

DELEGATED DECISION REPORT

APPLICATION NUMBER

190682

The Ditch, Building Plot 2, 44 Ashperton Road, Ashperton, Nr Ledbury, HR8 2RY

CASE OFFICER: Mr Josh Bailey

DATE OF SITE VISIT: 5th March 2019 and 9th August 2019

**Relevant Development
Plan Policies:**

Herefordshire Local Plan – Core Strategy

Policies: SS1; SS2; SS4; SS6; RA2; MT1; LD1; LD2; LD3;
LD4; SD1; SD3 and SD4

Ashperton Neighbourhood Development Plan undertook
regulation 16 consultation between 13 May to 24 June 2019,
moderate weighting can be afforded

Policies:

H1 – Number of New Houses

H2 – Settlement Boundary

H3 – Housing Mix and Tenancy

H4 – Type of Housing

D1 – Design Appearance

D3 – Technical Design

E1 – Landscape

NPPF

Paragraphs 11 and 14

Sections 2, 5, 8, 9, 11, 12 and 16

Relevant Site History: 182827/F – proposed new build cottage style dwelling –
approved with conditions

CONSULTATIONS

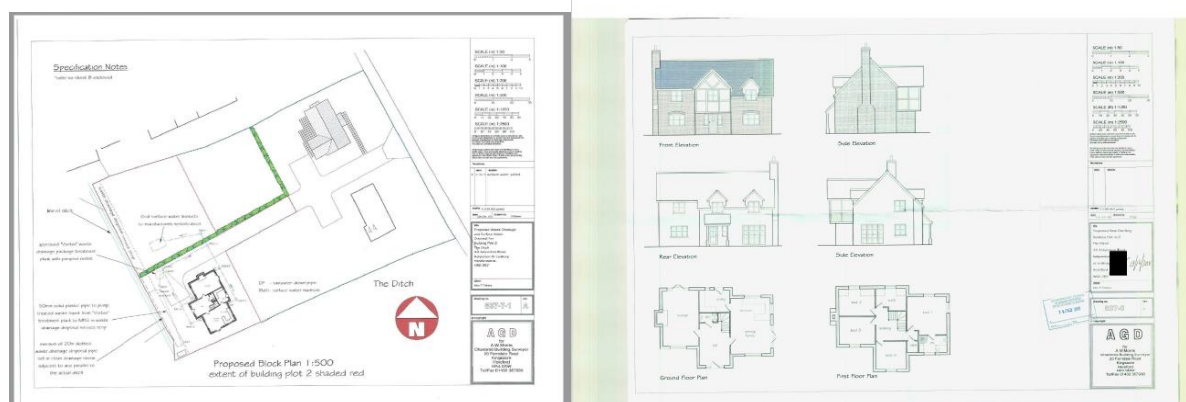
	Consulted	No Response	No objection	Qualified Comment	Object
Parish Council	XX				XX
Transportation	X			X	
Buildings Conservation Officer	XX				XX
Ecologist	XX				X
Welsh Water	X		X (No comment)		
Natural England	X		X (No comment)		
Land Drainage	X				X

Trees Officer	X				X
Site Notice/Newspaper	XX			X(1)	X(2)
Local Member	X		X*		

PLANNING OFFICER'S APPRAISAL:

Site description and proposal:

Ashperton is a village which is predominately developed along the A417 road, around 8 miles east of Hereford. The settlement pattern is primarily linear along the road which runs north-west / south-east, with development predominantly on the south-west side of the road, although there are some clear examples of development away from the A417, such as Church Lane, forming a number of cul-de-sacs. The plot in question is on this more developed south-western side of the A417, towards the northern end of the village, between The Ditch to the east and numbers 42 and 43 Ashperton Road to the north. The Ditch is much altered, but at its core a traditionally built timber framed house which is not a listed building. Numbers 42 and 43 are timber framed houses dating to the 17th century and are listed at grade II. Permission was granted in 2018 for 1. no four bedroomed dwelling, with gabled dormers to provide a more cottage design. The application before me is the erection of 1 no. 3 bedroomed dwelling to the rear of 44 Ashperton Road, establishing effectively a double-depth to the village hereabouts. For ease of understanding, I refer one to the proposed plans below:



The dwelling would have walling of facing brickwork with heavy oak framing features under a plain tile roof.

