable access to the Site for all users; and*

*Mitigate any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety to an acceptable degree.*

- 4.28 Paragraph 109 then advises that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

#### **Making Effective Use of Land and Achieving Well-Designed Places**

- 4.29 Section 11 of the NPPF seeks to ensure schemes efficiently uses land for development and this balanced with Section 12, which emphasises the need to provide well designed places that function well and add to the overall quality of the area; maintaining a strong sense of place that is safe, inclusive and accessible.
- 4.30 Reading these together, this highlights the importance ensuring developable land is not wasted but also that proposals should ensure they are designed appropriately for their setting and taking into account site specific constraints.

#### **Meeting the Challenge of Climate Change, Flooding and Coastal Change**

- 4.31 Paragraph 155 highlights that new development should avoid areas of high flood risk and that they should be made safe from flooding for their lifetime and not increase the possibility of flooding elsewhere.

#### **Conserving and Enhancing the Natural Environment**

- 4.32 Protecting the natural environment is detailed in Section 15 of the NPPF. Paragraph 175 in particular highlights the need to avoid ecological impact where possible and if this is not feasible, to undertake mitigation or seek relevant compensation. Paragraph 178 seeks to ensure that planning decisions establish that ground conditions are suitable for development proposals in terms of land contamination and stability and where issues are identified, land is made safe through appropriate measures.
- 4.33 Similarly, the NPPF in paragraph 180 outlines that planning decisions need to ensure new development is appropriate for its location taking into account factors such as noise impacts which would give rise to significant adverse impacts on health and quality of life.

4.34 To accompany the NPPF, Central Government has also published guidance on how to interpret and apply national planning policy. This is contained in the Planning Practice Guidance (PPG) which is a live document which Central Government updates periodically. In relation to this application specifically it provides information in relation to:

- Design – Emphasises the need to achieve good quality design which responds in a practical and creative way to site specific issues to create a sense of place.
- Housing – Points to the need for local planning authorities to take into account the definition of affordable housing provided in Annex 2 of the NPPF and to ensure needs are met in their area.

## 5.0 The Appellants Statement of Case

5.1 This part of the Statement sets out the Appellants statement of case against the Council's decision. Given the reasons for refusal, this part of the statement will focus on the following matters:

- Reason 1 - The Principle of Development
- Reason 2 - Landscape Impacts
- Reason 3 – Accessibility
- Reason 4 – Legal Agreement

5.2 Following an assessment of the above matters, the statement addresses the 'Planning Balance' in Section 6 considering the benefits of the scheme against any environmental harm.

### **Reason 1 - The Principle of Development**

#### Five Year Supply Position

5.3 Prior to making an assessment of the proposals against the Development Plan policies most relevant to this appeal, it is correct to consider the Councils housing supply position and whether or not a five-year supply of housing land can be demonstrated.

5.4 The most recent information with regards to the five-year housing land supply (5YHLS) of Herefordshire Council is contained within the Annual Position Statement at 1st April 2019, which details a 4.05-year supply.

5.5 In recent appeal decisions, it has also been common ground between the appellant and Herefordshire Council that the Council cannot demonstrate a 5-year housing land supply. This is evidenced by the recent appeal decision reference Appeal Ref: APP/W1850/W/19/3232124 dated 4<sup>th</sup> February 2020 (Appendix D).

5.6 Given the above, the policies most relevant to this application are considered out of date meaning that Paragraph 11 of the NPPF and the 'Tilted Balance' is engaged. The implications of this and those policies which are most relevant are discussed throughout this statement.



- 5.7 The Core Strategy contains a series of policies concerning residential growth within rural areas, and the strategy for rural growth is based on subdividing Herefordshire into a series of Housing Market Areas, each with their own growth requirement and identification of sustainable settlements within which the growth is to accommodate (based on a percentage increase).
- 5.8 The settlement of Withington is identified as sustainable and suitable for future residential growth within the Hereford Housing Market Area (HMA). Policy RA1 Rural Housing Strategy of the Core Strategy sets the Herefordshire HMA a growth target of 1,870 new homes over the plan period 2011-2031, which represents an increase of 18% upon the existing number of properties within the identified sustainable settlements, which includes Withington. As a total, this policy also identifies that in Herefordshire's rural areas, there will be around 5,300 new dwellings provided between 2011 and 2031 to help meet the county's housing needs.
- 5.9 The policies most relevant to this application are considered to be Policy RA2 (Housing in settlements outside Hereford and the market towns) and Policy RA3 (Herefordshire's countryside).
- 5.10 Policy RA2 Herefordshire Villages of the Core Strategy ensures that development is appropriate in scale to the existing settlement and that it is well related to the existing built environment. Figure 4.14 identifies Withington as a rural sustainable settlement for growth within the Herefordshire Housing Market Area.
- 5.11 The site is located adjacent to the settlement of Withington. Withington is identified by the Core Strategy as a sustainable settlement; a location where proportionate housing growth in or adjacent to the settlement is appropriate. The policy goes on to confirm settlement boundaries where necessary are to be confirmed by Neighbourhood Plans or the Rural Sites and Allocations DPD. In the absence of an NDP or Rural Sites and Allocations DPD which has reached an advanced enough stage where it may be afforded weight, the village does not have a defined development limit. The site, in this case is adjacent to the settlement limits identified by the Withington Neighbourhood Plan. Therefore, whilst the site is outside of the settlement boundaries it is contiguous with the main built-up form of the village and is considered to be sustainable in locational terms.
- 5.12 The remaining criteria of policy RA2 are:

- “1. Their design and layout should reflect the size, role and function of each settlement and be located within or adjacent to the main built up area. In relation to smaller settlements identified in fig 4.15 proposals will be expected to demonstrate particular attention to the form, layout, character and setting of the site and its location in that settlement and/or they result in development that contributes to or is essential to the social well-being of the settlement concerned;*
- 2. Their locations make best and full use of suitable brownfield sites wherever possible;*
- 3. They result in the development of high quality, sustainable schemes which are appropriate to their context and make a positive contribution to the surrounding environment and its landscape setting; and*
- 4. They result in the delivery of schemes that generate the size, type, tenure and range of housing that is required in particular settlements, reflecting local demand”.*

5.13 The appellant considers that the proposals meet the remaining criteria of Policy RA2. Importantly, as this is an application seeking outline planning permission, a number of these matters are for consideration at the Reserved Matters stage, although it is felt that the indicative proposals put forward to demonstrate how the site could be developed to meet these criteria. Overall, and notwithstanding the fact that this a most important policy which is deemed to be out-of-date, it is the appellants view that the proposals broadly comply with this policy.

5.14 Policy RA3 relates to Herefordshire’s countryside and states that in rural locations outside of settlements, residential development will be limited to proposals that satisfy one or more of the listed criteria (as seen below):

- 1. meets an agricultural or forestry need or other farm diversification enterprise for a worker to live permanently at or near their place of work and complies with Policy RA4; or*
- 2. accompanies and is necessary to the establishment or growth of a rural enterprise, and complies with Policy RA4; or*
- 3. involves the replacement of an existing dwelling (with a lawful residential use) that is comparable in size and scale with, and is located in the lawful domestic curtilage, of the existing dwelling; or*

4. *would result in the sustainable re-use of a redundant or disused building(s) where it complies with Policy RA5 and leads to an enhancement of its immediate setting; or*
5. *is rural exception housing in accordance with Policy H2; or*
6. *is of exceptional quality and innovative design satisfying the design criteria set out in Paragraph 55 of the National Planning Policy Framework and achieves sustainable standards of design and construction; or*
7. *is a site providing for the needs of gypsies or other travellers in accordance with Policy H4.*

5.15 The proposals as submitted seek outline planning permission for a development of open market dwellings with an appropriate mix of affordable units. The proposals are therefore not considered to strictly meet the criteria set out in Policy RA3. Nevertheless, it is felt that the scheme is broadly in compliance with the Core Strategy as whole due to its compliance with Policy RA2 and the other related policies. Furthermore, because the Council are unable to provide a 5-year supply of deliverable housing, the policies which are most relevant to the consideration of this appeal, including Policy RA3, are considered to be out of date.

5.16 The proposals would therefore either be considered broadly consistent with the Core Strategy or in accordance with NPPF Paragraph 11 (d) part ii. Section 7 of this statement considers the site constraints in this context of the 'tilted balance' as to whether *"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."*

#### Withington Neighbourhood Plan

5.17 Paragraph 14 of the NPPF states that *"In situations where the presumption (at paragraph 11d) applies to applications involving the provision of housing, the adverse impact of allowing development 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 housing delivery was at least 45% of that required<sup>9</sup> over the previous three years."*

- 5.18 Firstly, in considering the conflict of the proposals with the Neighbourhood Plan, it is important to draw a distinction between the aims of the Neighbourhood Plan and the Policies within it. In this regard, the High Court Judgement of Chichester District Council v Secretary of State for Communities and Local Government and Beechcroft Ltd, dated 12 September 2018 (Ref: [2018] EWHC 2386 (Admin)) (Appendix E) is relevant. Importantly, it should be noted that this Judgement was found to be sound by the Court of Appeal in October 2019.
- 5.19 In that case, the neighbourhood plan formed part of the development plan and allocated sites for new housing. As the site was not allocated and lay outside a settlement boundary, the Local Planning Authority refused permission, citing paragraph 198 of the 2012 NPPF on the basis that it conflicted with policies in adopted local and neighbourhood plans.
- 5.20 The inspector agreed that the scheme conflicted with local plan policies because the site fell outside the settlement boundary and did not accord with the aims of the neighbourhood plan because it was not allocated for housing. Nonetheless, because the council was unable to demonstrate a five-year supply of housing land, he considered relevant policies controlling the supply of housing land were out of date. He recognised that the neighbourhood plan had been carefully prepared and the settlement boundary had been explicitly drawn to exclude the appeal site, whose development for housing had been explicitly rejected during the plan's preparation.
- 5.21 Allowing the appeal, the inspector concluded that the neighbourhood plan was silent in respect of assessing housing sites outside the settlement boundary. So, while the scheme was at odds with the plan's overall aims, he decided that it did not conflict with relevant policies relating to housing. On balance, he concluded, it should be permitted because the adverse impacts did not significantly and demonstrably outweigh the benefits.
- 5.22 In challenging the decision, the council asserted that the inspector had acted irrationally by drawing a distinction between the aims of the neighbourhood plan and its policies. Judge Andrew Grubb disagreed with the council's claim. The inspector had carefully set out the reasons why the proposal conflicted with the local plan but not policies in the neighbourhood

plan, he found. The inspector had properly considered the requirements of paragraph 198 and the distinction drawn between "aims" and "policies" was entirely rational.

- 5.23 Since the neighbourhood plan did not contain policies which presumed against development outside the settlement boundary, the judge held that the inspector had correctly concluded that it was silent on this point. While the plan set out an "aim" to restrict housing to specific areas, he remarked, it did not explicitly preclude housing adjacent to the settlement. The inspector had carefully considered where the planning balance lay after ruling that harm to the development plan strategy would be limited, he concluded.
- 5.24 It is clear from this judgement that whilst a development maybe at odds with the overall aims of the Neighbourhood Plan, the key test is whether the development would be contrary to the relevant policies. Therefore, whilst at Paragraph 6.13 of the Planning Officers report, the Local Planning Authority identify that the proposal would result in the settlement delivering 73 dwellings over the minimum target / aim of the Neighbourhood Plan, this is not itself a reason to refuse planning permission. Notwithstanding this, as the Neighbourhood Plan provides a minimum target for housing growth, it is the Appellants view that there is no conflict with the aims of the Plan in this regard in any case.
- 5.25 Given the findings of the aforementioned Judgement, it is clear that the key consideration is the relevant policies in the Neighbourhood Plan. In this case, the most relevant Policy of the Withington Neighbourhood Plan to this application is Policy P2, relating to the development and the Withington Settlement Boundary. The Policy states:

*The Settlement Boundaries for Withington and Withington Marsh are defined as shown on their respective Village Policy Maps. Land within the Parish but outside these Settlement Boundaries will be regarded as Open Countryside to which Core Strategy Policy RA3 - Herefordshire's Countryside will apply to all new development*

- 5.26 The appellants position is that the proposals do not conflict with Policy P2, as Policy RA3 of the Core Strategy is out-of-date due to the Councils lack of five-year supply. The Council however come to a different view on this matter as demonstrated in the planning officers report. Paragraph 6.10 of the report states:

*6.10 WGNDP policy P2 states that 'The Settlement Boundaries for Withington and Withington Marsh are defined as shown on their respective Village Policy Maps. Land within the Parish but outside these Settlement Boundaries will be regarded as Open Countryside to which Core Strategy Policy RA3 - Herefordshire's Countryside will*

*apply to all new development.’ This categorically confirms that sites that are outside of the settlement boundary are in the countryside and makes no provision for those that are adjacent to it. The applicant suggests (Planning Supporting Statement para 5.18) that WGNPD policy P2 is silent on new development in the open countryside as it only refers to CS policy RA3, which is considered to be out of date. This approach is considered to be fundamentally flawed as it fails to recognise that the Development Plan should be read as a whole. Furthermore, the quote (para 5.18 - “The wording of the policy is clear and refers to CS Policy RA3 for development on land outside the settlement boundaries.”) from the Examiner’s Report is clearly misunderstood by the applicant, as it actually confirms that WGNPD policy P2 is clear that development outside of the settlement defined in the plan is subject to CS policy RA3, rather than supporting their interpretation of policy.*

5.27 The Council suggest that the appellants interpretation of the policy is incorrect and fundamentally flawed as it fails to recognise that the Development Plan should be read as a whole. In response to these comments, the following points are made.

5.28 The Council do not currently have a five-year supply of housing. In such circumstances, when considering applications for residential development, the NPPF is clear that the most relevant policies to the determination of the application should be considered out-of-date and that planning permission should be granted 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 proposed<sup>6</sup>; 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.*

5.29 Importantly, in the circumstances where the most relevant policies are out-of-date, Paragraph 11 of the NPPF sets out no requirement for the Development Plan to be read as a whole (although it should be noted that in the Appellants opinion the proposals are in compliance with the Development Plan as a whole). In such circumstances, the NPPF applies the ‘tilted balance’ i.e. Whether any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits.

5.30 Policy RA3 of the Core Strategy is clearly a most important policy in the assessment of the appeal. It considers residential development in Herefordshire’s countryside outside of its

settlements. In this case, Herefordshire Council cannot currently demonstrate a five-year supply of housing. Therefore, Policy RA3 as a most important policy to determining this appeal is considered to be out-of-date.

- 5.31 Policy P2 of the Neighbourhood Plan states that land outside of the Settlement Boundaries will be regarded as open countryside - this is not contended by the appellant. The Policy does not however provide any criteria against which development outside of the Settlement Boundaries will be assessed, nor does it state that development in the open countryside would be unacceptable or that permission should be refused. The Policy simply states that:

*“Land within the Parish but outside these Settlement Boundaries will be regarded as Open Countryside to which Core Strategy Policy RA3 - Herefordshire’s Countryside will apply to all new development.”*

- 5.32 The Appellant agrees with the Council’s viewpoint that policy P2 is clear that development outside of the settlement defined in the plan is subject to CS policy RA3. Importantly however, as the wording of Policy P2 does not specify that certain elements or certain criteria of Policy RA3 should apply, it must be taken that it applies the policy as a whole.

- 5.33 Therefore, it is the correct procedure to consider the status of the Policy, to then determine how it should be applied. It would be contrary to the NPPF to assume that Policy RA3 should be applied in full irrelevant of its status, ie. whether it is out-of-date or notwithstanding the Councils Housing Land Supply Position.

- 5.34 In this case, Policy RA3 is out-of-date (due to the Councils lack of five-year housing land supply) and the Appellant believes that there are no adverse impacts in granting planning permission that would not significantly and demonstrably outweigh the benefits. Therefore, the proposals result in no conflict with Policy RA3 in the determination of the Appeal. As such, when applying Policy RA3 in the context of Policy P2 of the Neighbourhood Plan, it follows that there is no reason why the development should be considered contrary to Policy P2 and refused planning permission.

- 5.35 Overall, it is the Appellants position that the development does not result in a conflict with the Neighbourhood Plan. Therefore, the tests set out in Paragraph 14 of the NPPF do not apply.

#### Presumption in favour of Sustainable Development

- 5.36 Having established that the most important Development Plan policies for the determination of the application are out of date, the tilted balance of paragraph 11 d of the NPPF 2019 is

engaged provided that the application of the policies of the Framework that protect areas or assets of particular importance does not provide a clear reason that Outline Planning Permission should be refused.

5.37 Footnote 6 to paragraph 11 (i) defines those areas as:

*‘The policies referred to are those in this Framework (rather than those in development plans) relating to: habitats sites (and those sites listed in paragraph 176) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 63); and areas at risk of flooding or coastal change.’*

5.38 There are no policies within the NPPF that indicate planning permission should be refused and the proposals should be considered in the context of whether the benefits of the development of this site significantly and demonstrably outweigh any adverse impacts. This ‘planning balance’ is undertaken in Section 6 of this statement.

## **Reason 2 - Landscape Impacts**

5.39 This reason for refusal states that the application has failed to demonstrate that the landscape has positively influenced the development in terms of scale, site selection, protection and enhancement of the rural setting and would result in a development would be incongruous within its surroundings and context and be substantially harmful to this local landscape character.

5.40 Prior to addressing the reason for refusal, it is first relevant to highlight the context of the appeal site being located immediately adjacent to the built form of the existing settlement. The site also does not form part of a valued landscape, nor any nationally designated environmental designation. The closest being the Wye Valley AONB, the limit of which lies approximately 5km to the south east of the Application Site.

5.41 With respect to the landscape impacts of the development, the appeal is supported by additional landscape evidence in the form of a Landscape Appeal Statement. This considers the appeal scheme in the context of the reason for refusal and addresses the comments made by the Council’s Landscape Consultee during the course of the planning application. The document also provides viewpoint visualisations which support the findings of the document.



- 5.42 The full assessment can be viewed in more detail in the landscape documents which support this appeal. The findings in terms of the landscape impacts of the development are summarised in the Visual Amenity Appraisal Table at Appendix D2 which considers the landscape character effects and visual amenity effects of the development based on the latest viewpoint visualisations.
- 5.43 The conclusions in the LVIA Addendum summarises the landscape impacts of the development. Based on these finding it is clear that overall, the proposals would conserve the character of the local landscape such that it would accord with the relevant policies of the Development Plan.
- 5.44 The Appellants position remains that the appeal scheme conserves that landscape such that planning permission should be granted. However, in the event that the Planning Inspector was minded to agree with the Council that landscape harm did occur, it is clear that the limited number of viewpoints of the site in the locality and its position adjacent to the existing built form, would result in the development only resulting in limited harm. In this circumstance, it is clear that any limited landscape harm would not outweigh the benefits of the proposal in the planning balance.

### **Reason 3 - Accessibility**

- 5.45 The third reason for refusal of the planning application relates to pedestrian access and reads as follows:

*The proposal does not demonstrate that the site can be made accessible and facilitate access by a genuine choice of modes of travel, by virtue of its poor pedestrian connectivity to local services and public transport, along with the gradient of the proposed access off the C1130. As such the proposal would fail to meet the requirements of policies SS4 and MT1 of the Herefordshire Local Plan – Core Strategy and the requirements of the National Planning Policy Framework.*

- 5.46 The appellant believes that this reason for refusal is focused on two key issues. 1. Whether the connectivity of the site to local services and public transport would be acceptable, and 2. Whether safe and suitable pedestrian access can be provided from the appeal site into the wider footpath network.
- 5.47 In order to address this matter, a Traffic and Transportation Appeal Statement, by Newell Edwards, has been submitted with the appeal.

5.48 When originally submitted the application proposed a pedestrian access directly on to the C1311 on the northern boundary of the site. The provision of a footway from the northern boundary provided a continuous footway from the site to Withies Road / Duke Street. During the course of the planning application however, the footway provision on Duke Street to the north of the site has been removed from the proposals. Instead, the proposal is to cross Duke Street continuing the proposed footpath to the west to join the existing pedestrian footway on the east side of Vine Tree Close. The below extract from the Traffic and Transportation Appeal Statement illustrates the proposed pedestrian connectivity.

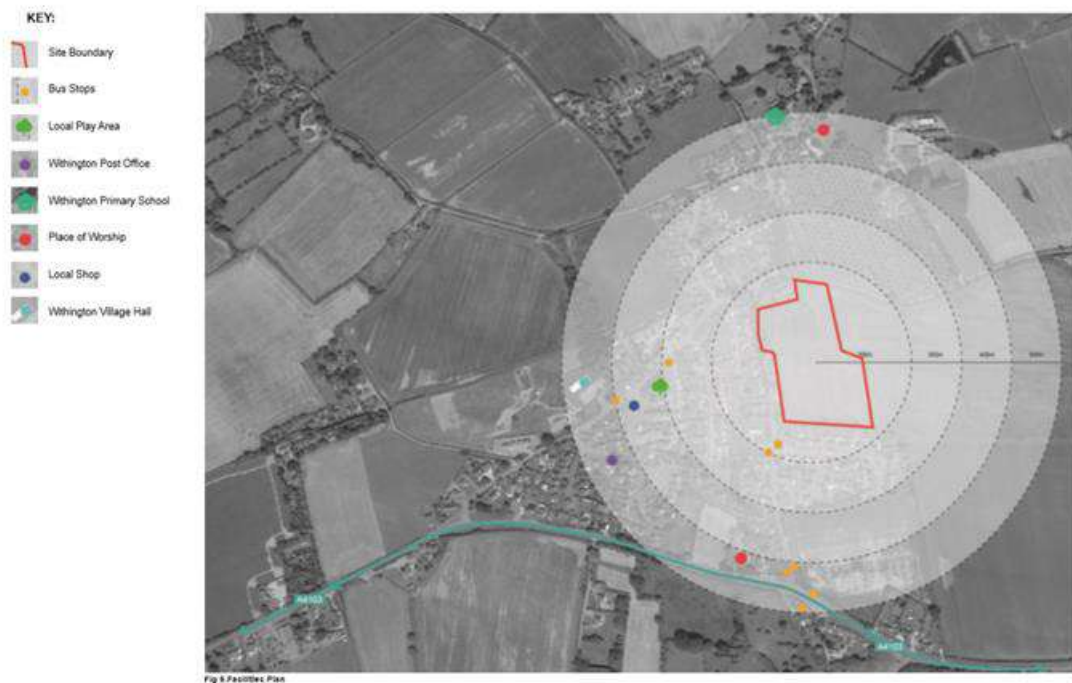


5.49 A footway in this arrangement would allow for pedestrian access to key services such as Withington Primary School and St Peter's Church to the north of the site, with facilitated access to the shop, Community Centre and bus stop via the footway to the west of the site along Withies Road.

5.50 As the below image, sourced from the accompanying DAS, demonstrates that within 800m of the site the following services can be found.

- Withington Primary School;
- Withington Post Office;

- Local Shop;
- Village Hall;
- Play Area;
- 2no. Place of worship;
- Various bus stops



**Image 7.1: Sustainability Map**

5.51 Overall, the village provides a range of services and facilities that make it a sustainable settlement in which to accommodate new residential development. Indeed, in the consideration of planning application ref. P151150/F which sought planning permission for 69 dwellings at land adjacent to Southbank, Withington, the Planning Committee report (Appendix F) made the following comments about the sustainability of Withington as a settlement:

***Accessibility to goods, services and employment***

6.8 *Withington is a main village within the Hereford Local Plan – Core Strategy and also historically within the UDP. The site is contiguous with the main built up part of the*

*settlement linking well with the villages existing network of footpaths. As regards the sustainability of the site in locational terms, a number of representations refer to the lack of access to necessary goods, services and employment opportunities. It is argued that the bus service, although relatively good by comparison with other rural services, is not a genuine alternative to the private motor car. It is stated that Withington does not have employment opportunities within the parish and there is no access to medical care. The conclusion is that the village is not equipped to accommodate largescale housing development of this sort, but should be allowed to grow via smaller sites; albeit these are as yet undefined.*

6.9 *Emerging policies anticipate that rural settlements such as Withington will accommodate proportionate growth over the plan period; it is the means by which the need is met that is at issue. In this context officers do not consider it can be argued simultaneously that such villages are unsustainable locations for proportionate housing growth. On this point officers are mindful of Inspectors' conclusions in relation to recent appeal decisions where the sustainability of similar rural settlements was also at issue.*

6.10 *Whilst accepting that Withington does not contain all of the facilities necessary for day-to-day existence, officers consider the village does support sufficient facilities to warrant its status as a sustainable location for future housing growth. Moreover, Withington is a village in the Hereford Housing Market Area, closely related to the county's main population centre and on a main arterial route. To conclude that Withington is not a sustainable location for housing delivery would undermine the evidence base supporting the Core Strategy; specifically the housing delivery policies and is not, in the opinion of your officers, arguable.*

6.11 *In this specific context the site is considered reasonably well placed relative to local facilities and public transport and the scheme takes the opportunity, insofar as is possible, to improve pedestrian connectivity.*

5.52 The appellant agrees with the comments made above and the conclusions that Withington is a sustainable location for housing delivery, a view which was endorsed by the Planning Committee in approving the planning application.

5.53 In terms of the position of the proposals to the village services, the site is centrally located in the village between the primary school and other services in the village. The appellant

believes that this is a more accessible position for residential development than other locations in the village, including the residents of planning application ref. P151150/F who would have far greater distance to walk to the school in particular.

- 5.54 Given the above, the outstanding matter relating to accessibility is whether a safe and suitable pedestrian access can be provided. The primary concern raised by the Council on this matter relates to the width of the proposed footway in sections where it measures 1m – 1.2m.
- 5.55 The appellant considers that the Traffic and Transportation Appeal addresses this matter demonstrating that based upon the topographical survey and a width of 1.2 metres has been shown, with a slight narrowing to 1 metre opposite Bank House. This width however will allow a parent and child to pass, and is only a very local narrowing. This should then be viewed in consideration of the expected low demand for the footway given the overall size of the development (as noted in the Transport Statement, only 2 pedestrian trips are predicted in the AM and PM peak hours).
- 5.56 Furthermore, it should be noted that the narrow footway link extends for a distance of approximately 50 metres on the north side of Withies Road. However, widening of the carriageway will provide traffic with more space to manoeuvre away from the footway, which will help to improve the overall perception of safety for pedestrians.
- 5.57 Other matters such as updated tractor and trailer movements turning into and out of Lock Lane / Duke Street and the gradient of the proposed access off the C1130 have also been addressed as part of the Traffic and Transportation Statement.
- 5.58 Overall, it is considered that the proposals can deliver a safe and suitable access in accordance with the requirements of the relevant Development Plan policies and the NPPF.

#### **Reason 4 – Legal Agreement**

- 5.59 Policy ID1- Infrastructure Delivery of the Core Strategy states that:

*“Provision for new and/or the enhancement of existing infrastructure, services and facilities to support development and sustainable communities, will be achieved through a coordinated approach. Where necessary, in addition to planning conditions for essential on-site design requirements and critical infrastructure, developer contributions towards strategic infrastructure through s106 agreements and/or a future Community Infrastructure Levy (CIL), will be secured in accordance with national planning policies and other relevant legislation. A Planning Obligations*

*Supplementary Planning Document (SPD) will provide details of the type and scale of obligations that may apply”.*

- 5.60 It is considered that any required contributions for open space, education, highway works, affordable housing, and sustainable communications infrastructure connections can be agreed as part of the appeal process and form part of the S106 Agreement to be agreed. This will address reason for refusal 4.

## 6.0 The Planning Balance

- 6.1 This part of the statement, considers the Planning Balance. The appellant's case has established that the most important policies of the Development Plan for the determination of this appeal are considered to be out of date.
- 6.2 There are no policies within the Framework that indicate clearly that Outline Planning Permission should be refused. The tilted balance of paragraph 11 d of the NPPF 2019 is engaged.
- 6.3 The application should therefore be considered in the context of the presumption in favour of sustainable development, at Paragraph 11 (d) part ii of the NPPF in the context of the *'tilted balance' as to whether "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."*

### The Benefits

- 6.4 The benefits of the proposal are as follows:

#### The Delivery of Housing

- 6.5 The key benefit of this appeal is the contribution the development will make to the delivery of housing in the District. The 'Housing White Paper: Fixing Our Broken Housing Market' (February 2017) makes clear that this country is in a housing crisis now. The Prime Minister's Foreword to the Housing White Paper is unequivocal:

*"Our broken housing market is one of the greatest barriers to progress in Britain today...*

*The starting point is to build more homes...we need to build many more houses, of the type people want to live in, in the places they want to live. To do so requires a comprehensive approach that tackles failure at every point in the system".*

- 6.6 The Secretary of State's Foreword goes on to state:

*"This country doesn't have enough homes. That's not a personal opinion or a political calculation. It's a simple statement of fact.*

*For decades the pace of house building has been sluggish at best. As a result, the number of new homes has not kept pace with a growing population. And that, in turn, has created a market which fails to work for far too many people.*

*That has to change. We need radical, lasting reform that will get more built right now and for many years to come”.*

6.7 The consideration and determination of the Planning Appeal must be taken in the context of the Housing White Paper.

6.8 The aims of the Housing White Paper are mirrored in the NPPF, which at Paragraph 59 states that:

*“To support the Government’s objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay.”*

6.9 Given the nature of the scheme delivering new housing, this site not only plays a vital role to meeting the housing need for the District but also in meeting the Government’s aim to address the housing crises and maintaining the housing supply nationally.

6.10 As advised in the NPPF, the Government’s objective is to significantly boost the supply of housing. Therefore, given the substantial shortfall of housing being delivered in the District such that the Council are unable to deliver a five year housing land supply, it is considered that **significant weight** should be given to the contribution the proposals would make to the delivery housing and boosting housing supply across the District.

#### Affordable Housing

6.11 In addition to the delivery of housing generally, it is also relevant to give weight to the delivery of affordable housing achieved by the proposals. Section 5 of the NPPF addresses delivering a sufficient supply of homes. This includes meeting the housing need of different groups. Paragraph 61 states:

*“Within this context, the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies (including, but not limited to, those who require affordable housing, families with children, older people, students, people with disabilities, service families, travellers, people who rent their homes and people wishing to commission or build their own homes”*



6.12 Paragraph 62 elaborates on this and states specifically for affordable housing that:

*“Where a need for affordable housing is identified, planning policies should specify the type of affordable housing required and expect it to be met on-site unless: off-site provision or an appropriate financial contribution in lieu can be robustly justified; and the agreed approach contributes to the objective of creating mixed and balanced communities.”*

6.13 Paragraph 64 continues and states that:

*“Where major development involving the provision of housing is proposed, planning policies and decisions should expect at least 10% of the homes to be available for affordable home ownership, unless this would exceed the level of affordable housing required in the area, or significantly prejudice the ability to meet the identified affordable housing needs of specific groups....”*

6.14 The Council’s Housing Implementation Strategy July 2019 states the following with respect to affordable housing need in the District:

#### *4. Affordable Housing Need*

*The NPPF requires that authorities meet the full, objectively assessed needs for market and affordable housing. The 2014 SHMA assessed the extent of the local housing market and its characteristics and provided an assessment of the need for market and affordable housing. It was updated in 2017 to take account of the 2014 based Sub-National Household Projections and new employment projections. The 2017 SHMA update concluded that the housing needs of the District lie within the range of 235 to 330 additional homes per year up to 2031.*

*This range also reflects an uplift to support additional affordable housing of which there is a relatively high need in the District. The 2017 SHMA Update reviewed the Housing Register as of October 2016 and current supply of affordable housing to identify a net backlog of 408. An assessment of likely newly arising affordable housing needs over the plan period was then undertaken to identify a net annual need for affordable housing of 224 to 432 homes per year.*

*In order to address the objectively assessed needs for housing in the District the Local Plan Submission Version proposes 320 homes per year which is towards the top of the OAN range.*

6.15 The Herefordshire Local Housing Market Assessment – 2012 Update Report Commissioned for Herefordshire Council (November 2013) prepared by GL Hearn Limited identifies a net affordable need within the County for 3,457 households in the period 2012 - 2017. Specifically, for the Hereford HMA, there is a requirement for 2,084 affordable dwellings within the same period.

6.16 At Appendix A of the Council's AMR 2019 (Appendix G) however, it is detailed that affordable housing completions since 2011/12 – 2018/19 is 1,063 affordable houses. This provision across the District is significantly short of the requirement set by the Councils own evidence base of between 1,792 and 3,456 dwellings per year.

6.17 At paragraph 3.35, the Herefordshire Local Plan Core Strategy states that:

*The council has produced a Strategic Housing Market Assessment 2008 and a Local Housing Market Assessment 2013, which indicates that there is an **urgent need to increase the provision of affordable housing in the county...** (AAH emphasis).*

6.18 As shown above, since the publication of the Local Housing Market Assessment in 2013, the Council have continued to underdeliver affordable housing to a significant level. Therefore, it must be concluded that the need to increase affordable housing in the county, has become even more urgent than described. In this context, the delivery of affordable housing must be a matter which carries significant weight in the consideration of planning decisions.

6.19 In terms of the delivery of affordable housing, the Council's affordable housing policy is set out in Policy H1 Affordable Housing of the Core Strategy. This sets out the thresholds and affordable housing provision target for the individual housing market areas. Hereford has a target of 35% of all new residential dwellings to be affordable on sites above 10 dwellings.

6.20 Affordable housing is an integral element of the proposed development, which the Appellant is committed to deliver. In this case, 35% affordable housing is proposed to be provided on-site in accordance with policy. The application would deliver 16 affordable units. This represents a significant proportion of the Councils annual requirement.

- 6.21 Therefore, the delivery of affordable housing in this District where there is a clear historic shortfall of affordable housing completions represents a consideration which should be **significant weight** in favour of granting planning permission.

#### Open Space

- 6.22 This scheme has been designed to provide a large area of open space in the central part of the site which will be available for the public to use. Through appropriate planning conditions or through other means, this part of the site could be used to deliver further benefits, such as greater landscape / planting benefits, ecological benefits through habitat creation or be used for Public Open Space. In this context, it is considered that **moderate weight** should be given in favour to social and environmental impacts of the proposals.

#### Achieving Sustainable Development

- 6.23 Section 2 of the NPPF seeks to achieve sustainable development. Paragraph 7 states that ‘the purpose of the planning system is to contribute to the achievement of sustainable development’. Paragraph 8 states that achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually achieved ways. The objectives are: a) an economic objective; b) a social objective; c) an environmental objective.
- 6.24 Taking each objective of Sustainable Development in turn, the benefits of the scheme are summarised below:

#### **Economic Objective**

- 150 jobs created including 1 apprentice, graduate or trainee’s role. <sup>1</sup>
- Resident Expenditure Benefits generated by 130 new residents of the new housing development and the support to existing local services and the local economy with increased spending power to Withington estimated to be £602,650. <sup>2</sup>
- On completion, there are Local Authority Revenue Benefits i.e. the benefits that house building development brings in terms of local authority financial receipts from New Homes Bonus and Council Tax.

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<sup>1</sup> Source HBF Housing Calculator - <https://www.hbf.co.uk/policy/policy-and-wider-work-program/hbf-housing-calculator/#tab-profile>

<sup>2</sup> Source HBF Housing Calculator - <https://www.hbf.co.uk/policy/policy-and-wider-work-program/hbf-housing-calculator/#tab-profile>

### **Social Objective**

- Delivery of houses that contributes towards housing requirement for District, the housing land supply position now and over the plan period.
- Delivery of 18 affordable dwellings promoting sustainable and balanced communities and would assist in the Council Meeting Objectively Assessed Need for affordable housing in District.
- Provision of high-quality homes in an accessible location which has good access to shops, services and facilities
- Provision of recreational open space for use by the existing and future residents.

### **Environmental Objective**

- The proposal would deliver biodiversity and landscape gains.
- The site is also not situated within an area at risk of flooding, therefore, contributing towards the climate change agenda.
- Due to its proximity to local services and its access to public transport, it would reduce the need to travel by car.
- The construction of the dwellings would contribute towards carbon savings and the move to a low carbon economy contributing towards the climate change agenda.

6.19 In accordance with Paragraph 8 of the NPPF the sum of net gains across each of the objectives of sustainable development summarised above amount to social, economic and environmental benefits as a direct result of the development of this site have been sought jointly and simultaneously through the planning system.

### **The Harm**

6.20 Overall, the level of harm resulting from the development is not considered to significantly and demonstrably outweigh the benefits of the scheme. It is noted that the application received no objections from the technical consultees on the following matters:

- Nature Conservation and Protected Species
- Historic Buildings / Built Conservation

- Trees
- Environmental Health
- Land Drainage
- Open Space
- Waste Management
- Wye Valley Trust

6.21 Indeed, the only environmental harm which has been considered to occur as a result of the proposals is that relating to the landscape impacts of the development.

6.22 As discussed in section 5 of this Appeal Statement, the landscape impacts of the development as identified by the Landscape Appeal Statement, are found to be limited. Therefore, it is the appellants view that only a limited amount of harm could be associated to the landscape impacts.

### **The Planning Balance**

6.23 The following table illustrates the planning balance to be undertaken on this scheme on the basis of the AAH Assessment:

	Level of Weight
<b>The Benefits</b>	
Social Benefit - The Delivery of Housing	<b>Significant</b>
Social Benefit - The Delivery of Affordable Units	<b>Significant</b>
Social Benefit – Provision of Public Open Space	<b>Moderate</b>

Economic Benefits	<b>Moderate</b>
Environmental Benefits	<b>Moderate</b>
<b>The Harm</b>	
Environmental Harm – Landscape Impacts	<b>Limited</b>

6.24 The above table illustrates the number of benefits arriving from the scheme compared to the harm. It is our submission that the significant social, economic and environmental benefits identified significantly and demonstrably outweigh the limited harms. Therefore, the proposed development comprises sustainable development in accordance with the NPPF and should be approved without delay.

6.25 However, even in the event that Inspector finds that the landscape impacts to be greater than our own assessment, it is clear that the benefits of the scheme do weight significantly in favour of granting planning permission. Therefore, we do not believe that it could be concluded that the adverse impacts of granting the development would ***significantly and demonstrably*** outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

## 7.0 Conclusion

- 7.1 The Council have refused the outline planning application for residential development at land at Southbank, Withington. As a result, the appellant has appealed against this decision.
- 7.2 The council does not currently have a five-year housing land supply, therefore as set out within this statement, policies which seek to control the delivery and distribution of new housing are not up-to-date and cannot be considered in the determination of the application. This appeal statement has also demonstrated that the proposals provide no conflict with the relevant Policies of the Withington Neighbourhood Plan, such that Paragraph 11 of the NPPF is engaged. The application should therefore be considered in the context of the presumption in favour of sustainable development and the benefits of the scheme.
- 7.3 Given the Council cannot demonstrate a five year supply of housing, it is the Appellants view that the Planning Inspector should give significant weight to the provision of new housing in the District.
- 7.4 Further to this, the NPPF is clear in its direction that the overriding planning aim is to support sustainable development. The NPPF provides clear guidance that proposals for housing applications should be considered against the three dimensions of sustainable development and not just as against the tests of the Development Plan. It is clear in advising that the sustainability benefits of a housing development are a material consideration which should be given due-regard and weighting by the determining authority. This approach is clearly outlined through recent appeals that are included as within the appendices to this statement.
- 7.5 Taking the above into consideration, this statement has identified that the proposal comprises sustainable development and that it would not result in any significant adverse impacts that demonstrably outweigh the benefits which arise from the scheme. The benefits to the scheme are outlined below:
- The proposal would provide much needed housing in an area which lacks a five-year housing land supply and therefore provide dwellings to meet the needs of present and future generations in a sustainable location.

- The site will provide 18 affordable housing units. This would contribute to the delivery of objectively assessed affordable housing need within the district and would improve the housing tenure mix of the area;
- The proposal would contribute to the delivery of objectively assessed market housing within the district.
- The scheme would provide onsite open space available for use by the whole community.
- The properties would be built to modern building regulations requirements and therefore provide excellent thermal performance through insulation and heating systems, helping to ensure the proposal is contributing towards carbon savings and the move to a low carbon economy.
- The proposed development would generate employment opportunities in construction and in other sectors linked to the construction market. There would also be ongoing maintenance costs and services required by the occupants which would supplement the local economy.
- The proposal would support social infrastructure, providing a contribution towards education facilities.
- The scheme will provide housing in close proximity to services, facilities and employment opportunities. Additionally, the occupants would shop and live locally; therefore, ensuring that local services have a greater catchment population to serve.
- This site represents an entirely logical and acceptable location for accommodating additional housing growth for Withington and the wider Herefordshire District.
- The proposals exhibit good design and provide a layout that is considered a logical future extension that will contribute positively to the built form of the settlement.

7.6 Given the above benefits, together with the fact that substantial weight should be given to housing development in the District.

7.7 Finally, this appeal statement has demonstrated that the accessibility of the site is excellent providing safe and suitable pedestrian connectivity.



- 7.8 Overall, the proposed development is considered to be commensurate with both local and national planning policies representing a sustainable location for development which should be approved without delay.
- 7.9 The Inspector is therefore respectfully requested to allow the appeal.



# REFUSAL OF PLANNING PERMISSION

**Applicant:**

Land Allocations Ltd  
C/O Agent

**Agent:**

Mr Matthew Mortonson  
AAH Planning Consultants  
2 Bar Lane  
York  
YO1 6JU

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Date of Application: 6 February 2020

Application No: 200207

Grid Ref:356490:243206

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**Proposed development:**

**SITE:** Land to the north of Southbank, Withington, Hereford,  
**DESCRIPTION:** Outline Planning Application for Residential Development for up to 46 dwellings including means of access with all other matters reserved.

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THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL hereby gives notice in pursuance of the provisions of the above Acts that PLANNING PERMISSION has been REFUSED for the carrying out of the development described above for the following reasons:

- 1 The application seeks approval for the erection of up to 46 dwellings in a location that is outside of the settlement boundary for Withington and in accordance with policies RA2 and RA3 of the Herefordshire Local Plan – Core Strategy and policy P2 of the Withington Group Neighbourhood Development Plan is in open countryside. The development fails to meet any of the exceptions specified in policy RA3 of the Herefordshire Local Plan – Core Strategy and is therefore contrary to the Development Plan in terms of the principle of development. In undertaking the test set out in paragraph 11d)ii of the National Planning Policy Framework, in light of the Council's current housing land supply position, and applying the implications of paragraph 14, the identified adverse impacts included in this reason for refusal and the following reasons both significantly and demonstrably outweigh the benefits.
- 2 The site lies outside of the settlement boundary and comprises an elevated greenfield site. The proposed vehicular access off the C1130 would require obtrusive engineering works to the eastern side of the existing vegetation lined lane to provide a splayed access. The application has failed to demonstrate that the landscape has positively influenced the development in terms of scale, site selection, protection and enhancement of the rural setting and would result in a development would be incongruous within its surroundings and context and be substantially harmful to this local landscape character. The proposed development would be contrary to the requirements of policies SS6, SD1 and LD1 of the Herefordshire Local Plan – Core Strategy and the requirements of the National Planning Policy Framework.

- 3 The proposal does not demonstrate that the site can be made accessible and facilitate access by a genuine choice of modes of travel, by virtue of its poor pedestrian connectivity to local services and public transport, along with the gradient of the proposed access off the C1130. As such the proposal would fail to meet the requirements of policies SS4 and MT1 of the Herefordshire Local Plan – Core Strategy and the requirements of the National Planning Policy Framework.
- 4 A legal agreement pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) has not been completed. As such, there is no legal mechanism by which the Local Planning Authority can properly secure the delivery, construction and occupation of the proposed affordable dwellings and secure financial contributions towards required community infrastructure. These measures are necessary to make the development acceptable. The absence of an agreement is in conflict with policies SC1, H1 and ID1 Herefordshire Local Plan Core Strategy 2011-2031, the Council's Planning Obligations Supplementary Planning Document (April 2008), policy P6 of the Withington Group Neighbourhood Development Plan and the provisions 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, including updating the applicant on the progress of the Withington Group Neighbourhood Development Plan (WGNDP) and the implications of this, and any other material considerations. The applicant was advised of the proposals conflict with the Development Plan and WGNDP at both pre-application stage and during the consideration of this application. The issues are so fundamental to the proposal that it is not possible to negotiate a positive way forward and due to the harm which have been clearly identified within the reasons for the refusal, permission should not be granted.
- 2 Reason for refusal 4 – draft Heads of Terms have been produced and are viewable on the website:

[https://www.herefordshire.gov.uk/info/200142/planning\\_services/planning\\_application\\_search/details?id=200207&search-term=200207](https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=200207&search-term=200207)

Should the applicant decide to appeal this decision then a Unilateral Undertaking can be submitted with the appeal submission and discussions can take with the Local Planning Authority with regards the terms of the draft Heads of Terms.

Planning Services  
PO Box 4,  
Hereford,  
HR4 0XH



**KELLY GIBBONS**  
**DEVELOPMENT MANAGER**

Date: 9<sup>th</sup> June 2020

YOUR ATTENTION IS DRAWN TO THE FOLLOWING NOTES

## NOTES

### Appeals to the Secretary of State

- If you are aggrieved by the decision of your local planning authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State under Section 78 of the Town and Country Planning Act 1990.
- If you want to appeal, then you must do so within 6 months of the date of this notice, or 12 weeks if the scheme is for that of "household" development using a form which you can get from The Planning Inspectorate, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN.
- The Secretary of State can allow a longer period for giving notice of an appeal, but he will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.
- The Secretary of State need not consider an appeal if it seems to him that the local planning authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.
- In practice, the Secretary of State does not refuse to consider appeals solely because the local planning authority based their decision on a direction given by him.

### Right to Challenge the Decision of the High Court

Currently there are no third party rights of appeal through the planning system against a decision of a Local Planning Authority. Therefore, if you have concerns about a planning application and permission is granted, you cannot appeal that decision. Any challenge under current legislation would have to be made outside the planning system through a process called Judicial Review (JR).