Representations:

Ashperton Parish Council – Two details objections made raising points in respect of:

- Street scene impact due to abnormal height when sat in plot;
- Over-development of site detrimental to character and appearance of village;
- Impact on setting of listed buildings;
- Impact on residential amenity

Transportation – Qualified Comments: “*The internal layout of the site is appropriate for the nature of the plot, however cycle storage should be considered. The site is connected to Ashperton via a footway on the same side as the development. In order to finalise a recommendation it would be beneficial for the claimed 90m visibility splay to be shown on a drawing for the full length so that it can be demonstrated as achievable*”.

Buildings Conservation Officer – Objection: *“The designated conservation assets here are the listed building at 42 & 43 A417. The cottage on the frontage, No. 44, is a timber framed building of local interest but not of statutory list quality. The village is not a conservation area, but good design in this context would need to take into account the settlement pattern and local scale.*

Pre-application advice raised concerns about the likely effect of this proposal on the setting of the listed cottages because of its proximity and because tandem development is not typical of the development pattern of the village.

These concerns seem to be well founded and emphasised by the form of development in (presently) three of the four corners of the site which is the worst possible arrangement for overlooking and disturbance. There will need to be visually dominant screen fences and an inevitable appearance of a corridor into the site if the backs of the frontage properties are to have any degree of protection and security from the access drive.

The setting of the listed buildings will be affected in two ways. Views of the buildings from public space will be further reduced and their immediate setting will be transformed from an essentially rural and green outlook to one with a house looming from the vantage of much higher ground, as shown in the image below.



For the above reasons this proposal cannot be supported”.

Ecology – Objection: *“I am unsure why Natural England’s national planning hub have responded but not requested a Habitat Regulation Assessment as the site clearly falls within the River Wye SAC catchment, thereby triggering the requirement for a HRA process through the generation of foul and surface water. This LPA has a duty of care to undertake an HRA process if it is triggered. This HRA ‘appropriate assessment, completed by the LPA, must be formally approved by Natural England PRIOR to any planning consent being granted.*

As identified in the drainage consultee’s response details and relevant supporting information in regard to foul water management have not been supplied. Confirmation of the actual location of the proposed private treatment system and soakaway drainage field on land within the development

boundary or clearly on land under the applicant's control are requested. Any relevant percolation tests should also be provided.

Notwithstanding the above it is noted that this development involves the loss of a recorded National Priority Habitat (Habitat of Principle Importance - HPI) – a Traditional Orchard referenced as HERE4004 on the national Traditional Orchards Inventory. Any loss of HPI is contrary to: Habitats and Species Regulations (2018), NPPF (2019), Core Strategy LD2 and NERC Act 2006. Based on this there is an Ecology OBJECTION raised to this application and proposed development”.

Welsh Water – No comments to offer

Land Drainage – Objection: *“I have reviewed the information on the website for application 190682. Surface Water - No information has been provided in regards to the proposals for surface water runoff management. Foul Water - I appreciate that the Applicant has included copies of the ‘binding rules’ and information about permits in relation to package treatment plants. However no information has been provided into the specific proposals for this development. I note that this planning permission refers to ‘building plot 2’. The Block Plan (Ref: 837.5 Rev B) does not include foul water proposals serving the proposed dwelling (within the red line boundary). The Block Plan does demonstrate a package treatment plant located outside of the red line boundary and appears to be serving a separate dwelling to the northeast. The proposed dwelling (within PP 190682) should be served by an individual package treatment plant and individual drainage field (if soakage is an option at this site). This individual system should be located on land owned by the respective homeowner. Clarity should be provided around the disposal of the treated effluent. Percolation testing results should be undertaken in accordance with BS6297 and results of this should be provided. Calculations should support this to demonstrate the sizing of the drainage field. We are unable to provide formal comments as there is no information about foul water or surface water drainage strategies. We request that foul water and surface water drainage strategies are provided. We will then be able to provide comments”.*

Natural England – No comments

Trees Officer – Objection/Further Information Required:

Arboreal Features:

- Within and in close proximity to plot 2 there are a number of trees which are of varying species, age and quality.
- The tree which is of most significance is a mature Walnut located behind the existing out buildings and in front of plot 2.

Potential Impacts:

- I have concerns that there is no reference of existing trees within any of the information provided to date. Without any arboreal information it is not possible to support this application, similarly there is also a lack of soft landscaping.