The decision may be challenged by making an application for judicial review to the High Court. The time limits for bringing such challenges are very strict, and applications need to be made as soon as possible after the issue of the decision notice. So, if you think you may have grounds to challenge a decision by Judicial Review you are advised to seek professional advice as soon as possible.

These notes are provided for guidance only and apply to challenges under the legislation specified. If you require further advice on making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000). For further information on judicial review please go to <http://www.justice.gov.uk>

The Council has taken into account environmental information when making this decision. The decision is final unless it is successfully challenged in the Courts. The Council cannot amend or interpret the decision. It may be redetermined by the Council only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### Purchase Notices

- If either the local planning authority or the Secretary of State refuses permission to develop land or grants it subject to conditions, the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state nor render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.
- In these circumstances, the owner may serve a purchase notice on the Council in whose area the land is situated. This notice will require the Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.



# DELEGATED DECISION REPORT

## APPLICATION NUMBER

### 200207

Land to the north of Southbank, Withington, Hereford,

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<b>CASE OFFICER:</b>	<b>Mrs Charlotte Atkins</b>
<b>VALIDATION DATE:</b>	<b>6.2.2020</b>
<b>DATE OF SITE VISIT:</b>	<b>14.2.2020</b>
<b>CONSULTATION PERIOD END DATE:</b>	<b>12.3.2020 (ORIGINAL PLANS) 13.5.2020 (AMENDED)*</b>
<b>TARGET DATE FOR DETERMINATION:</b>	<b>26.6.2020</b>

*\*Site notices were displayed to advertise the submission of amended/additional documents/drawings during the Covid-19 'lockdown' period. In light of these exceptional circumstances the period for reconsultations was 20 days to allow longer than normal for comments.*

#### 1) BACKGROUND, SITE DESCRIPTION AND PROPOSAL:

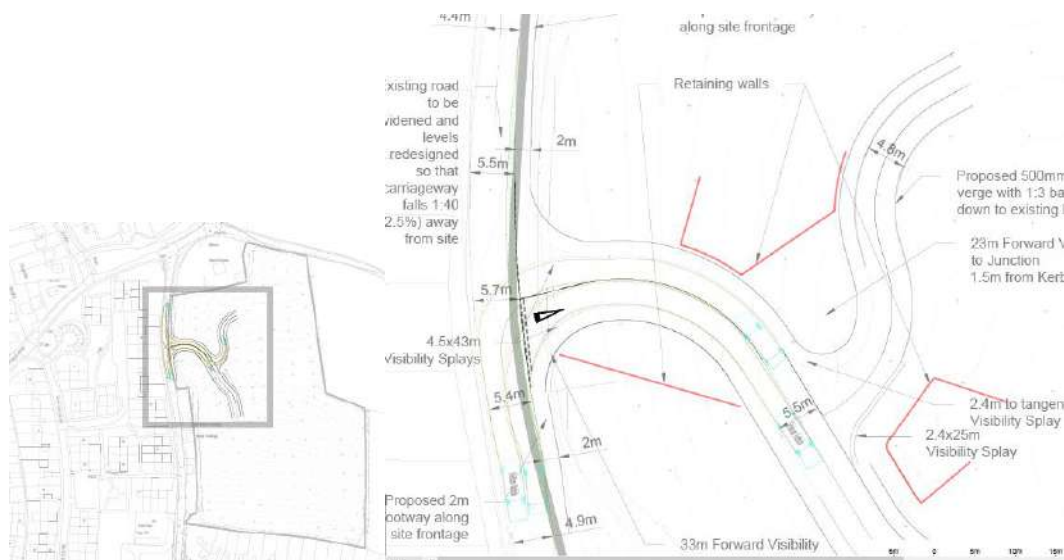
- 1.1 This application follows the previously refused outline application (191671/O) for residential development of up to 52 dwellings, including means of access with all other matters reserved. Pre-application advice has not been sought between that decision and the submission of this application (only more information about the HRA situation was requested).
- 1.2 The 2.97 hectare site lies to the south of the C1131, to the east of the C1130 and to the north of numbers 1-13 (inclusive) Southbank, Withington. To the northwest of the site, on the corner of the junction of the two 'C' classified roads lies Bank House and between the west of the lower section of the site and the C1130 lie Bank Cottage (with detached ancillary accommodation) and Little Bank Cottage. Beyond the western side of the C1130 lies residential development, at Withies Close. Generally levels rise from south to north, but within the site there is a ridge to the south of Bank House, such that levels fall towards the C1131 and they also rise from west to east.
- 1.3 The application site (red line) as originally submitted also included highway land to the north of the site (western side of C1130 (Lock Lane, but annotated as 'Duke Street') to Veldo Lane – approximately 195 metres in length), to the northwest (northern side of C1131 to the west of its junction with the C1130 (Lock Lane) to Vine Tree Close, and to the northern side of the C1131 opposite a short section on the southern side of the road to the east of Bank House to C1130 (Lock Lane). This is shown on the extract drawing below (60597123-SK-001 Rev A, 18.2.2020)





*vehicles, cycles and pedestrians in terms of the positioning and treatment of access and circulation routes and how these fit into the surrounding access network' (NPPG - Paragraph: 006 Reference ID: 14-006-20140306, Revision date: 06 03 2014).*

1.7 The site would be served by a single new vehicular access taken off the C1130 to the north of Bank Cottage. The scheme includes road widening for the stretch of carriageway contiguous with the site frontage to the lane (including a 2m wide footway to the north and south, as per the site entrance swept paths plans) with footpaths shown either side of the access road within the site. Retaining walls are annotated within the site to accommodate the internal road layout. A pedestrian access is indicated to the northern boundary, to the east of Bank House. As set out above (paragraph 1.3) further footways are proposed alongside the C1130 and C1131 to the north of the site. These have been amended during the consideration of this application.



(extracts from drawing 60597123-30-SK03)



Extract of drawing CAL021118 no. 08 Rev B  
(Landscape Strategy Plan)



Extract of CAL021118 no. 29  
Landscape Planting Concept Plan

1.8 Although layout is a reserved matter an indicative layout has been submitted. This shows 46 dwellings located to the southern and western part of the site, with an open area to the central section and the remaining dwellings to the northern section.

1.9 In addition to the drawings the application was submitted with a Preliminary Ecological Survey, Flood Risk Assessment (and Addendum submitted subsequently), Design and Access Statement (subsequently amended), Planning Statement (subsequently amended), Transport Statement, Interim Travel Plan, Arboricultural Impact Assessment, Arboricultural Statement (in response to previous refusal), Archaeological Assessment, Soil Classification Report, Information to support a HRA, covering letter, draft s106 Heads of Terms, Landscape Statement (in response to previous refusal), Landscape and Visual Appraisal Addendum (submitted subsequently) and a Landscape response to the Council's comments (May 2020).

## **2) PLANNING HISTORY**

2.1 184474/CE - Pre-app advice for residential development for up to 50 dwellings.

184472/EIA - EIA Screening for proposed residential Development – ES not required  
21.1.2019

191671/O - Outline Planning Application for Residential Development for up to 52 dwellings including means of access with all other matters reserved – refused 25.9.2019.

## **3) PRE-APPLICATION ADVICE** (for 191671/O – none for this application)

3.1 184474/CE - Pre-app advice for residential development for up to 50 dwellings. Advised of the relevant CS policies and their status where necessary, the progressing dWGNPD (and implications of this depending on when an application was submitted) and policies within, together with the NPPF. Key issues were conflict with the dWGNPD in principle and highways (vehicular and pedestrian connectivity), landscape, drainage and ecology. Matters of heritage assets, impact on neighbours, open space, housing mix etc. also raised. Implications of para 48 of the NPPF explained, if the dWGNPD is made at the time of determination of an application and also an assessment under the 'titled' planning balance (para 11dii), neither of which were considered favourable.

## **4) RELEVANT POLICIES**

4.1 Development Plan:

Herefordshire Local Plan Core Strategy 2011 – 2031

SS1	Presumption in favour of sustainable development
SS2	Delivering new homes
SS3	Releasing land for residential development
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
RA6	Rural economy

H1	Affordable housing – thresholds and targets
H3	Ensuring an appropriate range and mix of housing
SC1	Social and community facilities
OS1	Requirement for open space, sport and recreation facilities
OS2	Meeting open space, sport and recreation needs
OS3	Loss of open space, sport and recreation facilities
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
SD3	Sustainable water management and water resources
SD4	Waste water treatment and river water quality
ID1	Infrastructure delivery

#### Withington Group Neighbourhood Development Plan (made 11.10.2019)

P1	Allocated Sites in Withington
P2	Withington Settlement Boundary and Withington Marsh Settlement Boundary.
P4	Local Distinctiveness - Housing Layout and Design
P6	Transport and Traffic
P7	Conserving Historic Character
P9	Telecommunications - Broadband
P14	Social and Community Facilities

#### 4.2 National Planning Policy Framework Feb 2019 (NPPF) – Relevant Chapters

2. Achieving sustainable development
3. Plan-making
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
10. Supporting high quality communities
11. Making effective use of land
12. Achieving well-designed places
14. Meeting the challenge of climate change, flooding and coastal change
15. Conserving and enhancing the natural environment
16. Conserving and enhancing the historic environment

#### 4.3 National Planning Practice Guidance (NPPG)

## 5) CONSULTATION RESPONSES

### 5.1 Statutory Consultations

	Consulted	No Response	No objection	Qualified Comment	Object
Welsh Water	√√			√√	
Historic England	√			√	
Natural England	√			√	

Statutory Consultations comments are as follows:

#### 5.1.1 Welsh Water (28.2.2020)

We refer to your planning consultation relating to the above site, and we can provide the following comments in respect to the proposed development.

We write further to our previous letter and in response to the amended details submitted, we have no comments but reiterate that a comprehensive surface water strategy is required and full understanding of how the site will be effectively drained. The Flood Consequence Assessment dated December 2019 does not offer a definitive solution and suggest that infiltration testing is required to explore the use of soakaways. It does however state that the intention should infiltration not work is to capture flow in swales and basins before connecting offsite to the public sewer. The current design of the surface water system would not meet our adoptable standard and that of Sewer for Adoption 7th edition and therefore we recommend that discussions are held with us and a drainage strategy be agreed before submitting as part of any subsequent application.

Finally it is currently unclear where the proposed off site connection points for both foul and surface water are to the existing public sewer. Our records indicate that the sewer network is located in private gardens and this will need careful consideration.

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 development shall commence until a drainage scheme for the site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall provide for the disposal of foul, surface and land water, and include an assessment of the potential to dispose of surface and land water by sustainable means. Thereafter the scheme shall be Implemented In accordance with the approved details prior to the occupation of the development and no further foul water, surface water and land drainage shall be allowed to connect directly or indirectly with the public sewerage system.

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 Notes

The applicant may need to apply to Dwr Cymru / Welsh Water for any connection to the public sewer under S106 of the Water Industry Act 1991. If the connection to the public sewer network is either via a lateral drain (i.e. a drain which extends beyond the connecting property boundary) or via a new sewer (i.e. serves more than one property), it is now a mandatory requirement to first enter into a Section 104 Adoption Agreement (Water Industry Act 1991). The design of the sewers and lateral drains must also conform to the Welsh Ministers Standards for Gravity Foul Sewers and Lateral Drains, and conform with the publication "Sewers for Adoption"- 7th Edition. Further information can be obtained via the Developer Services pages of [www.dwrcymru.com](http://www.dwrcymru.com)

The applicant is also advised that some public sewers and lateral drains may not be recorded on our maps of public sewers because they were originally privately owned and were transferred into public ownership by nature of the Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011. Under the Water Industry Act 1991 Dwr Cymru Welsh Water has rights of access to its apparatus at all times.

The proposed development is crossed by a trunk/distribution watermain, the approximate position being shown on the attached plan. Dwr Cymru Welsh Water as Statutory Undertaker has statutory powers to access our apparatus at all times. I enclose our Conditions for Development near Watermain(s). It may be possible for this watermain to be diverted under Section 185 of the Water Industry Act 1991, the cost of which will be re-charged to the developer. The developer must consult Dwr Cymru Welsh Water before any development commences on site.

No problems are envisaged with the Waste Water Treatment Works for the treatment of domestic discharges from this site.

Our response is based on the information provided by your application. Should the proposal alter during the course of the application process we kindly request that we are re-consulted and reserve the right to make new representation.

#### 5.1.2 Welsh Water (amended) 20.5.2020

We refer to your planning consultation relating to the above site, and we can provide the following comments in respect to the proposed development.

We have reviewed the information submitted as part of this application with particular focus on the Amended Flood Risk Assessment dated March 2020 which outlines the surface water drainage strategy. We note that to date no soakaway testing has been undertaken and that a desk based assessment of the ground make up has informed the strategy to date. We further encourage the undertaking of these tests and investigate further sustainable outlets. Our records indicate that existing public surface water sewers have a discharge point further south on Southbank at grid reference 356445, 242838. A public sewer connection (combined or surface water) should only be made as a last resort.

In terms of foul water, option A as shown on page 3 of the report is considered acceptable and we can confirm available capacity to accommodate the proposed development.

The proposed development site is crossed by a public 150mm foul water only sewer, please see copy of indicative public sewer record attached. No operational development is to take place within 3 metres either side of centreline of sewer. We request that prior to commencing any operational development the location of this asset is determined. If operational development is likely to commence within 3 metres either side of centreline of sewer please stop works and contact us.

In light of the report stating that detailed design will be submitted as part of a reserved matters application and that further investigations are required, we request that if you are minded to grant planning permission that the following Conditions and Advisory Notes are included within any subsequent consent.

#### Conditions

No development shall commence until a drainage scheme for the site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall provide for the disposal of foul, surface and land water, and include an assessment of the potential to dispose of surface and land water by sustainable means. Thereafter the scheme shall be implemented in accordance with the approved details prior to the occupation of the development and no further foul water, surface water and land drainage shall be allowed to connect directly or indirectly with the public sewerage system. 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 Notes

The applicant may need to apply to Dwr Cymru / Welsh Water for any connection to the public sewer under S106 of the Water Industry Act 1991. If the connection to the public sewer network is either via a lateral drain (i.e. a drain which extends beyond the connecting property boundary) or via a new sewer (i.e. serves more than one property), it is now a mandatory requirement to first enter into a Section 104 Adoption Agreement (Water Industry Act 1991). The design of the sewers and lateral drains must also conform to the Welsh Ministers Standards for Gravity Foul Sewers and Lateral Drains, and conform with the publication "Sewers for Adoption"- 7th Edition. Further information can be obtained via the Developer Services pages of [www.dwrcymru.com](http://www.dwrcymru.com). The applicant is also advised that some public sewers and lateral drains may not be recorded on our maps of public sewers because they were originally privately owned and were transferred into public ownership by nature of the Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011. Under the Water Industry Act 1991 Dwr Cymru Welsh Water has rights of access to its apparatus at all times.

#### WATER SUPPLY

A water supply can be made available to serve this proposed development. The developer may be required to contribute, under Sections 40 - 41 of the Water Industry Act 1991, towards the provision of new off-site and/or on-site watermains and

associated infrastructure. The level of contribution can be calculated upon receipt of detailed site layout plans which should be sent to the address above.

The proposed development is crossed by various distribution watermain(s) and an abandoned watermain, the approximate positions being shown on the attached plan. Dwr Cymru Welsh Water as Statutory Undertaker has statutory powers to access our apparatus at all times. I enclose our Conditions for Development near Watermain(s). It may be possible for these watermain(s) to be diverted under Section 185 of the Water Industry Act 1991, the cost of which will be re-charged to the developer. The developer must consult Dwr Cymru Welsh Water before any development commences on site.

Our response is based on the information provided by your application. Should the proposal alter during the course of the application process we kindly request that we are re-consulted and reserve the right to make new representation.

If you have any queries please contact the undersigned on 0800 917 2652 or via email at [developer.services@dwrcymru.com](mailto:developer.services@dwrcymru.com)

#### 5.1.3 Historic England

Thank you for your letter of 10 February 2020 regarding the above application for planning permission. On the basis of the information available to date, we do not wish to offer any comments. We suggest that you seek the views of your specialist conservation and archaeological advisers, as relevant.

It is not necessary for us to be consulted on this application again, unless there are material changes to the proposals. However, if you would like detailed advice from us, please contact us to explain your request

#### 5.1.4 Natural England Comments

##### NO OBJECTION

Based on the plans submitted, Natural England considers that the proposed development will not have significant adverse impacts on designated sites and has no objection.

Notwithstanding the above, your authority should be aware of a recent Ruling made by the Court of Justice of the European Union (the CJEU) on the interpretation of the Habitats Directive in the case of Coöperatie Mobilisation (AKA the Dutch Case) (Joined Cases C-293/17 and C-294/17 ).

The Coöperatie Mobilisation case relates to strategic approaches to dealing with nitrogen. It considers the approach to take when new plans/projects may adversely affect the ecological situation where a European site is already in 'unfavourable' conservation status, and it considers the acceptability of mitigating measures whose benefits are not certain at the time of that assessment.

Competent authorities undertaking HRA should be mindful of this case and should seek their own legal advice on the implications of these recent ruling for their decisions.

Natural England's advice on other natural environment issues is set out below.

### **Internationally and nationally designated sites**

The application site is within the catchment of the River Lugg which is part of the River Wye Special Area of Conservation (SAC) which is a European designated site, and therefore has the potential to affect its interest features. European sites are afforded protection under the Conservation of Habitats and Species Regulations 2017 (as amended), the 'Habitats Regulations'. The SAC is notified at a national level as the River Lugg Site of Scientific Interest (SSSI) Please see the subsequent sections of this letter for our advice relating to SSSI features.

In considering the European site interest, Natural England advises that you, as a competent authority under the provisions of the Habitats Regulations, should have regard for any potential impacts that a plan or project may have<sup>1</sup>. The Conservation objectives for each European site explain how the site should be restored and/or maintained and may be helpful in assessing what, if any, potential impacts a plan or project may have.

### **European site - River Wye SAC - No objection**

Natural England notes that your authority, as competent authority under the provisions of the Habitats Regulations, has undertaken an Appropriate Assessment of the proposal, in accordance with Regulation 63 of the Regulations. Natural England is a statutory consultee on the Appropriate Assessment stage of the Habitats Regulations Assessment process.

Your appropriate assessment concludes that your authority is able to ascertain that the proposal will not result in adverse effects on the integrity of any of the sites in question. Having considered the assessment, and the measures proposed to mitigate for all identified adverse effects that could potentially occur as a result of the proposal, Natural England advises that we concur with the assessment conclusions, providing that all mitigation measures are appropriately secured in any permission given.

### **River Lugg SSSI – No objection**

Based on the plans submitted, Natural England considers that the proposed development will not damage or destroy the interest features for which the site has been notified and has no objection.

### **Other advice**

Further general advice on the consideration of protected species and other natural environment issues is provided at Annex A.

## **5.2 Internal Consultation**

	<b>Consulted</b>	<b>No Response</b>	<b>No objection</b>	<b>Qualified Comment</b>	<b>Object</b>
Area Engineer (Highways)	√√				√√
PRoW	√		√		
Historic Buildings Officer	√			√	
Ecologist	√√			√√	
Landscape	√√√				√√√



Trees	√			√	
Environmental Health (noise/smell)	√		√		
Planning Obligations Manager	√			√	
Land Drainage	√√			√√	
Forward Planning	√	√			
Education	√			√	
Open Space Planning Officer	√			√	
Waste Management	√			√	
Strategic Housing	√			√	
Wye Valley Trust	√			√	
NHS CCG	√			√	
Cadent and National Grid	√			√	

5.2.1 Internal Consultation comments are as follows:

5.2.2 Public Rights of Way Manager  
No objection.

5.2.3 Area Engineer (highways)  
Objection.

As per the previous application (191671) the main concern of the local highway authority (LHA) is the pedestrian connectivity to and from the site. Plans have been provided which show a footway connection out of the northern boundary of the site, heading west to Vine Tree Close and north along Duke Street towards the school. With regard to these proposals the LHA has the following comments to make:

- It is noted that the topographical survey does not extend into Duke Street to the north. The OS Master-map base can have an error of up to 2m. Measurements taken on site show that the footway widths and carriageway widths cannot be achieved. No consideration has been made to construction near to existing walls in the section which may further exacerbate this issue.
- An ATC survey should be included in the submission to clearly set out the existing use of Duke Street which is observed to carry significant amounts of large vehicles. It is however recognised the difficulty in obtaining an accurate reflection at this time due to the effect of the Coronavirus on traffic patterns and flows.
- The pedestrian visibility splays at the junction outside Bank House are unacceptable at 7m (western side) and 6m (eastern side). It is also unclear if the pedestrian facilities are deliverable due to the topography of the highway verge.
- The tracking provided for farm vehicles omits a trailer unit. This is required to demonstrate that footway overrunning will not occur.
- The footway across the entrance to Bank House cuts across the existing property wall associated to the property. The construction of this will require the removal of the wall.
- The narrowing to the east of Bank House that will be created by the introduction of footways will remove passing places. These are currently used extensively, likely due to the limited forward visibility across the bend outside Bank House. The introduction

of the narrowing is likely to result in increased vehicle reversing at the junction to allow larger vehicles to pass.

It is noted that the access for vehicles to the site is the same as the previously submitted application (191671), and is acceptable in highways terms, however, the footway provision at the proposed bell-mouth does not connect to other facilities and should be removed.

All applicants are reminded that attaining planning consent does not constitute permission to work in the highway. Any applicant wishing to carry out works in the highway should see the various guidance on Herefordshire Council's website:

[www.herefordshire.gov.uk/directory\\_record/1992/street\\_works\\_licence](http://www.herefordshire.gov.uk/directory_record/1992/street_works_licence)  
<https://www.herefordshire.gov.uk/info/200196/roads/707/highways>

#### 5.2.4 Area Engineer (highways) amended 5.5.2020

Following receipt of the most recent plans and measurements the local highway authority (LHA) has the following comments:

- The measurements taken along Lock Lane/Duke Street show that with the addition of a narrow footway of circa 1m – 1.2m the width of the carriageway will be narrowed significantly, especially on approach to the junction with Withies Road. The measurements taken would indicate that without any highway verge or retaining structures the carriageway would be narrowed to between 4.06m/4.26m (depending on whether a 1m footway or a 1.2m footway was provided) and 5m/5.2m along a significant length close to the junction with Withies Road. The route between the A4103 and the A465 which encompasses the C1130, Withies Road and Duke Street is used as a cut-through between the two major roads, particularly for businesses located at Whitestone Business Park and includes a high percentage of HGV traffic. It is therefore vital that pinch points are minimised along the route, particularly on approach to the junction with Withies Road because should two vehicles be unable to pass then HGVs may have to reverse back through the junction. As can be seen in the extract from Manual for Streets a carriageway width of 5.5m is required for two HGVs to pass each other and 4.8m is required for a car to pass an HGV. The pinch point will reduce the carriageway width to circa 4.06m and 5m.

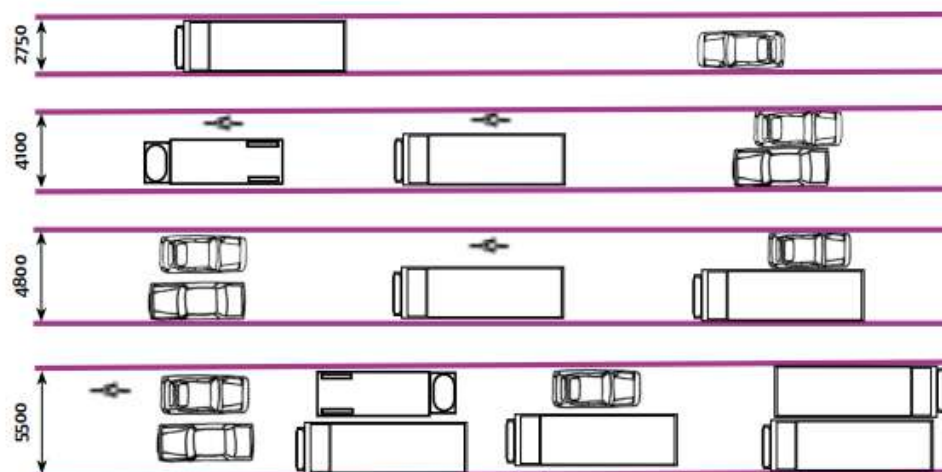
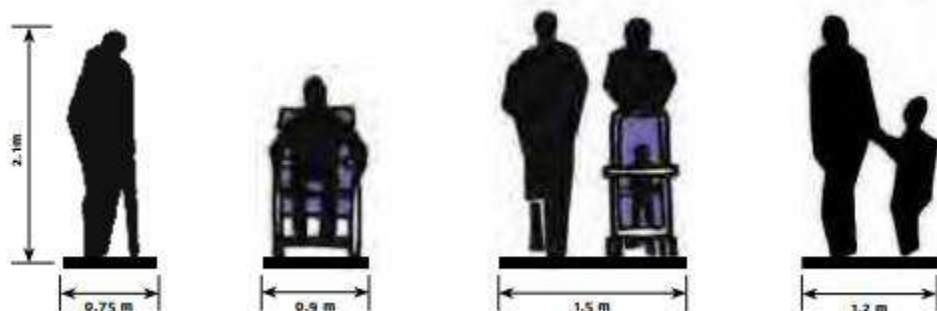


Figure 7.1 Illustrates what various carriageway widths can accommodate. They are not necessarily recommendations.

- The recommended minimum footway width is 2m therefore the proposed footway provision of 1m and 1.2m along both Withies Road and Lock Lane/Duke Street is substandard. Taking into consideration the significantly reduced carriageway width and frequent HGV use it is likely that users will feel unsafe using such a narrow footway and given that it is a route to the school it is the LHA's view that it is too narrow to be considered a safe route. This is further reinforced by Manual for Street guidance which states the widths of different users (as shown below), with a parent and child taking up a minimum of 1.2m and a parent pushing a buggy and someone walking alongside taking up a minimum of 1.5m.



- The footway arrangement along Withies Road at the northern site boundary and pedestrian access into the site is again between 1m and 1.2m between the pedestrian site access and Lock Lane/Duke Street. The current drawing demonstrating the proposed arrangement is a little confusing with different blue lines, particularly at the 4m pinch point. In addition, whilst the ahead movement along Withies Road has been tracked using a tractor and trailer, the critical movement of turning into and out of Lock Lane/Duke Street and heading east along Withies Road through the pinch point is only tracked using a tractor and therefore it has not been demonstrated that this manoeuvre can be undertaken by a tractor pulling a trailer as requested.
- The introduction of the footway on the northern side of Withies Road between the Lock Lane junction and the proposed pedestrian site access has narrowed the carriageway and moved vehicles over to the southern side of the carriageway. This has an effect on vehicles travelling straight ahead on Withies Road because it reduces forward visibility around the bend close to the junction with Lock Lane. This, coupled with the 4m pinch point, results in vehicles not being able to see oncoming vehicles in time to pull over where the carriageway is wider and therefore may necessitate vehicles reversing close to the Lock Lane junction.

After considering all of the above the LHA concludes that a safe pedestrian route cannot be provided and therefore object to the application.

#### 5.2.5 Environmental Health Officer (noise)

From a noise and nuisance perspective our department has no objections to this proposal.

#### 5.2.6 Archaeology

No objection

5.2.7 Historic Buildings Officer  
No objection.

Recommendations:

We would recommend consideration of the setting of the Conservation Area and Bank House, a C17 timber framed house and non-designated heritage asset, during any reserved matters application. We note that the application is for access only – any reserved matters application is likely to require low density on the site, design contextual to the location and we would recommend housing to the south side of the slope only.

Background to recommendations:

The previous outline application, ref 191671 was for access only, as such the setting of the non-designated heritage asset would not have been a material consideration, with the density and location being considered as part of a reserved matters application.

To the north of the site lies the Withington Conservation Area, characterised by a compact centre with church, school and war memorial and a scattering of houses on a cruciform layout with stone walls and hedges fronting the roads. There is no statutory protection to the setting of a Conservation Area, although it is a material planning consideration under policies contained within the revised NPPF protecting those aspects of the setting of heritage assets which contribute to their significance.

It is not felt that the principle of housing on the site would harm the setting of the conservation area, however care will be needed with the density of development, particularly on the W & N edges of the site.

Withington Court – a grade 2 listed farmhouse, lies approx. 300m to the NW of the site. Aspects of its setting which contribute to its significance include the views on along the driveway to the building (although it is noted that this is not a large country mansion, set within parkland.) and the wider agrarian landscape in which it is experienced and understood. Given intervening vegetation and buildings and the position of the access driveway, it is not felt that the principle of development would harm aspects of the setting of Withington court which contribute to its significance. However care will be required with the density of development and the treatment of the N edge of the site during any reserved matters application.

Bank House, a C17 Timber Framed house and an undesignated heritage asset, lies to the immediate north of the site.

5.2.8 Tree Officer

Having completed a site visit and read the supporting tree report I can confirm that I do not have any objections to the proposed development of up to 46 dwellings.

All trees on the site are positioned on the boundary of the site and there appears to be little impact on them, this is confirmed in the tree report which accompanies the application.

In principle the development appears to have little impact on the retained trees and is compliant with policies LD1, LD2 & LD3 of the Core Strategy.

#### Access-

The location of the access does necessitate the removal of hedgerow trees, none of which are considered to be of any significant merit as individuals but as a collective they could be considered to offer landscape value, their losses will require mitigation planting.

The RPA radius of T4 is 13m and the extent of the hedge removal to provide access construction is a further 10m from the radius furthest point. However, due to the constraints of the east and south it's likely that the root spread of T4 spreads further north (towards the proposed access) than illustrated in the tree plans. Therefore care must be taken if any roots from this tree are discovered. On finding any roots hand digging will be required.

#### Conditions

CK9 - Arboricultural Impact Assessment – Skilled Ecology Consultancy

CKA – 5yrs

#### Method Statement

Prior to the commencement of any works a method statement for hand digging around roots of T4 are discovered, must be submitted and approved by the local planning authority and the development shall be carried out in accordance with the approved method statement.

Reason: To safeguard the character and amenity of the area and to ensure that the development conforms with Policies LD1 and LD3 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

#### 5.2.9 Open Space Planning Officer

**Relevant Policies:** Open space is required from this proposal in accordance with the following policies and evidence bases. In this instance of both on and off site contributions will be requested:

##### **National Planning Policy Framework (NPPF):**

- Paragraph 96: Open Space and Recreation: provision of what open space, sports and recreational opportunities required in a local area should be based on robust assessments of need

##### **Core Strategy (CS):**

- OS1: Requirements for Open Space, Sports and Recreation Facilities
- OS2: Meeting Open Space and Recreation Needs

##### **Withington Group Neighbourhood Development Plans: adopted (WGNDP):**

- Policy P14 Social and Community Facilities:  
Where appropriate development will be required to make a proportionate contribution towards the provision of community infrastructure in the village: The priority list includes (but not exclusively)
  - a. Provision and improvement of footpaths especially those linking community facilities in Withington.
  - d. village hall and community buildings

- e. recreation areas/open spaces maintenance and improvements
- f. improved cycle access to village facilities and connectivity generally

#### **Evidence Base and standards:**

- Local Evidence: Herefordshire Open Space Study 2006 (data for amenity public open space has not changed significantly and it is still considered to be accurate).
  - This recommends POS should be at a rate of 0.4ha per 1000 population.
- Local Evidence: Herefordshire Play Facilities Study and Investment Plan 2012 and National Evidence: Fields in Trust Guidance:
  - These recommend children's play at a rate of 0.8ha per 1000 population.
  - Of this 0.25ha per 1000 population should be formal equipped play.
- Local: Playing Pitch Assessment 2012 and update 2014, Outdoor Sports Investment Plan 2016 and National Evidence: Fields in Trust Guidance.
  - These recommends outdoors sports provision of between 1.4 and 1.6ha per 1000 population and where future investment in outdoor sport should be directed to maximise the benefits to the local community.

#### **Open Space Policy Requirements:**

In accordance with CS policy OS1 and OS2 requirements open space, sport and recreation facilities will be sought from all new residential development on a site by site basis in accordance with all applicable set standards. Where on-site provision is not appropriate off-site contributions may be sought on an equally beneficial basis for the local community and in accordance with evidence bases and set standards as set out below.

**On Site POS and Children's Play:** The indicative site plan shows the potential for on-site POS as described in the Design and Access Statement as a site that can accommodate provision of POS for use by the whole community.

As the application progresses (RM stage), the applicant will need to demonstrate that provision meets the minimum standards of **0.126 ha (1260sq m)** of on-site green infrastructure for a development of 46 houses at an occupancy of **2.3 (total population 105.8)** comprising:

- **0.042ha (420sq m)** of Public Open Space (@ 0.4ha per 1000 population)
- **0.084ha (840sq m)** of Children's Play (@ 0.8ha per 1000 population) of which **0.026ha (260sq m)** should be formal children's play. (@ 0.25ha per 1000 population).

On-site provision is supported, particularly provision for younger children in respect of the formal play element. This option was set out at the pre-application stage given the location of the proposed development in relation to the existing facilities in the village at the village hall.

**Design:** The on-site provision should enable good design and be of a usable size to offer a range of recreation opportunities and experiences for both informal and formal recreation including natural play. The size is unknown but is generally acceptable offering natural surveillance dependant on orientation of housing, this is particularly important

when considering the location of the children's play area. The applicant has not indicated where this could be located within the open space at this stage.

Children's Play area: As part of the RM application the applicant will need to provide details of on-site play which meet with the minimum standard of **260sq m**. The play area should cater for infants and junior and could incorporate natural play provision

As the proposal develops details of the "cost" of the play area can be provided based on the size and final number of houses proposed in accordance with the SPD on Planning Obligations.

The play area scheme will need to be approved by the planning authority and we would expect details of the play area to include a complete proposed scheme providing:

- a detailed location plan,
- layout,
- equipment list (with suppliers and part numbers),
- details of safety fencing (if applicable),
- safety surfacing,
- information on signage,
- seating and litter bins

**SuDS:** The SuDs pond in the south west corner, if designed accordingly to take account of health and safety and standing water issues can be included as additional open space (to that required by policy). These areas can provide good opportunities for informal recreation and natural play along with being areas suitable for biodiversity and wildlife. The location of the SuDs area is dependent on the drainage of the site but if to be publically accessible a more integrated approach to the open space would be needed in support of the creation of a safe and accessible network of green infrastructure. Plans will also be required showing details of the SuDs: cross sections, gradients and details of standing water.

If it is not possible for health and safety reasons for the area to be incorporated it should be fenced off.

The landscape aspects of SUDs should be designed in accordance with the Councils SuDS Handbook which provides advice and guidance on the inclusion of SuDs on new development.

In addition the council advises that developers seek guidance from the CIRIA SuDS Manual and the Wildfowl & Wetland Trust /RSPB available from the Susdrain website.

Details to be submitted as part of the Open Space/Landscaping Scheme

**Adoption and Maintenance:** Suitable management and maintenance arrangements will be required to support any provision of open space and associated infrastructure within the open space in line with the Council's policies. This could be a management company which is demonstrably adequately self-funded or will be funded through an acceptable on-going arrangement; or through local arrangements such as a Trust set up for the new



community for example. There is a need to ensure good quality maintenance programmes are agreed and implemented and that the areas remain available for public use.

## **Condition**

### ***Condition: CA4 Provision of open space***

The detailed plans for the provision for open space and play areas shall be set out in accordance with the standards adopted by the local planning authority and shall be submitted to and approved in writing by the local planning authority.

Reason. In order to comply with the requirements of Policies OS1 and OS2 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework

### **Off-Site Outdoor Sports Contribution:**

In accordance with CS OS1 and OS2 and WGNDP policy P14, an off-site contribution will be sort in accordance with evidence bases:

- Hereford Area Playing Pitch Assessment 2012
- Outdoor Sports Investment Plan 2019 (updated annually)

The Outdoor Sports Investment Plan includes list of priority projects for cricket, football, hockey and rugby to provide new and improve existing facilities in accordance with the Playing Pitch Assessment. It has been prepared by a partnership of Sport England, Herefordshire Council the National Governing Bodies (NGB) for cricket, football, hockey and rugby and the County Sports Partnership. It is annually reviewed and provides up to date information on clubs and facilities in accordance with Sport England's requirements to review the Playing Pitch Assessment.

Projects are considered to be sustainable in helping to meet the needs of both the existing and future populations (future proofed to 2031) and have the support of the relevant NGB in both their regional and local facilities development plans.

In rural areas this is based on the equivalent on-site provision and costs are calculated using the following methodology which is considered to be CIL compliant:

Outdoor Sports standard: 1.4ha per 1000 population (based on an occupancy of 2.3 per house)

- A square meter rate of £27.28 is used in rural areas. (rate informed by the SPD planning obligations and the Infrastructure Delivery Plan for the Core Strategy).
- Calculated on OMU only or a 35% reduction if figure unknown.
- For this application: 30 OMU are proposed: the equivalent to 0.09ha (900sq m) is asked for.
- Using the rate of £27.28 this equates to **£24,552**

The contribution would be used towards the following projects to provide changing rooms for football at Withington Village Hall.

**Football: Withington Village hall site** (owned and managed by Withington Parish Council). Used by Withington FC (seniors and juniors)



- Current deficiency: Football Changing Rooms. They are required to support senior teams and club growth in meeting both Sport England and Football Association specifications for the senior game
- Cost: circa £235,000 (*Sport England Facilities Development Costs*)

#### 5.2.10 Ecology

##### Object

As identified for the previously refused application at this site ref 191671 it is noted that the applicant intends to connect to the local mains foul water system that is managed through the Hereford (Eign) Waste water Treatment Works – this would enable a required Habitat Regulation Assessment to be undertaken as there would be no pathways for any additional phosphate loading to reach the Lugg SAC catchment; and at this time the River Wye SAC at and downstream of the Eign WWTW outfall is not failing its conservation status levels for phosphates. However as previously advised it is not clear how legally or practically a connection to the local mains sewer network can be achieved due requirement for connection and location on or across third party/private land not under the applicant's control. It also appears there is uncertainty how surface water can be managed to achieve a satisfactory conclusion whereby excess water is discharged to the main sewer network (even if a connection can be secured).

Until such time as legal certainty over the main sewer connection is secured and a detailed SuDS agreed and accepted by the Council's drainage consultants and Welsh Water the required HRA process can only conclude that there remains beyond legal and scientific certainty unmitigated Likely Significant Effects and there is a potential Adverse Effect on the Integrity of the River Wye (Lugg) SAC from this proposed development. (As supported by Natural England in their HRA comments on the previous application 191671)

##### Additional ecology comments.

The supplied preliminary ecology report is noted. Due to the extensive works involved in this development, the location within the River Lugg SAC hydrological catchment and a period in excess of two years from the preliminary ecology report and works commencing it is reasonable for this LPA to request a Construction Environmental Management Plan as a Reserved matter (or pre-commencement condition) to ensure all of these potentially damaging operations and effects on highly mobile and opportunistic wildlife (including Protected Species) is considered as mitigated.

##### Habitat Regulations (River Wye SAC) – Nature Conservation Protection -

Before any work, including any site clearance or demolition begins, equipment or materials moved on to site, a fully detailed Construction Environmental Management Plan (CEMP), with detailed ecological working methods based on latest ecology assessments, and clearly named 'responsible person(s)' shall be supplied to the local planning authority for written approval. The approved CEMP shall be implemented and remain in place until all work is complete on site and all equipment and spare materials have finally been removed.

Reason: In order to comply with Conservation of Habitats and Species Regulations (2017), Wildlife & Countryside Act (1981), National Planning Policy Framework, NERC Act (2006), NPPF (2019) and Herefordshire Council Core Strategy (2015) policy SS6, LD2 and LD3

As identified in the NPPF, NERC Act, Core Strategy LD2 and draft Environment Bill all developments should clearly identify how they are going to achieve enhancement of the local biodiversity values. To secure this a condition is requested:

#### 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, 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. And consideration for the draft Environment Bill (2020)

#### 5.2.11 Ecology (amended) 14.4.2020

The required certainty over foul and surface water management and legal confirmation of ability to achieve any required mains sewer connections appears to be still outstanding and no consent should be granted until this has been received and the required HRA process and consultations with Natural England completed.

The final proposed foul and surface water strategy requires to be in sufficient detail to allow the LPA to undertake the required HRA with legal and scientific certainty it is achievable as approved under any consent granted. 'Grampian' style conditions not supported by relevant legal agreements are not considered to provide sufficient legal certainty in their own right for HRA purposes. Currently there is no final proposal, or any evidence supplied to demonstrate this is achievable. If an upgrade of any mains sewer network or similar is required the legal agreements (certainty) that this will be achieved and a clear timescale must be in place prior to any HRA process taking place.

The applicant is reminded that all proposed planting mixes should demonstrate compliance with the council's Highway Design Guide and best practice planting in areas of publically accessible or formal-informal open space or adjacent to play areas. To demonstrate this any species mixes containing any thorny or spikey species need to be away from any highway feature, pavement, path or formal-informal play or kick-about space. All landscaping plans supplied for final approval should clearly demonstrate compliance.

See previous comments re Biodiversity Net Gain. No further ecology comments at this time.

#### 5.2.12 Ecology HRA dated 21.5.2020

(see website for full text) Assessed impacts from foul and surface water and construction and concluded that subject to conditions, there would be no adverse effects on the integrity of the Special Area of Conservation; subject to appropriate mitigation being secured. Habitat Regulations 2017, Part 6, section 63(5).

#### 5.2.13 Landscape Officer 14.4.2020

##### Access

I refer to the following amended and additional drawings:

CAL021018 - 29 (Landscape Planting Concept Plan)

CAL021018 - 30 (Landscape Planting Sections

60597123-30-sk03 (Site Entrance Swept Paths)

The applicant has shown conceptual drawings that includes the intention to 'soften' the highway engineer's retaining walls for the access (This is the preferred approach). However, to fully appreciate the removal of the retaining walls and how the levels and gradients look, and if this impacts the planting structure, the landscape drawings and engineering drawings would need to be coordinated.

Further information of the 'actual' proposal is required.

The planting plan looks interesting as a zonal pattern, but how does it respond with actual species, densities and canopies? How does it respond to sight lines and vehicle visibility splay? And how does it respond to the levels, once the retaining walls are removed?

The native species woodland mix (the zone next to the footpath) is relatively narrow and therefore in essence is a hedge. The species mix includes thorny species, and needs to be considered carefully next to a footpath. Please refer to the Herefordshire Council, Highway Design Guide for New Development, under 2.14 Landscaping, that states 'Thorned species shall not be accepted immediately adjacent to footways or cycle tracks' and review the species list accordingly.

Regarding specimen trees, to make the sense of arrival more desirable, it may be worth considering locating these trees closer to the main access

##### Footpaths

In reference to drawing, 60597123-sk-001, Withington Court, Footpath Proposal and Tractor Swept Path Analysis, rev B. The proposed footpaths has the potential to impact on the integrity, health and capacity of the existing (and future) hedgerows, trees and vegetation. The total length of infrastructure required to support the access at this outline stage has the potential to harm the local countryside character and landscape.

The existing line of vegetation is not shown, so it is difficult to ascertain the impacts. Level information of the proposed footpath with existing levels is not indicated, so it is difficult to understand if earthworks will impact on root zones.

It is recommended to provide further information, so that the proposed works can be assessed holistically with its landscape context.

#### 5.2.14 Landscape Officer 5.5.2020

##### Additional Comments:

The following comments are in relation to the masterplan and is provided to reiterate the rational for landscape objection made in previous comments.

A fundamental issue is that the majority of the development is located at the southern part of the site which has the steepest topography (Refer to figure 2) of the site and Withington. The open countryside of the Principal Settled Farmlands is impacted by a 'wall' of buildings, a visual intrusion on the skyline exacerbated by the steep terrain, contrary to NPPF 12, 170 b, c and d, and local policy (Core Strategy) LD1.

In addition, with gradients of approximately 1:6 to 1:8, there will be significant excavation and associated earth battering and retaining systems. This may provide cumulatively visual impact; impact on natural hydrological systems and potentially restrict the ability to provide effective green infrastructure, in accordance with NPPF 14, 150a and local policy (Core strategy) LD1 and LD3.

The pond is located on a slope of approximately 1:10 and will require earth banks for damming or substantial cutting and battered slopes that will influence the size of the water body shown on the masterplan, and may impact the health and integrity of existing trees located along the south-west boundary, contrary to local policy (Core Strategy) LD1.

Overall, the development destroys grade two (very good), best and most versatile land for agriculture (Reference: West Midland Region Agricultural Land Classification, 2010, Natural England), contrary to NPPF 15, 170b and local policy (Core Strategy) SS7.

It is acknowledged that the reduction of houses does increase the area of open space and draws the development away from the top of the land and therefore is an improvement in this respect, however it does not address the fundamental issue of development on a steep slope; the proximity to dwellings on the southern boundary and overall landscape impacts on the countryside. In fact, when comparing the two schemes (Figure 1) it appears that the revised scheme densifies the development in the most sensitive part of the site and has an overall adverse impact on the Principal Settled Farmlands landscape character, contrary to NPPF 15, 170a and local policy (Core Strategy) LD1.

It is considered that although this application is outline for access, as it currently stands the combined impact of the access and masterplan maintains an overall landscape objection.



Figure 1: Comparison of landscape plans. Original scheme (left) and revised scheme (right)



Figure 2: Existing contours overlaid onto the proposed development.

#### 5.2.15 Landscape Officer 18.5.2020

I have read the document entitled Landscape Response to Council Comments (May 2020, v4 update rev B), and note that written suggestions and changes to drawings have been provided to mitigate harm, but not to a satisfactory level in accordance with policy compliance.

To reiterate previous comments, the site is a valued landscape, with an elevated undulating topography, surrounded by hedgerows; categorised as very good agricultural land and has an intrinsic landscape character making this land unacceptable in principle for development, due to the harm it would cause.

The access requires extensive engineering works, earthworks and path networks for highway safety and this would significantly impact on the character of a narrow hedgerow lined countryside lane and the surrounding physical landscape.

The majority of the development is located on the steepest land that is sensitive. It is suggested in paragraph 2.20, that the development has been designed to meet acceptable (gradient) standards; paragraph, 2.22, indicates that the design is illustrative and that the character of the site can be resolved; and paragraph 2.23, suggests that the character can be enhanced with landscaping. These statements are speculative and would need verification to meet with NPPF policy 12: Achieving well-designed places, paragraph 127 a, b and c; and Local policy (Core strategy) LD1.

Overall, the landscape is not suitable for development. The harm is detrimental to the intrinsic landscape character and beauty of the countryside, and the use of landscaping to mitigate visual and physical impact would not contribute to or enhance the character or value of the landscape in accordance with NPPF 15: Conserving and enhancing the natural environment 15 a and b, and Local policy (Core strategy) LD1 and LD3.

### 5.2.16 Land Drainage

## Outline Planning Applications: Flood Risk and Drainage Checklist

This response is in regard to flood risk and land drainage aspects, with information obtained from the following sources:

- Application for outline planning permission
- Indicate Site Layout (Drawing 05, Rev D)
- Flood Risk Assessment (December 2019)

We highlight that any planning application should be submitted in accordance with the Herefordshire SuDS Handbook and the Herefordshire Council Planning Applications Flood Risk & Drainage Checklist available on the Council's website:

[https://www.herefordshire.gov.uk/info/200142/planning\\_services/66/about\\_planning\\_services/11](https://www.herefordshire.gov.uk/info/200142/planning_services/66/about_planning_services/11)

### Site location and extract of flood map(s)

Figure 1: Environment Agency Flood Map for Planning (Rivers and Sea)



### Development description

The Applicant proposes the construction of up to 46 dwellings with associated garages and access roads. The site occupies an area of 2.77ha and is currently

used for agricultural purposes. The topography of the site slopes down from approximately 95.0AOD in the east to approximately 78m AOD in the south.

### *Identifying the need for a Flood Risk Assessment*

All Applicants must provide sufficient information to address the points listed below to enable an accurate assessment of flood risk and the need for a flood risk assessment to be made.

Information required	Reviewers comments
Confirmation of the site area in hectares or square metres	Site area confirmed as 2.77ha.
Identification of all designated main rivers within 20m of the site boundary	There are no main rivers in close proximity to the site.
Identification of all designated ordinary watercourses and land drains within 20m of the site boundary	There are no ordinary watercourses in close proximity to the site.
Confirmation of the site's location in Flood Zone 1, Flood Zone 2 or Flood Zone 3, and taking climate change effects into account	Review of the EA's Flood Map for Planning / submitted FRA confirms the location of the site in Flood Zone 1.
Confirmation and supporting justification of whether the site is at significant risk of flooding from other sources, including surface water flood risk or flood risk from minor watercourses with unmapped flood extents	The site is at low risk of surface water flooding.

### Completing a Flood Risk Assessment

A Flood Risk Assessment (prepared in accordance with NPPF and EA Standing Advice) must support the planning application for any development:

- Located in Flood Zone 2 or Flood Zone 3 <sup>(1)</sup>
- With a site area greater than 1 hectare.
- Located in an area identified to be at significant risk of flooding from other sources, including surface water flood risk or flood risk from minor watercourses with unmapped flood extents.

Review of the information summarised in Section 1 indicates that a FRA is required to support the planning application for this development as the site area is greater than 1ha.

The following information should be provided within the FRA:

√ Information provided is considered sufficient

X Information provided is not considered sufficient and further information will be required

<sup>1</sup> Note that the Council may also request an assessment of flood risk where the development is indicated to be at risk of flooding when the potential effects of climate change are taken into account.

(See completed table on website)

Overall comment



As discussed above, we recommend that the following information is provided prior to the Council granting planning permission for this development:

- Demonstration that a viable connection can be made to the public surface water network, if required, and that the suitability and capacity of the system has been explored in consultation with the relevant authority, including the need for on-site risk management measures.
- Demonstration that a viable connection can be made to the public foul water network and that the capacity of the system has been explored in consultation with the relevant authority.
- Clarification of any required third-party land access for both the surface water and foul water drainage connections, and demonstration that this has been agreed in principle with the relevant land owner if required.
- Confirmation of proposed authority responsible for the adoption and maintenance for the surface water and foul water drainage systems.

#### 5.2.17 Land Drainage (amended) 20.4.2020

This response is in regard to flood risk and land drainage aspects, with information obtained from the following sources:

- Flood Risk Assessment – Addendum for Outline Planning Consultee Responses (March 2020)

In our previous response dated March 2020 we recommended that the following information was provided prior to the Council granting planning permission for this development:

- Demonstration that a viable connection can be made to the public surface water network, if required, and that the suitability and capacity of the system has been explored in consultation with the relevant authority, including the need for on-site risk management measures.
- Demonstration that a viable connection can be made to the public foul water network and that the capacity of the system has been explored in consultation with the relevant authority.
- Clarification of any required third-party land access for both the surface water and foul water drainage connections, and demonstration that this has been agreed in principle with the relevant land owner if required.
- Confirmation of proposed authority responsible for the adoption and maintenance for the surface water and foul water drainage systems.

This amended response addresses the points listed above.

#### Response

*Demonstration that a viable connection can be made to the public surface water network, if required, and that the suitability and capacity of the system has been explored in*



*consultation with the relevant authority, including the need for on-site risk management measures*

The proposed drainage strategy for this development is to first promote infiltration to ground where soil permeability allows, although given the potential for low permeability soils the drainage strategy also promotes attenuated discharge to the Welsh Water sewer system to the west of the site. No information had been provided regarding any consultation with DCWW and review of the DCWW drainage plans indicated that the surface water drainage systems to the west of the site may rely on pumping.

The Applicant has since provided a figure illustrating various options for connecting to the DCWW surface water sewerage system. The applicant has also provided correspondence from DCWW in which DCWW does not object to the proposals, although highlights that the drainage strategy will need to be agreed with DCWW as part of the reserved matters application.

We have no objection to the proposals although note that two of these options (C and D) suggest a drainage connection from the north of the site, noting that this is at a higher elevation than the south. We stress that the total discharge from the site must not increase flood risk elsewhere and that we therefore expect only one discharge point in order to achieve the proposed  $Q_{bar}$  discharge rate. Pumping of surface water should be avoided wherever possible. If pumping of surface water discharge is required, residual risk in the event of pump failure must be considered, with no increased risk to the development or elsewhere up to the 100 year plus climate change event.

*Demonstration that a viable connection can be made to the public foul water network and that the capacity of the system has been explored in consultation with the relevant authority.*

No information had been provided regarding the proposed foul water drainage strategy. The Applicant has since provided a simple illustration that shows four potential options to connect to the DCWW foul water sewerage network. We have no objection to the proposals although note that two of these options (C and D) suggest a drainage connection from the north of the site, noting that this is at a higher elevation than the south. We highlight that pumping of foul water should be avoided wherever possible.

The applicant has also provided correspondence from DCWW in which DCWW does not object to the proposals, although highlights that the drainage strategy will need to be agreed with DCWW as part of the reserved matters application. The correspondence from DCWW states that no problems are envisaged with the Waste Water Treatment Works for the treatment of domestic discharges from this site.

*Clarification of any required third-party land access for both the surface water and foul water drainage connections, and demonstration that this has been agreed in principle with the relevant land owner if required.*

The Applicant acknowledges that two of the proposed surface water connection options and one of the proposed foul water connection options would require crossing of private third party land. The response from DCWW also highlights the potential complexity of

connecting to the existing systems within private gardens. However, DCWW suggest that this can form part of the discussions required to inform the reserved matters application. We highlight that the agreed strategy and confirmation from DCWW (including either third party agreement or an agreed requisition from DCWW) will need to be presented to Herefordshire Council as part of the reserved matters application.

*Confirmation of proposed authority responsible for the adoption and maintenance for the surface water and foul water drainage systems.*

The Applicant confirms that the intention is for the below ground piped surface water network and foul water network to be adopted by DCWW. This is also suggested by the DCWW response although DCWW highlights that the use of swales and basins would not be acceptable. The Applicant suggests that source control SuDS features would still be promoted and would remain the responsibility of the property owner; and that site control SuDS features would also still be promoted and would be managed by a private management company. We agree with this approach in principle, although highlight that DCWW are unlikely adopt drainage systems downstream of land drainage features or attenuation basins that are in private / management company ownership. Source control features such as privately-owned tanked permeable paving is likely to be acceptable. Appropriate treatment of runoff must still be provided. We also note that DCWW support the use of an attenuation basin whereby 30 year flows are stored within a granular bed beneath a grassed attenuation basin above.

#### Overall Comment

The Applicant has adequately address our previous concerns and in principle we do not object to the proposed development on flood risk and drainage grounds. Should the Council be minded to grant planning permission, we recommend that the following information is included within any reserved matters application:

- Results of infiltration testing at the location(s) and proposed depth(s) of any proposed infiltration structure(s), undertaken in accordance with BRE Digest 365 methodology;
- Confirmation of groundwater levels to demonstrate that the invert level of any soakaways or unlined attenuation features can be located a minimum of 1m above groundwater levels;
- Detailed drawings of the proposed surface water drainage strategy that demonstrate the inclusion of SuDS, where appropriate, and location and size of key drainage features;
- Detailed drawings of proposed features such as infiltration structures, attenuation features and pumping stations;
- If proposed, detailed calculations of proposed infiltration features informed by the results of infiltration testing. FEH 2013 rainfall data is expected;
- 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. FEH 2013 rainfall data is expected;
- 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. FEH 2013 rainfall data is expected;

- Calculations that demonstrates that the proposed drainage system will have sufficient capacity to cater for up to the 1 in 100 year event and allowing for the potential effects of climate change. FEH 2013 rainfall data is expected;
- Confirmation of the proposed methods of treating surface water runoff to ensure no risk of pollution is introduced to groundwater or watercourses both locally and downstream of the site, especially from proposed parking and vehicular areas;
- Description and drawing demonstrating the management of surface water runoff during events that may temporarily exceed the capacity of the drainage system;
- Operational and maintenance manual for all proposed surface water drainage features that are to be adopted and maintained by a third party management company;
- A detailed foul water drainage strategy showing how foul water from the development will be disposed of and illustrating the location of key drainage features;
- Confirmation that discharge to the public sewerage system has been agreed with the relevant authority;
- If access or works to third party land is required, details of these works and agreement in principal with necessary landowners/consenting authorities to cross third party land and/or make a connection to the proposed sewer;
- Confirmation of agreement in principle of proposed adoption and maintenance arrangements for the surface water and foul water drainage system;
- Demonstration that appropriate access is available to maintain drainage features, including pumping stations.

#### 5.2.18 Waste Management

A swept path analysis of a refuse collection vehicle should be provided to show that it can access the site. Dimensions:

Height: 3500mm

Width: 2250mm (2650 including mirrors)

Length: 7565mm

Should the application proceed to a reserved matters application the following should be provided:

A swept path analysis to show in principle that a large refuse collection vehicle (RCV) can access all internal access roads and turning heads, where it is intended the RCV would access.

Bin storage locations for each plot. Where wheeled bins are to be stored to the front of the property (including when bins are to be placed in the front on collection day) there should be at least 1 metre space around the bin to allow the resident and collection operatives to manoeuvre the bin, and it should not cause an obstruction to the entrance to the property.

Bin collection points (areas of hardstanding where residents can place their bins for collection) should be provided for any plot located over a 25 metre walking distance from where the RCV can safely access in accordance with "Guidance Notes for storage and collection of domestic refuse and recycling"

Please refer to "Guidance Notes for storage and collection of domestic refuse and recycling" for advice with regards to waste management arrangements for households.

[www.herefordshire.gov.uk/downloads/file/2883/guidance\\_notes\\_for\\_storage\\_and\\_collection\\_of\\_domestic\\_refuse\\_and\\_recycling](http://www.herefordshire.gov.uk/downloads/file/2883/guidance_notes_for_storage_and_collection_of_domestic_refuse_and_recycling)

Please note, the council will only agree to travel private roads for the purposes of waste collection if:

The council and its contractors determine that collections can be carried out safely;  
and

The council receive written confirmation from the landowner/developer that the roads over which the refuse collection vehicle (RCV) will travel are built to a suitable specification for this type of vehicle to travel over on a frequent basis;

and

The council and its contractor(s) are indemnified against damage to property and general wear and tear, other than that caused through negligence.

When the development is brought into use, the council and/or its contractor will assess the safety of collections via the completion of a risk assessment which will take into consideration the access and suitability of the road surface, width, obstructions and turning areas for a 26 tonne RCV.

Further information required.

A swept path analysis of a refuse collection vehicle should be provided to show that it can access the site.

Dimensions:

Height: 3500mm

Width: 2250mm (2650 including mirrors)

Length: 7565mm

#### 5.2.19 Strategic Housing

As this is an outline application with all matters reserved except for access, I would be looking for both the open market and affordable unit sizes to be agreed via pre-app prior to the submission of any reserved matters application.

With regards to the open market mix there should be a good mix of 2 & 3 bed units.

With reference to the affordable housing, I would be looking for 35% to be allocated for affordable housing by way of intermediate tenure to include Low Cost Market and Discounted Market as outlined in the councils Technical Data to support the SPD April 200.

These units should be a mix of two and three bedroomed properties and would need to be secured through a S106.

#### 5.2.20 NHS Clinical Commissioning Group

(see website for full comments) In summary it states that mitigation for impact on three GP practices, which do not have capacity for increased patients arising from the development

#### 5.2.21 Wye Valley NHS Trust

(see website for full comments) In summary it states financial contributions are necessary to make the development acceptable and are directly related to enable health services to be maintained and to make the development sustainable.

#### 5.2.22 Education

(see website for full comments) In summary confirmed only 1 year group at each of the catchment primary and high schools had one place of capacity compared against planned admissions numbers (based on permanent accommodation only). Contributions required in accordance with sums set out per property type.

#### 5.2.23 Planning Obligations Manager

I have reviewed the supporting documents and there is a Draft Heads of Terms dated 17 February 2020. This outlines the principal of obligations towards infrastructure provided that those obligations are compliant with the Community Infrastructure Levy Regulations.

The following obligations are listed;

- The delivery of 35% affordable housing - although this may be reduced at reserved matters stage if there are issues with regards to viability
- The delivery of open space – either on or off-site
- Contributions towards utilities, transport and community infrastructure (education and healthcare)

There are no financial figures within the Draft Heads of Terms.

I have therefore produced a draft heads of terms below;

DRAFT  
HEADS OF TERMS  
Proposed Planning Obligation Agreement  
Section 106 Town and Country Planning Act 1990

Planning application:  
P200207/O

Site address:  
Land to the north of Southbank, Withington, Herefordshire

Planning application for:  
Outline application for residential development of up to 46 dwellings including access with all matters reserved

This Heads of Terms has been assessed against the adopted Supplementary Planning Document on Planning Obligations dated 1st April 2008, and Regulations 122 and 123 of the Community Infrastructure Levy Regulations 2010 (as amended).

1. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of:

£2,845.00 (index linked) for a 2+ bedroom apartment  
 £4,900.00 (index linked) for a 2 bedroom open market dwelling  
 £4,900.00 (index linked) for a 3 bedroom open market dwelling  
 £8,955.00 (index linked) for a 4+ bedroom open market dwelling  
 to provide enhanced educational infrastructure at Withington Primary School and Aylestone High School. The sum shall be paid on or before the commencement of the development, and may be pooled with other contributions if appropriate.

2. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of:

£1,465.00 (index linked) for a flat  
 £1,720.00 (index linked) for a 2 bedroom open market dwelling  
 £2,580.00 (index linked) for a 3 bedroom open market dwelling  
 £3,440.00 (index linked) for a 4+ bedroom open market dwelling

to provide sustainable transport infrastructure to serve the development. The sum shall be paid on or before the commencement of the development, and may be pooled with other contributions if appropriate.

The monies shall be used by Herefordshire Council, in consultation with the Parish Council, at its option for any or all of the following purposes:

- Positive interventions to improve safety, such as new speed limits, reinforcing existing provisions and other speed reduction measures
- Installation of village gateway features
- Bus infrastructure improvements
- New pedestrian routes
- New cycle routes
- Safer routes to schools
- Facilitating safer parking and road crossing points between facilities within Withington

NOTE: Balfour Beatty Living Places – the council public realm contractor – are scoping and designing a range of sustainable travel options for Withington. The monies would be used towards delivery of those schemes.

3. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of £80.00 (index linked) to provide 1x waste and 1x recycling bin for each dwelling. The sum shall be paid on or before the commencement of the development.

4. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of £17,400.00 (index linked) for infrastructure improvements at Cantilupe Surgery, Hereford Medical Group and Fownhope Surgery. The sum shall be paid on or before the commencement of the development.

5. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of £30,665.66 (index linked) for infrastructure improvements at Hereford Hospital. The sum shall be paid on or before the commencement of the development.

6. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of £24,552.00 (index linked) for the provision of changing facilities at Withington Village Hall. The sum shall be paid on or before the commencement of the development.
7. The developer covenants with Herefordshire Council to provide 0.126 hectares (1260sqm) of on-site green infrastructure comprising; 0.084 hectares (840sqm) of children's play and 0.042 hectares (420sqm) of Public Open Space. The on-site green infrastructure shall be made available on or before the occupation of the 1st open market dwellinghouse.
8. The maintenance of any on-site Public Open Space (POS) will be by a management company which is demonstrably adequately self-funded or will be funded through an acceptable on-going arrangement; or through local arrangements such as the parish council and/or a Trust set up for the new community for example. There is a need to ensure good quality maintenance programmes are agreed and implemented and that the areas remain available for public use.
9. The developer covenants with Herefordshire Council to provide 35% units of affordable housing.
10. The developer covenants with Herefordshire Council that the Affordable Housing Units shall be for Intermediate tenure which means housing sold to people in need of Affordable Housing at a discounted price.
11. The developer covenants with Herefordshire Council not to occupy or cause or permit the occupation of more than fifty percent (50%) of the Open Market Units until the affordable housing is delivered (unless Occupation is otherwise agreed in writing by the Council in accordance with a phasing programme).
12. The Affordable Housing Units must be allocated in accordance with the Herefordshire Allocation Policy for occupation as a sole residence to a person or persons in affordable housing need one of who has:-
  - 12.1 a local connection with the parish of Withington;
  - 12.2 in the event there being no person with a local connection to the parish of Withington to the adjoining parishes;
  - 12.3 in the event there being no person with a local connection to the above parish any other person ordinarily resident within the administrative area of Herefordshire Council who is eligible under the allocation policies
13. For the purposes of sub-paragraph 12.1 & 12.2 of this schedule 'local connection' means having a connection to one of the parishes specified above because that person:
  - 13.1 is or in the past was normally resident there; or
  - 13.2 is employed there; or
  - 13.3 has a family association there; or

13.4 a proven need to give support to or receive support from family members; or

13.5 because of special circumstances

14. In the event that Herefordshire Council does not for any reason use the sums in paragraphs 1, 2, 3, 4, 5 and 6 above, for the purposes specified in the agreement within 10 years of the date of payment, the Council shall repay to the developer the said sum or such part thereof, which has not been used by Herefordshire Council.
15. The sums referred to in paragraphs 1, 2, 3, 4, 5 and 6 above shall be linked to the RICS Community Infrastructure Levy (CIL) Index with the intention that such sums will be adjusted according to any percentage increase in prices occurring between the date of the Section 106 Agreement and the date the sums are paid to the Council.
16. If the developer wishes to negotiate staged and/or phased trigger points upon which one or more of the covenants referred to above shall be payable/delivered, then the developer shall pay a contribution towards Herefordshire Council's cost of monitoring and enforcing the Section 106 Agreement. Depending on the complexity of the deferred payment/delivery schedule the contribution will be no more than 2% of the total sum detailed in this Heads of Terms. The contribution shall be paid on or before the commencement of the development.
17. The developer shall pay to the Council on or before the completion of the Agreement, the reasonable legal costs incurred by Herefordshire Council in connection with the preparation and completion of the Agreement.

#### 5.2.24 Cadent/National Grid

(see website for full comments) In summary identified apparatus in the vicinity – contractor required to contact Plant Protection before work commences.

#### 5.3 Representations

	<b>Consulted</b>	<b>No Response</b>	<b>No objection</b>	<b>Qualified Comment</b>	<b>Object</b>
Parish Council (+ amended/addition plans/documents)	√√				√√
Public Consultation (+ amended/addition plans/documents)	√√				√ 102 objections (√ 79 objections)

Representations received are as follows:

##### 5.3.1 Withington Group Parish Council comments:

The Withington Group Parish Council on the 9th March 2020 considered the application following presentations by members of the public (approximately 40 attending the meeting). The overwhelming view of the public was that the application should be refused. There were no comments in support of the proposal.



The WGPC resolved to object to the application on the following grounds.

1. The Withington Group NDP was formally adopted on the 11th October 2019, therefore in line with paragraph 48 of the NPPF the following is appropriate: The plan should be afforded full weight and the application should be refused as the site is not allocated for development and lies in open countryside as defined by Policies RA2 and RA3 in the Core Strategy. There is nothing in the proposals for this to be considered as an exception. The proposal is thus in direct conflict with Policy P2.

2. Withington is highlighted within the Core Strategy Policy RA2 as an area for proportional growth. The Withington Group NDP has defined Withington with a settlement boundary. Policy P3 indicates that any areas outside of this settlement boundary are defined as open countryside. There were no objections to the settlement boundary in the location of the application site which lies outside the boundary or the principle of Policy P3. The proportional growth for Withington Group is 127 and to date some 244 dwellings have been approved. Approximately 99 have been completed up to occupation. (It is accepted that these figures may differ slightly as recent completions and approvals continually alter them.) The Group Parish has therefore met its proportional growth target by over 110 dwellings. A further 15 dwellings are likely to be approved after the completion of a S 106 agreement. This excessive over provision, well beyond the minimum requirement of 127 houses, is already creating difficulties in maintaining the character of this rural settlement, due to excessive traffic and danger to pedestrian movements on narrow country lanes. The County Council can also illustrate a 3 years supply of housing in accordance with the NPPF for up-to-date neighbourhood plans.

3. This application is located within an area defined as open countryside and therefore contrary to Policy RA3 of the Core Strategy and P3 of the NDP. Again for these reasons the application should be refused.

4. The site lies to the east and north of the main housing areas and is separated from them by the narrow country lane (C1130) which already experiences severe traffic congestion due to its narrow width. The historic development of Southbank in the 1950's later expanded in the 1980's and further expanded recently through the development of David Wilson Homes all generate significant traffic movements onto this very narrow country lane. The C1130 also serves as a link between the A4103 and A465, thus allowing traffic to avoid Hereford. The very recent developments to the south of the site by David Wilson Homes of 69 dwellings has exacerbated the problems on this stretch of the road. A further application for 15 dwellings, also with a proposed access onto the C1130, is under consideration on a brown field site immediately opposite the southern edge of the current application site. The Parish Council has objected to this development as being of too high a density and with insufficient parking which will impact on the free flow of traffic on the C1130. The recent developments have also increased the pedestrian usage of the road which is devoid of footways and for the most part has no verges. It is interesting to note that the highways requirement for any new estate road is for

a 4.8 metre carriageway. This cannot be achieved on a significant part of the C1130. The proposed estate highway will also be required to have footpaths. The submitted plans for the access have little detail to illustrate the impact on the C1130, nor the impact of excavation work required to the physical form of the land. As access is not reserved it is considered that the plans should be refused due to the inadequate and unacceptable access.

(It is worth noting at this stage that the Parish Council has requested a full traffic study of Withington to determine how outstanding section 106 highway funds should be invested in securing improvements to the network. Balfour Beatty on behalf of the highway authority has recently proposed a possible one way system along the C1130 along with other measures throughout the village. Further work is being undertaken before schemes are presented to the public, but it is interesting to note that the possibility of introducing footpaths along the C1130 and Duke Street have been rejected due to the lack of available roadspace. The applicant has confirmed that their highway 'experts' have never visited the site before preparing their proposals. This is clearly reflected in the submitted proposals which cannot be implemented.

It is further considered that the suggestion by the transportation department that the applicant could widen the C1130 without any public consultation on the future transport plan for Withington is unacceptable and goes beyond the requirement of the consultation on the application as submitted – it is therefore assumed that there is a strong highways objection to the proposal.

The C1130 provides the direct route from the housing areas to the south to the village primary school. This route is already a danger for pedestrians and further development will only increase this danger.

5 The site covers an area which is at the highest point on the edge of the village and any development will have an unacceptable visual impact when viewed from several vantage points. The most severe impact will be on the adjacent properties at The Bank, Bank Cottages and on 14 dwellings at Southbank. The steeply rising ground level will mean that all properties will be severely overlooked into their private rear spaces and potentially into their upper floor windows. The provision of screen fencing and dense vegetation to reduce this impact will be unacceptable as it would transform the outlook from all the properties involved. Whilst it is noted that a view cannot be protected the visual environment should not be impacted to the extent that the whole character of the area around a dwelling is detrimentally changed. The development is therefore contrary to Policy RA2.

6. The larger area of open space now indicated, if used by residents from beyond the development, will potentially lead to more pedestrian movements on the C1130. This could not be acceptable on highway/pedestrian safety grounds.

7. The WGPC supports the objection from the county landscape advisor and in particular the following points outlining the detrimental impacts of the proposal.

- Detrimental change to landscape character and settlement pattern.

- Significant loss of trees and earth along road C1130 to achieve vehicle visibility splay.
- Due to topography and design steep footpaths from the development will not be acceptable for disabled use or comfortable for prams and children, particularly when approaching the C1130.
- Increased surface water runoff to manage. The site falls in the direction of proposed access and will naturally run towards the road.
- Destruction of grade two (very good) agricultural soil, biodiversity and habitats. (Reference: West Midland Region Agricultural Land Classification, 2010, Natural England).
- Substantial earthworks to accommodate access road, roads, housing and car parking infrastructure on sloping site, that will potentially affect the natural geology and hydrology of the site.
- The loss of dense hedgerow, mature tree and earth along road C1130 damages the landscape character and experience for people travelling along this rural village lane. The application does not provide any form of landscape compensation (i.e. reinstatement of trees) nor does it respect the local landscape character.

8. The site topography falls towards the proposed access and road C1130 and generally to the south west. The SUDS water storage area is indicated in the south west corner immediately adjacent to Southbank. The driveway and pavements increase hard surfaces and therefore surface water volumes, as there are already reported flooding issues in gardens at Bank Cottages and Southbank these are likely to be exacerbated.

There are also insufficient details relating to the provision for foul sewage disposal.

9. The development is not sustainable in respect of transport issues as there is only a minimal bus service to Hereford, and there are no safe cycle routes. As all the main services including most employment opportunities, shopping requirements, health provision, secondary and tertiary education, cultural and sports facilities are in Hereford, the majority of trips have to be made by car. The proposal is thus in conflict with the government's stance on climate change as agreed in the Paris accord.

10. The WGPC endorses many of the objections by local residents and respectfully requests that the application be refused.

#### 5.3.2 Withington Group Parish Council comments (amended) 23.4.2020

The WGPC continues to strongly object to this application as it is clearly outside of the development areas highlighted by their Neighbourhood Plan, which was adopted in October 2019. The NDP was created by public consultation, it is less than a year old, and the WGPC believes that it should carry enough legal weight to not be overridden by developers or landowners. The insinuation that drainage can be sorted out after outline planning permission has been granted is clearly absurd as the PC feels that this is a crucial area of consideration in light of recent floods. WGPC had 38 members of the public at the meeting where this application was discussed, and all 38 were vehemently opposed to the application, at the present

time there are more than 125 letters of opposition to the application on line, the Parish Council can only continue to stress that this application is neither wanted nor necessary, given that the village has already far exceeded the provision of new housing originally required

### 5.3.3 102 objections (from 93 objectors) have been received. In summary the main points raised are:

#### Planning policy/principle of development

- NDP is part of the development plan, following successful referendum
- Ridiculous application given the vast number of reasons for refusal last time
- Little change to previously refused scheme, just 6 less houses, refusal reasons and opposition still just as relevant to this application
- This resubmission does not address the previous reasons for refusal
- Withington has achieved and greatly exceeded its minimum growth target (minimum of 127 required for plan period, allocations/permissions/constructions amount to 254, as of February 2020 158 completed/under construction – 24% over requirement)
- Site is outside of the NDP settlement boundary
- Development is contrary to the NDP – agreed by a vote (88% of voters supported it).
- Acceptance of the proposal, contrary to the NDP, would undermine democracy, local politics and policies
- Development is contrary to the NPPF – harm would outweigh the benefits
- Paragraph 14 of the NPPF applies, to grant permission contrary to the recently made NDP would be an insult to the local community and extensive work involved in the NDP and allocated sites.
- Village has provided more growth than required already
- Application, resubmission, does not acknowledge that the NDP is now made and incorrectly suggests it attracts limited weight
- Application falsely states that that the proposal would result in no conflict with the NDP, when it would
- Where is evidence that shows there is a need for exceeding the agreed quota of housing?
- This is another outline application with all matters reserved, except access, which again does not provide enough information to assess the full impact
- Matters of ecology and flooding should be provided
- Applicant was advised at pre-application stage (before 191671/O) not to apply due mainly to the NDP

#### Highways

- Submitted drawing (figure 7, page 11 Transport Statement) is almost unreadable
- Transport Statement incorrectly refers to 52 dwellings
- Poor/limited unreliable local transport would result in car use for day to day life
  - at peak times the service has reached capacity and is overcrowded – resulting in residents using cars instead
  - Monday to Friday service (none in the evenings) no service on Sundays
  - No peak am services into Hereford – first departure is in Worcester direction at 09.10

- Only standing room on the 8am bus to Hereford (Withies Road entrance)
- No service after 6pm
- Southbank bus stop has very few buses stop there
- No school bus service (only a minibus to Aylestone High School) as local schools are at capacity many children have to travel out of Withington leading to more car journeys
- Applicant is incorrect suggesting that there is a good level of services and access to employment (business park is small, with few locals employed there)
- Access off a narrow lane (two cars struggle to pass one another) – not suitable for increased traffic and does not have capacity to be widened
- Narrow lanes in the locality are unsuitable for extra traffic
- Unsafe access proposed, on blind bend
- Unsafe for pedestrians to use the lane
- Congestion from increased traffic from housing results in longer journey times
- Real impact of recently granted housing on local roads not yet seen (Whitstone Chapel – 33, Vine Tree Gardens – 31, opposite the Business Park – 3, Veldo Lane – 2 + this proposal = 138+) - need to be considered together
- Negative impact on roads, where Withies Road meets the A4103, east of the village
- Proposed pedestrian access directly onto the C1131, north of the site, would be unsafe, due to poor visibility at crossing over points, on this busy road
- Proposed footpath to the memorial would unacceptably reduce the width of the already narrow highways, as it is bounded either side by banks/third party land, that is used by large vehicles and as a rat run
- Due to narrow nature of the lanes and use by large vehicle it is inevitable for overrun of the footways proposed, resulting in danger for pedestrians
- Proposed footpath on Withies Road would either be inadequate or would result in significant loss of hedgerow and verge etc., due to limited carriageway width – therefore either unsafe or harmful impact on appearance of the lane
- Unclear from accident report how many near misses there have been and when such might be a fatality
- Cycling to Hereford is not safe, there is no cycle lane on the A4103 (nor is it wide enough to provide one) and it is fast and busy (rarely seen cyclists use it due to these hazards) – applicant does not propose a cycle lane to Hereford to facilitate this mode of transport
- Local lanes are too narrow for cycling
- Applicant proposed a site layout to include public transport stops – no buses to catch or use it
- Proposal includes measures to promote walking (only advice on personal safety for residents), cycling (maps of cycle routes to the site – there aren't any)
- Generic proposals for alternative modes of transport, which for residents are known to be completely incorrect and not relevant to Withington
- Increased traffic would result in a log jam – hardly room for two cars to pass
- Dangerous proposed access
- Proposed access is at the point where the lane is 4.2m wide, on a bend at the summit, with significant level differences between the western boundary and the lane (Transport Statement records the gradient as 1:12.5 – hazardous for both vehicular and pedestrian traffic)
- Lane is used as a rat run, with excessive speeds

- Lane already experiences heavy traffic is used by a range of traffic, including buses, tractors and HGVs and is unsuitable for increased traffic
- Increased traffic is a safety concern on overused and badly maintained roads
- Near collision between speeding cars resulted in both vehicles coming through the fence to Withies Close
- Narrow lane with new access would be a highway safety issue
- Lane is a route to the school, no pavement or lighting, extra traffic will lead to an accident – unsuitable and unsafe for access to school for pedestrians and cyclists
- No footpaths exist along the lane adjacent to the site to reach local services and none are proposed – danger for pedestrians
- Challenge the applicant's consultant's expected daily traffic movements – validity of traffic survey and statement that 46 new dwellings would only lead to 28 trips per day (most households have 2 cars)
- Extra traffic likely to be 92 car movements (2 cars per house) for trips to school, work, college etc.
- Traffic levels were recorded at Little Bank Cottage (3.6.2019 between 07.00-10.00 & 15.00-18.00) – 867 traffic movements (cars/light goods = 760/87.6%, rigid lorries/agricultural vehicles and articulated lorries = 80/9.2% & cyclists 16, motor cycles 10, buses 1 = final 3.1%)
- Road already unsuitable for volume and type of traffic – no capacity for additional traffic
- Duke Street is inadequate for extra traffic or to provide a safe pedestrian route
- Transport Statement – accident data claims no accidents along site frontage – locally this is known to be incorrect. Two accidents have occurred 2018/2019, an overturned vehicle and pedestrian being struck by a vehicle and transferred to hospital.
- Noted journeys from development at 'Orchards' site (62 dwellings occupied at that time) – between 7.30 and 9.30am 76 vehicular movements (excluding construction traffic) were recorded – demonstrates inaccuracy of submission which anticipates 29 am trips and 28 pm trips at peak times from the proposed site
- Applicant's desk top assessment of traffic generation seems flawed
- Travel Plan refers to the 'town', with many services available by a short cycle ride – this is exaggerated
- Travel Plan refers to 'Brompton' and Hereford to which it states that the site has good public transport connections to – this is incorrect (including reference to Brompton)
- No reference to provision for electric car charging on the site
- New pedestrian footway proposed to north only near to/would serve 9 out of the 52 (sic) dwellings
- Main access into the site would not cater for pedestrians to have easy access to village facilities
- Transport Statement accepts due to the nature of the lane to the west there is no scope to provide a suitable facility along the western site boundary
- Transport Statement accepts there is an infrequent bus service
- Misleading plans – indicate a public footpath behind 17 Withies Close. It is not wide enough to accommodate a footpath
- Proposed footway to west of Duke Street would restrict width to single file and bottleneck traffic, which includes HGVs and large agricultural traffic

- Tracked movements of a John Deere 5603 4WD is misleading, because this model is on the small side compared to typical vehicles of this type and does not include a trailer, plough or seed drills, which significantly alter width, length and stability – pedestrian safety will be at risk (John Deere = 1.95m wide, most tractors are 2.4m minimum, most opt for wider tyres to minimise damage to land and are 2.65m)
- If proposed footways were provided they would limit width of the highway so that vehicles could not use them without mounting the new pavements
- Applicant has obviously not visited the site, because the roads are not able to be widened, due to historic walls – ludicrous proposal, risk of harm to pedestrians and walls
- Risk of vehicles being forced off road, due to narrow nature and increased traffic into rear gardens of Withies Close, which are 3-4ft lower than the road

#### Landscape

- Harmful to landscape and environment – no landscape gain as applicant suggests
- Green field site, loss of its intrinsic nature
- Loss of fertile agricultural land – been in use as such for 34 years, records show for centuries
- Field not under cultivation for second year running, but this being for the first time since June 2007
- Applicant suggests the land is classified as Grade 3b (after a survey in February 2019) and not Grade 2 as per the Classification Map, local evidence has always indicated it produces a strong, dense and healthy variety of crops – Grade 2 classification seems more relevant
- Survey was after the wettest three months of the year and in part attributed the downgrading due to wetness. Para 170 of the NPPF requires recognition of the economic and other benefits of best and versatile agricultural land, weighing greater where the land is outside of the NDP settlement boundary
- Cumulative impact of loss of agricultural land/undeveloped land around the village
- Dominant parcel of land due to topography and elevation, would be visible for miles
- Visually intrusive development
- Urban sprawl proposed
- Creation of access, including tree and hedgerow removal and earth works would be harmful to the existing rural character of the lane
- Would spoil local views across the landscape
- Question benefits of supplementary planting to the east – to protect the landowner of the field from views of this urban sprawl?
- 1.8m high boundary fencing would be harmful to amenities of the area
- D & AS suggests the scheme would include Urban design that will, in its own right have a sense of identity – this is contrary to the NDP, which requires that the integrity is kept, to retain rural character
- No cross sections to indicate height relative to contours – this is needed to evaluate the true impact
- Appraisal Addendum suggests only 'minor to moderate effects' on the landscape - photographs supporting this appear selective (taken at low level) – should consider views from the south and east

- Proposal includes removal of entire length of hedgerow to provide access/visibility splays resulting in steep and bare embankment
- Updated landscape response from applicant does not address previous reason for refusal on this ground
- Site clearly identifies as part of the countryside rather than urban fringe
- Site is considered to be a 'valued' landscape – should be protected under paragraph 170 of the NPPF
- Reduced number of units and contrived layout would harm landscape and not reflect character and grain
- Wrong greenfield site in wrong location for speculative housing development
- Extensive engineering operations would be required resulting in a scar on the local landscape
- High magnitude of change proposed
- Harmful suburbanising impact resulting from encroachment into the countryside
- Site includes large, central open space which would then be subject to further applications to build on
- Loss of trees would be harmful – counted 149 tall trees (not including smaller saplings)
- Trees are not insignificant, as applicant suggested (on 191671 application)
- Self-seeding oak samplings are growing ready to replace the big, old oak tree
- Is destruction of trees criminal damage?
- Government is promoting tree growing to meet carbon reduction target, how can removal of these trees be justified?
- Proposed footpath to Duke Street would change the character of this part of the village (is unjustified, as existing access is via Vine Tree Close, Veldo Lane and Duke Street)
- Landscape seeks to protect the applicant's views (Withington Court) with tree planting, same not proposed for other dwellings to boundaries

#### Infrastructure

- Local infrastructure is struggling already, how will it cope with more development?
- Primary school's capacity (is full) and facilities unable to cope, using portable classrooms already
- Catchment high school (Aylestone) is already under pressure from increased pupil numbers
- NHS – Wye Valley Trust is operating at full capacity, i.e. 90% bed occupancy, which is one of the highest rates in England and when the figure is over 85% patients are put at serious risk
- No investment in infrastructure in last ten years for developments permitted
- Strain on utilities - since construction of dwellings at Vine Tree Close there has been a drop in water and gas pressure –
- Shop struggles to supply the village, never has stock and is close to closure
- Shop cannot keep up with demand, so has limited stock
- Post Office sells a small amount of stationary
- No shops, no schools, poor roads
- Village facilities are poor and unable to sustain an extra 92+ residents
- Village hall attacks/break in – paid for by residents
- Village is becoming a dormitory housing area for Hereford
- Infrastructure cannot be improved to accommodate development – do not approve



- Improved infrastructure from s106 needed before an increased population:
  - Better communications,
  - Improved capacity at catchment schools/upgrading of schools/new schools
  - doctors/dentist/medical facilities
  - extension to village hall, play area and car park
  - more/better shops (with cash point)
  - public house
  - Improved public transport
  - Improved drainage
  - Improved roads – traffic calming, footpaths (if achievable) road width and surfacing – potholes
  - Widening of A4103 (two lanes to Aylestone Hill/Roman Road)
  - Benefits to ecological habitats
  - Repairs to war memorial
  - Should be social housing -1, 2 and 3 bed units
  - Should be affordable housing – part buy part rent scheme
  - All landscaping should be planted before work commences and be mature specimens
- No doctors in the village – have to travel to Fownhope (no direct bus service) and 13-14 mile journey

#### Heritage Assets

- Bank House is a non-designated heritage asset (see HBO comments for 191671/O) – scheme should provide a buffer to this asset due to its historically remote position in relation to the village
- NPPF requires consideration to the impact on heritage assets (designated and non-designated) – ignored by the applicant
- Are ley lines on the hill of archaeological interest?
- Megalithic/neolithic stone at Withies Road – archaeological significance? Should be protected for future generations
- Previous use of the site dating back to Roman times? – anecdotally it is believed to be
- Harmful impact on the Conservation Area – designated to protect the heart of the village

#### Flood Risk/drainage

- Drainage should not be a reserved matter, due to key issue in the village and River Lugg catchment
- Lack of clarity on drainage should justify refusal
- Surface water run off during construction and has been experienced at Southbank and adjacent new development – resulted in water pollution
- Surface water already runs off the site to the north (Bank House and C1131), west (Little Bank Cottage, across driveway to C130) and south (Southbank gardens)
- Surface water runoff into Withies Close
- High risk of flooding of Southbank
- High risk of flooding at St Peters Field/Orchard Development (experienced October 2019 and February 2020 – external and internal flooding of properties)
- Gardens at Southbank frequently flood

- Flooding has caused large potholes to the C1131 and erosion of splayed driveway at Bank House
- Loss of green field site and vegetation and increased non-permeable surfaces would adversely affect drainage, exacerbating the existing problems
- Lack of crop growing has increased flooding in the area, (including Little Bank Cottage and Southbank)
- Contaminated flood water would fill up struggling sewer/pipes
- FRA is vague, no evidence that permeable surfacing and swales will significantly reduce increased run off as suggested
- FRA includes numerous conflicting statements, such as which direction it would drain due to topography, its land use and how drainage could be effective but need to factor in system failure
- Bedrock is shallow so soakaways are not feasible – ponds would be required
- Attenuation pond would be dangerous for children (unfenced)
- Massive drainage problem – drains regularly blocked due to the number of houses connected
- Previously (191671/O) WW indicated there was no clarity on the availability for foul and surface water connections
- Drainage 'mitigations' (swales etc.) will not resolve the natural flow from the elevated site
- Comparison with David Wilson Homes' (St Peter's Field) development where FRA concluded that surface water would be appropriately managed and in reality it was not (October 2019 and February 2020 – flooding of site)
- Do sewers have capacity for this increase in population and are they been upgraded? (including other recent developments)
- Recent development (David Wilson Homes) property experienced effluent coming up through inside pipes – suggested system cannot cope with existing numbers

#### Amenity/living conditions

- Negative impact on the surroundings area
- Due to sloping nature of the site – loss of privacy (bedrooms, bathrooms, living areas, gardens) for residents of Southbank, Bank House (north of the site) and Bank Cottages (Little Bank) (west of the site) and Withies Close (from properties, gardens, paths, open space and roads)
- Car headlights, when exiting the site, would shine into rear gardens/windows of Withies Close
- D and A Statement make no reference to ensuring privacy for existing properties to the north and south (refers to properties to the east, when there aren't any)
- Adverse impact on safety, security, privacy, light
- Proposed 1.8m high fencing to boundaries would have significant impact on neighbours and still, along with vegetation, would not ensure adequate privacy of existing residents due to levels
- Acknowledge this is an outline application but due to proximity to existing dwellings there would be a detrimental impact on amenity
- Existing dwellings would not provide natural surveillance, as suggested, for the new dwellings, because they are on lower ground.
- Fear of flooding
- Overshadowing of Little Bank Cottage (set between 1.75m and 3.75m below the adjacent field levels)

- Dark skies/natural light would be compromised by light pollution from the site
- Noise and fumes from extra traffic
- Extra residents = more noise, pollution, litter, dog mess (as evidenced since construction of St Peter's Field)
- Already enough building work in the village disrupting the village
- Loss of countryside, now a concrete jungle

#### Social cohesion

- Significant recent growth is a strain on the community, detracting from village life, and not providing a strong, healthy community, contrary to the balanced approach of the NDP
- To whom would the affordable units be affordable for?
- Already existing anti-social behaviour due to limited things to do in the village – worsened by more inhabitants
- Properties being built are too expensive for local residents and some still for sale on recent developments for that reason
- Village is now the size of a small town – disproportionate growth
- Scared to let children play out due to traffic

#### Ecology/HRA

- How can a foul connection be achieved when it appears to cross third party land?
- Potential for significant issues of harm to the River Wye (Lugg) SAC, which is failing its conservation status, from phosphates
- Pollution from extra cars contributing to climate change
- Polluting houses in a rural area
- Ecological Report should be dismissed as its suggestion that the site is of no ecological value is incorrect
- Wildlife on site - nesting birds (including two endangered birds of prey – buzzards nesting in field)m, grass snakes
- Wildlife in the vicinity includes birds pf prey flying and hunting over the site, owls, grass snakes, butterflies, hedgehogs, field mice, squirrels, foxes, toads, amphibians and newts and in vicinity – nesting birds, bats, red kites, woodpeckers, pheasants – loss of irreplaceable habitat/how would the loss of habitat be addressed?
- Bats roost at Bank House, light pollution will be hazardous to their survival
- Harm during construction phase, due to large vehicles, building materials

#### Other

- Still properties for sale on recent development – saturated market, no demand
- Excessive development here is not acceptable to meet the countywide requirement, as the applicant suggests
- Even affordable units are secures at permission stage, builders often try to change this on economic viability grounds
- Traumatic, prolonged experience since submission of the EIA.
- Permission should not be granted for financial gain for the council
- Effects of Brexit on housing requirements is yet to be seen
- Believed that a full inspection for wildlife has not been undertaken
- Scheme fails to demonstrate that net gains for biodiversity would be achieved