Summary & Recommendations:

- There is a requirement for a BS5837:2012 tree survey which will detail the impact plot 2 may have on existing trees, identify which should be retained/removed, protective measures and any method statements deemed necessary.
- A tree planting plan is required detailing the following:
 - Species
 - Locations

- Size
- Protective Measures”

(Officer Note: TPO 620 has now been established on the mature Walnut tree since the application has been validated)

Site Notice: 3 letters of comments received, 2 of these object to the application on grounds of residential amenity; heritage; street scene impact and grain of development and 1 letter of comment in respect of lack of cycle storage.

Local Member – Ward Cllr Lester confirmed delegated authority via email on 10th October 2019, raising no objections.

Pre-application discussion:

Email exchange with Officer and Building Conservation Officer, advised that whilst site is in Ashperton settlement boundary in emerging NDP, there is insufficient information to make an informed assessment.

Constraints:

A417 adjacent
Grade II Listed Buildings nearby
PROW nearby
Protected Species nearby
Surface Water
SSSI Impact Zone
Village Green nearby
TPO 620 on site

Appraisal:

Policy context

Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states as follows: *“If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”*

In this instance the adopted development plan is the Herefordshire Local Plan – Core Strategy (CS). It is also noted that the site falls within the Ashperton Neighbourhood Area, which published a draft Neighbourhood Development Plan (Ashperton NDP) for Regulation 16 consultation on 2 May 2019. At this time the policies in the Ashperton NDP can be afforded weight as set out in paragraph 48 of the National Planning Policy Framework 2019, which itself is a significant material consideration.

Legislation

With regards to heritage, Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states “In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. It follows that the duties in section 66 do not allow a local planning authority to treat the desirability of preserving the setting of listed buildings merely as material considerations to which it can simply attach such weight as it sees fit. When an

authority finds that a proposed development would harm the setting of a listed building, it must give that harm “considerable importance and weight”.

Importantly, this does not mean that an authority’s assessment of likely harm of proposed development to the setting of a listed building or to a conservation area is other than a matter for its own planning judgement. Nor does it mean that an the authority should give equal weight to harm that it considers would be limited or “less than substantial” and to harm that it considers would be “substantial”.

Other appeal decisions (particularly the Barnwell Manor Court of Appeal decision) confirm that a finding of harm to the setting of a listed building or a conservation area give rise to a strong presumption against planning permission being granted. On the basis of S66, the presumption is a statutory one, even if the harm caused is deemed to be ‘less than substantial’.

Principle of Development

Paragraph 11 of the NPPF sets out a presumption in favour of sustainable development. For decision-taking this means 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 the application of policies of the NPPF that protect areas or assets of particular importance provides a clear reason for refusing the development proposed or 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.

Footnote 7 to Paragraph 11 states this includes, for applications involving the provision of housing, situations 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). The local authority is currently failing to provide a 5 year Housing Land Supply, plus a buffer and as such, Paragraph 11 is triggered due to conflict with the relevant requirements of NPPF chapter 5 Delivering a sufficient supply of homes.

Where the existence of a five year land supply cannot be demonstrated, there is presumption in favour of granting planning permission for new housing unless the development can be shown to cause demonstrable harm to other factors that outweigh the need for new housing. In reaching a decision upon new housing the housing land supply position needs to be balanced against other factors in the development plan and/or NPPF which could result in the refusal of planning permission. This site is therefore considered on its suitability as being sustainable in regards to its location and material constraints and considerations.

This position was crystalised at the Appeal Court prior to the NPPF 2018 coming into effect and the implications of this position following the *Suffolk Coastal DC v Hopkins Homes & SSCLG* and *Richborough Estates v Cheshire East BC & SSCLG* [2016] EWCA Civ 168 were described by the Court thus We must emphasize here that the policies of the NPPF do not make "out-of-date" policies for the supply of housing irrelevant in the determination of a planning application or appeal. Weight is, as ever, a matter for the decision-maker (as described the speech of Lord Hoffmann in *Tesco Stores Ltd. v Secretary of State for the Environment* [1995] 1 W.L.R. 759, at p.780F-H).

Accordingly, the Council’s housing land supply position vis-à-vis the NPPF does not result in the proposal being acceptable when there are both material considerations demonstrating the development should be refused or where, locally, housing supply targets can be demonstrated.