- *'The countryside has been ignored, it's people are not listened to...and the countryside will haemorrhage away.'* (Quote from The Decline of an English Village – Robin Page, Ed 2019)
- Allowing the submission of this application, after the positive NDP referendum is a waste of money
- Location Plan is not accurate, does not include recent developments
- Devaluing of homes – whether refused or not, as details of application remain on website in perpetuity

5.3.4 Following the submission of additional/amended information 79 further objections (from 61 objectors) have been received. In summary the additional main points raised are:

#### Principle of development

- Applicant did not make representations/raise concerns over the site being outside the settlement boundary during the NDP preparation (content that the land now developed by David Wilson Homes would be suitable)
- WGNDP took around 500 hours to bring to fruition, with grant funding of £10,440.05, application is trying to bulldoze 46 houses through in the face of concerted opposition and if allowed the hours and money spent will have been totally wasted
- Contrary to Government's stance on climate change as agreed in the Paris accord

#### Transportation

- Witnessed applicant's Transport Consultant (who had travelled from Leeds to Hereford during lockdown) measuring the distances between eroded verges and not the tarmacked highway (artificially maximising the dimensions)
- It is stated that the 6m section can accommodate a 1.2m wide footway, and some sections between 5.7-5.26m wide would need to narrow the carriageway to provide one.
- The road is a bus route and used by large tractors and HGV – narrowing the carriageway is wholly unacceptable and inappropriate
- Narrow new footways (1m and 1.2m) would not accommodate pedestrians (with pram/pushchair) passing from opposite directions
- Narrow new footpaths (1m) could provide a false sense of security, people passing could step into the road
- Reduction of Duke Street to 4.8m and 4m in places is fanciful in the extreme
- Reduced carriageway would create a chicane effect in places, causing traffic problems
- Suggestion of less direct route via Vine Tree Close, Veldo Lane and Duke Street is unlikely to happen in reality – human nature to take most direct route or car (suggestion is almost double the distance)
- Lack of connectivity outside of the village and limited facilities in the village are more noticeable during Covid-19 restrictions on travel
- Removal of soil exceeding 3,600m<sup>3</sup> (9,000 tonnes) = 450 heavy vehicles movements (previous scheme calculations, due to reduced gradients this would be greater)
- Amended plans acknowledge hay trailer width of 2.5m, but show one of 1.95m, and still skirt over the wider vehicles that use the lanes

- Increased heavy/large vehicles had already damaged verges
- Current review of highway network (by BBLP on behalf of the Highway Authority) in village has already ruled out possibility of footpaths along the C1130 and Duke Street due to lack of available road space
- Applicant confirmed that their highway 'expert' had not visited the site before submission of the application
- Larger open space within the scheme could attract local residents, increasing movement to the site, on dangerous roads

#### Landscape

- Suggestion that development would retain the majority of trees and scrubby vegetation seems not to relate to the western boundary – as access requires removal
- Planting proposed would not mitigate the impact of the splayed access and would take years to mature
- Sections seem to use artistic licence and soften the real gradients
- Planting would not contribute to enhancement or air quality as applicant suggests
- Immature planting will absorb less pollution and rain water
- Applicant is aware of high visibility of the site – previous suggestion in 2000 to erect a folly on the ridge so it would be seen from a long way away
- Significant soil removal for access – harmful to character of the lane
- AAH comments in LS at 2.5 states that the C1130 is fronted by dwellings along its entire western edge – this is factually incorrect, there are mature trees and hedgerows
- How can development of a greenfield, sloping site enhance it/comfortably nestle at the settlement edge?
- Assessment is rhetoric
- Applicant is guilty of lacking clarity, not Herefordshire Council as they suggest (LA 4.4)
- Not 'minor' or 'minor to moderate adverse' impacts – would be major
- Landscape planting section plan, not to scale and show extremely mature trees (how it may look in 30-40 years)
- Development that needs the amount of screening proposed is clearly unacceptable
- No tree compensation proposed
- Site is visible from Bartestree
- Trees will have to be removed for 5G to work
- Fanciful suggestion by the applicant that development would improve the landscape character and visual amenity of the site
- Applicant's landscape response states that design has been developed to allow for APPROPRIATE (????) gradient, but fails to state anywhere what they are

#### Heritage Assets

- Provision of footway along Duke Street, beyond pinch point, would be harmful to Conservation Area, due to loss of verge and impact on dry stone walls
- Loss of church spire on skyline – defines Withington

#### Flooding/drainage

- February 2020 flooding overwhelmed sewers on the Orchards development and in Withies estate
- Foul connection option 2 (of 4) requires access to third party land – too important to be discussed after the grant of outline permission as suggested
- Removal of vegetation and root system to eastern side embankment of the C1130 for access and visibility splay would increase flood risk elsewhere
- Applicant now accepts that infiltration is likely to be poor, but still insists on drainage been dealt with after the grant of the outline permission
- Council' Land Drainage comments advised that swales and basins would not be acceptable to DCWW for adoption, yet scheme still proposes these.
- Requested calculations have provided not to work, as found when David Wilson Homes site flooded recently
- Unacceptable for Council's drainage consultant to agree to unfirmed up proposals

#### Ecology

- Witnessed skylarks, merlins and hawks in the area

#### Infrastructure from S106 contributions to consider:

- Woodland creation (in Lugg Valley area)
- Restore hedgerows
- Enlarged village hall carpark
- Different access
- Pavement widening
- Footpath from Springfield Road to the A4103
- Flood defences for Southbank
- Improved utilities
- Community facilities- local churches, sport and changing facilities
- Major drainage works

#### Other

- Submission of further information is unreasonable and causes the Planning Authority unnecessary additional work
- Applicant has been advised that 'drip feeding' information is not helpful and even more so during Covid-19 lockdown
- Amended proposals should not be allowed due to coronavirus restrictions on travel preventing site notices being displayed
- Applicant's references to matters being discussed following outline consent being granted assumes permission being forthcoming and pushes all detailed problems into the 'long grass'
- Uncoordinated submissions – highways and landscape drawings do not correlate (1:12 gradient at access, compared to 1:16)
- Agent suggests significant hedgerow retention, compared to Transport Consultant's statement that all trees and hedgerows along the C1130 to be removed
- If permission is granted, contrary to strong local opposition and policy requirements, the landscaping should comprise mature specimens (height min. of 6m for edge of woodland trees and 9m for woodland trees) and be planted during the first planting season after commencement, before the construction of any dwellings continues, and monitored and maintained for min. of 10 years

- Villagers opposed to the application presume that between the consultation end date and determination date no more information could be submitted, so may not check website
- Stop requesting new applications
- More power cuts recently – can utilities cope with more housing?
- Increased chance of burglary of neighbours – access through proposed housing to rear of Southbank
- How will a meeting be held in lockdown?
- Application has no merit – time to stop submitting further information
- Continuing submission of information is extremely frustrating – unnecessary workload on Council Officers
- Reports are repetitive and conflicting

The full text of these representations can be viewed on the website at:

[https://www.herefordshire.gov.uk/info/200142/planning\\_services/planning\\_application\\_search/details?id=200207&search=200207](https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=200207&search=200207)

5.3.5 The Ward Councillor, Councillor Andrews, agreed for a decision to refuse permission to be made under the Scheme of Delegation to Officers. He was updated on 5<sup>th</sup> June 2020 of the recommendation.

## **6) PLANNING OFFICER'S APPRAISAL**

### **6.1 Constraints:**

Development Plan – outside of settlement boundary, defined in NDP

SSSI impact zone, HRA AA

Surface water adjacent

Heritage Assets – Conservation Area and Listed building to the north of the site, Archaeology

### **6.2 Appraisal**

#### *Policy context and Principle of Development*

6.3 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.”*

6.4 In this instance the adopted development plan is the Herefordshire Local Plan – Core Strategy (CS) and the Withington Group Neighbourhood Development Plan (WGNDP).

6.5 The NPPF is a significant material consideration in both general policy requirements and also where the LPA cannot demonstrate a 5 year housing land supply, as is the present situation (published figure is 4.05 years – April 2019). The NPPF confirms at para 12 that the presumption in favour of sustainable development does not change the statutory status of the development point as the starting point for decision making. Whilst the policies in the development plan concerning the provision of housing should be treated as ‘out-of-date’, by virtue of footnote 7 to para 11d, this does not mean that they are not

afforded any weight, which is a matter for the decision maker as established in caselaw. The implications of this are assessed later in this report.

#### CS and WGNDP policy assessment

6.6 As statutorily required (Section 38 (6) of the Planning and Compulsory Purchase Act 2004), and as confirmed in the NPPF (para 12) the starting point in decision making is the Development Plan, and this is not altered by the presumption in favour of sustainable development set out in the NPPF. This assessment of the principle of development therefore starts with the CS, and in particular the relevant housing policies, together with the WGNDP, as together these comprise the Development Plan for the determination of this application.

6.7 The CS identifies settlements in figures 4.14 (settlements which will be the main focus of proportionate housing development) and 4.15 (other settlements where proportionate housing is appropriate) where sustainable housing growth will be supported. Withington is included in the Housing Market Area (HMA) for Hereford in figure 4.14.

6.8 CS Policy RA2 guides development in these rural settlements. It states:-

*“The minimum growth target in each rural Housing Market Area will be used to inform the level of housing development to be delivered in the various settlements set out in Figures 4.14 and 4.15. Neighbourhood Development Plans will allocate land for new housing or otherwise demonstrate delivery to provide levels of housing to meet the various targets.*

*Housing proposals will be permitted where the following criteria are met:*

*1. Their design and layout should reflect the size, role and function of each settlement and be located within or adjacent to the main built up area. In relation to smaller settlements identified in fig 4.15 proposals will be expected to demonstrate particular attention to the form, layout, character and setting of the site and its location in that settlement; and/or they result in development that contributes to or is essential to the social well-being of the settlement concerned;*

*2. Their locations make best and full use of suitable brownfield sites wherever possible;*

*3. They result in the development of high quality, sustainable schemes which are appropriate to their context and make a positive contribution to the surrounding environment and its landscape setting; and*

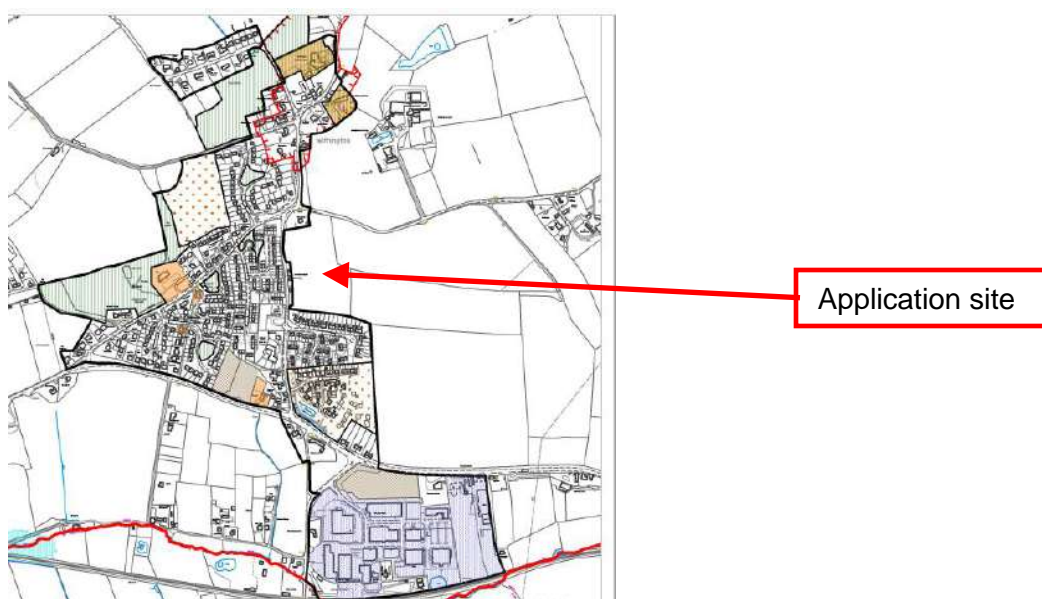
*4. They result in the delivery of schemes that generate the size, type, tenure and range of housing that is required in particular settlement, reflecting local demand.*

*Specific proposals for the delivery of local need housing will be particularly supported where they meet an identified need and their long-term retention as local needs housing is secured as such.”*

6.9 Both the policy and pre-amble specify the need for the site to be located within or adjacent to the main built up area. The CS advises that until such time as settlement boundaries are defined, either through Neighbourhood Development Plans (NDP) or a



Rural Areas Site Allocations DPD that schemes should be assessed against their relationship to the main built form of the settlement. Development should be restricted outside of the built up area to avoid unsustainable development and unnecessary isolated, non-characteristic and discordant dwellings, which would adversely affect the character and setting of a settlement and its local environment. The WGNDP includes a settlement boundary for Withington, as per the extract below, which unequivocally identifies the application site as being outside of the settlement boundary. On this basis, and contrary to the applicant's conflicting assertions\*, the application is to be considered against the WGNDP settlement boundary, because it has defined one. (\* note: the Amended Planning Supporting Statement February 2020 states at 5.10 that the village does not have a defined limit, despite including an extract of the WGNDP settlement boundary plan at Image 3.1)



WGNDP – Withington village policies map – settlement boundary outlined in black

6.10 WGNDP policy P2 states that *'The Settlement Boundaries for Withington and Withington Marsh are defined as shown on their respective Village Policy Maps. Land within the Parish but outside these Settlement Boundaries will be regarded as Open Countryside to which Core Strategy Policy RA3 - Herefordshire's Countryside will apply to all new development.'* This categorically confirms that sites that are outside of the settlement boundary are in the countryside and makes no provision for those that are adjacent to it. The applicant suggests (Planning Supporting Statement para 5.18) that WGNDP policy P2 is silent on new development in the open countryside as it only refers to CS policy RA3, which is considered to be out of date. This approach is considered to be fundamentally flawed as it fails to recognise that the Development Plan should be read as a whole. Furthermore, the quote (para 5.18 - *"The wording of the policy is clear and refers to CS Policy RA3 for development on land outside the settlement boundaries."*) from the Examiner's Report is clearly misunderstood by the applicant, as it actually confirms that WGNDP policy P2 is clear that development outside of the settlement defined in the plan is subject to CS policy RA3, rather than supporting their interpretation of policy.

6.11 CS policy RA3 states as follows:

*In rural locations outside of settlements, as to be defined in either neighbourhood development plans or the Rural Areas Sites Allocations DPD, residential development will be limited to proposals which satisfy one or more of the following criteria:*

- 1. meets an agricultural or forestry need or other farm diversification enterprise for a worker to live permanently at or near their place of work and complies with Policy RA4; or*
- 2. accompanies and is necessary to the establishment or growth of a rural enterprise, and complies with Policy RA4; or*
- 3. involves the replacement of an existing dwelling (with a lawful residential use) that is comparable in size and scale with, and is located in the lawful domestic curtilage, of the existing dwelling; or*
- 4. would result in the sustainable re-use of a redundant or disused building(s) where it complies with Policy RA5 and leads to an enhancement of its immediate setting; or*
- 5. is rural exception housing in accordance with Policy H2; or*
- 6. is of exceptional quality and innovative design satisfying the design criteria set out in Paragraph 55 of the National Planning Policy Framework and achieves sustainable standards of design and construction; or*
- 7. is a site providing for the needs of gypsies or other travellers in accordance with Policy H4.*

6.12 None of the listed exceptions to allowing residential development outside of the settlement boundary, which has been clearly defined in the WGNDP, are met. Consequently, in terms of the principle of residential development of the site, the proposal is contrary to the Development Plan. Unless there are material considerations to indicate otherwise, planning permission should be refused.

6.12 The first key material consideration is the NPPF and most specifically the requirement to consider policies that are '*most important for determining the application*' as being '*out of date*' when a 5 year housing land supply is not demonstrable (as stipulated in footnote 7 (to para 11d) of the NPPF). The current published position is a 4.05 year housing land supply.

6.13 The most important policies for this application for residential development are CS SS2, SS3, RA1, RA2 and RA3 and WGNDP policy P2. These are positively worded and promote housing growth in sustainable locations in accordance with a strategic approach that has very recently been finalised at the local level through the WGNDP (made 11.10.2019). As established in caselaw it is for the decision maker to determine the weight to be afforded to these policies. One of the factors to be taken into consideration when doing so, cited by the judges in the Richborough Estates (2016) case, is the extent

to which relevant policies fall short of providing for the five-year supply of housing land. With regards this application, it is noted that it is located in a Parish that has very recently provided clarity on its growth through the WGNDP. At the Parish level there is certainty on how the minimum growth would be met and indeed fundamentally how it has in fact been far exceeded. The growth within the Parish early in the Plan period (as set out in Table 1 below) demonstrates that it has significantly boosted the supply of housing in this area. The minimum requirement for 127 dwellings (18% growth of existing 703) has been exceeded, with a total housing supply identified in the WGNDP of some 254 dwellings. This equates to 36% growth, double the minimum target. Even excluding the windfall allowance and the expiration of the planning permission for the 80 unit car home facility at Whitestone (reference 152042/O – expired 15.6.2019) and despite its continued allocation in the WGNDP the growth already far exceeds the minimum requirement for 127 new homes by some 27 dwellings (equating to 22%). The proposal for up to 46 on the application site would result in 73 dwelling over the minimum target (200 dwellings, compared to 127 required), amounting to some 28.4% growth within the first half of the 20 year plan period.

<b>Table 1</b> <b>Withington Group NDP</b> <b>Source of Housing Supply and Requirements</b> <b>(Data from 2011 to 31<sup>st</sup> March 2017)</b>		
Existing dwellings in 2011	Withington/Withington Marsh	610
	Westhide	33
	Preston Wynne	60
	<b>Total</b>	<b>703</b>
Minimum requirement to 2031 in accordance with Core Strategy Policy RA1		
	18% of 703	<b>=127</b>
Completions and demolitions 2011 to 31 <sup>st</sup> March 2017	Withington/Withington Marsh	10 (new) 2 (demolished) = net 8 gains
	Westhide	0
	Preston Wynne	1 (new), 1 (demolished)
	<b>Total</b>	<b>8 (net)</b>
Commitments (permissions granted, allocations and under construction)	Withington: Adj. Whitestone chapel Southbank Rear of Vine Tree Close Care Home at Whitestone	33 69 31 80
Individual permissions of 1 or 2 dwellings (i.e. "windfall")	Withington	3
	Westhide	0
	Preston Wynne	10
<b>Total Allocations/Permissions (net figure allowing for demolitions in table above)</b>		<b>234</b>
Proposed windfall allowance to 2031	(includes Withington, Westhide, Preston Wynne, Withington Marsh and remaining rural area)	20
<b>Total Housing Supply Identified</b>		<b>254</b>

Table 1 of the dWGNDP

6.14 In light of the above it is considered that the settlement boundary provided in the WGNDP and the relevant housing policies can be afforded significant weight in this instance and as the proposal does not meet any of the criteria set out in CS policy RA3 it conflicts with policy requirements in principle and is contrary to the Development Plan

6.15 It is recognised that there is currently a housing land supply deficit, with the published position being a 4.05 year supply. This is an important material consideration and the implications for this, as set out in the NPPF, apply. This requires the application of the

planning tests set out in paragraph 11d)i) or ii). The implications of paragraph 14 of the NPPF must also be taken into account. These are undertaken in the conclusion section of this report.

- 6.16 Turning to matters of detail, the submission is in outline form, with only access for consideration at this time.

#### Access

- 6.17 As defined in article 2 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 'Access' means the accessibility to and within the site, for vehicles, cycles and pedestrians in terms of the positioning and treatment of access and circulation routes and how these fit into the surrounding access network.

- 6.18 The site for up to 46 dwellings is proposed to be served from one vehicular access off the eastern side of the C1130. Its alignment within the site differs to the previously refused scheme and includes retaining walls (annotated on the drawings). The Transportation drawings include 2 metre wide footways to the north and south of the vehicular access contiguous with the site frontage (note: the landscape plans do not include these footpaths). In addition a pedestrian access to the north (C1131) is included, with footway initially on the southern side and also to the north, with a crossing point to a further section of footway to the junction with Vine Tree Close. The initially proposed footway from Withies Road to Veldo Lane has been removed from the scheme, following the applicant's Transport Consultant's site visit and taking of measurements. This application is supported by a revised Transport Statement and Interim Travel Plan, stated to have been submitted to address RfR3 of 191671/O.

- 6.19 CS policy MT1 and the NPPF require developments to provide safe access for all users. This includes motorised and non-motorised vehicles and pedestrians. WGNPD policy P7 requires, amongst other things that, developments make proportionate contributions towards the provision of transport infrastructure, which includes a priority list (a-e), measures to improve safe pedestrian access to the Primary School, improvements to public transport links to Hereford, introduction of cycle lanes and signposted cycle routes, traffic calming measures to improve public safety and the improvement and provision of footpaths within the parish.

- 6.20 Firstly, with regards the proposed vehicular access this is annotated to now provide a visibility splay of 43m x 4.5m (compared to 2.4m previously). This meets required standards. The width of the carriageway adjacent to the access would be 5.7m and this is considered to be acceptable for the nature of the road and quantum of housing proposed, although it is accepted that if larger vehicles are passing this width would be restrictive, as the lane currently is. The Transport Statement states that the proposed gradient of the vehicular access would be 1:12.5 (although the Landscape Planting Sections indicate it to be 1:16). The Area Engineer (Highways) has not objected to the proposed vehicular access in highway safety terms. Notwithstanding some objectors' views with regards the submitted likely trip generation from the site (particularly morning and afternoon for work/school journeys) and the capabilities of the road network to accommodate this, the Area Engineer (Highways) previously advised (reference 191671/O) that this is based on industry standards (TRICS) and on this basis a case cannot be substantiated that the local road network could not accommodate the resulting

traffic. Furthermore, this scheme is for modestly less units. It is therefore considered that the proposal would provide a safe and suitable vehicular access for up to 46 dwellings in accordance with CS policy MT1 and the requirements of para 108 of the NPPF.

6.21 Secondly, turning to access for non-motorised transport the submitted Transport Statement and Interim Travel Plan seeks to demonstrate how accessible the site's location already is and how this can be improved by new footpaths and opportunities to achieve a 'mode shift'. For the most part, I find the Interim Travel Plan to be a generic document that does not contribute much in the way of improving travel behaviour for a village location, such as this (despite its reference to suitable and safe connections through the 'town' to the 'many shops' – para 7.2) and more specifically for this site, which it has already been identified in the previous refusal of planning permission has very limited opportunity to improve connectivity. In addition the Transport Statement makes reference to desirable, acceptable and preferred maximum walking distances, however it fails to review these in light of the actual walking environment and the ultimate experience for pedestrians.

6.22 The C1130 road is narrow, unkerbed and devoid of footways and street lighting from Southbank to its junction with Withies Road (C1131). Either side there are embankments, which are densely lined with hedgerows and hedgerow trees and the carriageway is narrow. The plans indicate a 5.5m wide access road with the provision of two lengths of footpaths achieved through regrading of the bank to the eastern side of the road. No details of these engineering works are provided and given the now annotated 4.5m set back ('x' distance) this is likely to be more significant than the previously proposed 2.5m set back. Furthermore, it is noted that the Landscape Plans appear to indicate the retention of the existing embankment and hedgerow/hedgerow trees, which casts doubt on the clarity of the nature of these works. The road widening would result in increased widths of between 5.4m and 5.7m, with 2m footways either side (approximately 30m in length to the north and 20m to the south). Beyond the proposed access and footpaths the road is shown to be unaltered, with widths of 4.4m to the north and 4.9m to the south. The footways on the eastern side of the C1130 do not connect to any existing footpaths and the applicant's Transport Statement acknowledges that there is no scope to improve the site frontage for pedestrians due to its width and nature. As a result, pedestrians from the site would leave the 2m wide footway to the north of the access onto a 4.4m wide carriageway devoid of a footway or any refuse areas (note the embankment) for a stretch of some 22m before reaching the proposed footway on the northwestern side of Withies Road, having crossed near to the junction of the 'C' roads. In a southerly direction along the C1130, once the proposed footpath has ended there would be a distance walking along the carriageway of just over 80m to reach the footpath link between numbers 26 and 27 Withies Close and some 150m to reach the bus stop at Southbank. This is not considered to provide suitable and safe connections to the shop, Post Office/Fish and Chip Shop, village hall or bus stops to the south/southwest of the site. In addition, the footways indicated along either side of the vehicular access into the site are stated to be at a gradient of 1:12.5, which is considered too steep to facilitate pedestrian access, particularly those with pushchairs and or young children, wheelchair users and the less mobile. The applicant suggests that this gradient is acceptable, because of the additional pedestrian link now proposed to the north of the site. It is considered that the northern link would not provide a suitable or desirable connection for

pedestrians to the shop, post office/fish and chip shop, village hall or bus stops to the south/southwest, by virtue of its indirect route. As a result pedestrians, particularly those occupying dwellings towards the centre and southern parts of the site would not choose to make such a journey on foot.

6.23 Turning to the proposed northern pedestrian access and footpaths (as amended) these would not provide a direct or safe route to the village primary school or church, due to their route and width. The direct route originally proposed via a new footway along Lock Lane to Veldo Lane would have provided a route of some 350 metres from the site, which the Transport Statement asserts would 'greatly improve' pedestrian connectivity. Unfortunately, at the time of proposing that footway and making that claim the site had not been visited. Following a site visit and the taking of dimensions it has now been deleted from this proposal, because to include it would have reduced the carriageway (without any verge or retaining structures) to between 4.06/4.26m depending on the width of the proposed footway, 1m or 1.2m, both of which are significantly less than the recommended minimum width of 2m. The Area Engineer (highways) has noted that not all of the tracked movements for tractors include trailers and therefore it has not been demonstrated that these manoeuvres can be undertaken if the footpaths are provided. Moreover, the narrowing of the carriageway to accommodate footpaths, which in themselves would be of substandard width (between 1m-1.2m), would adversely impact on traffic movements of larger vehicles, such as tractors. Local objections, supplemented with photographs, supports this view. As such the proposed pedestrian links to the north would not materially improve the significantly limited pedestrian accessibility to the school and church.

6.25 Neither a revision to the Transport Statement nor re-evaluation of the pedestrian connectivity has been provided, in particular in respect of the earlier conclusion that the site is accessible by pedestrians using safe and convenient facilities, despite the achievability of the initially proposed footpath and its subsequent deletion from the scheme.

6.26 The submission references the local bus service. The Transport Statement, acknowledging the lack of a serve between 8-9am and at the weekends considers it to be of 'limited attractiveness'. In contrast the Interim Travel Plan considers there to be good public transport to Brompton (sic) and Hereford, without barriers to encourage its use. It also suggest opportunities for public transport to be rerouted to enter the site, which is unrealistic for a scheme for up to 46 dwellings, and other such generic propositions. The Interim Travel Plan alludes to pedestrian connectivity through links to the existing PRoW network. The relevance of this is not explained, given these are only suitable for 'leisure' walks and do not connect local services with suitably lit or surfaced paths, I am not convinced that they provide suitable opportunities to access local services and public transport.

6.27 The proposal also suggests that cycling provides a realistic opportunity to access services in the village and beyond, to Hereford and suggests that cycle storage would be provided. Whilst there may be some scope for cycling for confident adults and older children within the village the narrow nature of the lanes, topography and type of traffic would be a limiting factor for others. Travelling further afield by cycle would be limited to only the most confident in my opinion, due to the speed and volume of traffic along the

A4103, which does not have a cycle lane and is unlit. The provision of cycle storage is generally supported, but by itself it cannot facilitate cycling as an alternative means of transport if the road network is not suitable for such. Local residents have consistently commented on the poor public transport provision and unsafe nature of the highway network for cycling, such that it results in reliance on the private car.

6.28 As set out above, it is considered that the amended proposal would not facilitate suitable and safe pedestrian connectivity to day to day local services and public transport and, other than for the most confident, cycling would not be a realistic option either. The existing public transport service would not accommodate travel outside of the village for typical working days. As a consequence the proposal would not provide future occupiers with safe and suitable access on foot and cycling and public transport are limited too. Therefore the proposal conflicts with CS policy MT1 and the NPPF.

#### Landscape impact

6.29 The site comprises a greenfield site. An LVIA Addendum has been submitted, to evaluate the changes to the scheme compared to the previous refusal and a Landscape Statement to address the previous landscape reason for refusal. CS policy SS6 states that development proposals should be shaped through an integrated approach to planning certain listed environmental components from the outset. This needs to be based upon sufficient information to determine the effect upon each of these. Of these the following are considered relevant:

- landscape, townscape and local distinctiveness
- biodiversity and geodiversity especially Special Areas of Conservation and Sites of Special Scientific Interest
- the network of green infrastructure;
- local amenity, including light pollution, air quality and tranquillity;
- agricultural and food productivity

6.30 The policy's post-text states that where necessary to achieve the objectives of the CS, areas of lower quality agricultural land will be utilised in preference to the best and most versatile agricultural land. The Landscape Officer's comments for the previous application (191671/O) advised that the land is classified as grade 2 (very good quality) with reference to the: West Midland Region Agricultural Land Classification, 2010, Natural England. The submitted Soil Classification Report concludes that the land comprises 3b agricultural land, which is described as moderate quality – capable of producing moderate yields of a narrow range of crops or lower yields of a wider range of crops (classification is from 1-5, including 3a and 3b). Local objections have advised that the field has not been cultivated for the second year running, despite in recent times and historically always been so. They also point out that the survey to inform the Soil Classification Report was carried out after the wettest three months of the year and in part this wetness of the soil attributed to the report's downgrading from Grade 2 to 3b.

6.31 The Landscape Officer continues to objected to the submission on the basis that the change to the landscape character and settlement pattern, loss of dense hedgerow, mature tree and earth along road C1130, the significant engineering works (cut/fill) to provide the attenuation pond (either an embankment on the south side or substantial



earthworks to the north) and the engineering works within the site to provide secondary roads, parking areas etc. would be harmful to the setting of the settlement and its landscape character. Despite the submission of the applicant's responses to the Landscape comments, the objection in principle does not change. The Landscape Concept Plan and Planting Sections Plan, submitted during the consideration of the application, do not correspond with the access plans/Transport Statement in terms of gradient and engineering works to create the vehicular access visibility splay and footpaths. This casts considerable doubt over their accuracy and reliability in the resulting changes to the character and appearance of the eastern side of the C1130.

- 6.32 The submitted LVIA Addendum predicts 'Minor to Moderate' adverse effects arising for Topography, Geology and Soil Type, Land-Use and Field Boundaries and Tree Cover and suggests that these findings are raised to 'Moderate' adverse in terms of effects on Spatial Character and Enclosure Pattern and Landscape Quality. Overall, the LVIA Addendum acknowledges that the scheme would impose change and that this would be most obvious at close range. It states that there would be a loss of a 'short section of hedgerow', which does not tally with the access plans, nor does it mention regrading for the visibility splay and proposed footpaths. This possibly explains why these are not shown on the landscape plans. The Addendum suggests that due to the enclosed nature of the site and its location adjacent to the edge of the existing settlement that this would only be a minor alteration to the landscape character. The residual phase is quantified as resulting adverse effects of 'minor adverse' significance to the landscape features. The open spaces are stated to assist in the integration of the new access road and 'enhance' the open character of the site. In summary the Addendum concludes that the development would result in a low magnitude of change and a minor adverse significance of effect. Turning to the visual amenity effects the report concludes that throughout the construction, operation and residual phase at worst these would be moderate adverse impacts, with minor beneficial impacts from certain views (despite this being an outline application with layout and landscaping reserved for future consideration). It also suggests that through careful analysis and evaluation during the initial site selection stages consideration has been given to enhancing the landscape and visual amenity. In doing so it notes the influence of the *'close-built proximity of other residential areas fronting the C1130 to the west'*. The Landscape Statement (November 2019, in response to the refusal) also states (para 2.5) that *'the C1130 is fronted by dwellings along its entire western edge'* and uses this as the baseline for assessing the loss of hedgerow. In fact opposite the site on the western side of the C1130 lie the back gardens of the properties' on Withies Close and mature vegetation, such that it appears undeveloped to passing traffic. Indeed the photograph of viewpoint 088 within the LVIA Addendum (page 55, extract below) itself notes *'dense vegetation on west side of C1130 within rear gardens of dwellings on Withies Close'*, thus contradicting the earlier statement in the updated Report and the Landscape Statement.



Dense roadside vegetation on east side of C1130 on bank forming boundary of Application Site.

Little Bank Cottage on the bend to the left of the C1130.

Dense vegetation on west side of C1130 within rear gardens of dwellings on Withies Close.



6.33 The quantum of units has been modestly reduced compared to the previously refused scheme and the indicative 'masterplan' shows these to be confined to the southern/western and northern parts of the site. Nevertheless, the impact of the vehicular access would have a harmful impact on the rural character of the C1130 and the provision of housing would clearly result in the loss of this currently open greenfield site. The Landscape Officer's responses clearly identify the key issues and the harm that would result. The site is elevated compared to the majority of the existing built form. Despite there being dwellings along the lane, those to the upper western section back onto the lane and are barely discernible from it and do not comprise a key characteristic. There are only two dwellings to the upper eastern section. Given the extensive engineering works required to provide the vehicular access and the extent of development on site it is considered that landscape harm would result and this would be contrary to CS policies SS6 and LD1 and the NPPF.

#### Heritage Assets

6.34 As confirmed in the HBO and Archaeology consultation responses there are no designated heritage assets on or near the site, such that the implications of sections 66 or 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 would need to be applied. The HBO previously advised that Bank House is considered to be a non-designated heritage asset and has noted its degree of alteration. In assessing an application's impact on a non-designated heritage asset CS policy LD4 and WGNPD policy P7 apply, but are done so proportionately to the significance of the asset. Paragraph 197 of the NPPF advises that the effect on the significance should be taken into account and a balanced judgement is required, having regard to the scale of any harm or loss and the significance of the heritage asset. Subject to a satisfactory reserved matters application I am satisfied that the impact would be less than substantial and in weighing this up in a balanced judgement would be outweighed by the benefits of providing housing growth.

#### Ecology/HRA AA

6.35 The site lies within the River Wye SAC and triggers the requirement for a Habitat Regulations Assessment. That assessment must satisfy beyond all reasonable scientific doubt that there would not be an adverse effect on the integrity of the River Wye SAC (Lugg sub catchment) which is currently failing in terms of phosphate levels.

6.36 Foul drainage is proposed to the mains and after some remaining uncertainty, as per the previously refused application, with regards the ability to connect to the existing

network due to a connection point being within private gardens (Welsh Water comments on 191671/O), the applicant has identified (amended FRA) other points of connection to the south and north of the site. A foul connection to the north would require pumping, which is not favoured, but a point to the south, within the highway at Southbank is considered acceptable by Welsh Water and they confirm that there is capacity to accommodate the quantum of housing proposed. The foul mains discharges to the Eign WWTW in Hereford, outside of the River Lugg sub-catchment (note: Withington lies in the River Lugg sub-catchment). With regards surface water this is proposed to be either through soakaways (including site control SuDS features such as swales, ponds/basins, filter strips, and permeable paving and source control SuDS features such as rainwater harvesting water butts, house soakaways etc.) or discharged to the sewer network. WW note that no soakaway testing has been undertaken and encourage these so that sustainable outlets are considered first.

- 6.37 In terms of undertaking the HRA AA the confirmed foul and surface water drainage strategies, with no objection in principle from WW or the Council's Land Drainage Engineer has provided enough certainty for the conclusion that there would be no likely significant adverse effects on the SAC subject to conditions in respect of drainage and a construction environmental management plan (CEMP). Natural England has been consulted and have confirmed that they concur with this assessment. On this basis it can be concluded the proposal, subject to conditions, would meet the requirements of CS policies LD2, SD3 and SD4, which require that proposals conserve, restore and enhance the biodiversity and geodiversity assets of the county and should not undermine the achievement of water quality targets for rivers.

#### Drainage

- 6.38 The site lies in Flood Zone 1, an area at lowest risk of flooding, and sequentially where new development should be directed in flood risk terms by CS policy SD3 and the NPPF. The application has been accompanied by an FRA and a subsequently submitted Addendum, required because the site exceeds 1 hectare in Flood Zone 1. The site itself is not at risk of flooding due to the topography. If developed, however, there could be a risk of flooding off site, due to the reduced permeable area of this greenfield site. The local residents' concerns about future surface water runoff are appreciated, given the site's undeveloped nature and recent surface water runoff events.

- 6.39 Foul drainage is confirmed to be to the mains and surface water via soakaways or an attenuated outfall to the mains. In principle a foul mains connection and SuDS for surface water accords with the sequential preferences set out policy SD4 of the CS. The Land Drainage Engineer has noted the potential for low permeability soils and local representations suggest this may indeed be the case. WW request that infiltration is considered first, but do not object to an attenuated discharged subject to a detailed drainage strategy including infiltration testing, at reserved matters stage. Although not finalised, and with some indication of WW's position of not adopting some site control SuDS features, neither the Land Drainage Engineer nor WW object to the outlined drainage strategy, on the basis that detailed information would have to be submitted with the reserved matters application and a technical solution is achievable. The Land Drainage comments list all the information required, which covers aspects of offsite flooding, accounting for climate change and prevention of groundwater and watercourse pollution, amongst other things. This would mean that a technical solution, through on

site SuDS and potentially an attenuation outfall to the mains would ensure that the greenfield runoff rates are not exceeded. Given that this is an outline application, for 'up to' 46 dwellings and with layout a reserved matter, I am satisfied that there is scope to ensure that the drainage strategy meets CS policy SD3 and NPPF requirements not to increase flood risk elsewhere.

- 6.40 It is suggested in the FRA Addendum that responsibility for maintenance of the drainage systems could be subcontracted and included in a service management company's responsibilities, if WW would not adopt them. The submitted draft Heads of Terms do not include provision for this arrangement, but if permission were granted a condition requiring these details to be submitted could be reasonably imposed.

#### Amenity of neighbours

- 6.41 CS policy SD1 requires development to safeguard residential amenity for existing and proposed residents. The NPPF goes a little further requiring safe and healthy living conditions (para 117) and create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users (para 127f).

- 6.42 As for the previously refused scheme objections have been received from residents of Southbank, Withies Close, Bank House, Bank Cottage and Little Bank Cottage with regards the adverse impact of the proposal on their amenity. Principally, these would relate to overlooking, overshadowing, impact from lights (including car headlights exiting the site) and drainage. It is clear that development of the site would significantly alter the appearance of the undeveloped field and the outlook for these properties, in particular those to the north, immediate west (Bank Cottage and Little Bank Cottage) and to the south. The indicative 'masterplan' shows a potential layout that provides for suitable distance separation in terms of overlooking and at this stage, with scale and appearance being reserved matters there remains the ability to secure buildings of appropriate height, orientation and position of openings. Mindful that this is an outline application for up to 46 dwellings, at a density of 14 dwellings per hectare, with only access for consideration, I am of the view that there would be scope to ensure a layout, with appropriate scale, appearance and landscaping at reserved matters stage that would protect the privacy of the existing residents. Furthermore, if needed the number of units could even be reduced further if the reserved matters scheme did not provide suitable living conditions for existing residents. On this basis, I am not convinced that the impact on neighbours is a defensible reason for refusal for this outline application, and even more so as the numbers are reduced compared to the previous scheme that did not include such a reason for refusal.

- 6.43 Concerns have been raised by objectors about the ability to drain the site and the potential impact of a failure to drain it on their amenity. Some of these objections note existing surface run off from the field and the impact on their properties. The ability to drain the site is covered in the preceding section. It is considered that a technical solution is likely to be achievable, such that the living conditions of neighbours would not be materially adversely affected. In any event this can be conditioned/subject to a detailed reserved matters application.

- 6.44 With regards the impact of vehicles exiting the site during the dark, with headlights on, there is potential for these to shine into the rear gardens of the properties on Withies Close opposite the proposed vehicular access. Existing fencing and vegetation on the western side of the C1130 would partially screen this, and thus reduce the impact. Nevertheless, there would be a degree of adverse impact, particularly due to the gradient of the proposed access, but compared to the alignment of the previous scheme's access road this would be lessened.
- 6.45 Other concerns about antisocial behaviour are noted, however there is no indication that a scheme for up to 46 dwellings (16 affordable housing and 30 open market) would automatically give rise to this. I accept that the fear of crime can be a material planning consideration, however in the absence of any evidence to substantiate that it is a reasonable expectation I cannot give this matter any weight.
- 6.46 Due to the significant growth in the village in a relatively short period of time, some local residents consider that it has resulted in disproportionate growth that has undermined social cohesion. It is considered that the proposal for a further 46 dwellings would exacerbate this. The volume and tone of the objections raise valid points on this matter and I consider that this could be considered to be an adverse community impact at this time.

#### S106 financial contributions

- 6.47 As the scheme exceeds 10 units financial contributions and the provision of affordable housing are required under the CS and the NPPF. The submitted Planning Statement acknowledges the need for affordable housing and confirms that 35% (16) of the proposed dwellings would be affordable. The draft s106 HoTs states that *'up to 35% of the total number of dwellings, based on a mix to be agreed as part of the subsequent reserved matters approval, unless a Financial Viability Assessment is submitted to the Council to demonstrate that it is not viable for the development to provide this percentage of the total number of units and/or tenure mix of affordable housing.'* This caveat is noted, however at this time a policy compliant proportion of affordable housing is proposed and this is a positive aspect of the scheme provided it is secured. Nevertheless, given the caution in the draft HoTs I would highlight that this is a greenfield site, unlikely to have abnormal costs and that the PPG makes it explicitly clear that *'Potential risk is accounted for in the assumed return for developers at the plan making stage. It is the role of developers, not plan makers or decision makers, to mitigate these risks. The cost of fully complying with policy requirements should be accounted for in benchmark land value. Under no circumstances will the price paid for land be relevant justification for failing to accord with relevant policies in the plan.'* In addition if viability were argued at a later date any assessment should be prepared on the basis that it will be made publicly available, other than in exceptional circumstances.
- 6.48 The submitted draft HoTs are generic and do not include financial figures, despite being advised to do so at pre-application stage (if they decided to pursue an application contrary to the advice given) and this being a previous reason for refusal. The Planning Obligations Manager has produced a draft heads of terms. Whilst there is a means of securing the requisite affordable housing and financial contributions required to mitigate the impacts a signed s106 has not been received to secure this. Given the objection in principle to the residential development of land this has not been sought and as such

compliance with policy requirements has not yet been secured. If an appeal is lodged the applicant can provide a Unilateral Undertaking and the Local Planning Authority could discuss the terms of the legal agreement at that juncture.

#### Housing Mix

6.49 The proposal includes a mix of affordable and open market housing (16/30 ratio for 46 units). As set out above the affordable housing would need to be secured by way of a legal agreement. In principle the Strategic Housing Officer has no objection and advises that the intermediate tenure should include Low Cost Market and Discounted Market as outlined in the Council's Technical Data to support the SPD April 2020. The importance of discussions about unit sizes prior to the submission of a reserved matters application is stressed. With regards the open housing mix, the application forms are silent on the proportion of 2, 3 and 4+ units. To ensure compliance with CS policies RA2 and H3 general accord with the GL Hearn Report (part of the CS evidence base) or any superseding documents, for the Hereford Rural HMA housing mix would be required. This could be conditioned if permission were granted to ensure an appropriate open market housing mix.

#### Conclusion and Planning Balance

6.50 In accordance with the statutory requirement the starting point is to determine the application in accordance with the Development Plan (noting the NPPF confirmation that the presumption in favour of sustainable development does not change its status), unless material considerations indicate otherwise.

6.51 The Development Plan comprises the CS and the WGNDP. In terms of the principle of development the site falls outside of the Withington settlement boundary and is therefore contrary to WGNDP policy P2, unless it meets one of the criteria in CS policy RA2. The scheme, for open market new build dwellings (with 35% affordable housing provision), does not accord with any of the seven listed criteria. Consequently, the principle of development is contrary to the Development Plan and should be refused in principle. Moreover, the landscape impact of the quantum of development and the access thereto would not accord with policies SS6, SD1 and LD1 of the CS. The proposed development would not provide safe or suitable pedestrian connectivity to local services for the amount of housing proposed and conflicts with CS policies SS4 and MT1. As set out above the provision of the requisite affordable housing and financial contributions has not been secured by way of a signed legal agreement and this is an adverse impact at this time. To conclude, the principle of development and the impacts of this would be clearly contrary to the Development Plan. Therefore, an assessment of the proposal against the Development Plan alone means that permission should be refused.

6.52 Turning to material considerations, to ascertain if these indicate otherwise, the NPPF is a key matter.

6.53 As the application is for the supply of residential development, specifically up to 46 dwellings, the current implications of the LPA not being able to demonstrate a 5 year housing land supply, plus requisite buffer (published position is 4.05 years – April 2019), as set out in the NPPF (footnote 7) must be considered. At paragraph 11d the NPPF

states that where policies which are most important for determining the application are out-of-date, permission should be granted 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 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*

6.54 Taking these in sequence, firstly having regard to footnote 6, which sets out the protected areas or assets of particular importance in the NPPF, it is considered that although the SAC is a habitat listed in paragraph 176 and policies therefore can provide clear reason to refuse in this case they do not, because the certainty provided for the methods of foul and surface water drainage mean that the HRA AA conclusion is that there would be no likely significant adverse impact on the SAC, subject to conditions specifying the means of drainage and a CEMP, this direction to refuse is not engaged.

6.55 Continuing, it is necessary to assess the application against 11 d)ii, the 'tilted' planning balance. This requires permission to be granted unless there are adverse impacts that significantly and demonstrably outweigh the benefits. In undertaking this assessment it is critical to factor in the implications of paragraph 14 of the NPPF. This states that '*In situations where the presumption (at paragraph 11d) applies to applications involving the provision of housing, the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits, provided all of the following apply (footnote 8 – Transitional arrangements set out in Annex 1):*

- 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 housing delivery was at least 45% of that required (footnote 9) over the previous three years.*

(Footnote 9 - Assessed against the Housing Delivery Test, from November 2018 onwards).

6.56 In this case:

- a) the WGNDP became part of the Development Plan on 11<sup>th</sup> October 2019 – less than two years ago
- b) the WGNDP includes policies and allocations to meet its identified housing requirement (in just over 9 years into the Plan period (2011-2031) Withington has exceed its minimum growth target of 18% (127 new dwellings)

- c) the LPA has a 4.05 year supply (including appropriate buffer)
- d) the LPA's housing delivery was 80% of that required over the previous three years (Housing Delivery Test for 2019)

6.57 All of these criteria are met and this weighs very heavily against the application, because para 14 confirms that the conflict with the WGNDP is likely to significantly and demonstrably outweigh the benefits.

6.58 The applicant contends that because WGNDP policy P2 is silent on new development in the open countryside it is either out of date due to its reference to CS policy RA3 or is silent, as a 5 year housing land supply cannot be demonstrated. It then suggests that as a result there is no conflict with the Development Plan as the scheme is adjacent to the settlement. As set out earlier, I consider this contorted approach to be flawed, because it fails to recognise that the Development Plan, here the CS and the WGNDP, should be read as a whole. Furthermore, just because RA3 can be considered out of date it does not mean it carries no weight. The weight to be afforded is for the decision maker. In these circumstances, in an area with a very recently made NDP, which positively plans for proportionate growth, including allocations and allowance for windfalls, and which has already exceed its growth target in the first half of the 20 year plan period, it is my view that considerable weight can be afforded to the policy most important for determining the application. Moreover, as set out above in paragraph 6.56 the four criteria of para 14 of the NPPF are met and this means that the conflict with the WGNDP is 'likely' by itself to significantly and demonstrably outweigh the benefits.

6.59 In undertaking the 'titled' planning balance, it is also necessary to assess the other identified adverse impacts to establish if these, along with the conflict of the principle of development with the WGNDP, would significantly and demonstrably outweigh the benefits. I do so bearing in mind that the NPPF states the conflict with the WGNDP alone will be likely to be sufficient by itself to outweigh the benefits.

6.60 The scheme would not provide suitable pedestrian connectivity and given the limited highway extent near to the site this is acknowledged to be unachievable by the applicant. This weighs heavily against the application, along with the adverse landscape impact. I have also noted potential adverse impacts on neighbours' amenity from cars leaving the site during darkness due to the headlights and the strong local concerns of the implications of disproportionate growth, however the impact on the residents in the overall consideration is a moderate adverse impact. There has been strong objection to the application from local residents, in stark contrast to the majority support of voters at the WGNDP referendum. This demonstrates the local opposition and lends weight to the asserted concerns of disproportionate housing growth with the resulting reduced social cohesion due to the number of new households in a relatively short period of time.

6.61 Turning to the benefits, the provision of up to 46 dwellings would positively contribute to the Council's housing land supply and there is the ability to condition open housing mix to ensure it would reflect local demand. In the context of a housing land supply shortfall this attracts significant weight at County level, but I suggest is reduced at the local level where growth has significantly exceeded the minimum growth target. The submission suggests policy compliant (35%) affordable housing would be provided, but caveats this being subject to viability. If secured by way of a signed s106 legal agreement this would

be a benefit. There would also be the usual economic benefits to the construction industry (materials and labour) and after completion increased spend locally by occupiers of the new dwellings. There is also the opportunity for the new residents to contribute to community life, at the school, village hall and church etc., although I am aware of some objectors contrary view that such a concentrated influx of new residents from this site and the others recently completed/being built would undermine community life.

6.62 Bringing all of this together, it is considered that the adverse impacts, namely the conflict with the WGNPD in principle along with those identified in para 6.60 above, significantly and demonstrably outweigh the benefits.

6.63 A further material consideration is the site's recent planning history. This comprises a refusal of planning permission for up to 52 dwellings and access. The current scheme has not addressed all of the reasons for refusal. Indeed since that decision, the WGNPD has been made, meaning it is now part of the Development Plan, rather than a significant material consideration, such that the first RfR is even more robust. The documents submitted with this application did not reflect the change in status of the WGNPD and the Planning Statement has been updated to correct this. The Interim Travel Plan (dated December 2019) asserts that only limited weight can be afforded to the post examination WGNPD, despite that at that time it has been already made (11 October 2019). The Transport Statement does not reference any WGNPD policies. The previous refusal was not appealed and there has been no change in policy, either national or local, since then that would justify a different decision in principle.

#### Conclusion

6.64 The material considerations (NPPF and planning history), do not indicate that a decision other than in accordance with the Development Plan should be made. In fact the NPPF explicitly confirms that conflict with a recently made NDP is likely to be enough by itself to outweigh the benefits of a scheme, thus further reinforcing that the application is to be assessed in a plan led system and against the policy requirements of the Development Plan. On this basis planning permission should be refused and my recommendation is made accordingly.

**RECOMMENDATION:** REFUSE ☒

#### **REASONS FOR REFUSAL:**

- 1) The application seeks approval for the erection of up to 46 dwellings in a location that is outside of the settlement boundary for Withington and in accordance with policies RA2 and RA3 of the Herefordshire Local Plan – Core Strategy and policy P2 of the Withington Group Neighbourhood Development Plan is in open countryside. The development fails to meet any of the exceptions specified in policy RA3 of the Herefordshire Local Plan – Core Strategy and is therefore contrary to the Development Plan in terms of the principle of development. In undertaking the test set out in paragraph 11d)ii of the National Planning Policy Framework, in light of the Council's current housing land supply position, and applying the implications of paragraph 14, the identified adverse impacts included in this reason for refusal and the following reasons both significantly and demonstrably outweigh the benefits.




- 2 The site lies outside of the settlement boundary and comprises an elevated greenfield site. The proposed vehicular access off the C1130 would require obtrusive engineering works to the eastern side of the existing vegetation lined lane to provide a splayed access. The application has failed to demonstrate that the landscape has positively influenced the development in terms of scale, site selection, protection and enhancement of the rural setting and would result in a development would be incongruous within its surroundings and context and be substantially harmful to this local landscape character. The proposed development would be contrary to the requirements of policies SS6, SD1 and LD1 of the Herefordshire Local Plan – Core Strategy and the requirements of the National Planning Policy Framework.
- 3) The proposal does not demonstrate that the site can be made accessible and facilitate access by a genuine choice of modes of travel, by virtue of its poor pedestrian connectivity to local services and public transport, along with the gradient of the proposed access off the C1130. As such the proposal would fail to meet the requirements of policies SS4 and MT1 of the Herefordshire Local Plan – Core Strategy and the requirements of the National Planning Policy Framework.
- 4) A legal agreement pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) has not been completed. As such, there is no legal mechanism by which the Local Planning Authority can properly secure the delivery, construction and occupation of the proposed affordable dwellings and secure financial contributions towards required community infrastructure. These measures are necessary to make the development acceptable. The absence of an agreement is in conflict with policies SC1, H1 and ID1 Herefordshire Local Plan Core Strategy 2011-2031, the Council's Planning Obligations Supplementary Planning Document (April 2008), policy P6 of the Withington Group Neighbourhood Development Plan and the provisions 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, including updating the applicant on the progress of the Withington Group Neighbourhood Development Plan (WGNDP) and the implications of this, and any other material considerations. The applicant was advised of the proposals conflict with the Development Plan and WGNDP at both pre-application stage and during the consideration of this application. The issues are so fundamental to the proposal that it is not possible to negotiate a positive way forward and due to the harm which have been clearly identified within the reasons for the refusal, permission should not be granted.
- 2 Reason for refusal 4 – draft Heads of Terms have been produced and are viewable on the website:  
[https://www.herefordshire.gov.uk/info/200142/planning\\_services/planning\\_application\\_search/details?id=200207&search-term=200207](https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=200207&search-term=200207)

Should the applicant decide to appeal this decision then a Unilateral Undertaking can be submitted with the appeal submission and discussions can take with the Local Planning Authority with regards the terms of the draft Heads of Terms.

Signed:  ..... Dated: .....8.6.2020.

**TEAM LEADER'S COMMENTS:**

**DECISION:**

**PERMIT** ☐

**REFUSE** ☒

Signed: 

..... Dated: 9<sup>th</sup> June 2020

**Appendix C: Herefordshire Council Five Year Housing Land Supply (2019 - 2024) Annual Position  
Statement At 1st April 2019 (July 2019)**

**Five year housing land supply (2019 - 2024)**  
**Annual Position Statement at 1<sup>st</sup> April 2019**

**July 2019**

**1. Introduction**

- 1.1 This Statement sets out an assessment of the housing land supply position in Herefordshire taking into account the requirements of the National Planning Policy Framework (NPPF) at 1<sup>st</sup> April 2019.
- 1.2 With the government aim of achieving faster delivery of new homes, a reviewed approach to the five year supply has been set. The context to the updated Framework, as has been repeatedly cited by Government, is to address the severe issues of housing undersupply and affordability prevalent across the country. It is of no surprise therefore that the most substantial policy changes relate to the delivery of housing and the more effective use of land. It is about ensuring homes are actually built.
- 1.3 The approach to engagement on this supply paper is set explained at the relevant sections within this document.

**2.0 Planning Policy**

**National Planning Policy Framework**

- 2.1 The NPPF 2019 indicates that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide five years supply of housing against their housing requirements set out in adopted strategic policies or against the local housing need where the strategic policies are more than five years old (paragraph 73). The supply of specific deliverable sites should in addition include a buffer:
- 5% to ensure choice and competition in the market for land; or
  - 10% where the local planning authority wishes to demonstrate a five-year supply of deliverable sites through an annual position statement or recently adopted plan, to account for any fluctuations in the market during that year; or
  - 20% where there has been significant under delivery of housing over the previous three years, to improve the prospect of achieving the planned supply<sup>1</sup>.

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<sup>1</sup> (NPPF Footnote 39) From November 2018, this will be measured against the Housing Delivery Test, where this indicates that delivery was below 85% of the housing requirement.

- 2.2 Paragraph 75 sets out that to maintain the supply of housing, local planning authorities should monitor progress in building out sites which have permission. This will be assessed by the Secretary of State in the *Housing Delivery Test* which is explained later.
- 2.3 NPPF Paragraph 11 sets out the presumption in favour of sustainable development for both plan making and decision taking. Paragraph 11d states 'where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date this means granting permission'.
- 2.4 Not meeting the five year supply continues to be associated with policies that are 'out of date'. This is clarified by Footnote 7 of the NPPF 'where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 73); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years' then granting permission is expected to be granted for sustainable development.
- 2.5 In emphasising the importance of the presumption in favour of sustainable development the NPPF is clear that the housing land supply position will need to be balanced against other factors in the development plan and/or NPPF which could result in the refusal of planning permission or restriction in development. Footnote 6 associated with paragraph 11 of the NPPF is helpful in stipulating those areas that the NPPF has in mind where development should be restricted. Such areas relevant to Herefordshire include:
- habitats sites (and those sites listed in paragraph 176<sup>2</sup>) and/or designated as Sites of Special Scientific Interest
  - irreplaceable habitats
  - land designated as Local Green Space
  - land designated as an Area of Outstanding Natural Beauty
  - land affected by designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 63<sup>3</sup>)
  - land at risk of flooding
- 2.6 The NPPF has reviewed its definition of '**deliverable**<sup>4</sup>' sites. To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. In particular:
- a) sites which do not involve major development and have planning permission, and all sites with detailed planning permission, should be considered deliverable until

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<sup>2</sup> a) potential Special Protection Areas and possible Special Areas of Conservation;

b) listed or proposed Ramsar sites (see NPPF footnote 59); and

c) sites identified, or required, as compensatory measures for adverse effects on habitats sites, potential Special Protection Areas, possible Special Areas of Conservation, and listed or proposed Ramsar sites.

<sup>3</sup> Non-designated heritage assets of archaeological interest, which are demonstrably of equivalent significance to scheduled monuments, should be considered subject to the policies for designated heritage assets.

<sup>4</sup> NPPF pg.66.

permission expires, unless there is clear evidence that homes will not be delivered within five years (for example because they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans).

b) where a site has outline planning permission for major development; has been allocated in a development plan; has a grant of permission in principle; or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.

2.7 Once a 5 year housing land paper is drafted, it then needs to meet the requirements of paragraph 74 as this provides a new mechanism to allow a local planning authority to demonstrate a five year supply of housing sites. However it is worth noting this applies to more recently adopted plans as explained at paragraph 2.9 below.

2.8 'A five year supply of deliverable housing sites, with the appropriate buffer, can be demonstrated where it has been established in a recently adopted plan, or in a subsequent annual position statement which:

- a) has been produced through engagement with developers and others with an impact on delivery;
- b) considered by the Secretary of State; and
- c) incorporates the recommendations of the Secretary of State where the position on specific sites cannot be agreed during the engagement process.

2.9 Footnote 38 of the NPPF states that '... a plan adopted between 1 May and 31 October will be considered 'recently adopted' until 31 October of the following year; and a plan adopted between 1 November and 30 April will be considered recently adopted until 31 October in the same year. Therefore only those Local Plans adopted in this timeframe will be considered acceptable for submission of their 'Five Year Housing Land Supply Annual Position Statement' to the Planning Inspectorate. Herefordshire Council's Local Plan Core Strategy was adopted in October 2015 under the 2012 NPPF Framework and is therefore not suitable for submission. However, this supply paper has been approached as closely as possible to reflect the guidance.

### **The Housing Delivery Test**

- 2.10 The NPPF states that "the Housing Delivery Test measures net additional dwellings provided in a local authority area against the homes required, using national statistics and local authority data. The Housing Delivery Test is carried out by Central Government and the Secretary of State will publish the test results for each local authority in England every November". The first results for 2018 were delayed and published in February 2019.
- 2.11 The 'presumption in favour of sustainable development' at paragraph 11 states that that the presumption will apply where housing delivery is below 75% of the requirement; in line with the Housing Delivery Test. There are transitional

arrangements in place until the 75% target is applied. Paragraph 215 of the NPPF sets out these requirements:

- a) November 2018 - If delivery falls below 25% of housing required over the previous three years;
  - b) November 2019 - Indicate that delivery was below 45% of housing required over the previous three years;
  - c) November 2020 and in subsequent years - Indicate that delivery was below 75% of housing required over the previous three years.
- 2.12 Regardless of passing the test, paragraph 75 of the NPPF states that where delivery falls below the above figures or if delivery falls below 95% over three years from 2020 then authorities are required to prepare an *action plan* to assess the causes of under-delivery and identify actions to increase delivery. In addition to maintaining a deliverable 5 year housing land supply, the Housing Delivery Test imposes a major incentive to process housing applications as swiftly as possible and work with developers to speed up implementation and delivery.
- 2.13 Whereas five-year supply tries to forecast what will be built in the future, the Housing Delivery Test looks at what has actually been delivered. Where targets have been missed over the last three-years, a variety of consequences will apply depending on the severity of the shortfall.
- 2.14 The Housing Delivery Test result for Herefordshire was 74%. Therefore as the result is less than 95% delivery rate, an action plan will be published in August 2019 to address under delivery.

### **Planning Practice Guidance (PPG)**

- 2.15 The PPG Guidance was updated **13 Sept 2018** and again **22 July 2019**. Local Planning Authorities are expected to be more transparent with regard to the information that is set out in the 5 year supply. Commentary on site progress including reasons for slow/fast rates of activity as well as build out rates are expected to be set out.
- 2.16 The following highlights the recent changes:
- Local Planning Authorities can have their Five Year Supply position confirmed by the Planning Inspectorate as long as they have a recently adopted Plan in line with Footnote 38 of the NPPF. Herefordshire Council does not have a recently adopted Plan in this case.
  - The authority should engage with the typical stakeholders such as developers, landowners, land promoters and even utility providers.
  - The authority needs to seek agreement on sites and the level of delivery.
  - Authorities may wish to set up an assessment and delivery group which can assist authorities to not only identify any delivery issues but also help to find solutions to address them.

### Site information required

- 2.17 Assessments need to be realistic and made publicly available in an accessible format as soon as they have been completed. As set out in the recently updated PPG paragraph 14, assessments will be expected to include:
- for sites with detailed planning permission, details of numbers of homes under construction and completed each year; and where delivery has either exceeded or not progressed as expected, a commentary indicating the reasons for acceleration or delays to commencement on site or effects on build out rates;
  - for small sites, details of their current planning status and record of completions and homes under construction by site;
  - for sites with outline consent or allocated in adopted plans (or with permission in principle identified on Part 2 of brownfield land registers, and where included in the 5 year housing land supply), information and clear evidence that there will be housing completions on site within 5 years, including current planning status, timescales and progress towards detailed permission;
  - permissions granted for windfall development by year and how this compares with the windfall allowance;
  - details of demolitions and planned demolitions which will have an impact on net completions;
  - total net completions from the plan base date by year (broken down into types of development e.g. affordable housing); and
  - the 5 year housing land supply calculation clearly indicating buffers and shortfalls and the number of years of supply.
- 2.18 The majority of the above actions have been addressed in this Annual Position Statement. There was not adequate time to assess sites 'under construction' and 'completed' sites for their rate of delivery as this is a new requirement in the very recently published PPG.

### Development Plan Position

- 2.19 The Herefordshire Local Plan - Core Strategy was adopted by Herefordshire Council on 16 October 2015 following an Examination in Public. However a review of the Core Strategy is due to commence by the end of 2019; the scope of which will be agreed later this year.
- 2.20 As a result of the lack of a five year supply the council issued an ***Interim Statement*** in *September 2016* setting out its position as a result of not having a five year land supply. Going forward the Council will be producing a Housing Delivery Action Plan to address under delivery.
- 2.21 To date there has been good progress with the uptake of Neighbourhood Development Plans (NDPs) across the county. All Made Plans form part of the statutory development plan for the relevant parish area in conjunction with the Core Strategy. Further information on NDPs and their progress and contribution in the supply can be found at paragraph 4.39.
- 2.22 As the NPPF requires an annual update to the five year supply position of each local authority, this statement simply sets out the annual position at April 2019.



### **Neighbourhood planning and housing land supply**

- 2.23 Neighbourhood Plans should support the strategic policies contained within local plans and should not promote less development than set out in the strategic policies for the area.
- 2.24 Paragraph 14 of the revised NPPF (2019) refers to paragraph 11d whereby it states in situations where the presumption applies ...'where there are no relevant development plan policies, or the policies which are most important for determining the application are out of date', it is expected that permission is granted unless there are other material matters. Therefore the presumption applies to applications involving the provision of housing, the adverse impact of allowing development that conflicts with the neighborhood 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 neighborhood 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 requirements, including the appropriate buffer as set out in paragraph 73); and
  - d) The local planning authority's housing delivery was at least 45% of that required over the previous three years.

### **3. Calculating the Housing Land position**

- 3.1 The NPPF states that strategic policies should be informed by a local housing needs assessment conducted using the standard method in national planning guidance (paragraph 60). As the Herefordshire Core Strategy was adopted nearly four years ago its housing targets are still considered to be up to date. The Core Strategy covers the period 2011-31 and provides for a minimum **16,500 homes** between 2011 and 2031.
- 3.2 This report therefore provides an assessment of the housing land supply against the Core Strategy targets. Policies SS2 and SS3 of the Core Strategy set out the Council's strategy to secure the delivery of a minimum of 16,500 homes in Herefordshire between 2011 and 2031. In respect of a housing target for Herefordshire the expectation is that the highest rate of housing completions will be towards the latter end of the plan period.
- 3.3 The Core Strategy indicative trajectory suggests that in the early years of the plan anticipated delivery rates will be lower but as the housing market improves and key infrastructure is provided, delivery rates will increase. The anticipated Core Strategy trajectory from 2011–2031 is set out in Figure 1. The stepped target is a basis for monitoring and assessing land supply (including the five year housing land supply) throughout the plan period and a detailed annualised trajectory is provided in Appendix 5).

**Figure 1. Overall Core Strategy housing trajectory**

	2011-16	2016-21	2021-26	2026-31	Average per annum
Core Strategy	600	850	900	950	825
<b>Totals</b>	<b>3000</b>	<b>4250</b>	<b>4500</b>	<b>4750</b>	<b>16500</b>

#### **4. Methodology**

- 4.1 In assessing the components of the 5-year housing supply position in Herefordshire the contents of the NPPF and NPPG have been considered.

In assessing the 5-year supply position the following elements have been considered:

1. Sites with planning permissions include sites with full planning permission, sites with outline permission and sites currently under construction as at 1 April 2019.
2. Sites which have received a resolution to grant planning permission between 31 March 2018 and 1 April 2019.
3. The contribution that Core Strategy strategic housing proposals can make to the five year supply.
4. A windfall site allowance. The Council has made no allowance for windfalls in the first three years in order to avoid double counting with existing commitments. As such there would be a windfall calculation for years 4 & 5.
5. An assessment of the realistic number of dwellings which are likely to be delivered through neighbourhood development plans over the five year period.

Other factors must be also considered against the calculation of five year supply and these relate to:

6. Past housing completions at the time of calculation (Officers on site surveying development progress between the period April– May 2019).
7. The shortfall against plan targets during the same period. Comparisons are made against the indicative trajectory.
8. It is acknowledged that Herefordshire should be considered as a 20% authority as there has been an under-provision in the previous three years which has been less than 85% delivery on completion rates as per NPPF Footnote 39.

- 4.2 The following section explains how each of these factors has been taken into account:

##### **Sites with planning permission**

- 4.3 Sites with full permission which are considered to be deliverable can contribute to housing supply. In the NPPF Glossary, a definition of *deliverable* is set out. It confirms that sites with detailed planning permission or sites which are not a major

housing development (less than 10 dwellings) should be considered deliverable until permission expires. If there is evidence to say they will not come forward in the next five years then that needs to be taken into account. In this instance sites have been assessed to determine which ones are experiencing delays. Where problems have been identified then discounts have been applied.

- 4.4 Sites with outline permission which are considered to be deliverable can still contribute to housing supply. However, the NPPF requires more evidence of the site coming forward if it is to be included in the supply. This is particularly the case on sites accommodating 10 or more dwellings. The standard lead in times allows an additional period for such sites to obtain full planning permission and discharge conditions as required. An assessment of all sites in this category has been carried out and discounting has been applied where inactivity exists. Communications with development management officers, agents, house builders and developers have been undertaken to establish a picture of the progress being made. Sites which are experiencing land sales, valid reserved matters applications, discharge/variation of conditions and housebuilder involvement are considered to be making progress through the system. Where sites are experiencing inactivity then a part or complete discount of the site is applied.
- 4.5 Sites that are under construction are considered to be deliverable and such sites continue to deliver completions. The very recently revised PPG expects more analysis on the build out rate of sites. As this requirement was issued late on 22<sup>nd</sup> July 2019, it was not possible to carry out such an analysis in time prior to publication of the document. However it is something which the council will be undertaking for the next supply paper.

Appendix 1 lists all commitment sites with planning permission at 1 April 2019.

**Figure 2a. Commitments (before discount)**

<b>Commitments</b>	<b>2018/19</b>
Not started	4612
Under construction	875
Total (Gross)	5487
Total (net)	<b>5370</b>

#### **Additional supply contributions**

- 4.6 Included in the commitments, is a certificate of lawfulness (CLEUD) decision P142613/U at Lea Villa, Lea. This was a historic permission dating back to 1969 for use of land for the siting of 52 caravans for residential purposes and occupied by persons of 50 years of age and over. The CLEUD is allowing the intensification of the site. The actual number of additional park homes is not set out in the application but after investigation, the plan is for an additional 18 more homes. 13 park homes have been sited and completed whilst another 5 have not yet started.
- 4.7 Similarly, a planning decision for a CLEUD (160813) on Yew Tree Residential Park, Peterstow allows for additional siting of mobile homes. The CLEUD is not specific about the number of mobile homes but it is estimated that the site has capacity for a

minimum of 10 homes. 2 of these homes have been completed in 2019 with 8 not started.

#### **Commitment sites discounts and considerations**

- 4.8 In line with the requirements of the NPPF and PPG a more detailed assessment of sites has taken place this year. Some of the larger sites may still have further to go before commencement on site can begin therefore their ability to contribute fully to the supply has been looked at and discounts and adjustments have been made where necessary. All outline permissions capable of accommodating 10 or more dwellings have been assessed to determine their deliverability. This has been a combination of contact with the Council's Development Management team as well as agents, and housebuilders associated with the sites to determine how much they will contribute to the supply.
- 4.9 Where sites with full planning permission are known to have some delays these sites have also been assessed and discounted in part or full where necessary. Please see Appendix 2 for the discounted sites with both full and outline permission. Reasons for discounting and retention of sites as part of the supply are also set out in this table.

#### **Sites with a resolution to grant planning permission**

- 4.10 All sites which have been to committee between 31 March 2018 and 1 April 2019 that have achieved a resolution to grant permission can be considered as part of the supply. They have also been assessed and discounted where necessary. These sites are also set out in Appendix 2 above. Once sites have been discounted the following totals are the commitments.

**Figure 2b Commitment figures (post discounting)**

<b>Commitments (net)</b>	<b>2018/19</b>	<b>Sub Total</b>	<b>Discounted</b>
Total (net)	5370		
Total dwellings on Resolution to grant permission sites discounted	155	5525	
Discounted full permissions			226
Discounted outline permissions			407
Total dwellings on Resolution to grant permission sites discounted			51
Total discounted			<b>684</b>
All commitment sites after discounting		<b>4841</b>	

A total of **4841** is the final commitment figure that will contribute to the supply.

### **Strategic urban extensions**

- 4.11 The Core Strategy strategic housing proposals will plainly make a significant contribution to the overall housing land supply over the plan period. They were vigorously examined as part of the Core Strategy examination in public. Detailed discussions with developers, agents and landowners have been progressing on a regular and productive basis and as outlined in the following sections. It therefore remains necessary only to demonstrate the availability and achievability of each site to warrant its inclusion in the land supply.
- 4.12 Projected out-turns on these sites have been assumed at levels currently advised by the in house planning officers to establish lead in times for each decision milestone. Estimations on commencement and build out rates have been advised by the development industry during June/July 2019. Figure 4 sets out the projected annual build rate for each of the strategic sites. However, given the size of these sites and the potential for more than one house-builder to be active on site at any one time, there is potential for a significant increase in the levels of delivery should there be a further increase in market demand for housing in the area. The delivery of strategic site allocations will be a key focus as these will make a substantial contribution to housing delivery in the longer-term.
- 4.13 Two of the urban extension sites within the Core Strategy now have planning permission following two separate Planning Committee meetings. Holmer West (150478) in Hereford achieved a planning permission for 460 dwellings in August 2016 with a section 106 agreement signed 19 May 2017. Phase 1 for 88 dwellings is complete and the Phase 2 application (182712) for 221 dwellings is already underway. The site is making good progress and has been accounted for in the commitments at Appendix 1.
- 4.14 More recently in March 2018, land at Hildersley in Ross on Wye (150930) achieved outline planning permission for 212 dwellings and is currently for sale. Due to the land not having a reserved matters permission a cautious approach has been taken as to its potential delivery and this is accounted for in the discounted sites at Appendix 2.

### **Hereford western expansion, Three Elms**

- 4.15 Three Elms is principally in the ownership of the Church Commissioners who provide active support for the development proposed. An outline planning application (162920) was validated in September 2016. Smaller areas of land to the south of the expansion area are covered by options to Taylor Wimpey.
- 4.16 Development at Three Elms is subject to planning policy requirements for a range of social, transport and environmental infrastructure. The range and scale of matters to be addressed is generally typical for a scheme of this nature. They have been discussed with the developers as the scheme has developed in recent years. Flood risk considerations are addressed in the policy.
- 4.17 Policy HD5 as currently drafted requires the development to make contributions to Hereford transportation improvements (infrastructure and sustainable transport measures), and to deliver land and infrastructure to facilitate the construction of the

adjoining phase of the Hereford Bypass. The Three Elms expansion area overlaps with the Road corridor in the west (Core Strategy, figure 4.2). This will not preclude development commencing on eastern parts of the expansion area and which are outside the Road corridor. A Cabinet decision on the preferred red route was taken in July 2018 in preparation for consultation. On this basis, development at Three Elms may proceed in advance of such improvements being in place or the preferred route selection for the Bypass Road.

- 4.18 Further investigations regarding water supply have been carried out resulting in a decision on the planning application moving back within the timeframe to address objections to the application from neighbouring industries. This has led to a revised masterplan taking into account drainage and landscape and this is expected shortly which means a consultation on the masterplan will be necessary.
- 4.19 Taking this delay into account, commencement on the site is not expected until May 2022 with delivery of 20 dwellings in year 4 and 100 dwellings in year 5 giving a total of 120 dwellings in the five year period.

#### **Hereford southern expansion, Lower Bullingham**

- 4.20 Lower Bullingham is controlled by a single developer (Bloor Homes). Significant technical work undertaken by the developer has been discussed with the Council and other stakeholders. An outline application is expected late summer 2019 with a decision anticipated Autumn 2020. This will take the form of a Hybrid application which is an outline application in the whole but phase 1 of the development will be identified in the same level of detail as a full or reserved matters application. This will allow commencement on site with phase 1 whilst remaining phases are agreed. This is to expedite the process of delivery on such a large site. It will also allow the developers to respond to the market with regard to house types in later phases.
- 4.21 The developer anticipates a comprehensive scheme coming forward for planning approval for over 1,000 dwellings and other uses in line with the emerging Core Strategy policy HD6. The principal site access will be onto the B4399 (Rotherwas Access Road).
- 4.22 The development of Lower Bullingham is subject to planning policy requirements for social, transport and environmental infrastructure. The range and scale of matters to be addressed is generally typical for a scheme of this nature. Flood risk considerations are addressed in the policy.
- 4.23 Policy HD6 as currently drafted requires the development to make contributions to Hereford transportation improvements (infrastructure and sustainable transport measures). The site is expected to commence delivery of phase 1 in 2021/22, with 40 dwellings programmed to be completed in the initial year following site preparation and continuing with 50 dwellings per annum thereafter, yielding a total 140 dwellings in the five year period.

#### **Hereford, City Centre development**

- 4.24 The Local Plan identifies the city centre as providing 800 houses over the plan period. The large majority of those new houses will be delivered within the urban

village, a policy area; formed by a conglomeration of underutilised sites located to the north of the river bounded by the railway line to the north. The Hereford Area Plan will seek to define the actual boundary area for Local Plan Core Strategy Policy HD2 to apply.

- 4.25 The new Link Road traverses across Merton Meadow from Commercial Road to Edgar Street and opens up previously land locked sites for development. Other than the Link Road, which is complete, delivery of housing in the city centre is not dependent on the delivery of any other strategic infrastructure, and applications for housing schemes are regularly coming forward. Welsh Water are fully engaged in discussions on the improvements required to the water and sewerage infrastructure. Contributions towards additional educational needs would be expected to come forward as part of this development.
- 4.26 Early drafts of the defined city centre area combined with an analysis of completion rates show that 239 dwellings have been completed within this area<sup>5</sup> since 2011. This completion figure set against the target for delivery of 800 dwellings shows that approximately a further 550 dwellings should be delivered to meet the Core Strategy growth targets for this area. In addition, commitments within this area amount to 293 dwellings yet to come forward half of which are under construction and this is an increase on last year's position. Based on recent year's performance, a build out rate commencing with 70 dwellings per annum for years 4 and 5 is forecast to avoid double counting with current permissions. The council is working alongside its strategic partner, Keepmoat to deliver redevelopment of the land it owns in and around the city centre, particularly within the area close to the link road. Please see below for current rate of commitment and completions for this area. Please see Appendix 1 for a list of all the HD2 commitments and Appendix 4 for the completions in this area of Hereford.

**Figure 3. HD2 City Centre progress**

City Centre HD2	Completions (net)	Commitments (net)
2011-2018	202	293
2019	37	
Total to date	<b>239</b>	

### **Bromyard, Hardwick Bank**

- 4.27 The Core Strategy strategic urban extension site in the town is in the controlling interest of Bovis Homes. A planning application (163932) was submitted in April 2017 for up to 500 homes which is 250 dwellings more than the urban extension identified in the Core Strategy. The site has already been considered as a pre application in 2016.

<sup>5</sup> The completion and commitment figure has already been incorporated into figures above to avoid double counting.

- 4.28 The location is not dependent on any strategic infrastructure for its delivery. Contributions towards additional educational needs, a new park, or any other identified infrastructure requirements will be provided for as part of any planning permission and associated s.106 agreement. Discussions with Welsh Water are ongoing to identify a suitable potable water source and additional infrastructure may be needed to deliver this. Active transport links and improvements to footways, cycleways, crossing facilities and bus stops will be provided as part of the Hardwick Bank development.
- 4.29 The site is currently being considered by the district valuer to determine any viability issues. Depending on the length of time this takes, a decision on the outline application is expected later in 2019 following on with a reserved matters application anticipated in Spring 2020. Following site preparation, the site is expected to commence delivery in 2021/22, with 15 dwellings programmed to be completed in year 3, rising to 30 dwellings in year 4 and 5, yielding a total of 75 dwellings in the five year period.

#### **Ledbury, Viaduct Site**

- 4.30 A planning application (171532) for up to 625 homes was submitted in April 2017 together with an Environmental Statement. The Transport Assessment has been approved by Highways and the site is due to be scheduled for a Committee decision in the next few months. Thereafter the Section 106 agreement on the site is expected to be completed by early 2020. A reserved matters decision on the site is expected mid 2020 with commencement on the site promptly after this.
- 4.31 An allowance for the canal forms part of the strategic site. The intention is for this land to be transferred to the Canal Trust as part of a future planning permission.
- 4.32 The site is expected to begin delivery in the second supply year with just 12 dwellings. Thereafter the level of delivery will increase to 50 dwellings per annum and continue at this build out rate. The site is expected to yield a total 162 dwellings in the five year period.

#### **Leominster Southern Expansion**

- 4.33 This area is principally in the ownership of Brasenose College, Oxford University and Land agents are handling the project for Brasenose College.
- 4.34 Policy LO2 sets out a number of planning policy requirements for a range of social, transport and environmental infrastructure. A critical element of this is the provision of a link road from east to west at the southern limit of the urban extension to serve the new development. The likeliest section of the site to provide for early release of land would be on the eastern side of the site on Hereford Road. The Council is currently looking at a timetable to bring the site and the road forward. However due to the site's progress to date it is not expected to deliver in the short term and is more likely to be in the medium term future.



**Figure 4. Strategic Urban Extension Sites build out rate at April 2019**

Strategic location	Estimated Core Strategy site capacity	2019/2020	2020/2021	2021/2022	2022/2023	2023/2024	Sub total
<b>Hereford</b>							
Hereford, Three Elms	1000				20	100	120
Hereford, Lower Bullingham	1000			40	50	50	140
Hereford, City Centre Urban Village	800 (-239)						
	Remainder to be delivered = 561				70	70	140
<b>Leominster</b>							
Leominster, Southern expansion	1500	0	0	0	0	0	0
<b>Bromyard</b>							
Bromyard, Hardwick Bank	250			15	30	30	75
<b>Ledbury</b>							
Ledbury, Viaduct	625		12	50	50	50	162
<b>Total</b>	<b>4973</b>		12	105	220	300	<b>637</b>

#### **Windfall assessment**

- 4.35 Windfall sites are those that have not been specifically identified as available in the Local Plan process. They normally comprise previously-developed sites that have unexpectedly become available. Herefordshire is a predominantly rural county and experiences a number of windfalls that also come forward on greenfield land. The Revised NPPF states at paragraph 70, 'Where an allowance is to be made for windfall sites as part of anticipated supply, there should be compelling evidence that they will provide a reliable source of supply. Any allowance should be realistic having regard to the strategic housing land availability assessment, historic windfall delivery rates and expected future trends'.
- 4.36 The SHLAA is an assessment of the likely total numbers of new houses that could be achieved on sites with potential to deliver 5 or more dwellings. Historically, larger windfall sites have not formed a major part of the housing supply. Therefore it was decided to continue to focus this assessment on the smaller windfall sites as they have a stronger pattern of occurrence. The historic performance of windfall sites accommodating four or less dwellings was assessed as these sites would not be identified through SHLAA. Historic windfall completions are detailed in the table below.

**Figure 5. Historic windfall completion rates**

<b>YEAR</b>	<b>Net Windfall Completions (all sites)</b>	<b>Net Windfall<sup>6</sup> (site capacity 4 or less)</b>
2004/05	454	297
2005/06	610	278
2006/07	552	243
2007/08	559	263
2008/09	449	191
2009/10	342	176
2010/11	267	158
2011/12	233	89
2012/13	137	57
2013/14	281	95
2014/15	647	303
2015/16	253	122
2016/17	347	128
2017/18	707	319
2018/19	583	238
<b>TOTAL</b>	<b>6421</b>	<b>2957</b>

- 4.37 Windfall sites accommodating four or less dwellings provide just under half of the total housing completions over the past ten years. The Council therefore considers it realistic and reasonable to expect 100 windfall units will be delivered per year over the next 5 years (in line with the windfall estimate set out in the Core Strategy). Based on past trends and the number of windfall sites that are currently either undetermined applications or at an advanced stage of preparation, this is considered to be a conservative estimate of what is likely to be delivered.
- 4.38 To avoid double counting, the Council has applied the windfall allowance within the housing trajectory from year 4 onwards only (2022/23 and 2023/24). This is because planning permissions lasts for 3 years and some of the existing housing commitments will already be windfall developments.

**Figure 6. Anticipated windfall**

Windfall allowance for yrs. 4 & 5 is 100 dwellings pa	100	
Account for yrs. 4 & 5 in five year supply		200

<sup>6</sup> These completions exclude residential garden land completions

### **Sites brought forward through Neighbourhood Development Plans**

- 4.39 The Council has been proactive in working with local communities on the preparation of Neighbourhood Development Plans. There are currently 111 Neighbourhood Development Plans (NDPs) being prepared which covers all the market towns except Bromyard and over 80% of those rural settlements highlighted for growth. It is expected that they will take between 12 and 18 months to reach adoption. Once adopted, these NDPs will add local detail to the policies set within the Core Strategy, as required by national planning policy set within the NPPF, as well as playing a major part in the delivery of the level of housing required in the plan period. Paragraph 40 of the NPPG is clear that Neighbourhood plans should deliver against the *up to date evidence of housing needs*.
- 4.40 Housing delivery in the rural areas has historically been strong and has provided approximately half of development in the County. Housing allocations within rural areas are contained within neighbourhood development plans. As at 22 July 2019 there are 61 adopted/made NDPs and 5 further plans awaiting referendum. A further 7 plans have reached examination stage and 6 plans have reached submission (regulation 16). In addition a further 10 plans have reached draft plan stage (regulation 14). Therefore a total of 89 NDPs have material weight in planning decisions. 44 of these plans contain site allocations.
- 4.41 As set out earlier the Council has taken a modest approach in its estimate of windfall delivery including only 1000 units of windfall development within the overall supply. The evidence in Figure 5 however indicates that on average 197 dwellings come forward per annum on sites with capacity for 4 or less dwellings. While the NPPF does not support the inclusion of garden land as windfall development, the Council believes there is clear evidence and policy support that supply from this source will continue and it is suggested there is additional flexibility for these sites to come forward. Of those plans without specific site allocations, 26 contain settlement boundaries and criteria based policies to allow for continuing growth within the settlement for these windfall developments.
- 4.42 This estimate takes account of the progress made to date. Those more advanced NDPs include proposals for approximately 1194 dwellings which equates to 544 dwellings excluding those identified sites with planning permission. This includes Plans that are at Regulation 14, Regulation 16 post examination, those with scheduled referendums and those that are due to be Made or have been Made. The following build out rate anticipated for NDPs is based on the yield of allocations set out in current NDPs that have reached referendum stage or are now adopted/made. This amounts to a 288 dwelling yield from all these allocations, see Appendix 3 for a list of these sites.
- 4.43 The parishes have provided confirmation of these sites coming forward through their knowledge of the sites and landowners. This figure is considered to be cautious as it only amounts to a fraction of the total allocations there are in the NDPs. Where NDPs have not identified allocations no estimation has been made on the potential yield but these areas still have potential to deliver housing under a criteria based policy. Where issues have been identified with sites, discounting has also been

carried out and this is reflective of the discounting carried out earlier with the commitment sites. Therefore an anticipated yield of 288 dwellings is set out for NDPs in the supply.

**Figure 7. Anticipated Neighbourhood Development Plan supply**

	Year 1	Year 2	Year 3	Year 4	Year 5	Total
NDP allowance for yr2 - yr5		70	70	73	75	
<b>Total</b>						<b>288</b>

The table below sets out all the aforementioned deliverable sites with a sum total of **5966** deliverable dwellings.

**Figure 8. Total deliverable sites**

<b>Deliverable (net)</b>	<b>Amount</b>	<b>Discount</b>	<b>Total</b>
Total	5370		
Total dwellings on Resolution to grant permission sites (net) discounted	155		
Total before discount	5525		
Commitments discount (full pp)		226	
Commitments discount (outline permission)		407	
Resolution to grant permission sites discounted		51	
Discount total		<b>684</b>	
Commitments plus resolution sites after discount	<b>4841</b>		4841
Strategic Urban Extensions			637
Neighbourhood Plans allocations. (without planning permission)	288		288
Windfall allowance for yrs. 4 & 5 in five year supply			200
<b>Total deliverable sites</b>			<b>5966</b>

## **Additional calculation factors**

### **Past housing completions**

- 4.44 Completions are monitored annually and are deducted from the overall target to establish progress. See Appendix 4 for a list of completions.

**Figure 9. Completions compared with Core Strategy indicative trajectory**

<b>Year</b>	<b>Core Strategy year</b>	<b>Net requirements with stepped trajectory</b>	<b>Net Completions</b>	<b>Shortfall Difference</b>
1	<b>2011/2012</b>	600	341	-259
2	<b>2012/2013</b>	600	201	-399
3	<b>2013/2014</b>	600	331	-269
4	<b>2014/2015</b>	600	774	174
5	<b>2015/2016</b>	600	327	-273
6	<b>2016/2017</b>	850	405	-445
7	<b>2017/2018</b>	850	776	-74
8	<b>2018/2019</b>	850	666	-184
	<b>Total</b>	5550	3821	<b>-1729</b>

### **Shortfall of housing supply from previous years**

- 4.45 The shortfall is calculated from the start of the Plan period to the time of calculation (2011- 2019). The shortfall itself comprises the difference between the number of homes that should have been built in trajectory terms and those that have actually been built over this period. The Council's shortfall is 1729 when assessed against the indicative Core Strategy target as set out earlier in Figure 1.

### **Buffers**

- 4.46 As set out earlier at para 2.1 the NPPF states that supply should include a buffer. Due to not having a 5 year housing land supply for the past three years and to improve the prospect of achieving the planned supply the Council continues to apply the 20% buffer rather than the 5% or 10 % buffer to the housing requirement. The buffer is added after the shortfall in the calculation.
- 4.47 Taking into account all the variables set out above, Figure 10. provides a summary of how the five year supply is calculated. The table shows that with a stepped trajectory target and the shortfall being addressed over the forthcoming five years there is currently not a five year supply of housing land in the County.

**Figure 10. Assessment against Core Strategy stepped trajectory.**

	Source	Homes	Notes
<b>A</b>	Core Strategy	16500	
	2011 – 2031		
<b>B</b>	Core Strategy requirement	5550	Using Trajectories: 600 dpa 2011-2016 (5yrs.) 850 dpa 2016-2019 (3 yrs.)
	1/4/2011 – 1/4/2019		
<b>C</b>	Homes Completed (net)	3821	Net reduction includes demolitions and conversions
	1/4/2011 – 31/3/2019 (past eight years)		
<b>D</b>	Requirement for next five years	4400	Using Trajectories 19/20– 20/21 – 850 pa (2 yrs) 21/22 – 23/24 900 pa (3 yrs)
<b>E</b>	Plus Residual Shortfall	1729	(over next five years as per NPPG)
<b>F</b>	Plus 20% buffer	1229	As recommended by Core Strategy Inspector and NPPF 2018
<b>G</b>	<b>Total Requirement</b>	<b>7358</b>	
<b>H</b>	<i>Annualised requirement</i>	1472	
<b>I</b>	<b>Total Deliverable dwellings</b>	5966	
<b>J</b>	<b>Housing Supply</b>	<b>4.05yrs</b>	I / H

## 5. Housing land supply for Herefordshire

- 5.1 When assessed against the Core Strategy, the current supply is 4.05 years. Before any discounting of sites was carried out this year's permission was 125 dwellings less than 2018. Changes to the NPPF has meant there is a need to be more rigorous with sites in terms of what is considered to be deliverable. Sites with permissions and allocations have been discounted where there is inactivity or lack of information on them coming forward through the planning process or being developed. This has affected the five year supply figure quite significantly and hence the drop from 2018 where the supply was 4.55yrs to 4.05yrs in 2019. This year's

housing completions totals (666) are less than last year's total of 776. However the target has also increased by approximately 300 making it more difficult to achieve a supply at current development rates.









## Appeal Decision

Hearing Held on 27 November 2019

Site visit made on 27 November 2019

**by Mrs H Nicholls MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 04 February 2020**

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**Appeal Ref: APP/W1850/W/19/3232124**

**Land south of Church Road, Brampton Abbots, Ross-on-Wye, Herefordshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Adam West against the decision of Herefordshire Council.
  - The application Ref 163755, dated 23 November 2016, was refused by notice dated 2 January 2019.
  - The development proposed is construction of no.10 residential dwellings, no.10 car ports & no.2 garages and associated works.
- 

### Decision

1. The appeal is allowed and planning permission is granted for construction of no.10 residential dwellings, no.10 car ports & no.2 garages and associated works at Land south of Church Road, Brampton Abbots, Ross-on-Wye, Herefordshire, in accordance with the terms of the application, Ref 163755, dated 23 November 2016, subject to the conditions in the attached schedule.