Ashperton is identified as one of the rural settlements within the Ledbury Housing Market Area (HMA), Figure 4.14, which will be a main focus of proportionate housing development. The preamble to RA2

– Housing in settlements outside Hereford and the market towns states: “*Within these settlements carefully considered development which is proportionate to the size of the community and its needs will be permitted.*” The proactive approach to neighbourhood planning in Herefordshire is also noted and that when adopted, Neighbourhood Development Plans (NDPs) will be the principal mechanism by which new rural housing will be identified, allocated and managed. However, the Ashperton NDP is only at regulation 16 consultation and moderate weighting can be afforded to it.

Ledbury Housing Market Area requires a proportionate housing growth of 14% over the plan period. The growth target should not be seen as a ceiling to development and proposals should be considered in terms of paragraph 14 of the NPPF which states that the presumption in favour of sustainable development requires the granting of planning permission, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

In the absence of a made NDP, the CS confirms that housing schemes should be assessed against their relationship to the main built up part of the settlement; the intention being to avoid unsustainable patterns of development that give rise to isolated residential development that are inaccessible and give rise to attendant landscape harm.

The core principles upon which RA2 is founded can be summarised as an expectation that development proposals should reflect the size, role and function of the village concerned; make best use of brownfield land where possible; result in high-quality, sustainable development which enhances local character where possible and does not result in unsustainable patterns of development. It is my view, therefore, that although out-of-date, RA2 may continue to attract weight in the determination of this application. This is because it is positively worded and does not, in advance of an NDP, seek to impose a cap on development. It does, however, require development to be built within or adjacent the main built up part of the settlement concerned, and that locational aspect of the policy cannot carry weight in the current context. This proposal is located adjacent to the main built up area of the village and the properties are of a size and scale suitable to the community therefore it is in accordance with policy RA2.

I do also recognise that the dwelling would also be located wholly within the settlement boundary for Ashperton, identified under Policy H2 and would contribute to the proportionate housing growth for the Neighbourhood Area acknowledged under Policy H1 of the emerging NDP for the parish. However, it can only be afforded moderate weighting at this time. Indeed, sustainable development is more than simply a matter of location.

Design/Amenity/Locality Impact

Whilst I do consider the design to be acceptable, namely in respect of being appropriate to its surroundings as a village location, due to the elevated nature of the site, a number of concerns have been raised with regards to residential amenity. The additional dwelling behind ‘The Ditch’ would sit on rising ground and would have a ridge height of approximately 10m above ground. As such it would be prominent from the highway, both from directly in front of ‘The Ditch’ and through the gap between ‘The Ditch’ and the permitted new build next door as an incongruous tandem development in the ‘rear garden’ of ‘The Ditch’. Although there are properties set back from the road (such as 42, 43) and others set back well behind roadside properties (such as Orchard View) the proposed dwelling would clearly appear as an over-development detrimental to the character and appearance of the village. It is accepted that the existing plot is generous but the location of the proposed dwelling on a shallow ridge directly behind ‘The Ditch’ would accentuate its dominance and incongruity.

The proposed dwelling would be located back-to-back with the existing house. Whilst the separation would be sufficient to avoid any unacceptable inter-visibility between windows to habitable rooms,

each dwelling would directly overlook the private rear garden of the other, causing some harm to living conditions, resulting in the loss of privacy. With regard to overlooking, whilst such inter-visibility may comply with acceptable standards for housing estates, the arrangement with principle habitable rooms directly overlooking each other and private garden areas is not really encouraged in a village setting. I consider that it would be contrary to Policy SD1 of the Herefordshire Core Strategy, which seeks to safeguard residential amenity for future occupiers.

Heritage

The proposed application also requires consideration to heritage assets. Namely, the setting of 42 and 43 Ashperton Road, Ashperton, both of which are Grade II Listed (42,43 A417). Historic England's Listing (1302697) considers 42 and 43, A417 as,

"Two tenements, No 42 to east and No 43 to west. C17, altered mid-C19 and C20. Timber-framed, mainly wattle-and-daub infill with part painted brick, sandstone plinth, brick external stacks, weatherboard cladding to west gable, slate roof. Seven framed bays (four bays to No 43, three bays to No 42), aligned east/west facing south with large external stacks with bread ovens to both gable ends. East of centre entrance to No 43, entrance to No 42 in C20 addition at east gable end, C19 additions to west gable end. Single storey and attic, four gabled dormers with 2-light casements to attic (two to each house), fenestration to ground floor with weatherings at lintels, one 2-light and one 3-light casement window flank entrance with ledged door to No 43, three similar 2-light windows to No 42. Framing largely complete though irregular, three square panels from sill to wall-plate, trusses: two struts to collar and V-struts in gable".