### Applications for costs

2. At the Hearing an application for costs was made by Mr Adam West against Herefordshire Council. This application is the subject of a separate Decision.

### Preliminary Matters

3. Prior to the Hearing, the Council indicated that it no longer intended to pursue the reason for refusal relating to the sustainability of the site or the effect of the proposal on highway safety. The Council indicated that these aspects could be subject to conditions. Whilst no longer a main issue between the parties, I address these matters further below.

### Main Issue

4. The main issue is the effect of the proposal on the character and appearance of the area, with particular regard to the Wye Valley Area of Outstanding Natural Beauty (AONB).

### Reasons

5. The appeal site is an undulating paddock in use for livestock grazing. Its roadside hedge is in poor to variable condition and views into the site are easily obtainable from Church Road, adjacent to the site. The Oak Tree Nursery building and other dwellings line the eastern boundary and owing to the lack of garden depth and limited boundary vegetation, they appear to form an abrupt

- transition from the built up part of the village to rural context. The dwelling known as Barcombe Grange marks the western end of the site's frontage and stands proud of its setting, with limited trees or landscaping around its boundaries.
6. The arrangement of dwellings in Brampton Abbots is generally clustered, with dwellings sited adjacent to the road. Whilst there are limited cul-de-sac arrangements, the village has numerous examples of semi-detached pairs or small clusters of dwellings, which, along with their boundaries or retaining structures, introduce a suburban quality to what is a semi-rural village. Dwellings take a variety of forms, with no one particular overriding type of style. The commonalities between dwellings in the area is generally limited to simple gabled forms, chimneys, pitched roofs and a use of red brick as an external walling material.
  7. A footpath runs in close proximity to the south of the site. The appeal site is most apparent along the section of footpath where there is a gap in the hedgerow vegetation, but views are otherwise partially screened. There are existing dwellings that back onto the footpath at its western end which have a variety of boundary treatments, including fencing, which in some instances appear to form a hard edge to the footpath.
  8. There are numerous other footpaths in the wider area, many of which I walked as part of my appeal visit. The appeal site is not particularly visible in more distant views from surrounding footpaths owing to topography and its enclosure by existing hedgerows and other dwellings to the east, west and south-west. Views from footpaths closer to the site are particularly limited unless viewers are on Church Road or very close thereto.
  9. The site's frontage is formed from a hedgerow that is a characteristic feature of the Principal Settled Farmlands and Sollers Hope Ridges and Valleys landscape character areas. These areas are respectively defined in the Landscape Character Assessment SPG<sup>1</sup> and Wye Valley AONB Management Plan<sup>2</sup> (AONBMP). The particular hedgerow that would be lost in this case is poor quality and it would be replaced with a newer hedgerow, including stone wall, set behind a visibility splay.
  10. The Council indicate that the proposal would introduce a layout of dwellings that is uncommon in Brampton Abbots because it would introduce a cul-de-sac arrangement of dwellings at the eastern end. However, the site is located centrally within the village and the development would extent along the site's frontage between the hard edges formed by existing dwellings. In this sense, the development would infill a gap between the existing built form of the village. The cul-de-sac extension on the eastern end would be minimal and would not be particularly apparent as an anomaly in the layout of dwellings within Brampton Abbots. The introduction of the public right of way beyond the vehicular turning head would ensure that the area has onward connectivity and would not strictly form a dead-end.
  11. The proposal has been designed to maintain a good degree of set back from Church Road and also from the eastern boundary, with tree planting and soft

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<sup>1</sup> Landscape Character Assessment Supplementary Planning Guidance (SPG) 2004

<sup>2</sup> Wye Valley Area of Outstanding Natural Beauty (AONB) Management Plan 2015 - 2020

landscaping forming a vital part of the integration of the scheme within its setting.

12. The proposal would also retain a smaller paddock to the south, maintaining a degree of separation from the closest footpath. There would also be another intervening hedgerow to be planted along the backs of the gardens to form another layer of mitigation screening to soften the impact of the proposal.
13. In terms of the losses of features characteristic of the landscape, the proposal would offset the loss of hedgerow by providing new hedgerows behind the visibility splay or elsewhere on site. The proposal would result in the partial loss of a paddock which constitutes a gap between dwellings in the settlement. However, for reasons of the location of the site, the interaction of existing neighbouring dwellings with the site and surrounding countryside, and also that it would leave a section to the south undeveloped, the proposal would not harm the landscape character or wider AONB characteristics.
14. I do not consider that the change of the settlement pattern from a more dispersed pattern with some linear aspects to a more nucleated settlement with its focus around Church Road would be particularly harmful. This is also in recognition that this road already has some dwellings that front onto the road from both sides and that the Church, Village Hall and Oak Tree nursery are located along or adjacent thereto.
15. The Council indicate that the visual impact of the proposal would be localised and I agree that this would be the case. The appeal site forms a minor part of wider views from where it can be seen, and this would not change even with the introduction of dwellings of up to two storeys in height.
16. From closer views, and particularly from along Church Road, viewers are aware of being within a village setting and the introduction of additional dwellings would not be harmful or obtrusive.
17. In the closest localised view from the south, the filtered views that would be obtainable would not be harmful, given the greater visibility of other existing dwellings sited in closer proximity. The gap in the hedgerow along this boundary would also be infilled to help mitigate the visual impacts where they would be more pronounced.
18. The design of the individual dwellings and their collective form and appearance, along with the garages and other associated boundary features, would assimilate well with the surrounding context. I note that many dwellings are unique and have evolved more organically, but to attempt to recreate such originality in a scheme of ten dwellings would be more likely to result in a contrived form of development. The traditional form of the proposed dwellings, albeit with some variation in storey heights and external materials, with simple repetition of commonly found features, including pitched roofs, chimneys, window detailing and canopied porches, would produce a coherent form of development that would retain the character of the area and wider AONB.
19. Although the boundary treatments proposed could be considered as utilitarian, they would reflect examples of similar examples of such boundaries in the surrounding area. It is also the case that the southern boundary is intended to be a post and wire stockproof fence with trees planted along its length in order to form a hedgerow.

20. Whilst I note that discussions about the suitability of the fruit trees to be planted in the southern hedgerow and the extent of visibility splay to be created were ongoing prior to and during the hearing, I consider that the landscaping scheme proposed would be comprehensive and appropriate to offset the impacts of the proposal. Whilst a reduced visibility splay may result in marginally less hedgerow being removed, I am mindful that this would result in a more fragmented approach to the northern boundary of the site and may negate any improvements to the highway layout that may otherwise be achieved. I have also borne in mind that the fruit trees are not typical in hedgerows, and are usually located within orchards. However, accepting that the trees are to be planted for softening and screening purposes to avoid the use of more urban boundary features, I consider that the tree species would be capable of establishing and suitable for this purpose.
21. In view of this main issue, the proposal would not harm the character and appearance of the area or the Wye Valley AONB. It would therefore accord with Policies SS6, RA2 and LD1 of the Herefordshire Core Strategy<sup>3</sup> (Core Strategy). Read together, these policies collectively seek to ensure that new development makes a positive contribution to the surrounding environment and conserves and enhances the natural, historical and scenic beauty of important landscapes and features. The proposal would also accord with Policies WV-D2 and WV-D3 of the AONBMP which seek to resist inappropriate development in the AONB, and encourage high standards of design to ensure that development complements the local landscape character.

## **Other Matters**

### *Special Area of Conservation – Appropriate Assessment*

22. The appeal site is within the catchment area of the River Wye which is part of the River Wye Special Area of Conservation (SAC). The SAC is designated in accordance with the Habitats Directive as transposed in the UK by the Conservation of Habitats and Species Regulations 2017 (Habitats Regs).
23. As a residential proposal which will create wastewater, of both foul and surface varieties, that needs to be appropriately channelled and treated, there is a potential that it will contribute to changes in the nutrient levels within the SAC, with particular regard to the levels of phosphorus. Any proposal which by reason of its location within the catchment area of the SAC, that may result in the alteration of nutrients in the river from improper discharge of wastewater, is likely to have an adverse effect on the integrity of the SAC. As such, the proposal would be likely to have significant effects either alone, or in combination with other projects.
24. I have had regard to the conservation objectives for the SAC which are to ensure that its integrity is maintained or restored as appropriate, and ensure that it contributes to achieving the favourable conservation status of its qualifying features, which include valuable aquatic flora and fauna and a range of invertebrate, fish and birds. The conservation objectives of the SAC can be observed by maintaining or restoring the following:
- The extent and distribution of qualifying natural habitats and habitats of qualifying species;

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<sup>3</sup> Herefordshire Local Plan Core Strategy 2011 - 2031

- The structure and function (including typical species) of qualifying natural habitats;
  - The structure and function of the habitats of qualifying species;
  - The supporting processes on which qualifying natural habitats and habitats of qualifying species rely;
  - The populations of qualifying species; and,
  - The distribution of qualifying species within the site.
25. It is clear that the proposal is not directly connected with or necessary for the management of the SAC.
26. The only way of avoiding adverse effects on the integrity of the SAC without seeking an alternative solution would be to secure appropriate mitigation.
27. Whilst Natural England has advised that his particular catchment area is not failing its conservation objectives for phosphate, there is a need to implement measures to avoid any alteration in the phosphate levels in the SAC. In this case, mitigation measures include the provision of adequate drainage infrastructure to ensure that foul water flows are routed to the public sewer system and that all surface water flows are managed through a sustainable urban drainage system. The main parties agree that the mitigation measures are necessary to avoid the likelihood of significant effects and that these must be able to be relied upon over the full lifetime of the project.
28. During the construction of the development, surface water will need to be managed to ensure that it does not reach the SAC. To this end, a detailed construction environmental management plan (CEMP) will need to be adhered to throughout the construction phase until such time as the final drainage infrastructure is in place. The CEMP would ensure that the developer were responsible for managing surface water within the site through a phased regime as construction progresses and until it is completed. Subject to the submission of a detailed CEMP and its approval in writing by the Council prior to the commencement of any part of the development, and subject to the CEMP being implemented as approved throughout the construction phase, it would adequately avoid any effect on the integrity of the SAC. Should the developer fail to implement any specified measure within the CEMP, the Council would be capable of enforcing the condition, halting the construction phase until such time as the measure was adequately implemented.
29. In terms of foul water, it is envisaged that each dwelling will be connected to a system that routes to the public sewer network. However, at the present time, there is insufficient capacity within the existing network to accept the proposed dwellings. The statutory undertaker, Welsh Water, has indicated that the capacity to receive the proposed dwellings will be available on, or by the 1<sup>st</sup> April 2020.
30. A planning condition would prevent commencement of any part of the development until the final design of the drainage system were submitted to and approved in writing by the Council showing its connection to the existing foul drainage network, and a timetable for its implementation. The approval of these details would ensure that the developer and/or any nominated contractor would construct the system and ensure a fully functioning connection to the existing foul drainage network prior to first occupation of any of the dwellings.

The planning condition, which can be enforced by the Council, will ensure that no foul flows are discharged from the dwelling until after 1 April 2020, although it is highly unlikely that any dwellings would be constructed by that date in any event.

31. The Council would be responsible for enforcing the condition should the development commence prior to approval of the details or if the development were to proceed without compliance therewith. The planning condition also requires that the drainage scheme is retained for the lifetime of the development. Following its completion and adoption, Welsh Water would be responsible for ensuring that the foul flows were appropriately treated at the appropriate sewerage treatment plant in accordance with the relevant permits issued by the Environment Agency.
32. In terms of surface water, extensive surface water assessments have been undertaken and the conclusion is that it is possible to route attenuated surface water flows through a storage tank system to a nearby highway drain. The surface water system will need to be adopted by the drainage undertaker to ensure that it would be appropriately maintained following completion.
33. A planning condition would be added to prevent commencement of any part of the development until the final design of the surface water drainage scheme were submitted to and approved in writing by the Council along with a timetable for its implementation. The approval of these details would ensure that the developer and/or any nominated contractor would construct the system and ensure a fully functioning connection to the existing highway drainage network prior to first occupation of any of the dwellings.
34. The Council would be responsible for enforcing the condition should the development commence prior to approval of the details or if the development were to proceed without compliance therewith. The planning condition also requires that the drainage scheme is retained for the lifetime of the development. Following its completion and adoption, Welsh Water would be responsible for ensuring that the attenuated flows were appropriately treated at the appropriate treatment plant in accordance with the relevant permits issued by the Environment Agency.
35. Natural England has been consulted on the appeal application and more recently on the 24 January 2020 and agree that the use of planning conditions to secure the implementation of suitable drainage measures would be adequate to avoid adverse harm to the SAC. Natural England has no objection.
36. Subject to the imposition and adherence to conditions, the proposal would not adversely affect the SAC and would therefore accord with the Habitats Regs and Core Strategy Policies SD3 and SD4 which seek to conserve and enhance watercourses and riverside habitats by observing water quality targets through the treatment of wastewater.

#### *General matters*

37. I have taken into account the many objections submitted in respect of the proposal. Whilst this decision will be a disappointment to those interested parties, I have set out the reasons why the proposal is considered acceptable.
38. In respect of the sustainability of the site, I acknowledge that public transport services serving the village are limited. The nature of the connecting roads and



public footpaths into nearby Ross-on-Wye are also likely to inhibit opportunities to promote walking and cycling, although such journeys are possible. Notwithstanding this, Brampton Abbots is considered to be a village suitable for modest housing growth as identified by the relevant Local Plan policies despite the limited range of modal choices.

39. In respect of highway safety, I have seen no cogent evidence that there is an issue that would be exacerbated by an increase in vehicular movements along Ross Road and Church Road. The access to the appeal site has been adapted to suit the specific conditions of Church Road and includes the setting back of a hedgerow behind the requisite visibility splay. As such, the use of planning conditions would ensure the delivery of measures to maintain the safety of users of the highway.
40. A number of separate points were also made in respect of the proposal. In terms of the effects on the living conditions of occupiers of Barcombe Grange, the proposal is sufficiently distant and orientated so as not to generate any harm with particular regard to light pollution or overlooking.
41. In terms of the need for the proposal to provide a car park for use in association with Oak House Nursery, I do not consider it necessary or reasonable to seek to ameliorate an existing issue outside of the site that does not present a highway safety concern for the Council when considered with the proposed increase in vehicular movements.
42. I have not sought to establish the type of heating that would be employed for the dwellings as the potential number of oil tank deliveries, should they be necessary, would not be excessive nor harmful to highway safety given the scale of the development.
43. Whilst the proposal would provide an area of landscaping to the rear of Oak Tree Nursery and the adjoining dwellings, with additional tree planting, the legal protection of this as a 'buffer strip' is not a matter for the appeal. The plans indicate that the area is set aside for the provision of landscaping and a new footpath and conditions shall seek to ensure that it is appropriately maintained for these purposes.
44. I note that a number of correspondents have highlighted that the proposal would be detrimental to the ecological value of the site. Whilst the proposal would reduce the extent of pasture land, it would also significantly increase the number of trees across the site. Consequently, along with a condition that would secure other ecological enhancement measures, the overall effect of the proposal on biodiversity would be positive.

### **Planning balance**

45. The Council acknowledges that it cannot currently demonstrate a 5 year supply of housing land and at the Hearing, agreed that the 'tilted' balance, set out in paragraph 11d) of the National Planning Policy Framework (the Framework) was engaged.
46. The application of the tilted balance involves granting permission unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the Framework as a whole, unless where any specific policies in the Framework indicate that development should be restricted. The examples given in Footnote 6 of paragraph 11 include



landscapes designated as AONBs. The Council raised in the written evidence that the Monkill judgement is relevant in this context. The judgement advises that great weight to AONBs qualifies as a policy to be applied under Framework 11d)(i), and that Framework paragraph 172 can be used as a freestanding reason for refusal in non-major as well as major development in an AONB. It goes on to state that if Framework paragraph 11, footnote 6 provides a clear reason for refusal under paragraph 11d)(i), the tilted balance is irrelevant and must not be applied.

47. I have given regard to the need to conserve the landscape and scenic beauty of the AONB, as required by paragraph 172 of the Framework. I have found that there would be no significant adverse effects and that, therefore, the AONB would be conserved. Consequently, the policy does not indicate that permission should be refused. As such, I agree that the tilted balance is applicable in this instance.
48. I have identified landscape and visual changes that would occur on the appeal site and its localised surroundings. There would be partial losses of features characteristic of the landscape and visual effects of new dwellings, most notably from footpaths and roads adjoining the appeal site. Collectively, these changes would not amount to harm to the area or wider AONB. I have not identified any conflict with the development plan policies in these regards.
49. Subject to conditions, the proposal would mitigate any potential effects on highways, biodiversity value and existing trees and hedges. These are neutral aspects of the proposal, neither weighing for or against it.
50. The proposal, subject to conditions, would not adversely affect the integrity of the SAC. Similarly, this is a neutral factor in the planning balance.
51. The proposed dwellings would add to the housing stock and would also be a valuable addition to the housing land supply. The proposal would also result in economic and social benefits, throughout the construction phase and during their future occupation. These are substantial benefits weighing in favour of the scheme.
52. The adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework.
53. Having regard to the reasons given above and all other matters raised, the proposal is considered to comply with the Development Plan, including Local Plan policy SS1, and there are no material considerations that indicate that a decision should be taken other than in accordance therewith.

### **Conditions**

54. I have considered the suggested planning conditions having regard to paragraph 55 of the Framework and advice in the Planning Practice Guidance. Where pre-commencement conditions have been used, agreement was sought from the appellant. I have undertaken some editing and reordering of the suggested conditions to avoid duplication and in the interests of precision.
55. In addition to the statutory time limit, a condition requiring adherence to the approved plans is necessary in the interests of certainty (1,2).

56. In the interests of the integrity of the SAC and to ensure that the adequate drainage capacity is available for the dwellings once constructed, it is necessary to impose pre-commencement conditions requiring a construction environmental management plan, a final surface water drainage scheme and separate foul water drainage scheme (3, 4, 5).
57. In the interests of the character and appearance of the area, it is necessary to condition tree protection measures and soft landscape implementation works (6, 7). For similar reasons, it is necessary to condition the submission of external material details and a landscape management plan for implementation beyond completion of the development (12, 13).
58. In the interests of highway safety, it is necessary to condition the provision of requisite visibility splays, the specification of the accesses to the site and the internal road and driveway specification at the appropriate junctures (8, 9).
59. In order to protect the health of future occupants, it is necessary to require precautionary contamination investigations to be undertaken and for any necessary remedial work to be completed prior to occupation (10, 11).
60. In the interests of the biodiversity value of the area, it is necessary to seek details of the ecological enhancement measures that will be implemented (14).
61. To accord with the relevant development plan policy (Core Strategy Policy SD3), it is necessary to secure details of water efficiency measures that will be implemented within the dwellings (16).
62. Whilst the Council suggested a condition relating to secure cycle storage, it is evident that each dwelling with benefit from a garage or car port, into which cycles can be secured. I do not consider it necessary to seek further details or additional secure cycle storage facilities which may result in a proliferation of other structures.

### **Conclusion**

63. As such, I conclude that the appeal should be allowed.

*Hollie Nicholls*

INSPECTOR

## SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:

Location plan	16009.100	28.10.16
Site layout	15009.101 Rev C	28.06.17
Materials plan	16009.103 Rev C	28.06.17
Storey heights	16009.104 Rev C	29.06.17
Enclosure details	16009.105 Rev A	01.11.16
Site sections	16009.106 Rev A	28.06.17
Garages and car ports	16009.300 Rev A	31.10.16
House type HT1	16009.201 Rev C	10.02.17
House type HT2	16009.201 Rev C	10.02.17
House type H3 – render	16009.HT3 202 C	10.02.17
House type H3 – red brick	16009.HT3 201 C	10.02.17
House type H4 plans	16009.HT4 201 A	01.11.16
House type H4 elevations	16009.HT4 202 C	10.02.17
Landscaping Detailed Design	W2163 1001	July 2017
Plant Schedule	W2163 1002	July 2017
- 3) Before any work, including any site clearance or demolition begins, or any equipment or materials are moved on to site, a Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority. The CEMP shall include a full Ecological Working Method Statement, construction phase drainage system and construction vehicle wheel washing facilities. The approved CEMP shall be adhered to throughout the construction period for the development.
- 4) Prior to the commencement of development, details of the surface water drainage scheme shall be submitted to and approved in writing by the Local Planning Authority. The details shall include:
  - Information about the measures to control the rate of surface water discharged from the site, including an allowance for a 100 + year climate change rainstorm and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
  - A timetable for its implementation; and,
  - Details of the arrangements for adoption by the statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

The development shall be carried out in accordance with the approved details which shall be fully functioning prior to first occupation of any of the dwellings hereby permitted and shall thereafter be retained as such.

- 5) Prior to the commencement of development, details of the foul water drainage scheme shall be submitted to and approved in writing by the Local Planning Authority. The details shall include:
- The design of the system and its connection to the Mains Sewer network; and
  - A timetable for its implementation to ensure that no foul flows are discharged to the Waste Water Treatment Works earlier than 1<sup>st</sup> April 2020.

The development shall be carried out in accordance with the approved details which shall be fully functioning prior to first occupation of any of the dwellings hereby permitted and shall thereafter be retained as such.

- 6) None of the existing trees and/or hedgerows on the site (other than those specifically shown to be removed on the approved drawings) shall be removed, destroyed or felled. No development, including demolition works shall be commenced on site, site huts, machinery or materials brought onto the site, before adequate measures have been taken to prevent damage to those trees/hedgerows that are to be retained. Measures to protect those trees/hedgerows must include:
- a) Root Protection Areas for each hedgerow/tree/group of trees which shall be defined in accordance with BS5837:2012 – Trees in Relation to Design, Demolition and Construction.
  - b) Temporary protective fencing, of a type and form agreed in writing with the Local Planning Authority must be erected around each hedgerow, tree or group of trees. The fencing must be at least 1.25 metres high and erected to encompass the whole of the Root Protection Areas for each hedgerow/tree/group of trees.
  - c) No excavations, site works or trenching shall take place, no soil, waste or deleterious materials shall be deposited and no site huts, vehicles, machinery, fuel, construction materials or equipment shall be sited within the Root Protection Areas for any hedgerow/tree/group of trees.
  - d) No burning of any materials shall take place within 10 metres of the furthest extent of any hedgerow or the crown spread of any tree/group of trees to be retained.
  - e) There shall be no alteration of soil levels within the Root Protection Areas of any hedgerow/tree/group of trees to be retained.

The tree and hedgerow protection measures shall be retained in situ for the duration of the construction period

- 7) The approved soft landscaping scheme and planting schedule detailed in plan refs W2163 1001 and W2163 1002, including the infilling of the gap in the existing southern hedgerow on adjoining land, shall be carried out concurrently with the development hereby permitted and shall be completed no later than the first planting season following the first occupation of the development.

- 8) Prior to commencement of development, the specifications for the vehicular accesses shall be submitted to and approved in writing by the Local Planning Authority. The specifications shall provide for:

- Visibility splays of 43 metres in each direction along the nearside edge of the adjoining carriageway, measured 2.4 metres back from the nearside edge of the adjoining carriageway (measured perpendicularly) at 0.6 metres above ground level at the centre of the accesses; and
- A gradient not steeper than 1 in 12.

The accesses shall be provided in accordance with the approved details prior to the commencement of any other works on site.

Nothing shall be planted, erected and/or allowed to grow within the visibility splays above a height of 600mm which would obstruct the visibility splays described above.

- 9) Development shall not begin in relation to the provision of road and drainage infrastructure until the engineering details and specification of the proposed roads, highway drains and driveways and turning areas have been submitted to and approved in writing by the Local Planning Authority. The details shall provide for private driveways and vehicular turning areas that shall be consolidated and surfaced at a gradient not steeper than 1 in 8, with private drainage arrangements to avoid run-off onto the highway.

None of the dwellings shall be first occupied until the roadworks necessary to provide access from the nearest publicly maintained highway have been completed in accordance with the approved details, and shall be retained as such thereafter.

- 10) Prior to the commencement of development, the following shall be submitted to and approved in writing by the Local Planning Authority:

a) a 'desk study' risk assessment report including previous site and adjacent site uses, potential contaminants arising from those uses, possible sources, pathways, and receptors, a conceptual model and a risk assessment in accordance with current best practice

b) if the risk assessment in (a) confirms the possibility of a significant pollutant linkage(s), a site investigation should be undertaken to characterise fully the nature and extent and severity of contamination, incorporating a conceptual model of all the potential pollutant linkages and an assessment of risk to identified receptors

c) if the risk assessment in (b) identifies unacceptable risk(s) a detailed Contamination Remediation Scheme and measures necessary to avoid risk from contaminants/or gases when the site is developed.

The Contamination Remediation Scheme shall include consideration of and proposals to deal with situations where, during works on site, contamination is encountered which has not previously been identified. Any further contamination encountered shall be fully assessed and an appropriate remediation scheme submitted to and approved in writing by the local planning authority .

- 11) The Contamination Remediation Scheme approved under the requirements of condition 11) shall be fully implemented before the development is first occupied. On completion of the remediation scheme the developer shall

provide a validation report to confirm that all works were completed in accordance with the agreed details, which must be submitted to and agreed in writing by the Local Planning Authority before the development is first occupied.

- 12) Prior to their first use in the development hereby approved, details, including samples, of materials and finishes to be used externally on walls and roofs shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 13) Prior to first occupation of any of the dwellings hereby approved, a landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas and hedges enclosing the site and adjoining land, shall be submitted to and approved in writing by the Local Planning Authority. The approved landscape management plan shall be carried out in accordance with the timetables therein.

As part of the landscape management plan, any trees, shrubs or other plants which are removed, die or are seriously damaged within five years shall be replaced during the next planting season with others of similar sizes and species.

- 14) Prior to first occupation of any of the dwellings hereby approved, a detailed habitat enhancement scheme shall be submitted to, and be approved in writing, by the Local Planning Authority. The enhancement scheme shall be designed to ensure that any habitat enhancement or boundary feature is not illuminated by any external lighting. The approved habitat enhancement scheme shall be carried out in accordance with the timetables therein.
- 15) Prior to the first occupation of any of the dwellings hereby permitted, written evidence shall be provided to the Local Planning Authority that demonstrates that water conservation and efficiency measures to achieve the 'Housing – Operational Technical Standards – Water efficiency standards' (i.e. currently a maximum of 110 litres per person per day) for water consumption as a minimum have been installed/implemented. Thereafter, the approved water conservation and efficiency measures shall be maintained for the lifetime of the development.
- 16) During the construction phase no machinery shall be operated, no process shall be carried out and no deliveries taken at or despatched from the site outside the following times: Monday-Friday 0700 – 1800, Saturday 0800 – 1300 nor at any time on Sundays, Bank or Public Holidays.

END OF SCHEDULE

## **APPEARANCES**

### FOR THE APPELLANT:

Mr Richard West	Appellant's representative
Mr Gavin Cooper	Planning Consultant
Mr Robert Clancy	Landscape Consultant

### FOR THE LOCAL PLANNING AUTHORITY:

Ms Elizabeth Duberley	Principal Natural Environment Officer
Ms Charlotte Atkins	Planning Officer

**Appendix E: High Court Judgement of Chichester District Council v Secretary of State for Communities and Local Government and Beechcroft Ltd, dated 12 September 2018 (Ref: [2018] EWHC 2386 (Admin))**



Case No: CO/5767/2017

Neutral Citation Number: [2018] EWHC 2386 (Admin)  
**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**PLANNING COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 12 September 2018

**Before :**

**UT JUDGE ANDREW GRUBB**  
**(SITTING AS A DEPUTY HIGH COURT JUDGE)**

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**Between :**

**Chichester District Council**

**Claimant**

**- and -**

**(1) Secretary of State for Housing, Communities  
and Local Government (2) Beechcroft Ltd**

**Defendants**

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**Gwion Lewis** (instructed by **Sharpe Pritchard, Solicitors**) for the **Claimant**  
**Guy Williams** (instructed by **Government Legal Department**) for the **First Defendant**  
**Killian Garvey** (instructed by **Eversheds, Solicitors**) for the **Second Defendant**

Hearing dates: 20 June 2018

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**Judgment**

**Judge Grubb :**

## **INTRODUCTION**

1. The Claimant, Chichester District Council (“the Council”) challenges by statutory review under s.288 of the Town and Country Planning Act 1990 (“the TCPA 1990”) the decision of the First Defendant’s inspector, set out in his Decision Letter of 2 November 2017 (“the DL”), to allow an appeal by the Second Defendant, Beechcroft Ltd against the Council’s decision dated 8 February 2017 to refuse its application for planning permission for up to 34 dwellings and related development of land at Breach Avenue, Southbourne, West Sussex (“the proposed development”).
2. The claim was lodged on 12 December 2017. The papers were initially considered by Lang J on 18 January 2018 who ordered the Claimant to file Supplementary Statement of Grounds which were duly filed on 8 February 2018, together with Supplementary Grounds of Resistance by the Defendants on 21 February 2018. Permission to proceed with the statutory review was granted by Lang J on the papers in an order dated 26 March 2018.
3. The Claimant challenges the inspector’s DL on two grounds which are related. First, in ground 1(a), it is contended that the inspector failed to decide whether the proposed development “conflicts with a neighbourhood plan”, namely the Southbourne Parish Neighbourhood Plan 2014-2019 (“the NP”) as required by para 198 of the National Planning and Policy Framework (“the NPPF”). Secondly, in ground 1(b), it is contended that the inspector irrationally relied upon a distinction between the “policies” of the NP and its “aims” when assessing whether the proposed development conflicted with the NP.
4. Although Lang J granted permission on both grounds, in her order it appears she considered that ground 1(b) was the more meritorious.

## **THE DEVELOPMENT PLAN**

5. The claim relates to a proposed residential development on land in the Southbourne area. There is in effect a ‘neighbourhood plan’, (the NP), for the Southbourne area dealing with such development which dates from September 2015. There is also a Local Plan of the Council’s for 2014-2029 (“the LP”). The NP identifies new sites for housing in the Southbourne area based upon the indicative number of houses allocated to Southbourne in the LP.
6. A “neighbourhood development plan” is defined in s.38A(2) of the Planning and Compulsory Purchase Act 2004 (“the PCPA 2004”) as a plan which:

“sets out policies (however expressed) in relation to the development and use of land in the whole or any part of a particular neighbourhood area specified in the plan.”
7. Together the LP and NP comprise, so far as relevant for this case, the “development plan” as defined in s.38(3) of the PCPA 2004.

8. It is common ground between the parties that the relevance of this, in this case, lies in s.38(6) of the PCPA 2004 and para 198 of the NPPF. Section 38(6) provides that:

“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.”

9. By virtue of s.70(2) of the TCPA 1990, the “development plan” was material to a determination of the planning application in this case.

10. Further, specifically in relation to a ‘neighbourhood plan’ para 198 of the NPPF provides:

“Where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should normally not be granted”

11. It is common ground between the parties that para 198 of the NPPF is consistent with s.38(6) of the PCPA 2004 and does not give an enhanced status to a ‘neighbourhood plan’ (see Woodcock Holdings Ltd v SSCLG [2015] JPL 1151 at [24] and SSCLG v BDW Trading Ltd [2016] EWCA Civ 493 at [21]).

12. It is, therefore, a central part of the decision-making process in respect of a planning application to determine whether the proposal “conflicts” with the development plan, i.e. in this case the LP and/or the NP.

13. It is also common ground between the parties, as the inspector concluded at para [18] of his DL, that the proposed development was in conflict with the policies of the LP, in particular Policies 2 and 45, as it fell outside the settlement boundaries of the NP and did not meet “an essential, small scale and local need” (see para [9], DL). I need say no more about the LP as the focus of the argument, and dispute between the parties, is upon the NP and whether the proposal “conflicts” with it.

14. The relevant policies in the NP are Policy 1 and Policy 2.

15. Policy 1 sets out the “settlement boundaries” for development in the area and provides as follows:

“The Neighbourhood Plan will support development proposals located inside the Settlement Boundaries of Southbourne/Prinsted, Nutbourne West and Hermitage/Lumley/Thornham, as shown on the Policies Map, provided they accord with other provisions of the Neighbourhood Plan and development plan.”

16. Policy 2 provides a detailed allocation of 4 sites:

“The Neighbourhood Plan allocates the following sites for housing development of a mix of mainly 1, 2, 3, and 4 bedroom homes, as shown on the Policies Map, subject to the development principles outlined:

- i. 150 dwellings on land at Loveders Mobile Home Park, Main Road, provided the scheme:
  - a. is accessed from the A259 Main Road only;
  - b. meets its public open space requirements by providing land to form part of the Green Ring proposed in Policy 3, comprising a playing field, an equipped children's play space and informal open space;
  - c. safeguards land within the site for the future erection of a pedestrian footbridge over the railway east of Southbourne station and connected this to the footpath network of the Green ring; and
  - d. enables the provision of a new footpath to Southbourne railway station, to the satisfaction of Network Rail, and makes a reasonable financial contribution to the cost of implementing this footpath.
  - e. demonstrates by way of a site specific flood risk assessment that the proposed development would be acceptable incorporating Sustainable Drainage Systems (SuDS) to prevent increases in surface water flood risk; and
  - f. includes a Solent-wide strategic mitigation package proportionate to the scale of the recreational disturbance to the Chichester Harbour SPA.
- ii. 125 dwellings on Land North of Alfrey Close, provided the scheme:
  - a. is accessed from the A259 Main Road;
  - b. meets its public open space requirements by providing land to form part of the Green Ring proposed in Policy 3, comprising informal open space and an equipped children's play space;
  - c. demonstrates by way of a site specific flood risk assessment that the proposed development would be acceptable incorporating Sustainable Drainage Systems (SuDS) to prevent increases in surface water flood risk; and
  - d. includes a Solent-wide strategic mitigation package proportionate to the scale of the recreational disturbance to the Chichester Harbour SPA.
- iii. 25 dwellings on Land at Gosden Green, provided the scheme;
  - a. is accessed from the A259 Main Road by way of a new road along the eastern boundary of the site;
  - b. meets its public open space requirements by providing land to form part of the Green Ring proposed in Policy 3, comprising informal open space;
  - c. includes a Heritage Statement identifying mitigation proposals where evidence indicates potential presence of remains; demonstrates by way of a site specific flood risk assessment that the proposed development would be acceptable incorporating

Sustainable Drainage Systems (SuDS) to prevent increases in surface water flood risk; and

- d. includes a Solent-wide strategic mitigation package proportionate to the scale of the recreational disturbance to the Chichester Harbour SPA.

iv. 50 dwellings on Land at Nutbourne West, provided the scheme:

- a. is accessed from the A259 Main Road;
- b. provides a significant landscape buffer along all its boundaries, comprising structural landscaping, public allotments, informal open space and a children's play area;
- c. makes reasonable financial contribution towards a package of drainage works to mitigate the impacts of the development and to ensure that existing flooding problems in the vicinity of the site and downstream are not exacerbated; and
- d. makes provision for car parking spaces to benefit dwellings adjoining the site;
- e. includes a Heritage Statement identifying mitigation proposals where evidence indicates potential presence of remains;
- f. demonstrates by way of a site specific flood risk assessment that the proposed development would be acceptable incorporating Sustainable Drainage Systems (SuDS) to prevent increases in surface water flood risk; and
- g. includes a Solent-wide strategic mitigation package proportionate to the scale of the recreational disturbance to the Chichester Harbour SPA.

All the proposed allocations will be expected to deliver affordable housing in accordance with the policies of the development plan and to provide financial contributions to meeting their infrastructure requirements and other provisions of the Neighbourhood Plan, as indicated in Proposal 2."

17. The reasoned justification for Policy 2 is given at paras 4.6-4.8 of the NP:

"4.6 The prior alignment of the Settlement Boundaries was established in the 1999 Local Plan Policy BE1. However, as there are no sites of sufficient size to accommodate new development within these boundaries, their alignment requires amendments in order to make provision for the site allocations in Policy 2.

4.7 A review of these boundaries has been undertaken using the SPNP evidence base to derive the following criteria to justify amendments:

- a) Proximity to the Chichester & Langstone Harbours Special Protection Area – land is not in an area within the designated

400m buffer zone (in accordance with saved Policy RE7 of the 1999 Local Plan and NPPF para 118)

- b) Relative landscape sensitivity to development – not land within the Chichester Harbour AONB (in accordance with saved Policy RE4 of the 1999 Local Plan and NPPF para 115)
- c) *Minimisation of local traffic congestion – only land south of the Stein Road railway level crossing (in accordance with saved Policy TR6 of the 1999 Local Plan and NPPF para 30)*
- d) Flood risk – land in Flood Zone 1 only (in accordance with NPPF para 100)
- e) Proximity to local services – land in close proximity to either Southbourne, Nutbourne or Hermitage local services and/or public transport service routes (in accordance with NPPF para 70).

4.8 Only where all five of the above criteria can be met is there a justification for a re-alignment of the boundary. In this way, the policy accords with national planning policy aimed at promoting development in rural areas but minimising its impact on areas of international nature conservation significance, the countryside and the local highway network. It also accords with the principles for reviewing the settlement boundary as proposed in Policy 2 of the CLPKP of:

- Respecting the setting, form and character of the settlement – see (b) above
- Avoiding actual or perceived coalescence of settlements – see (b) above
- Ensuring good accessibility to local services and facilities – see (c) and (e) above.” (my emphasis)

18. I have highlighted para 4.7(c) as it features prominently in the case. The justification recognises that the settlement boundary and chosen sites were selected only on land “south of the Stein Road railway level crossing” in order to minimise local traffic congestion. The issue of congestion was raised during the public consultation (see para 2.33 of the NP). The NP also refers to it as one of the “Objectives & Measures” listed in para 3.2 in order to achieve the key objectives of the NP:

“9. To avoid increasing traffic congestion at the Stein Road railway crossing in the plan period and to identify long term solutions.”

19. The proposed development, for which planning permission was given, was on land north of the Stein Road railway level crossing.
20. One final matter in relation to the NP which I should set out here concerns the report of the Examining Inspector in respect of the (then) draft NP in May 2015. He recommended changes to Policy 1 of the draft NP which were subsequently made to

the final NP: Policy 1 in its draft form was as follows with the suggested amendments struck through:

**“Policy 1: Development within the Settlement Boundaries  
~~Spatial Strategy~~**

The Neighbourhood Plan will support development proposals located inside the Settlement Boundaries of Southbourne/Prinsted, Nutbourne West and Hermitage/Lumley/Thornham, as shown on the Policies Map, provided they accord with other provisions of the Neighbourhood Plan and development plan. ~~Development proposals outside the Settlement Boundary will be required to conform to development plan policy in respect of the control of development in the countryside.”~~

21. The Examining Inspector’s justification for recommending the change was that it was not appropriate for the NP to deal with development in the countryside (i.e. outside the settlement boundary) and that that should be left to the development plan policies of Chichester DC, in effect through its LP:

“5.9 To the extent that over the life of the Plan proposals might come forward for development outside the settlement boundaries, it would not be appropriate for the Plan to require such proposals to conform to development plan policy in the countryside. That responsibility should be for Chichester District Council to determine through its development plan policies. For this reason I have indicated that if this policy is to be retained, the final sentence of the draft policy should be removed, as indicated below. In the explanatory text, the policy should therefore encourage, rather than direct development, within the established settlements within the parish. The recommended revision to the policy is shown in Appendix 1.”

22. With that background in mind, I turn to consider the inspector’s DL.

**THE DECISION LETTER**

23. The DL at paras [6]-[11] dealt with the LP and NP and the Claimant’s contention that the proposal was in conflict with both of them:

*“Development Plan Strategy*

6. The development plan comprises the adopted Chichester Local Plan Key Policies 2015 (LP) and the made Southbourne Parish Neighbourhood Plan 2015 (NP). Policy 1 of the LP reflects the presumption in favour of sustainable development set out in paragraph 14 of the National Planning Policy Framework (the Framework). Policy 2 sets out the settlement hierarchy for the District, with Chichester city at the top and

Southbourne and three other locations as second tier Settlement Hubs. Below the Settlement Hubs are Service Villages and the Rest of Plan Area, which comprises smaller settlements and the countryside. Strategic development in the form of medium-scale extensions is identified at Settlement Hub locations including Southbourne. The policy includes a presumption in favour of sustainable development within settlement boundaries. These boundaries are to be reviewed through Development Plan Documents and Neighbourhood Plans. Development in the Rest of the Plan Area is restricted to that which requires a countryside location or meets an essential local need.

7. Policy 5 of the LP makes provision for small scale housing to meet local community needs on sites to be identified in neighbourhood plans. In Southbourne, excluding Southbourne Village and strategic allocations, an indicative number of 50 units is proposed. Policy 20 makes provision for strategic development in Southbourne. Such development is to be allocated in the NP and will include 300 homes. Policy 45 states that development outside of settlement boundaries will be granted where it requires a countryside location and meets essential, small scale and local needs. The Council's planning proof also refers to LP Policy 33 which deals with the design of residential development. However, no conflict with this policy is alleged.

8. Policy 1 of the NP supports development proposals located within the settlement boundaries identified on the Policies Map. Those boundaries have been amended to allow for the allocation of four housing sites for a total of 350 units under Policy 2. Development has been completed, commenced, or planning permission granted for a total of 357 units in accordance with these NP allocations. Policy 3 proposes the establishment of a Green Ring around the village of Southbourne.

9. The appeal site comprises essentially undeveloped land which was formerly used as an orchard. It abuts the eastern edge of established residential development at Breach Avenue as well as Fraser Gardens and East Field Close. However, the site falls outside of the settlement boundary as defined in the NP and is not allocated for any form of development. Nor is it claimed that the appeal proposal would meet an essential, small scale and local need. It is common ground, therefore, that the proposal would be contrary to LP Policies 2 and 45.

10. The Council considers that the proposal is also in conflict with LP Policy 45 and NP Policies 1 and 2 on the basis that the unplanned provision of 34 dwellings would be at variance with the development strategy for Southbourne which was properly considered through the LP and NP preparation processes.

11. The appellant contends that these policies are silent on the question of housing development outside of settlement boundaries and



are, therefore, not relevant to the appeal proposal. The appellant points to the NP Examiner's Report<sup>3</sup> which recommended the omission of wording from Policy 1 which would have required development outside of settlement boundaries to conform to development plan policy for the control of development in the countryside. Moreover, it is argued that the scale of development proposed would not be inconsistent with the overall size of Southbourne or the level of development anticipated there in the development plan strategy. The appellant draws support for its approach from an appeal decision at Newick<sup>4</sup>."

24. At paras [12]-[18] the inspector set out his conclusions on the parties' arguments before him as follows:

"12. I agree with the appellant that the policies in question do not directly presume against development outside of settlement boundaries. Furthermore, it was accepted by the Council that LP Policy 5 does not set a cap on the amount of housing which may be provided. That much is plain from the policy's use of the phrase 'indicative housing numbers.'

13. Nevertheless, nor is there anything in the NP policies which supports the proposal. Indeed, it is clear that the way in which the settlement boundary was amended under NP Policy 1, and the housing allocations located under Policy 2, was the result of an intention to avoid further development north of the railway line in order to minimise congestion at the Stein Road level crossing<sup>5</sup>. I also heard from interested parties at the Inquiry, as well as others in written submissions, how important this consideration was to local people in the preparation of the NP. The appeal site is located to the north of the railway line. For this reason it was considered and rejected as a housing location during the NP preparation process. I consider below the effect of the proposal on congestion at the crossing. However, at this stage, it is pertinent to recognise that the proposal is at odds with the aims of the NP with regard to the location of new housing.

14. The NP Examiner explains the reason for recommending the amendment to Policy 1 at paragraph 5.9 of his Report. He says that it would not be appropriate for the NP to require proposals outside of settlement boundaries to conform to development plan policy for the countryside; that responsibility should be for the District Council through its development plan policies. It seems to me therefore, that the Examiner was not offering support for development outside of settlement boundaries. Rather, he was merely seeking to ensure that the matter is dealt with at the appropriate level of plan making. That approach in accordance with the development plan when read as a whole, unless material considerations indicate otherwise.

15. I recognise that there are many parallels between the considerations in this appeal and those in the Newick case. In particular, the recognition that the policies of the Joint Core Strategy

(JCS) and Newick Neighbourhood Plan did not place a cap on development in the settlement. Notwithstanding that the Newick Neighbourhood Plan was made before the full extent of housing allocations in the JCS had been established, it is also relevant that the scale of the proposal in that case was, relative to the size of the settlement, greater than in this case.

16. Moreover, it was accepted by the Council's planning witness that the housing numbers for Southbourne in the LP are not maximums. Furthermore, notwithstanding a suggestion to the contrary in the Council's closing submissions, its planning witness accepted that, had the 34 units been located within the settlement boundary, there would have been no objection on the basis of scale of the proposal. There is no firm evidence to indicate that the proposed 34 units would be incompatible with the scale of Southbourne as a whole or that future occupiers would not be adequately served by reasonably accessible local services and facilities. Indeed the Council accepted that the site is sustainably located in that regard.

17. I recognise that that the indicative figures in the LP represent a considered policy response to the scale of development to be accommodated in Southbourne. However, the proposal would represent an increase of less than 10% over the 350 dwellings earmarked for Southbourne as a whole. Since the site adjoins the established built up area and is fairly well linked to its facilities, I consider this to be a more useful comparison than the Council's reference to the 50 dwellings indicated in LP Policy 5. It also distinguishes the proposal from the Hambrook appeal cited by the Council<sup>6</sup>. In that case 120 dwellings were proposed in a considerably smaller settlement where just 25 additional units were allocated in the Local Plan. Consequently, I consider that the scale of the proposal, as opposed to its location, would not be at odds with the broad development plan strategy for new housing as indicated in LP Policies 5 and 20.

18. The silence of NP Policies 1 and 2 on the question of development outside of settlement boundaries is not a positive point in favour of the appeal proposal. As such, it does not outweigh the proposal's conflict with LP Policies 2 and 45 and its lack of accord with the aim of the NP with regard to the location of new housing. Therefore, I find that the proposal would be contrary to the development plan strategy for the location of residential development when considered as a whole. I consider below the weight to be attached to this conflict."

- 25. At paras [19]-[46], the inspector dealt with a number of other matters, including the issue of housing supply, which are not relevant to this case.
- 26. At paras [47]-[55], the inspector turned to consider the 'Planning Balance':

“47. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires proposals to be determined in accordance with the development plan unless material considerations indicate otherwise. I have found that the proposal conflicts with LP Policies 2 and 45 and does not accord with the aim of the NP with regard to the location of new housing.

48. Nonetheless, I have concluded that the Council cannot demonstrate a five year supply of housing as required by the Framework. Framework paragraphs 49 and 14 advise that, where a five year housing land supply cannot be demonstrated, relevant development plan notices should be considered out of date and that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole. This consideration distinguishes the appeal proposal from the Wivelsfield decision<sup>23</sup> cited by the Council where it was found that a five year supply existed.

49. Even taking the Council’s figure for the number of housing units to be delivered over the next year years, the supply land supply position would be marginal. However, I have found that substantially fewer units are likely to be delivered. The appellant also considers that the LP is out of date pending the adoption of the DPD. However, there is nothing to suggest that the settlement boundaries for Southbourne will be affected by the completion of that process. Therefore, whilst Policies 2 and 45 are relevant to the supply of housing, I consider that they should still carry moderate weight in the determination of this appeal. I have also found that the scale of the proposal would not be at odds with the level of residential development in Southbourne indicated in LP Policies 5 and 20. Furthermore Southbourne is identified in the LP as a Settlement Hub where strategic development is anticipated. Nor have I found that proposal would lead to other direct harms. Therefore, notwithstanding the conflict with the terms of LP Policies 2 and 45, in practice, the degree of harm to the development plan strategy would be limited.

50. Framework paragraphs 184 and 198 advise that neighbourhood planning provides a powerful tool for local people to ensure that they get the right type of development and that proposals which conflict with a made Neighbourhood Plan should not normally be granted. Paragraph reference 41-083-20170810 of the Planning Practice Guidance advises on the application of the Written Ministerial Statement on neighbourhood Planning dated 12 December 2016 following the Hopkins Homes Supreme Court judgement<sup>24</sup>. It advised that where, as in this case, the criteria in the Written Ministerial Statement apply, significant weight should still be given to the Neighbourhood Plan notwithstanding the fact that the local planning authority cannot demonstrate a five year supply of deliverable housing sites. I recognise that a great deal of time and effort was invested in the preparation of the

NP and that local people responded positively to Government policies on neighbourhood planning. Allowing the appeal could be seen to undermine confidence in the planning process. These matters form part of the social dimension of sustainability which, Framework paragraph 7 advises, includes supporting strong, vibrant communities.

51. However, I have found that the proposal would not conflict with the policies of the NP and would not materially exacerbate congestion at the railway crossing. As such, it would not cause harm in respect of the underlying reason why the NP seeks to restrict development north of the railway line. Moreover, Framework paragraph 8 requires the social, economic and environmental roles of sustainability to be considered together.

52. Framework paragraph 47 seeks to significantly boost the supply of housing. This too is part of the social dimension of sustainability. The LP examiner's report found that environmental and infrastructure restrictions in the District justified a housing target which was lower than the OAN. The Council's housing witness also accepted that the OAN is likely rise in the future. With these consideration in mind, the provision of 34 new dwellings in a location with reasonably good access to local facilities and public transport and no significant environmental or infrastructure constraints would make a valuable contribution to the supply of housing. The proposal would also contribute to the provision of affordable housing in an area of high housing need. Taken together, I consider that these amount to very significant benefits.

53. The appellant also points to the economic benefits of the proposal through construction employment and activity, spending by future resident at local facilities and the New Homes Bonus. Collectively, these amount to moderate benefits of the proposal.

54. The proposed publicly accessible open space, new planting and ecological enhancements would generally align with the Green Ring to be established under NP Policy 3. These features would, therefore, offer moderate environmental benefits. The provision of a turning facility at the end of Breach Road would also be a limited benefit of the proposal.

55. Overall therefore, I find that the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits of the proposal. As such, the proposal benefits from the presumption in favour of sustainable development set out in Framework paragraph 14 and LP Policy 1. This consideration is sufficient to overcome the conflict with LP Policies 2 and 45 and the aim of the NP with regard to the location of new housing."

## **THE PARTIES' CASES IN SUMMARY**

27. I am grateful to all counsel for their helpful written and oral submissions. What I now set out is only a summary of their detailed submissions.
28. At the hearing, Mr Gwion Lewis, who represented the Claimant maintained both grounds in his skeleton argument and oral submissions.
29. The Claimant's case may be briefly summarised as follows. The NP supported development proposals within settlement boundaries (Policy 1). Those settlement boundaries and specified sites for development are set out in Policy 2 of the NP. The appeal site is not within the settlement boundary nor is it one of the specified sites. Indeed, the Council considered and excluded the proposed development site as a potential area for development when preparing the draft NP. In part, in order to minimise local traffic congestion at the Stein Road railway level crossing, the Council excluded development to its north in Policies 1 and 2 of the NP – which is where the appeal site is located. By virtue of para 198 of the NPPF, the inspector was required to determine whether the proposed development “conflicts” with the NP because, if it did, “planning permission should not normally be granted”.
30. Mr Lewis contended that the inspector's DL should be quashed because: (a) in his DL the inspector did not reach a decision on whether it did conflict. In Mr Lewis' words he “fudged” the issue, deciding that it did not conflict with the “policies” in the NP although it was “at odds” with its aims. He did not determine whether that meant it “conflicts” with the NP; (b) in any event, the distinction between the “aims” and “policies” of the NP is irrational and the proposed development did conflict with the NP because it did not fall within the settlement boundary and specified sites for development covered by Policies 1 and 2 of the NP respectively.
31. Representing the First and Second Defendants, Mr Guy Williams and Mr Killian Garvey respectively in their skeleton arguments and oral submissions sought to resist the Claimant's case that the inspector had erred in law in his DL and that his decision should be quashed.
32. First, they contended that the inspector did reach a decision on whether the proposed development conflicted with the NP. On a fair reading of the DL as a whole, the inspector clearly concluded that it did not. Although he accepted (and all parties agree this is the case) that the proposed development did conflict with Policies 2 and 45 of the LP, he concluded that the NP was silent on development outside the settlement boundary areas and rejected the Claimant's case on conflict, not least when he stated at para [51] of the DL that the proposal would not conflict with the policies of the NP.
33. Secondly, having concluded there was no conflict with the NP, the inspector properly and rationally concluded that the proposed development was not in conflict with the “policies” of the NP as it did not deal with development outside the settlement boundary and specified sites. That had been specifically left to the LP, as evidenced by the deletion from Draft Policy 1 following the Examining Inspector's report. Having found that the proposal did conflict with the LP, and that the “aim” of the NP was to avoid settlement north of the railway line because of traffic congestion problems at the Stein Road level crossing, the inspector found that not to be the effect

of the proposed development. Thereafter, the inspector made a rational and lawful 'planning judgment' in favour of the development.

34. Finally, relying on Simplex GE (Holdings) Ltd v Secretary of State for the Environment (1989) 57 P & CR 306, the Defendants contend that relief should be refused even if the claimant succeeds in establishing his grounds because the inspector would have come to the same conclusion carrying out the 'planning balance' even if the proposed development was in conflict with the NP.

### **THE RELEVANT LAW**

35. I can set out the applicable law briefly as it was not in dispute before me with the exception of the proper application of the decision in Crane v SSCLG [2015] EWHC 425 (Admin), with which I will deal later in my discussion of the parties' submissions.
36. The principles applicable to a legal challenge to a planning decision are well-established and set out in the "seven familiar principles" in the judgment of Lindblom J (as he then was) in Bloor Homes East Midlands Ltd v SSCLG and Hinckley & Bosworth BC [2014] EWHC 754 (Admin) at [19] as follows:

"19. The relevant law is not controversial. It comprises seven familiar principles:

(1) Decisions of the Secretary of State and his inspectors in appeals against the refusal of planning permission are to be construed in a reasonably flexible way. Decision letters are written principally for parties who know what the issues between them are and what evidence and argument has been deployed on those issues. An inspector does not need to "rehearse every argument relating to each matter in every paragraph" (see the judgment of Forbes J. in *Seddon Properties v Secretary of State for the Environment* (1981) 42 P. & C.R. 26, at p.28).

(2) The reasons for an appeal decision must be intelligible and adequate, enabling one to understand why the appeal was decided as it was and what conclusions were reached on the "principal important controversial issues". An inspector's reasoning must not give rise to a substantial doubt as to whether he went wrong in law, for example by misunderstanding a relevant policy or by failing to reach a rational decision on relevant grounds. But the reasons need refer only to the main issues in the dispute, not to every material consideration (see the speech of Lord Brown of Eaton-under-Heywood in *South Bucks District Council and another v Porter (No. 2)* [2004] 1 WLR 1953, at p.1964B-G).

(3) The weight to be attached to any material consideration and all matters of planning judgment are within the exclusive jurisdiction of the decision-maker. They are not for the court. A

local planning authority determining an application for planning permission is free, "provided that it does not lapse into *Wednesbury* irrationality" to give material considerations "whatever weight [it] thinks fit or no weight at all" (see the speech of Lord Hoffmann in *Tesco Stores Limited v Secretary of State for the Environment* [1995] 1 WLR 759, at p.780F-H). And, essentially for that reason, an application under section 288 of the 1990 Act does not afford an opportunity for a review of the planning merits of an inspector's decision (see the judgment of Sullivan J., as he then was, in *News Smith v Secretary of State for* [2001] EWHC Admin 74, at paragraph 6).

(4) Planning policies are not statutory or contractual provisions and should not be construed as if they were. The proper interpretation of planning policy is ultimately a matter of law for the court. The application of relevant policy is for the decision-maker. But statements of policy are to be interpreted objectively by the court in accordance with the language used and in its proper context. A failure properly to understand and apply relevant policy will constitute a failure to have regard to a material consideration, or will amount to having regard to an immaterial consideration (see the judgment of Lord Reed in *Tesco Stores v Dundee City Council* [2012] PTSR 983, at paragraphs 17 to 22).

(5) When it is suggested that an inspector has failed to grasp a relevant policy one must look at what he thought the important planning issues were and decide whether it appears from the way he dealt with them that he must have misunderstood the policy in question (see the judgment of Hoffmann L.J., as he then was, *South Somerset District Council v The Secretary of State for the Environment* (1993) 66 P. & C.R. 80, at p.83E-H).

(6) Because it is reasonable to assume that national planning policy is familiar to the Secretary of State and his inspectors, the fact that a particular policy is not mentioned in the decision letter does not necessarily mean that it has been ignored (see, for example, the judgment of Lang J. in *Sea Land Power & Energy Limited v Secretary of State for Communities and Local Government* [2012] EWHC 1419 (QB), at paragraph 58).

(7) Consistency in decision-making is important both to developers and local planning authorities, because it serves to maintain public confidence in the operation of the development control system. But it is not a principle of law that like cases must always be decided alike. An inspector must exercise his own judgment on this question, if it arises (see, for example, the judgment of Pill L.J. *Fox Strategic Land and Property Ltd. v Secretary of State for Communities and Local Government* [2013] 1 P. & C.R. 6, at paragraphs 12 to 14, citing the

judgment of Mann L.J. in *North Wiltshire District Council v Secretary of State for the Environment* [1992] 65 P. & C.R. 137, at p.145).”

37. The need for caution to avoid “excessive legalism” when reading planning decisions was repeated by Lindblom LJ in Barwood Strategic Land II LLP v East Staffordshire BC [2017] EWCA Civ 893 at [50]:

“50. I would, however, stress the need for the court to adopt, if it can, a simple approach in cases such as this. Excessive legalism has no place in the planning system, or in proceedings before the Planning Court, or in subsequent appeals to this court. The court should always resist over-complication of concepts that are basically simple. Planning decision-making is far from being a mechanical, or quasi-mathematical activity. It is essentially a flexible process, not rigid or formulaic. It involves, largely, an exercise of planning judgment, in which the decision-maker must understand relevant national and local policy correctly and apply it lawfully to the particular facts and circumstances of the case in hand, in accordance with the requirements of the statutory scheme. The duties imposed by section 70(2) of the 1990 Act and section 38(6) of the 2004 Act leave with the decision-maker a wide discretion. The making of a planning decision is, therefore, quite different from the adjudication by a court on an issue of law (see paragraphs 8 to 14, 22 and 35 above). I would endorse, and emphasize, the observations to the same effect made by Holgate J. in paragraphs 140 to 143 of his judgment in *Trustees of the Barker Mill Estates*.”

38. In Suffolk Coastal DC v Hopkins Homes and another [2017] UKSC 37, the Supreme Court recognised that the proper interpretation of planning policy was ultimately a matter for the courts. Nevertheless, Lord Carnwath (at [25]) again recognised the need to approach an inspector’s decision on the basis they were, in effect, experts as specialist planning inspectors:

“25. It must be remembered that, whether in a development plan or in a non-statutory statement such as the NPPF, these are statements of policy, not statutory texts, and must be read in that light. Even where there are disputes over interpretation, they may well not be determinative of the outcome. (As will appear, the present can be seen as such a case.) Furthermore, the courts should respect the expertise of the specialist planning inspectors, and start at least from the presumption that they will have understood the policy framework correctly. With the support and guidance of the Planning Inspectorate, they have primary responsibility for resolving disputes between planning authorities, developers and others, over the practical application of the policies, national or local. As I observed in the Court of Appeal (*Wychavon District Council v Secretary of State for Communities and Local Government* [2008] EWCA Civ 692;



[2009] PTSR 19, para 43) their position is in some ways analogous to that of expert tribunals, in respect of which the courts have cautioned against undue intervention by the courts in policy judgments within their areas of specialist competence (see *Secretary of State for the Home Department v AH (Sudan)* [2007] UKHL 49; [2008] 1 AC 678, para 30 per Lady Hale.)”

39. At [26] Lord Carnwath distinguished between:

“issues of interpretation of policy, appropriate for judicial analysis, and issues of judgment in the application of that policy...”

40. In this appeal it is important to note that the Claimant does not contend that the inspector misinterpreted the NP. Rather, it is contended he failed to make the required decision as to whether the proposal was in “conflict” with it and, to the extent he made the decision that it did not, irrationally drew a distinction between the NP’s “policies” and “aims”.

## **DISCUSSION**

41. I now turn to deal with each of the grounds.

### **Ground 1(a)**

42. It is undoubtedly the case that the inspector was required to decide whether the proposed development “conflicts” with the NP by virtue of para 198 of the NPPF. That is common ground between the parties. Mr Lewis submitted that the inspector had not done so. In his DL he had stated that there was “no conflict with the policies of the NP” (para [51]) but had also stated that the proposal was “at odds with” or “not in accord with” the aims of the NP, namely the location of new housing (paras [18] and [47]). That, Mr Lewis submitted, left unanswered the issue of “conflict” with the NP.

43. Lang J did not see any particular merit in ground 1(a) when granting permission. In my judgment, she was right not to do so. Accepting, for the purposes of ground 1(a), that the distinction is rational, it is plain to me that the inspector concluded that the proposed development did not conflict with the NP.

44. First, the inspector was clearly aware of the terms of para 198 of the NPPF to which he made specific reference in para [50] of the DL. As the case law identifies, the inspector, as an expert decision-maker in the field of planning, should not be presumed to act in ignorance of the applicable planning law and policy. There is absolutely no reason to consider that he fell into error in this respect reading his DL, as it must be, fairly and as a whole.

45. Secondly, the structure of his DL is entirely consistent with the inspector having reached a conclusion that the proposed development (1) did not conflict with the NP; but (2) did conflict with the LP.

46. At paras [6]-[8] of the DL, the inspector set out the relevant policies in the NP and LP. At para [9], he noted that it was accepted, and was common ground between the parties, that the proposal was contrary to LP Policies 2 and 45 as the site fell outside the settlement boundaries and the proposal would not meet an “essential, small scale local need”.
47. Then at para [10], the inspector summarised the Claimant’s arguments that the proposal was in conflict with Policies 1 and 2 of the NP as it fell outside the settlement boundary and specified sites. At para [11], the inspector summarised the Second Defendant’s position that there was no such conflict. At para [12] he expressed agreement with the Second Defendant that the policies in the NP did not “presume against development outside of the settlement boundaries”. At para [13], however, the inspector noted that the proposal was “at odds with the aims” of the NP with regard to the location of new housing, i.e. not to be located north of the Stein Road railway crossing. At para [14], the inspector concluded, based upon the amendment to the NP following the NP Examining inspector’s report, that proposals outside the settlement boundary were appropriately dealt with under the LP.
48. The inspector reached his conclusion, having considered other aspects of the LP at paras [16] and [17] of the DL, at para [18]. Having first noted that the NP Policies 1 and 2 did not provide a “positive point” in favour of the proposed development (the locational issue was a matter addressed in the LP) and secondly that the proposed development was in conflict with LP Policies 2 and 45, he concluded that the proposal would be
- “contrary to the development plan strategy for the location of residential development when considered as a whole.” (my emphasis)
49. In my judgment, this can only properly be construed as a conclusion that the proposal was in conflict with the development plan (i.e. the LP and the NP read together) because it was in conflict with the LP alone.
50. That point is re-enforced by the inspector’s conclusion at para [51] of the DL that the proposal was “not in conflict with the policies of the NP” and further at para [55], when carrying out the ‘planning balance’ when he stated that the presumption in favour of sustainable development:
- “is sufficient to overcome the conflict with LP Policies 2 and 45 and the aim of the NP with regard to the location of new housing.”
51. It is clear that the inspector distinguished between the “policies” of the NP and its “aims”. He concluded that it did not conflict with the former. Of course, that distinction is the subject of challenge in ground 1(b) to which I will turn shortly. In my judgment, providing that is an appropriate distinction to draw, the inspector’s decision was that the proposal did not “conflict” with the NP. For these reasons, therefore, I reject ground 1(a).

Ground 1(b)

52. The Claimant's case under ground 1(b) is essentially two-fold. The two points are related and cannot be wholly divorced from each other.
53. First, the distinction drawn by the inspector between the "policies" and "aims" of the NP is irrational. The Claimant's case is that they are, in effect, one and the same thing. As the inspector concluded that the proposed development was "at odds" with the aims of the NP, he should, therefore, have concluded that it was in conflict with the NP for the purposes of para 198 of the NPPF.
54. Secondly, the proposed development was in conflict with the NP as it fell outside the settlement boundary in Policy 1 of the NP and also did not fall within any of the specific settlement areas in Policy 2. It was contrary to the NP to allow housing development elsewhere in the Southbourne area.
55. Mr Lewis placed reliance upon the case of Crane v SSCLG [2015] EWHC 425 (Admin) where Lindblom J held that a development outside those allocated sites in the neighbourhood plan was in conflict with that plan.
56. The distinction between the "policies" set out in the NP and its "aims" is, in my judgment, in principle a rational one. Mr Williams and Mr Garvey referred me to decision of the Court of Appeal in R(Cherkley Campaign Ltd) v Mole Valley DC and another [2014] EWCA Civ 567. There, the Court of Appeal distinguished between the "policies" and the supporting text. The latter might be relevant to the interpretation of the "policies" contained in a development plan but whether a proposal conformed with, or conflicted with, the plan was to be determined by reference to the policies it sets out. At [16], Richards LJ (with whom Underhill and Floyd LJJs agreed) said this:

"Leaving aside the effect of the saving direction, it seems to me, in the light of the statutory provisions and the guidance, that when determining the conformity of a proposed development with a local plan the correct focus is on the plan's detailed *policies* for the development and use of land in the area. The supporting text consists of *descriptive and explanatory matter* in respect of the policies and/or a *reasoned justification* of the policies. That text is plainly relevant to the interpretation of a policy to which it relates but it is not itself a policy or part of a policy, it does not have the force of policy and it cannot trump the policy. I do not think that a development that accorded with the policies in the local plan could be said not to conform with the plan because it failed to satisfy an additional criterion referred to only in the supporting text. That applies even where, as here, the local plan states that the supporting text indicates how the policies will be implemented."

57. At [19], Richards LJ continued:

"The policy is what is contained in the box. The supporting text is an aid to the interpretation of the policy but is not itself policy. To treat as part of the policy what is said in the

supporting text about a requirement to demonstrate need is to read too much into the policy. I do not accept that such a requirement is implicit in the policy or, therefore, that paragraph 12.71 makes explicit what is implicit. In my judgment paragraph 12.71 goes further than the policy and has no independent force when considering whether a development conforms with the Local Plan. There is no requirement to demonstrate need in order to conform with the Local Plan either in its original form or as saved.”

58. Further, some assistance can be derived from s.38A(2) of the PCP Act 2004 which defines a “neighbourhood plan”, inter alia, as a plan

“which sets out policies (however expressed) in relation to the development and use of land in the whole or any part of a particular neighbourhood area specified in the plan.” (my emphasis)

59. In my judgment, the inspector was correct to identify the relevant policies in the NP and, in applying para 198 of the NPPF, to determine whether the proposed development was in conflict with them. The NP identified new sites for housing in and around Southbourne based upon the indicative number of houses allocated to Southbourne in the LP. Policy 1 sets out the settlement boundary for development and Policy 2 identified the allocated sites for settlement. Whilst an underlying “aim” of the plan in Policies 1 and 2 included avoiding development to the north of the Stein Road level crossing in order to avoid traffic congestion, it was not explicitly part of either Policy 1 or Policy 2. The inspector did not, in my judgment, err in law by drawing an irrational distinction between this “aim” and the “policies” expressed in Policy 1 and Policy 2 of the NP.
60. The crucial issue is whether it was irrational to conclude that proposed development did not conflict with the NP. The argument before me was pains-taking in its detail. Mr Lewis eschewed any challenge based upon the inspector having misinterpreted the NP but, at times, the argument veered close to such a claim.
61. It is, of course, obvious that the proposed development did not fall within the settlement boundary in Policy 1 of the NP and was not one of the specific sites for development in Policy 2. In addition, Mr Lewis also relied upon the fact that the proposed site had been specifically excluded in the consultation process preceding the adoption of the NP. Mr Lewis submitted that the strategy for housing development was set out in Policies 1 and 2 and excluded development elsewhere, in particular on the proposed site. It was contrary to the strategy of permitting development only south of the Stein Road level crossing.
62. I do not accept those submissions. First, the proposal was not explicitly contrary to either Policy 1 or 2 as the inspector concluded at para [12] of the DL when he stated that the policies “do not directly presume against development outside the settlement boundaries”. Secondly, however, the policies offered no positive support for development outside the settlement boundary and specified areas (see para [18], DL). Thirdly, the amendment to the NP as a result of the Examining Inspector’s report makes plain that development outside the settlement boundary and specified areas is a

matter for the LP. In effect, therefore, as the inspector stated at para [18] of the DL, the NP is “silent” on development outside the settlement boundaries. Whilst, therefore, it was an “aim” to restrict development to the south of the Stein Road level crossing, such a limitation was not expressed in the NP’s Policies 1 and 2 so that it can properly be said that any proposed development there (or anywhere outside the settlement boundary and specified areas) “conflicts” with the NP.

63. Mr Lewis relied upon Crane but that case does not, in my judgment, provide support to, and make good, his submissions in respect of whether the proposed development in this case was in “conflict” with the NP.
64. In Crane, the claimant (the developer) challenged the Secretary of State’s decision to refuse planning permission for a housing development in a village on the basis that it would conflict with the relevant (Broughton Astley) neighbourhood plan. It was argued that it was irrational to conclude there was a conflict. Lindblom J (as he then was) rejected the challenge. He concluded that the proposal conflicted with policies H1 (setting out specific allocation of land for housing) and H3 (providing for a “windfall and back land development”) in the neighbourhood plan. Lindblom J’s reasoning at [41]-[48], as relied upon by Mr Lewis, was as follows:

“41. To borrow words used by the Government in paragraph 183 of the NPPF, the neighbourhood plan embodies the "shared vision" of the community in Broughton Astley for their neighbourhood. It displays a comprehensive approach to planning at the neighbourhood level in the period from 2013 to 2028. It is the means by which the parish council has chosen – as paragraph 185 of the NPPF puts it – "to shape and direct sustainable development in [its] area" in that period. With this in mind, I think there are three points that can fairly be made about the relevant parts of the neighbourhood plan.

42. First, it is in my view clear from the passages I have quoted from sections 1, 2 and 3 of the plan that the allocations in policy H1 represent both the acceptable location and the acceptable level of new housing development in Broughton Astley in the plan period, albeit with the latitude for approving "windfall" development in policy H3. The allocations in policy H1 are explicitly the result of a process of selection, having emerged as the sites chosen for allocation in the light of public consultation and the evaluation of options (paragraph i of policy H1). They had been selected in preference to other available sites which developers and landowners – including Mr Crane – had suggested (paragraph 3.13). They are also explicitly the planned "maximum" provision of new housing, as one sees in the subsequent policies setting out the requirements for each of them. Apart from the possible bonus of modest "windfall" sites coming forward under policy H3, the 528 dwellings provided for in policy H1 are the entirety of the planned new housing, including the affordable housing required under policy H2. Phased development on the two large allocated sites is given first priority, the identified reserve site

adding to the delivery of new housing on those two sites if need be. The supporting text – including paragraph 2.2, "The Core Objectives and Vision of the Neighbourhood Plan", and the "Justification" for policy H1 – shows that the purpose underlying the allocations in that policy was to meet at least the minimum requirement for new housing in Broughton Astley set by the core strategy, without too much expansion into the "surrounding countryside". The allocations in the policy are clearly intended to strike the right balance. The parish council was seeking to achieve reasonable clarity and certainty as to where the new housing in Broughton Astley would go, and not to encourage developers to promote large proposals on unallocated sites. It achieved this without needing to define a settlement boundary, or "Limits to Development" of the kind contemplated by Policy CS2 of the core strategy.

43. Secondly, it is in my view significant that housing development on sites other than the allocations in policy H1 is deliberately provided for in the way that it is in policy H3. Apart from "windfall" proposals coming forward under that policy, the plan does not provide for, or envisage, any housing development in excess of the 528 dwellings on the sites allocated under policy H1. Policy H3 goes no further than to allow for development "on sites of less than 5 dwellings on previously developed land". If the intention had been to accept the development of housing on larger, unallocated sites, a policy drafted in this way would not have been included in the plan.

44. Thirdly, in deciding which sites should be allocated for housing and which should not, the parish council considered the sustainability of the new housing it was planning. This can be seen in the policies specifying the particular requirements for the allocated housing sites. It can be seen in the policies relating to other allocations. And it can also be seen in the overarching policy for sustainable development – policy SD1. The plan is composed of policies, both specific and general, which connect to each other and form a coherent whole. The effect is to create a full picture of the development and infrastructure for which the parish council has planned.

45. All of this, in my view, is abundantly clear from the policies and text of the neighbourhood plan itself, without having to turn to the "Evidence Base". The plan itself is entirely unambiguous. Whether one could have used the "Evidence Base" as an aid to understanding the plan is not, therefore, a question I have to consider. In fact, I do not think it would have been wrong to do that, because the "Evidence Base" is not merely referred to in the plan but also appended to it, and thus incorporated into it. But if I had relied on the "Evidence Base"

in construing the plan, it would only have reinforced the interpretation I favour. It confirms that in choosing sites to allocate for housing – as well as for other forms of development – the parish council considered a number of sites put forward by those who made representations, including Mr Crane.

46. It follows from my understanding of the relevant provisions of the neighbourhood plan that a proposal for housing on a site other than those allocated in policy H1 will only accord with the plan if it finds support in policy H3 as a "windfall" proposal, and is consistent with other relevant policies. Larger proposals for housing on unallocated sites will not accord with the plan. They will be contrary to its strategy for housing development in policies H1 and H3. They will therefore be in conflict both with the neighbourhood plan itself and with the development plan as a whole.

47. I reject the notion that the plan, properly construed, allows for development such as Mr Crane's so long as it does not conflict with specific policies for the protection of the environment, such as policies EH1 and EH2, and would not frustrate or delay development on any of the sites allocated in policy H1. That is not what the plan says, and not what it means. As Ms Lieven and Mr Smyth submit, such an interpretation could not be squared with the plan's obvious purpose in providing for sustainable development in Broughton Astley. It would undo the balance that was struck when the plan was prepared – the balance between the aim of allocating sites for additional housing to satisfy the core strategy's minimum requirement, the aim of avoiding excessive expansion into the countryside, and other relevant goals. It would negate the strategy which the parish council conceived.

48. As Ms Lieven points out, Mr Hill's argument cannot be reconciled with the true purpose and effect of the allocations in policy H1. If the interpretation of the plan urged on me by Mr Hill were right, there would have been no point in the parish council going through the exercise of selecting the sites it allocated for housing development and formulating the policies and text which support those allocations. That, I think, is beyond any sensible dispute."

65. Lindblom J then concluded at [53]:

"The conclusion at the end of paragraph 17 that Mr Crane's proposal "conflicts with the neighbourhood plan and therefore the development plan as a whole" follows inevitably from a proper understanding of policies H1 and H3. Because the appeal site was not allocated in policy H1 and the appeal scheme was not a "windfall" proposal within policy H3, the

proposed development was in conflict with the neighbourhood plan. The proposal did not have to be in breach of any other policy of the neighbourhood plan to be in conflict with it, and with the development plan as a whole. The proposal was in conflict "with the neighbourhood plan" because it did not comply with the plan's strategy for housing development in policies H1 and H3. All of this is straightforward. The Secretary of State's application of the relevant policies of the neighbourhood plan was legally impeccable, his conclusion inevitable. This is one of those cases in which the court can say that the decision-maker's conclusion applying relevant development plan policy was not only reasonable but also plainly right."

66. Mr Lewis relied upon Lindblom J's approach in Crane. He submitted that it was not necessary that the development be expressly prohibited by the NP. Relying on Crane, he submitted that the proposed development was contrary to the strategy for housing development in the NP and was, as a result, in conflict with the NP. It was expressly excluded as an allocated site when the plan was drafted. It was outside the boundary settlement and specified sites in Policies 1 and 2 of the NP.
67. Despite the attractive way in which he put the Claimant's case, I do not accept Mr Lewis' submissions on this issue. As both Mr Williams and Mr Garvey submitted, Lindblom J was concerned with the proper construction and application of the particular neighbourhood plan in that case. He was not seeking to lay down any a priori legal approach or principles, at least beyond those familiar ones in planning cases (see Bloor Homes).
68. In Crane, the relevant neighbourhood plan was considered by Lindblom J to be, in effect, a comprehensive one (see [42]-[43] and [46]). Consequently, a proposed development that did not fall within the acceptable location and level of new housing development under policy H1 was, in fact, governed by the 'windfall' policy in policy H3. If the proposal did not accord with either H1 or H3 it was properly seen as being in conflict with the neighbourhood plan. The development did not fall within either H1 or H3. By contrast, in this case, there is no equivalent of policy H3. As the inspector noted, the NP is "silent" on development outside the settlement boundary and specified areas in Policies 1 and 2 of the NP.
69. There is a further distinction between the relevant plans. The allocations in the Broughton Astley neighbourhood plan were "explicitly the planned maximum provision of new housing" (see [42]). It is accepted that neither the LP nor the NP in this case set a cap on the amount of housing to be provided (see DL at [12]).
70. The NP in this case is not, therefore, a "comprehensive" plan such that, as in Crane, if the proposed development is not included, it must be seen as in conflict with the NP.
71. That point is, in my judgment, made absolutely plain by the amendment to the NP following the Examining Inspector's report. The NP simply does not have anything to say – positively or negatively – about development outside those areas covered in Policies 1 and 2. Such developments are, as the inspector concluded, to be dealt with by the LP.



72. Further, I do not consider Mr Lewis is assisted by reliance upon Lindblom J's reference in Crane to whether the proposal did, or did not, accord with the "strategy for housing development in the neighbourhood plan" (see [53]). As Lindblom J made clear at [51] (and indeed in [53] itself), the "strategy was to be found encapsulated in policies H1 and H3". As I have already pointed out, Policies 1 and 2 of the NP are concerned with a settlement boundary and specified areas for development, they do not deal with development elsewhere in the relevant planning area and, although they may reflect the "aim" of limiting development to the south of the Stein Road level crossing to avoid congestion, they do not "encapsulate" any such limitation as part of the NP's policies such that a development not in accord with that aim would conflict with the NP. To that extent also, the NP differs from the one considered in Crane.
73. For all those reasons, the inspector did not fall into error in concluding that the proposed development was not in conflict with the NP. It follows that I reject ground 1(b).

#### Relief

74. It follows that the Claimant's challenge fails.
75. It is not strictly speaking necessary, therefore, to deal with the Defendants' fall-back position based upon Simplex. I accept, however, that if the inspector had not fallen into error in concluding that the proposed development did not conflict with the NP, he would nevertheless have inevitably reached the same conclusion. The inspector did, of course, conclude that the proposed development conflicted with the LP. He approached his decision, therefore, on the basis that the development was in conflict with the development plan as a whole. He also took into account that it was at "odds" with the aim of avoiding development north of the Stein Road level crossing in order to prevent traffic congestion. He, therefore, had well in mind the issue that would have been the basis upon which the proposed development was in conflict with the NP. But, at paras [47]-[55] he carried out the 'planning balance' recognising the underlying "aim" of the NP to restrict development north of the Stein Road railway crossing in order to avoid congestion. He concluded that the development would not "materially exacerbate congestion at the railway crossing" (para [51]). That finding is not challenged. The inspector specifically noted the importance and weight that should be given to a neighbourhood plan and its preparation (para [50]). The inspector identified the benefits of the proposal: the "very significant benefits" to housing and affordable housing delivery (para [52]); the "moderate" economic and environmental benefits (paras [53] and [54]); and the "limited benefits" of a "turning facility" as part of the development (para [54]). The inspector then struck the balance, having regard to the presumption in favour of sustainable development, in favour of granting permission (para [55]). I accept Mr Williams' submissions set out at paras 40-49 of his skeleton argument, that having regard to the matters set out and considered by the inspector at paras [47]-[55] of the DL, he would inevitably have reached the same conclusion in striking the 'planning balance' and would have granted planning permission. I would, therefore, have refused relief in those circumstances.

#### DISPOSAL

76. The Claimant's challenge by way of statutory review is dismissed.



<b>MEETING:</b>	<b>PLANNING COMMITTEE</b>
<b>DATE:</b>	<b>7 October 2015</b>
<b>TITLE OF REPORT:</b>	<b>151150 - PROPOSED RESIDENTIAL DEVELOPMENT OF 69 NO. DWELLINGS OF WHICH 24 WILL BE AFFORDABLE, ACCOMPANIED BY ASSOCIATED INFRASTRUCTURE AND PUBLIC OPEN SPACE ON LAND ADJACENT TO SOUTHBANK, WITHINGTON, HEREFORDSHIRE.</b>  <b>For: David Wilson Homes (Mercia) Ltd per Mrs Sian Griffiths, Unit 6 De Sallis Court, Hampton Lovett, Droitwich, Worcestershire WR9 0QE</b>
<b>WEBSITE LINK:</b>	<a href="https://www.herefordshire.gov.uk/planning-and-building-control/development-control/planning-applications/details?id=151150&amp;search=151150">https://www.herefordshire.gov.uk/planning-and-building-control/development-control/planning-applications/details?id=151150&amp;search=151150</a>
<b>Reason Application submitted to Committee – Contrary to Policy</b>	

**Date Received: 17 April 2015**  
**Expiry Date: 23 July 2015**  
 Local Member: Cllr DW Greenow

**Ward: Hagley**

**Grid Ref: 356556,242770**

## **1. Site Description and Proposal**

### The Site

- 1.1 Detailed planning permission is sought for the erection of 69 dwellings on a 2.92ha field at the south-eastern edge of Withington. The site is bounded to the south by the A4103 Hereford to Worcester Road and to the north by the Southbank housing estate, which appears to have been built in at least two distinct phases. The western boundary is formed by hedgerow lining the C1130, punctuated at the mid-point by the existing field access. Vehicular access into the site is proposed slightly further to the south. Orchard View, which comprises three pairs of semi-detached dwellings, lies adjacent the site's south-eastern corner. These dwellings line the northern edge of the A4103 with long gardens (c. 50m) extending north-eastwards. The western boundary of No.1, which abuts the site, is formed by a dense, conifer hedge.
- 1.2 Opposite the site to the west are dwellings and a residential care home. Further to the west, fronting the A4103 is the Grade II listed Whitestone Chapel and beyond that the site allocated for housing under the Unitary Development Plan policy H5 – Land adjacent to Whitestone Chapel, Withington. This site has outline planning permission for the erection of 33 dwellings and is a 'commitment' contributing towards the parish housing requirement over the lifetime of the Core Strategy. Whitestone Business Park is found to the south of the A4103 along with several other dwellings.

- 1.3 Withington is identified as a main village in the Unitary Development Plan and also a settlement within the Group Parish where proportionate housing growth will be sought over the lifetime of the emerging Core Strategy.

#### The Proposal

- 1.4 The detail of the application has been amended on several occasions post-submission but has remained constant insofar as the number of dwellings (69) is concerned. The layout places public open space against the roadside boundaries. This space incorporates a surface water attenuation basin, landscaping and an adoptable footway that enters the site at the north-western corner opposite the existing public footpath linking back via Withies Close to Withies Road and the village facilities; including the village hall, playing fields and shops. This footway exits the site on the boundary with the A4103 giving direct access to the bus stop outside Orchard View. The village primary school lies off to the north within the Conservation Area.
- 1.5 The development comprises a mixture of 1, 2, 3 and 4-bedroom 1, 1 ½ and two-storey dwellings. The 2 and 3 bed units are terraced or semi-detached. The larger units are detached. Almost two-thirds of the open market units (29) are 4-bed properties, with 14 no. 3-bed and a single 2-bed unit. The affordable housing is split in line with the Housing Development Officer's brief between social rent and intermediate tenures with 12 intermediate units and 12 social rented.
- 1.6 The estate road heads into the site with properties arranged on either side overlooking the public open space initially, before being orientated to overlook the principal estate road and shared private drives within the site. The estate road takes a loop within the site with two drives terminating in turning heads on the eastern boundary, where dwellings overlook open countryside with the proposed 'buffer planting' intervening.
- 1.7 There is a pocket of development (units 32-38) located against the north-eastern boundary of the gardens to Orchard View, whilst units 40-44 back on to the north-western boundary of the garden to No.1, with the intent that the existing conifer hedgerow be protected and retained. This element of the scheme has been redesigned, as discussed below.
- 1.8 The site is outside but immediately adjacent the settlement boundary for Withington as defined by 'saved' policy H4 of the Unitary Development Plan. The application site was subject to assessment under the Strategic Housing Land Availability Assessment and categorised as having low/minor constraints. The implications of the Council's lack of housing land supply (HLS) are discussed below.
- 1.9 The application is accompanied by a Planning Statement, Design and Access Statement, Ecological Appraisal, Landscape and Visual Impact Assessment, Transport Statement, Summary Statement of Community Involvement, Drainage and Flood Risk Assessment and Arboricultural Report.
- 1.10 The Council has adopted a Screening Opinion in relation to the development proposal which concludes that it is not development requiring the submission of an EIA.

## **2. Policies**

- 2.1 National Planning Policy Framework. The following sections are of particular relevance:

Introduction	-	Achieving Sustainable Development
Section 6	-	Delivering a Wide Choice of High Quality Homes
Section 7	-	Requiring Good Design
Section 8	-	Promoting Healthy Communities
Section 11	-	Conserving and Enhancing the Natural Environment

Section 12 - Conserving and Enhancing the Historic Environment

2.2 Herefordshire Unitary Development Plan 2007

S1	-	Sustainable Development
S2	-	Development Requirements
S3	-	Housing
S7	-	Natural and Historic Heritage
DR1	-	Design
DR3	-	Movement
DR4	-	Environment
DR5	-	Planning Obligations
DR7	-	Flood Risk
E15	-	Protection of Greenfield Land
H4	-	Main Villages: Settlement Boundaries
H7	-	Housing in the Countryside Outside Settlements
H10	-	Rural Exception Housing
H13	-	Sustainable Residential Design
H15	-	Density
H19	-	Open Space Requirements
T6	-	Walking
T8	-	Road Hierarchy
LA2	-	Landscape Character and Areas Least Resilient to Change
LA3	-	Setting of Settlements
LA5	-	Protection of Trees, Woodlands and Hedgerows
LA6	-	Landscaping Schemes
NC1	-	Biodiversity and Development
NC6	-	Biodiversity Action Plan Priority Habitats and Species
NC7	-	Compensation for Loss of Biodiversity
CF2	-	Foul Drainage

2.3 Herefordshire Local Plan – Draft Core Strategy

SS1	-	Presumption in Favour of Sustainable Development
SS2	-	Delivering New Homes
SS3	-	Releasing Land for Residential Development
SS4	-	Movement and Transportation
SS6	-	Addressing Climate Change
RA1	-	Rural Housing Strategy
RA2	-	Herefordshire's Villages
H1	-	Affordable Housing – Thresholds and Targets
H3	-	Ensuring an Appropriate Range and Mix of Housing
OS1	-	Requirement for Open Space, Sports and Recreation Facilities
OS2	-	Meeting Open Space, Sports and Recreation Needs
MT1	-	Traffic Management, Highway Safety and Promoting Active Travel
LD1	-	Landscape and Townscape
LD2	-	Biodiversity and Geodiversity
LD3	-	Green Infrastructure
SD1	-	Sustainable Design and Energy Efficiency
SD3	-	Sustainable Water Management and Water Resources
ID1	-	Infrastructure Delivery

2.4 Withington Group Parish Council has designated a Neighbourhood Area under the Neighbourhood Planning (General) Regulations 2012. The Parish Council will prepare a Neighbourhood Development Plan for that area. The plan must be in general conformity with the strategic content of the emerging Core Strategy, but is not sufficiently advanced to attract weight for the purpose of decision-taking.

- 2.5 The Unitary Development Plan policies together with any relevant supplementary planning documentation can be viewed on the Council's website by using the following link:-

<https://www.herefordshire.gov.uk/planning-and-building-control/planning-policy/unitary-development-plan>

### **3. Planning History**

- 3.1 None on site

### **4. Consultation Summary**

#### Statutory Consultations

- 4.1 Welsh Water: No objection subject to conditions.

#### Internal Council Advice

- 4.2 Transportation Manager: No objection subject to conditions.

Speed data has been provided to confirm the visibility splay from the proposed junction with the C1130. The distance accords with the Manual for Streets recommendation for the measured 85% speed. A setback of 3.5m has also been agreed. This is above the standard 2.4m for a junction such as this, but allows for some encroachment by the hedgerow proposed to the rear of the splay. The pedestrian visibility for the crossing of the C road to the footpath opposite is also acceptable.

The provision of a footway through the site to provide a link to and from the bus stop on the A4103 is a benefit as it will draw pedestrians off the road into a safer walking environment. It has been confirmed that this footway will be offered for adoption by the Council thus securing its use by the public.

The likely traffic impact of the development is summarised in the Transport Statement and the impact on the road network is considered acceptable.

As regards the internal layout and parking provision, this submitted layout on Drawing H6888-101 Rev E is considered acceptable. Cycle parking should be provided in oversized garages or in separate stores as appropriate.

In terms of sustainability, there are footway links into the village and onward to primary school, shop, post office and main bus stops, with a regular bus service to Hereford as detailed in the Transport Statement.

The draft Heads of Terms for Section 106 is considered acceptable, and suitable schemes for use of the contribution will need to be discussed and agreed. Although no provision for a pedestrian crossing of the A4103 is made, the Section 106 contribution could be put towards this if it is considered a local priority.

As with the need for a pedestrian crossing of the A4103 Worcester Road, street lighting will need to be discussed with the Parish Council. As highways within the development are not offered for adoption, this will need to be done by the developer.

- 4.3 Conservation Manager (Landscape): No objection

- As stated within the pre-application advice: *The site is located adjacent to the A4103 and forms part of the eastern gateway to the Village of Withington. Adjacent to the Village*

*Settlement Boundary it relates well to the settlement with existing dwellings on three boundaries. The principle of development on the site is therefore supported.*

- As previously noted, views of the proposal will be possible from the eastern approach to the settlement, the A4103, PROW WT30 and elevated landform to the east. Whilst the proposal will be seen in the context of the existing settlement, it is recommended that the eastern boundary of the development which borders agricultural land has a robust landscape in order to assimilate the scheme into its surroundings.
- It is noted that despite recommendations for green infrastructure to form an integral part of the proposal, public open space is confined to the west of the proposal. It is therefore recommended that extensive planting of trees, shrubs and perennials be incorporated into the scheme in order to soften the built form.
- The proposed public open space running along the south western perimeter of the proposal will provide a buffer between residential dwellings and the A4103 filtering both noise and light levels. As well as providing an attractive landscape setting to the public footpath connecting the development to public transport.
- It is, however, disappointing to see that despite recommendations on more than one occasion for the increase of green infrastructure across the site these have not been included as part of the proposal.

#### Overall Conclusion:-

In conclusion therefore, the impact upon landscape character and visual amenity is unlikely to be detrimental to the locality and the principle of development upon the site is considered acceptable. The lack of green infrastructure proposed is regrettable however an appreciable buffer with the A4103 is proposed and the layout gives some consideration to the transition between open countryside and built form. Having regard to both local context and the UDP policies LA2 and LA3 the scheme is considered to be acceptable. Conditions should be imposed requiring the submission of tree and hedgerow protection proposals, a fully detailed planting specification and a landscape management plan.