It is therefore important to refer to Paragraph 189 of the NPPF, which states that,

"In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary. Where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation".

The applicant has failed to submit a detailed heritage statement to allow the LPA to identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise (Paragraph 190 of the NPPF). Whilst I do acknowledge that a design and access statement has been submitted, it does not assess the significance of the heritage assets the proposed development affects. This is particularly concerning given the works fail to acknowledge the setting of 42 and 43 Ashperton Road, both Grade II Listed.

In respect of heritage assets, the advice set out at paragraph 193 of the Framework is relevant, insofar as it requires that great weight be given to the conservation of a designated heritage asset. The more important the asset, the greater the weight should be. Paragraph 194 goes on to advise that any harm to, or loss of, the significance of designated heritage assets should require clear and convincing justification. At paragraph 195, it states that where substantial harm is identified local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or loss. Paragraph 196 goes on to state that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the

public benefits of the proposal including, where appropriate, securing its optimum viable use. In the lack of clear justification and assessment of heritage impact, in accordance with Paragraph 194 of the NPPF, any harm to the significance of designated heritage assets must be appropriately considered.

I refer to the comments of the Council's Building Conservation Officer, whom has requested further information in respect of this aspect, which has not materialised. The cottage on the frontage, No. 44, is a timber framed building of local interest but not of statutory list quality. The village is not a conservation area, but good design in this context would need to take into account the settlement pattern and local scale.

Pre-application enquires raised concerns to the applicant's agent about the likely effect of this proposal on the setting of the listed cottages because of its proximity and because tandem development is not typical of the development pattern of the village.

These concerns seem to be well founded and emphasised by the form of development in (presently) three of the four corners of the site which is the worst possible arrangement for overlooking and disturbance. There will need to be visually dominant screen fences and an inevitable appearance of a corridor into the site if the backs of the frontage properties are to have any degree of protection and security from the access drive.

Notwithstanding this, the setting of the listed buildings, 42 and 43, will be affected in primarily two ways. Views of the buildings from public space will be further reduced and their immediate setting will be transformed from an essentially rural and green outlook to one with a house looming from the vantage of much higher ground

As discussed above, no evidence has been forthcoming. I therefore must consider on the information before me. On the basis of the case advanced, the application lacks any convincing Heritage Statement or any other detail that would allow others to properly understand the detailed significance. Without this assessment it is also difficult to understand the impacts of the proposed development. In the officers' view, one needs to follow the test underlined under paragraph 196 of the NPPF namely,

"Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use".

In my view, the proposed development, based on the view of the Building Conservation Officer, will establish less than substantial harm to the significance and setting of the Listed Grade II 42 and 43 Ashperton Road. However, the public benefits of 1 no. dwelling do not outweigh this identified harm. The harm to significance would need to be minimised and "clear and convincing justification" (NPPF paragraph 194) for harm is not evidenced. This evidence also needs to consider why the building's "optimum viable use" (NPPF paragraph 196) cannot be sustained. However, I find a total absence of such evidence of this. Therefore, I find the application to fail to meet the requirements of Section 16 of the NPPF, namely paragraph 196 given there are no public benefits, given the less than substantial harm identified which would not be outweighed by the public benefits of one additional dwelling.

It is the uncharacteristic arrangement of the existing, permitted and proposed dwellings which would cause significant harm to the setting of the listed building. Indeed, whilst the Framework explains that planning policies and decisions should support development that makes efficient use of land, taking into account: the desirability of maintaining an area's prevailing character and setting (including residential gardens), or of promoting regeneration and change, this is not the case.

The proposal would also be contrary to Policy LD4 in so that the proposal would fail to conserve or enhance heritage assets and their settings in a manner appropriate to their significance. Whilst I do

accept that each application should be assessed on its own merits, notwithstanding the lack of a heritage statement, I have considered and set out that the less than substantial harm identified would not be outweighed by such public benefits.

Highways

Policy MT1 of the Core Strategy and NPPF policies require development proposals to give genuine choice as regards movement. The NPPF requires local planning authorities to facilitate the use of sustainable modes of transport and refers to the need to ensure developments generating significant amounts of movement should take account of whether safe and suitable access to the site can be achieved for all people and whether improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. Development should only be prevented or refused on transport grounds where 'the residual cumulative impacts of development are severe.