#### 4.4 Conservation Manager (Ecology):

Thank you for consulting me on the above application. Although carried out a sub-optimal period of the year, the findings of the ecological report are adequate for this site with some recommendations which should form the basis for a non-standard ecological condition as follows:

*The recommendations set out in the ecologist's report from Betts Ecology dated January 2015 should be followed unless otherwise agreed in writing by the local planning authority. Prior to commencement of the development, a habitat protection and enhancement scheme integrated with the landscape scheme should be submitted to and be approved in writing by the local planning authority, and the scheme shall be implemented as approved.*

#### Reasons:

To ensure that all species are protected having regard to the Wildlife and Countryside Act 1981 (as amended), the Conservation of Habitats and Species Regulations 2010 and Policies NC1, NC6 and NC7 of Herefordshire Unitary Development Plan.

#### 4.5 Conservation Manager (Historic Buildings): No objection

The western edge of the site is within 70 metres of the Baptist Chapel which is a grade II listed building. The White Stone, a 3ft high section of sandstone, also grade II listed is located close to junction with the A4103. Policy HBA4 Setting of listed buildings is therefore applicable to this proposal.

The chapel is located within an existing group of buildings and is not experienced in the same context as the proposed residential site. The proposed landscaped public open space running along the southern and south western perimeter also provides a buffer. It is concluded that there would not be a significantly harmful impact on the setting of the Baptist Chapel. The White Stone would also not be affected by the development unless the junction of the lane with the A4103 has to be widened / altered. If it does need to be moved, then listed building consent would be required.

4.6 Housing Development Manager: No objection

4.7 Schools Capital and Investment Officer: No objection. The village primary school has capacity to accept children from this development.

4.8 Parks and Countryside Officer:

**UDP Policy H19 and RST3: Open Space Requirements:** In accordance with UDP policies H19 and RST3 developments of 69 houses consisting of 1 x 4 bed, 14 x 2bed , 21 x 3bed and 30 x 4+ bed and a population of 161.7 are required to provide:

- 0.06ha (600sq m) of POS @ 0.4 ha per 1000 population
- 0.012ha (1200sq m) Children's play @ 0.8ha per 1000 population including both formal and informal.
- Formal provision using Fields in Trust Standard @ 0.25ha per 1000 population should be 0.04ha (400sq m)

**On site POS/Play/SuDS:** It is noted that the applicant in accordance with UDP policy H19 has provided a substantial amount of POS including opportunities for natural play but they have not indicated the size and have suggested that this is dependant on the level of existing provision within the immediate locality. It is acknowledged that Withington is reasonably well provided for in terms of play and recreation facilities, including a neighbourhood facility at the village hall catering for all ages and a couple of smaller play areas which are used by the immediate residential areas all of which are fairly new and in good condition, but the applicant will need to demonstrate how much on-site provision is usable for recreation purposes as some of the area includes an attenuation pond as part of the SuDs.

Whilst natural play features are supported; as SuDs can create good informal semi natural POS for both biodiversity and natural play and recreation opportunities, they need to be designed to take account of health and safety issues. On site play provision should ideally complement that which already exists particularly at the village hall, where older children are well catered for in terms of kick-about space for example. Provision on site for younger children may be more appropriate as access to other facilities would involve negotiating roads. The approach to provide more natural play opportunities is supported particularly as this area forms part of the SuDs. This could take the form of play trails etc, and some formal equipment will be required.

**Based on the number of market housing only and using the SPD on planning obligation (development costs only) the play provision should be to the value of approximately £38,000 to be secured via planning condition.**

It is noted that the location of the open space has been designed in accordance with both opportunities and constraints and that developing a central village green feature is not practical given engineering constraints and the need for the balancing feature to be part of the POS which needs to be at the low point of the site. Although the opportunity to create one larger open space incorporating the SuDs area and informal recreation is generally supported the location of formal play is of some concern, and the applicant will have to consider children's safety when playing close to a noisy and busy road. Children need secure, safe places to play with good access. Final detail of landscaping plans and formal play equipment will need to be agreed via planning condition.



**Adoption/Commuted sums:** Suitable management and maintenance arrangements will be required to support any provision of open space and associated infrastructure within the open space in line with the Council's policies. For example, this could be by a management company or by the Parish Council. With regard to the SUDS areas: With the changing legal issues/revising national guidance around SuDS following recent Govt consultations, at this time we are unable to advise a definitive answer on adoption and maintenance of any SuDS areas. Any adoption or maintenance agreements and associated commuted sums/management charges with any eligible body are subject to the powers, acts and national guidance that is live and relevant at the time of adoption.

### **Off-site sports facilities contribution**

Withington Parish Council has an identified need for a stand-alone changing room facility to serve the adult and junior sports pitches. In the absence of a defined financial requirement by the Parish, this contribution has been calculated through the use of Sport England guidance. Accordingly the applicants have agreed to pay the total sum of £45,000 towards the provision of the community changing room facilities.

## **5. Representations**

### **5.1 Withington Group Parish Council: Objection**

The Parish Council has objected to the original proposal and the subsequent amended plans. The comments are summarised as follows. The full transcript of all Parish Council objections is available on the website and they should be read in conjunction with the relevant plans. Some of the objections are of an 'in principle' nature, whilst others are more specific to the proposals as they've evolved. The 10 bullet points below summarise the Parish Council position whilst taking account, where possible, of the revised proposals. The paragraph following on from these is the Parish Council's final response to the scheme before Members today.

1. The development in principle is in accordance with the requirement of the draft Core Strategy amendments, which suggest an 18% increase in the number of dwellings in the parish of Withington. (it is understood that this proposal has not yet been accepted). This would result in a requirement for 110 extra dwellings up to 2031. Existing commitments and completions since 2011 total just over 40 dwellings, giving a net shortfall of about 70 dwellings. However the layout of the development is not acceptable as it is more fitting for a major urban area rather than a rural settlement. The applicant's statement that the adjoining Southbank built in the 1980's was a private development is wrong. It was built by a housing association under strict financial controls. The design/access statement states that an opportunity exists for the 'creation of useable and well surveyed public open space to compliment the areas existing recreational and leisure facilities and reinforce feeling of space'. This has not been achieved. Recent developments in Withington have been based on the principle of the provision of a village green in the centre of the development, not on the edge adjacent to a major county highway. In addition the attenuation pond cannot be classed as public open space as it should be fenced for safety reasons and not be available for 'play'. The remaining 'open space is only included to accommodate the footpath.

The developer has ignored this 'design' principle notwithstanding this was brought to its notice at the first public consultation, and in subsequent submissions.

2. The location of the development is described as being on a so called quiet country lane, C1130. However the 'lane' is used as a cross county route to/from the A438, A4103 to the A465 to locations to the north and south of Hereford. There is a need for significant improvement from the A4103 to the new access and on to the junction with Southbank (the bus stop), with the lanes being delineated and a footpath provided. To the north of Southbank consideration should

be given to making the section one way up to Withies Road with the provision of a footpath. (the direction of travel to be determined on highway safety grounds) This suggestion has been ignored by the planning and highway officers.

3. The proposed footpaths links are inadequate and unattractive. Depending on 2 above, there should be a link into Southbank as stated in para 6.11 of the design/ access statement but not shown on the layout to provide access to the bus stop. It is noticed it was removed from earlier plans. Additional traffic calming measures are required on the C1130 at any crossing to link into the footpaths into Withies Close. A speed table may be beneficial. Since making these observations (points 2 and 3) the developer has simply stated that there could be ownership issues but has given no details. As Southbank is 'publicly' owned through a housing association both the developer and Council could co-operate in reaching a satisfactory solution.

4. The house sizes provide a mix of development and it is noted that significant changes have been made to the designs. The brick types should be 'rustic' and stone and render and possibly timber cladding (not mock tudor) should be used to break up the monotony of brick.

It has also been brought to the attention of the PC that the area behind 1, 2, and 3 Orchard View is prone to flooding. The balancing pond could be located behind these houses.

5. The affordable homes are not provided with garages, nor with the opportunity to build garages in the future. Regardless of proposed government policy to extend the right to buy, affordable homes should have the same facilities as open market dwellings or at least the ability to develop them in the future. It is understood that the Council does not pursue this as a policy but it would provide an opportunity to start doing so. This will ensure a reduction in on street parking. The lack of garage provision also applies to plots 40 – 44, but see 5 above.

6. Only 10% of the dwellings are bungalows or dormer bungalows. This should be increased to 20% (14 dwellings) to reflect the needs of an aging population. Again the lack of a Council policy should not prevent this being sought.

7. There are no proposals for pedestrian crossing facilities on the A4103 to provide safe access to the employment area at Whitestone Business Park. It is understood that the developer does not consider this necessary. The PC considers that no decision should be taken until proposals are submitted and agreed by the highway authority. Without significant traffic calming and pedestrian safety features all journeys are likely to be by car, and thus be unsustainable for a 2 – 500 metre journey.

8. There is no Section 106 agreement provided with the application, and the Parish Council would ask to be consulted on any draft agreement. The draft heads of term does not appear to reflect the wishes of the PC in respect of the type of affordable housing (too many social rented) and in respect of the contribution to public open space.

9. It is acknowledged that the neighbourhood plan has not progressed beyond initial consultation and the consideration of options for future residential development. However in order to overcome the problems re access, by foot and car to the existing school an alternative location, more accessible to the recent housing areas could be considered in the plan period of the Core Strategy. There are limited sites in the village to the north of the A4103 and part of the application site would provide an acceptable location. This is currently being considered for further public consultation as part of the NP process.

10. The PC has not been consulted as to the requirement for street lighting. It is considered that this is necessary.

#### Parish Council response to the current proposals

Following further consideration of the amended plan the WGPC considers that the scheme still does not overcome the fundamental objection which has been pursued from the initial consultation, over 6 months ago, that there should be a 'village green' approach to the layout. Public open space next to a major county highway is unacceptable and to link this with a flood attenuation area is also unacceptable. The reduced impact on 1 Orchard View is acknowledged, but does not overcome the significant impact of properties overlooking its' private amenity space.

5.2 Eight (8) letter of objection have been received. The content is summarised below:-

- The development is too large. It would fulfil the Parish requirement for housing over the lifetime of the Core Strategy in one go. Smaller sites should be looked at first;
- There are better sites with better access to village facilities. The second appeal at Vine Tree Close is pending and the decision should be awaited before taking a decision on this site;
- The route to the primary school via the C1130 and C1129 is unsafe. The road is unlit, narrow and without pavement. It is also prone to significant traffic movements, including articulated lorries and farm traffic. The alternative route via Withies Close is circuitous;
- The C1130 itself is narrow and the 30mph limit is not observed.
- The bus service is poor. The earliest bus does not arrive in Hereford in time for the beginning of the working day. This will reinforce reliance on the private motor car;
- The dwellings located adjacent Orchard View will result in a loss of privacy and devaluation of property. A greater margin should be built in around these properties;
- The village has no healthcare facilities or senior school. This will further increase reliance on the private motorcar for journeys to these facilities;
- The POS should be located to the rear of Orchard View not adjacent the A4103;
- The site is prone to flooding as a result of run-off from higher ground. Developing the site will increase the risk of surface water flooding elsewhere, including the A4103.

5.3 River Lugg Internal Drainage Board: No objection subject to standard requirements.

5.4 The consultation responses can be viewed on the Council's website by using the following link:-

<http://news.herefordshire.gov.uk/housing/planning/searchplanningapplications.aspx>

Internet access is available at the Council's Customer Service Centres:-

<https://www.herefordshire.gov.uk/government-citizens-and-rights/customer-services-enquiries/contact-details?q=customer&type=suggestedpage>

## **6. Officer's Appraisal**

6.1 The fully detailed proposal seeks planning permission for the erection of 69 dwellings, including twenty-four affordable, public open space and associated infrastructure on an agricultural field to the immediate north of the A4103 at the south-eastern fringe of Withington. The site covers 2.92ha and is in arable use.

6.2 The Council cannot demonstrate a five-year supply of housing land with requisite buffer. This contradicts the NPPF requirement as expressed at paragraph 47 and means that UDP policies relevant to the supply of housing must be considered out of date as per paragraph 49. Housing applications must therefore be considered in the context of the NPPF's presumption in favour of sustainable development unless other policies in the NPPF indicate that development should be restricted – see NPPF paragraph 14 foot note 9.

6.3 Relevant to the supply of housing in rural Herefordshire in the long-term is the content of the Core Strategy ('CS'); even if its policies attract no weight for the present. Within the CS, Withington is

identified as a main village within the Hereford Housing Market Area (HMA). Within such villages the intention is that an indicative proportionate growth target will deliver the requisite 5,300 homes in rural areas over the lifetime of the plan to 2031. For main villages in the Hereford HMA the minimum growth target is 18% relative to the housing stock at 2011.

### **How does the policy position translate to housing provision in Withington?**

- 6.4 The NPPF refers to the pursuit of sustainable development as the golden thread running through decision-taking. It also identifies the three mutually dependent dimensions to sustainable development; the economic, social and environmental dimensions or *roles*.
- 6.5 The economic dimension encompasses the need to ensure that sufficient land is available in the right places at the right time in order to deliver sustainable economic growth. This includes the supply of housing land. The social dimension also refers to the need to ensure an appropriate supply of housing to meet present and future needs and this scheme contributes towards this requirement with a mix of open market and affordable units of various sizes, including bungalows. Fulfilment of the environmental role requires the protection and enhancement of our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use resources prudently and movement towards a low-carbon economy.
- 6.6 The Core Strategy is predicated on the aims and objectives of the NPPF. As a main village within the Hereford Housing Market Area, the proportionate growth target for Withington Parish over the lifetime of the Core Strategy is 18%. When commitments and completions since March 2011 are taken into account, the residual requirement is a minimum 45 dwellings and the proposal would meet and exceed the minimum requisite growth for the parish between now and 2031. It should be noted there is no requirement in emerging Core Strategy policy for a phased approach to housing delivery in the rural areas.
- 6.7 Taking the policy context and characteristics of the site into account the main issue is whether, having regard to the supply of housing land, the proposals would give rise to adverse impacts that would significantly and demonstrably outweigh the benefits of the development so as not to contribute to the achievement of sustainable development.

### **Accessibility to goods, services and employment**

- 6.8 Withington is a main village within the Hereford Local Plan – Core Strategy and also historically within the UDP. The site is contiguous with the main built up part of the settlement linking well with the villages existing network of footpaths. As regards the sustainability of the site in locational terms, a number of representations refer to the lack of access to necessary goods, services and employment opportunities. It is argued that the bus service, although relatively good by comparison with other rural services, is not a genuine alternative to the private motor car. It is stated that Withington does not have employment opportunities within the parish and there is no access to medical care. The conclusion is that the village is not equipped to accommodate large-scale housing development of this sort, but should be allowed to grow via smaller sites; albeit these are as yet undefined.
- 6.9 Emerging policies anticipate that rural settlements such as Withington will accommodate proportionate growth over the plan period; it is the means by which the need is met that is at issue. In this context officers do not consider it can be argued simultaneously that such villages are unsustainable locations for proportionate housing growth. On this point officers are mindful of Inspectors' conclusions in relation to recent appeal decisions where the sustainability of similar rural settlements was also at issue.
- 6.10 Whilst accepting that Withington does not contain all of the facilities necessary for day-to-day existence, officers consider the village does support sufficient facilities to warrant its status as a sustainable location for future housing growth. Moreover, Withington is a village in the Hereford

Housing Market Area, closely related to the county's main population centre and on a main arterial route. To conclude that Withington is not a sustainable location for housing delivery would undermine the evidence base supporting the Core Strategy; specifically the housing delivery policies and is not, in the opinion of your officers, arguable.

- 6.11 In this specific context the site is considered reasonably well placed relative to local facilities and public transport and the scheme takes the opportunity, insofar as is possible, to improve pedestrian connectivity.

### **Impact on Landscape Character and Visual Amenity**

- 6.12 NPPF Paragraph 109 states that valued landscapes should be protected and enhanced. Paragraph 113 advises local authorities to set criteria based policies against which proposal for any development on or affecting protected wildlife or geodiversity sites or landscape areas will be judged. It also confirms that *'distinctions should be made between the hierarchy of international, national and locally designated sites, so that protection is commensurate with their status and gives appropriate weight to their importance and the contribution that they make to wider ecological networks.'* Appeal decisions have also confirmed that although not containing the 'cost-benefit' analysis of the NPPF, policies LA2 (landscape character), LA3 (setting of settlements), NC1 (biodiversity and development), NC6 (biodiversity action plans), NC7 (compensation for loss of biodiversity) and HBA4 (setting of listed buildings) are broadly consistent with chapters 11 and 12 of the NPPF.
- 6.13 The application site has no formal landscape designation and is bound to the north by an existing C20th residential development and to the south by the A4103. It lies in open countryside outside but adjacent the settlement boundary and was also categorised in the 2009 SHLAA as a site with 'low/minor' constraints. The Conservation Manager (Landscape) concludes the proposed development is not likely to adversely affect the character of the landscape or its visual amenity and that the site can accommodate the development proposed, although this is contingent on appropriate landscaping proposals and retention of the hedgerow features for which the Principal Settled Farmlands landscape typology is known and bolstering these features as appropriate. The revised layout and landscaping plans reflect these objectives and enhances green infrastructure by drawing development away from the western and southern highway boundaries.
- 6.14 The topography of the site and intervening features is such that there is no inter-visibility with the conservation area to the north and the Historic Buildings Officer confirms no objection in relation to the listed Chapel and milestone marker. There is no conflict with saved UDP policy HBA4 of guidance set down in Chapter 11 of the NPPF.
- 6.15 On the basis that conditions will be imposed requiring the protection of existing hedgerows, and in the context of the housing supply situation, the principle of development is considered acceptable in the context of 'saved' UDP policies LA2 and LA3 and NPPF guidance.

### **Design and Appearance**

- 6.16 The NPPF states that good design is indivisible from sustainable development. Neither local nor national policy seeks to impose a straitjacket on designers. Good, innovative design is actively encouraged, particularly where it has the ability to promote or reinforce local distinctiveness.
- 6.17 Officers agree that the submitted Design and Access Statement is accurate insofar as its assessment of the existing built form is concerned and believe it reasonable to describe Withington's growth over the last 40 years as comprising a series of residential estates; Withies Close, Southbank, Vine Tree Close, Farndon Rise and Springfield are such examples. Whilst Withington is not without numerous examples of traditional Herefordshire vernacular, these are concentrated in the conservation area, with the southern part of Withington now typified by more

modern development which now serves as a backcloth to the application site. As a consequence it is officers' opinion that the development would not appear incongruous in the immediate context.

- 6.18 Revisions to the layout and housing mix and appearance have been undertaken in response to officer and Parish Council concerns. The house-types proposed are variations on the standard units used by the applicant and through an iterative process these have been reviewed in a manner that officers are now satisfied with. The palette of materials has also been reviewed, with some principal elevations throughout the scheme faced in painted render. This alleviates the regimented uniformity associated with the use of brick throughout and is considered more appropriate in a village scenario, where there is often a diverse range of architecture and consequently building materials. A number of bungalows have been incorporated to the row of properties overlooking open countryside to the east. The resultant steps in ridge heights will relieve the massing that would result from uniform two-storey dwellings on this important flank of the application site which is exposed to the open countryside.
- 6.19 Given the mix of architectural styles and periods present in Withington it is difficult to reconcile policies that require the reinforcement or promotion of local distinctiveness with proposals for modern housing development, particularly where local distinctiveness has been blurred over time by comparatively large-scale C20th expansion; as is the case here. However, given the backcloth provided by Southbank and the retention of a landscaping buffer against the A4103, officers consider that the overall design and appearance of the development will not be incongruous. The Parish Council, in its response above (5.1, point 4), recognises the significant changes to the individual design of the dwellings themselves.
- 6.20 The Parish Council concerns include what is described as a lack of a 'village green' feature at the centre of the development. This has been discussed directly with the developer. Whilst understanding the Parish Council's concerns, officers consider the layout, which incorporates public open space and surface water drainage attenuation along the south-western boundary, is justified on technical *and* design grounds:-
- The public open space and associated landscaping offers a green wedge against the roadside that will better maintain the rural edge to the village;
  - This land incorporates some of the lower-lying land on the site and thus is the most logical position for the water attenuation basin;
  - The public open space will make an attractive setting for the public footpath link to the bus stop;
  - The buffer also protects the dwellings from road noise to a greater extent than if the dwellings currently overlooking this space were moved to the roadside.
- 6.21 In conclusion, whilst officers accept that there is more than one potential approach to architecture and site layout, the context is one of existing predominantly mid-late C20th dwellings that have grown up as small estates. In this context the use of standard house-types is not considered inherently unsustainable as a design approach but is broadly consistent with prevailing character locally. Likewise the layout is considered appropriate to the local context. Maintaining landscaped buffers to the two road frontages in this context is considered beneficial to the wider character of the area, notwithstanding it prevents the central 'village green' feature the Parish Council favours.

## **Impact on Adjoining Residential Amenity**

- 6.22 Loss of amenity arising from direct and prejudicial overlooking is a material consideration. In this case, officers are satisfied that development of the site as per the amended layout provides a reasonable standard of amenity and is without undue impact on adjoining property.
- 6.23 The scheme has been amended to take account of concerns that the layout in the south-eastern corner where the site adjoins Orchard View would have resulted in unacceptable adverse impacts for neighbouring residents. Specifically the two, large detached units occupying the original plots 45 and 46 have been removed and the public open space extended up to the boundary with No.1 Orchard View. Revised plot 44 has a front elevation removed from the mutual boundary with No.1 and orientated to overlook the public open space. Further along the boundary plots 41-43 form a short terrace of three bedroom dwellings with 10 metre rear gardens, separated from No.1 by the existing mature evergreen hedge. Given the distance and oblique relationship to No.1 itself, the relationship is now considered acceptable.
- 6.24 At the north-eastern end of the Orchard View gardens is a cluster of 7 affordable units in the form of a pair of semi-detached dwellings a pair of semi-detached bungalows and some maisonettes. The layout here is, in your officer's opinion, comparatively cramped. However, given the separation distances to the dwellings in Orchard View and intervening landscaping, it is not considered that the impact on the living conditions of existing residents would be so harmful to the living conditions of existing residents so as to warrant refusal. As such, whilst the shortcomings of the layout in this location are noted, this must be weighed in the balance against the benefits of the scheme.

## **Transport**

- 6.25 The Transportation Manager has no objection subject to conditions. The visibility splays for vehicles and pedestrians have been calculated against measured speeds and are acceptable. The provision of a footway link through the site is considered of wider benefit to pedestrian facilities locally, whereas the S106 contributions could, if desired locally, be put towards investigating the feasibility of constructing a pedestrian crossing of the A4103.
- 6.26 There is no evidence that the network will not be able to accommodate the traffic generated and the location adjacent the A4103 will result in fewer vehicles having to travel through the village along Withies Road by comparison with other sites.

## **Impact on Ecological Interests**

- 6.27 The Council's Ecologist concurs with the findings of the submitted ecological appraisals. It is concluded that the proposal will not have a significant impact on ecological interests. Subject to the imposition of conditions as set out below, the development is considered to accord with the provisions of the Development Plan and NPPF guidance.

## **Land Drainage and Flood Risk**

- 6.28 The Land Drainage Officer has no objections to the proposed development subject to submission and approval of detailed proposals for the disposal of foul water and surface water runoff from the development prior to construction. A condition is recommended to ensure the submission of a fully integrated foul and surface water drainage system.

## **Foul Drainage and Water Supply**

- 6.29 The Water Authority has no objection to the development and confirms that the treatment of domestic discharges from this site can be accommodated by the existing Waste Water Treatment Works. No problem is anticipated with the supply of potable water.

## **S106 Heads of Terms**

- 6.30 The S106 draft Heads of Terms are appended to the report. The S106 will also includes provision to ensure 35% of the development meets the definition of affordable housing, together with requisite standards and eligibility criteria. The Parish Council has requested that none of the affordable housing units be for Social Rent, but this position is not supported by the Council's Housing Development Manager. Expenditure of the off-site highway monies will be undertaken in consultation with the Parish Council. This could include discussion on the potential and desirability of forming a pedestrian crossing of the A4103. The contribution towards the village playing fields changing facilities has been negotiated with Parish Council input and is agreed by the developer. There is no contribution towards the village school, which has capacity.

## **The Neighbourhood Plan**

- 6.31 Withington Group Parish Council has designated a neighbourhood plan area. Work has been progressing towards the formulation of the plan for a considerable period. Paragraph 17 of the NPPF, states that planning should be *'genuinely plan led, empowering local people to shape their surroundings, with succinct local and neighbourhood plans setting out a positive vision for the future of an area'*.
- 6.32 The Neighbourhood Plan is not presently sufficiently far advanced to be attributed weight for the purposes of decision-taking and planning applications cannot, in these circumstances, be refused because they are potentially prejudicial to the neighbourhood plan. It is worth noting, however, that the application site has been identified as a preferred site for housing previously. In representations objecting to the development at Vine Tree Close, the application site was cited as the preferred location for housing development within the village.

## **7. Conclusions**

- 7.1 The Council cannot demonstrate a five-year supply of housing land with requisite buffer. The housing policies of the UDP are thus out-of-date and the full weight of the NPPF is applicable. UDP policies may be attributed weight according to their consistency with the NPPF; the greater the consistency, the greater the weight that may be accorded. The pursuit of sustainable development is a golden thread running through both plan-making and decision-taking and identifies three dimensions to sustainable development; the economic, social and environmental roles.
- 7.2 When considering the three indivisible dimensions of sustainable development as set out in the NPPF, officers consider that the scheme when considered as a whole is representative of sustainable development and that the presumption in favour of approval is engaged. The site lies outside but directly adjacent the settlement boundary on a SHLAA site that was designated as having low/minor constraints and Withington is, having regard to the NPPF, a sustainable location and this site is well placed to benefit from good pedestrian connectivity to village facilities and improves the existing footway network by diverting pedestrians off-road through the site towards the bus stop. In this respect the proposal is in broad accordance with the requirements of chapter 4 of the NPPF (Promoting sustainable travel).
- 7.3 The contribution the development would make in terms of jobs and associated activity in the construction sector and supporting businesses should also be acknowledged as fulfilment of the economic role.
- 7.4 In providing a greater supply of housing and breadth of choice, including 35% affordable and in offering enhancements to footway and pedestrian facilities locally, officers consider that the scheme also responds positively to the requirement to demonstrate fulfilment of the social dimension of sustainable development.



- 7.5 The Conservation Manager (Landscapes) confirms the application site has the ability to accommodate residential development subject to the retention of landscape features and the revised layout plan responds positively to these requirements. The site is well removed from the conservation area, and would exert relatively little influence on the setting of the listed Chapel and milestone. Officers also conclude that there are no highways, drainage, ecological or archaeological issues that should lead towards refusal of the application and thus the Environmental role is satisfied.
- 7.6 On the basis of the above and that officers have failed to identify overriding harm, the benefits associated with granting planning permission significantly and demonstrably outweigh the adverse impacts of doing so. It is therefore concluded that the presumption in favour of sustainable development should be engaged and that planning permission should be granted subject to the completion of a Section 106 Planning Obligation and appropriate planning conditions.

## **RECOMMENDATION**

**Subject to the completion of a Section 106 Town & Country Planning Act 1990 obligation agreement in accordance with the Heads of Terms stated in the report, officers named in the Scheme of Delegation to Officers are authorised to grant planning permission, subject to the conditions below and any other further conditions considered necessary**

**That planning permission be granted subject to the following conditions:**

- 1. A01 Time limit for submission of reserved matters (outline permission)**
- 2. B03 Amended plans**
- 3. C01 Samples of external materials**
- 4. G04 Protection of tree/hedgerows that are to be retained**
- 5. G10 Landscaping scheme**
- 6. G11 Landscaping scheme - implementation**
- 7. G14 Landscape management plan**
- 8. G19 Details of play equipment**
- 9. H03 Visibility splays**
- 10. H05 Access gates**
- 11. H06 Vehicular access construction**
- 12. H11 Parking – estate development**
- 13. H17 Junction improvements/off site works**
- 14. H27 Parking for site operatives**
- 15. I16 Restriction of hours during construction**

16. I51 Details of slab levels
17. L01 Foul/surface water drainage
18. L02 No surface water to connect to public system
19. L03 No drainage run off to public system
20. L04 Comprehensive and integrated draining of site
21. The recommendations set out in the ecologist's report from Betts Ecology dated January 2015 should be followed unless otherwise agreed in writing by the local planning authority. Prior to commencement of the development, a habitat protection and enhancement scheme integrated with the landscape scheme should be submitted to and be approved in writing by the local planning authority, and the scheme shall be implemented as approved.

Reason: To ensure that all species are protected having regard to the Wildlife and Countryside Act 1981 (as amended), the Conservation of Habitats and Species Regulations 2010 and Policies NC1, NC6 and NC7 of Herefordshire Unitary Development Plan.

22. I16 Restriction of hours during construction

#### **INFORMATIVES:**

1. HN04 Private apparatus within highway
2. HN05 Works within the highway
3. HN08 Section 38 Agreement & Drainage details
4. N11C General
5. S106
6. The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against planning policy and any other material considerations. Negotiations in respect of matters of concern with the application (as originally submitted) have resulted in amendments to the proposal. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

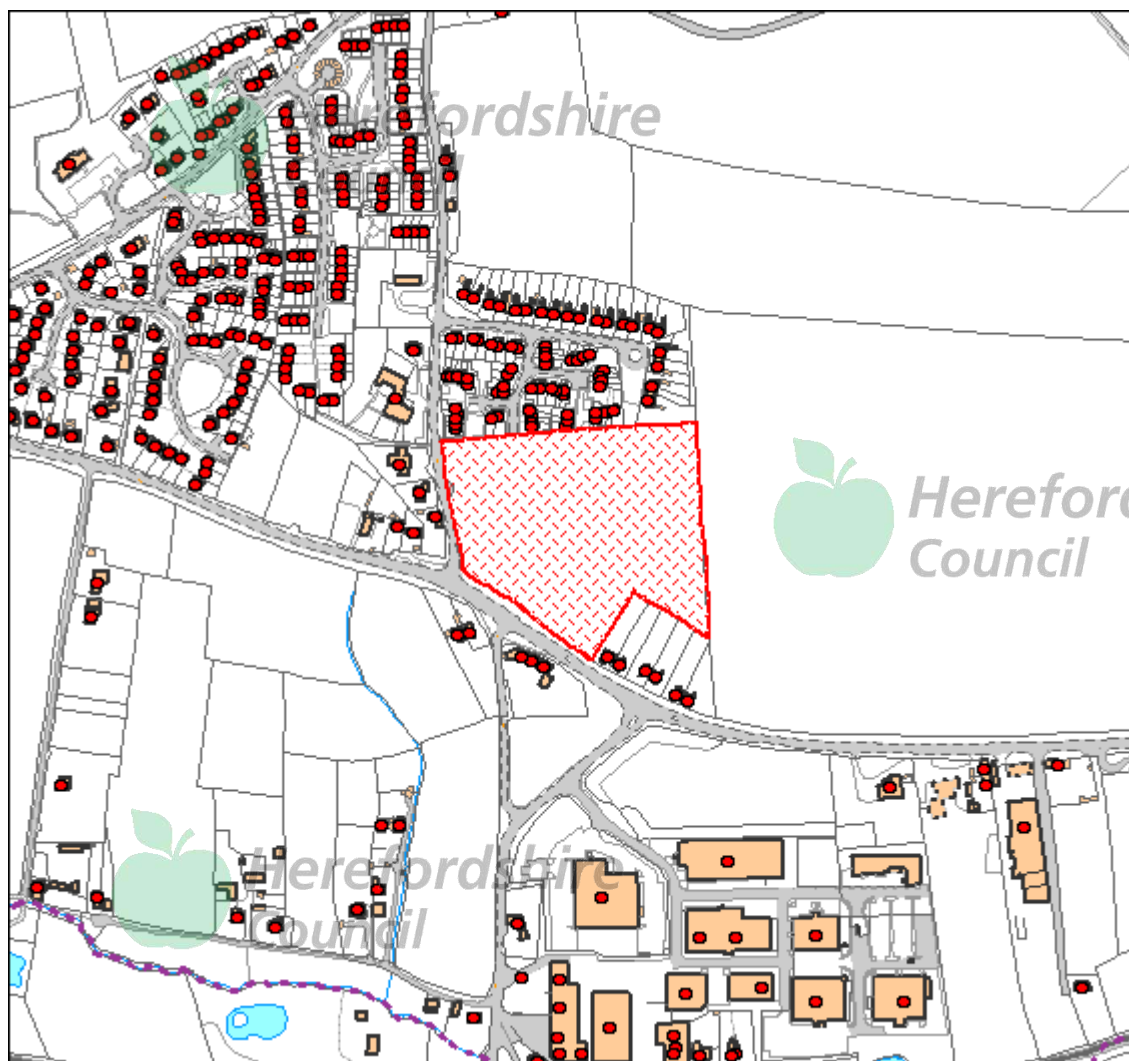
Decision: .....

Notes: .....

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#### **Background Papers**

Internal departmental consultation replies.



This copy has been produced specifically for Planning purposes. No further copies may be made.

**APPLICATION NO:** 151150

**SITE ADDRESS :** LAND ADJACENT TO SOUTHBANK, WITHINGTON, HEREFORDSHIRE

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# HEADS OF TERMS

## Proposed Planning Obligation Agreement Section 106 Town and Country Planning Act 1990

### Planning Application – 151150

Site address:

[Land adjacent to Southbank Withington Herefordshire](#)

Planning application for:

**Residential development of 69 dwellings.**

This Heads of Terms has been assessed against the adopted Supplementary Planning Document on Planning Obligations dated 1<sup>st</sup> April 2008, and Regulations 122 and 123 of the Community Infrastructure Levy Regulations 2010 (as amended). All contributions in respect of the residential development are assessed against open market units only except for item 3 which applies to all new dwellings.

1. The developer covenants with Herefordshire Council to pay Herefordshire Council the sums of (per open market unit):

£1720	(index linked) for a 2 bedroom open market unit
£2580	(index linked) for a 3 bedroom open market unit
£3440	(index linked) for a 4+ bedroom open market unit

to provide a sustainable transport infrastructure to serve the development, which sum shall be paid on or before the commencement of the development, and may be pooled with other contributions if appropriate.

The monies shall be used by Herefordshire Council at its option for any or all of the following purposes:

- a) Traffic calming and traffic management measures in the locality
  - b) New pedestrian and cyclist crossing facilities
  - c) Creation of new and enhancement in the usability of existing footpaths and cycleways in the locality
  - d) Public initiatives to promote sustainable modes of transport
  - e) Safer routes to school
2. The maintenance of any on-site Public Open Space (POS) will be by a management company which is demonstrably adequately self-funded or will be funded through an acceptable on-going arrangement; or through local arrangements such as the parish council and/or a Trust set up for the new community for example. There is a need to ensure good quality maintenance programmes are agreed and implemented and that the areas remain available for public use.  
  
*NOTE: Any attenuation basin and/or SUDS which may be transferred to the Council will require a commuted sum calculated in accordance with the Council's tariffs over a 60 year period*  
  
*NOTE: The public open space, although privately maintained, will be for the benefit and enjoyment of the general public and not solely for the use and enjoyment of residents of the development.*
  3. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of £80 (index linked) per dwelling. The contribution will be used to provide 1 x waste and 1 x recycling bin for each dwelling. The sum shall be paid on or before occupation of the 1<sup>st</sup> open market dwelling.
  4. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of £45,000 (index linked) towards the provision of community changing room facilities at the Village Hall playing fields.
  5. The developer covenants with Herefordshire Council that 35% (24 on basis of a gross development of 69) of the residential units shall be "Affordable Housing" which meets the criteria set out in policy H9 of the Herefordshire Unitary Development Plan or any statutory replacement of those criteria and that policy

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Further information on the subject of this report is available from Mr Edward Thomas on 01432 260479

including the Supplementary Planning Document on Planning Obligations.

Please note that the following tenures will be sought:

- 12 x Social Rent
- 12 x Intermediate tenure

For the avoidance of doubt, the term intermediate tenure shall not include equity loans or affordable rent.

6. All the affordable housing units shall be completed and made available for occupation in accordance with a phasing programme to be agreed in writing with Herefordshire Council.
7. The Affordable Housing Units must at all times be let and managed or co-owned in accordance with the guidance issued by the Homes and Communities Agency (or any successor agency) from time to time with the intention that the Affordable Housing Units shall at all times be used for the purposes of providing Affordable Housing to persons who are eligible in accordance with the allocation policies of the Registered Social Landlord; and satisfy the following requirements:-
  - 7.1. registered with Home Point at the time the Affordable Housing Unit becomes available for residential occupation; and
  - 7.2. satisfy the requirements of paragraphs 7 & 8 of this schedule
8. The Affordable Housing Units must be advertised through Home Point and allocated in accordance with the Herefordshire Allocation Policy for occupation as a sole residence to a person or persons one of whom has:-
  - 8.1. a local connection with the parish of Withington
  - 8.2. in the event of there being no person with a local connection to Withington any other person ordinarily resident within the administrative area of the Council who is eligible under the allocation policies of the Registered Social Landlord if the Registered Social Landlord can demonstrate to the Council that after 28 working days of any of the Affordable Housing Units becoming available for letting the Registered Social Landlord having made all reasonable efforts through the use of Home Point have found no suitable candidate under sub-paragraph 9.1 above.
9. For the purposes of sub-paragraph 8.1 of this schedule 'local connection' means having a connection to one of the parishes specified above because that person:
  - 9.1. is or in the past was normally resident there; or
  - 9.2. is employed there; or
  - 9.3. has a family association there; or
  - 9.4. a proven need to give support to or receive support from family members; or
  - 9.5. because of special circumstances.
10. In the event that Herefordshire Council does not for any reason use the sums in paragraphs 1, 2 and 3 above, for the purposes specified in the agreement within 10 years of the date of payment, the Council shall repay to the developer the said sum or such part thereof, which has not been used by Herefordshire Council.
11. The sums referred to in paragraphs 1, 2 and 3 above shall be linked to an appropriate index or indices selected by the Council with the intention that such sums will be adjusted according to any percentage increase in prices occurring between the date of the Section 106 Agreement and the date the sums are paid to the Council.
12. If the developer wishes to negotiate staged and/or phased trigger points upon which one or more of the covenants referred to above shall be payable/delivered, then the developer shall pay a contribution towards Herefordshire Council's cost of monitoring and enforcing the Section 106 Agreement. Depending on the complexity of the deferred payment/delivery schedule the contribution will be no more than 2% of the total sum detailed in this Heads of Terms. The contribution shall be paid on or before the commencement of the development.

13. The developer shall pay to the Council on or before the completion of the Agreement, the reasonable legal costs incurred by Herefordshire Council in connection with the preparation and completion of the Agreement.

**Peter Clasby**  
**Planning Obligations Manager**

**Appendix G: Herefordshire Council AMR 2019 Appendix A: Housing Completions and Commitments Data**

## Appendix A: Housing Completions and commitments data

### Housing Market Area Completions 2011-12

Housing Market Area	Completions 2011-12 (gross)	Losses (on completed sites)	Completions (net)	Percentage of total
Hereford	176	10	166	48%
Leominster	90	5	85	25%
Ross-on-Wye	53	5	48	14%
Ledbury	20	4	16	5%
Bromyard	6	0	6	2%
Kington	16	0	16	5%
Golden Valley	4	0	4	1%
<b>County Total</b>	<b>365</b>	<b>24</b>	<b>341</b>	<b>100%</b>

(Source: Herefordshire Council Housing Land monitoring 2012)

### Housing Market Area Completions 2012-13

Housing Market Area	Completions 2012-13 (gross)	Losses (on completed sites)	Completions (net)	Percentage of total
Hereford	102	9	93	46%
Leominster	26	3	23	12%
Ross-on-Wye	52	4	48	24%
Ledbury	34	2	32	16%
Bromyard	1	1	0	0%
Kington	6	1	5	2%
Golden Valley	1	1	0	0%
<b>County Total</b>	<b>222</b>	<b>21</b>	<b>201</b>	<b>100%</b>

(Source: Herefordshire Council Housing Land monitoring 2013)



### Housing Market Area Completions 2013-14

Housing Market Area	Completions 2013-14 (gross)	Losses (on completed sites)	Completions (net)	Percentage of total
Hereford	205	12	193	58%
Leominster	34	3	31	9%
Ross-on-Wye	56	2	54	16%
Ledbury	40	5	35	11%
Bromyard	7	1	6	2%
Kington	9	0	9	3%
Golden Valley	3	0	3	1%
<b>County Total</b>	<b>354</b>	<b>23</b>	<b>331</b>	<b>100%</b>

(Source: Herefordshire Council Housing Land monitoring 2014)

### Housing Market Area Completions 2014-15

Housing Market Area	Completions 2014-15 (gross)	Losses (on completed sites)	Completions (net)	Percentage of total
Hereford	357*	31	326	42%
Leominster	89	10	79	10%
Ross-on-Wye	245	14	231	30%
Ledbury	56	10	46	6%
Bromyard	41	3	38	5%
Kington	54	11	43	6%
Golden Valley	16	5	11	1%
<b>County Total</b>	<b>858</b>	<b>84</b>	<b>774</b>	<b>100%</b>

(Source: Herefordshire Council Housing Land monitoring 2015)

### Housing Market Area Completions 2015-16

Housing Market Area	Completions 2015-16 (gross)	Losses (on completed sites)	Completions (net)	Percentage of total
Hereford	133	7	126	39%
Leominster	47	6	41	12%
Ross-on-Wye	111	16	95	29%
Ledbury	39	3	36	11%
Bromyard	14	3	11	3%
Kington	17	5	12	4%
Golden Valley	8	2	6	2%
<b>County Total</b>	<b>369</b>	<b>42</b>	<b>327</b>	<b>100%</b>

(Source: Herefordshire Council Housing Land monitoring 2016)

### Housing Market Area Completions 2016-17

Housing Market Area	Completions 2016-17 (gross)	Losses (on completed sites)	Completions (net)	Percentage of total
Hereford	222	39	183	45%
Leominster	23	6	17	4%
Ross-on-Wye	83	5	78	19%
Ledbury	39	9	30	7%
Bromyard	81	3	78	19%
Kington	17	2	15	4%
Golden Valley	4	0	4	1%
<b>County Total</b>	<b>469</b>	<b>64</b>	<b>405</b>	<b>100%</b>

(Source: Herefordshire Council Housing Land Monitoring 2017)

## Housing Market Area Completions 2017-18

Housing Market Area	Completions 2017-18 (gross)	Losses (on completed sites)	Completions (net)	Percentage of total %
Hereford	449	19	430	55%
Leominster	97	2	95	12%
Ross-on-Wye	132	8	124	16%
Ledbury	20	2	18	2%
Bromyard	58	6	52	7%
Kington	47	2	45	6%
Golden Valley	15	3	12	2%
<b>County Total</b>	<b>818</b>	<b>42</b>	<b>776</b>	<b>100%</b>

(Source: Herefordshire Council Housing Land Monitoring 2018)

## Housing Market Area Completions 2018-19

Housing Market Area	Completions 2018-19 (gross)	Losses (on completed sites)	Completions (net)	Percentage of total %
Hereford	363	8	355	53%
Leominster	87	2	85	13%
Ross-on-Wye	102	3	99	15%
Ledbury	37	3	34	5%
Bromyard	46	4	42	6%
Kington	45	4	41	6%
Golden Valley	13	3	10	2%
<b>County Total</b>	<b>693</b>	<b>27</b>	<b>666</b>	<b>100%</b>

(Source: Herefordshire Council Housing Land Monitoring 2019)

## Housing Market Area Completions 2011-19

Housing Market Area	Completions 2011-19 (gross)	Losses (on completed sites)	Completions (net)	Percentage of total
Hereford	2007	135	1872	49%
Leominster	493	37	456	12%
Ross-on-Wye	834	57	777	20%
Ledbury	285	38	247	6%
Bromyard	254	21	233	6%
Kington	211	25	186	5%
Golden Valley	64	14	50	1%
<b>County Total</b>	<b>4148</b>	<b>327</b>	<b>3821</b>	<b>100%</b>

(Source: Herefordshire Council Housing Land monitoring 2011-2019)

## Housing Market Area Commitments April 2019

Housing Market Area	GROSS	POTENTIAL LOSSES	NET	Percentage of total
Hereford	1794	25	1769	33%
Leominster	909	12	897	17%
Ross-on-Wye	1270	19	1251	23%
Ledbury	761	42	719	13%
Bromyard	346	6	340	6%
Kington	168	7	161	3%
Golden Valley	239	6	233	4%
<b>County Total</b>	<b>5487</b>	<b>117</b>	<b>5370</b>	<b>100%</b>

## COMMITMENTS BY AREA AS AT APRIL 2019

LOCATION	GROSS	POTENTIAL LOSSES	NET	Percentage of total
Hereford	895	12	883	16%
Leominster	601	2	599	11%
Ross-on-wye	551	1	550	10%
Ledbury	441	1	440	8%
Bromyard	171	1	170	3%
Kington	27	0	27	0.5%
Rural areas	2801	100	2701	50%
<b>COUNTY TOTAL</b>	<b>5487</b>	<b>117</b>	<b>5370</b>	<b>100%</b>

(Source: Herefordshire Council Housing Land monitoring 2019)

## COMPLETIONS COMPARED WITH CORE STRATEGY

CORE STRATEGY YEAR	NET REQUIREMENTS	NET COMPLETIONS	DIFFERENCE
2011/2012	600	341	-259
2012/2013	600	201	-399
2013/2014	600	331	-269
2014/2015	600	774	+174
2015/2016	600	327	-273
2016/2017	850	405	-445
2017/2018	850	776	-74
2018/2019	850	666	-184
<b>OVERALL TOTAL</b>	<b>5550</b>	<b>3821</b>	<b>-1729</b>

**Affordable Housing provision (includes new build and empty properties brought back into use)**

Year	No of dwellings
2011-12	90
2012-13	60
2013-14	116
2014-15	159
2015-16	129
2016-17	135
2017-18	171
2018-19	203