The access shares the existing access from the A417 with number 44, the addition of the additional dwelling is not expected to have a material impact on the operation of the local highway network.

There is sufficient parking and turning area for both the proposal and the existing dwelling number 44 'The Ditch'. There are 90metres visibility splays in both directions as identified under the approved application in 2018 (P182827/F). Therefore this proposal is in accordance with Policy MT1.

Ecology/Drainage

There have been concerns raised by the Council's ecologist as the site clearly falls within the River Wye SAC catchment, thereby triggering the requirement for a HRA process through the generation of foul and surface water. This LPA has a duty of care to undertake an HRA process if it is triggered. This HRA 'appropriate assessment, completed by the LPA, must be formally approved by Natural England PRIOR to any planning consent being granted.

As identified in land drainage consultation response, details and relevant supporting information in regard to foul water management have not been supplied. Confirmation of the actual location of the proposed private treatment system and soakaway drainage field on land within the development boundary or clearly on land under the applicant's control have been requested and submitted under amended plans.

However, satisfactory 'no adverse effect' HRA appropriate assessment can not be achieved at this time. Natural England wrote to the Council on 18 July 2019, advising the Council to seek a legal opinion on the implications of the Dutch case (Joined Cases C-293/17 and C-294/17). As the Competent Authority for this matter, the council needs to form a view on the correctness of approving projects that allow further damage to sites that are already failing their conservation objectives, and whether the Nutrient Management Plan gives enough 'certainty' around mitigation measures to allow it to be relied upon in Habitat Regulations Assessment.

In discharging their role as statutory consultee, it is Natural England's advice that for plans or projects that have likely significant effects and require an Appropriate Assessment under the Habitats Regulations, the effects are currently uncertain. This is because, in their view, reasonable scientific doubt remains as to whether the Nutrient Management Plan can provide appropriate mitigation. The council may wish to consider, notwithstanding this, whether there are alternative solutions that would avoid an adverse effect on the integrity of the site or whether there are imperative reasons of overriding public interest. If there are not, then permission should not be granted.

Notwithstanding these omissions and missing information and mitigation proposals, subsequent to the previous comments further advice and guidance in relation to the matter of foul water and effects on the River Lugg SAC have come in to force and require consideration and comment. The updated comments based on this new advice and guidance follows:

“The site is within the Lugg sub-catchment of the River Wye SAC (Within 50m of the actual River Lugg SAC) and as such a Habitat Regulations Assessment process is required. Currently in line with standing advice from Natural England and pending further legal counsel and specialist advice being sought by this LPA no HRA process that involves any assessment of applications involving the creation of additional Phosphate levels (Foul water) can be progressed for any of the Lugg catchment – this includes mains sewer connections. Applications can not legally be determined without this completed HRA process. This situation is due to the currently ‘failing’ conservation status of the Lugg SAC (SSSI) catchment and more recent Habitat Regulation court rulings. See attached advisory note from Natural England.

Once all the relevant advice has been received and considered the LPA will be in a position to release a formal statement around this matter and to review outstanding applications within the Lugg sub-catchment and then where appropriate undertake an updated, legally required HRA screening and appropriate assessment process and formally re-consult Natural England for their ‘no objection’ comment prior to any grant of planning consent”.

Without an acceptable HRA appropriate assessment being available it is strongly advised that NO planning consent can legally be granted.

Notwithstanding the above it is noted that this development involves the loss of a recorded National Priority Habitat (Habitat of Principle Importance - HPI) – a Traditional Orchard referenced as HERE4004 on the national Traditional Orchards Inventory. Any loss of HPI is contrary to: Habitats and Species Regulations (2018), NPPF (2019), Core Strategy LD2 and NERC Act 2006. Based on this there is an Ecology OBJECTION raised to this application and proposed development due to the HRA issue, as well as absence of appropriate ecological surveys.

Trees

During consideration of this application, TPO 620 (great Walnut) has been formally confirmed.



The plans fail to adequately show the impact on existing green infrastructure on site and due to the proposed drainage arrangements, namely what is the proposed surface water and foul water drainage arrangements, the existing great Walnut Tree, which has a TPO on it, has insufficient information submitted to show it can be adequately protected. I have concerns that there is no reference of existing trees within any of the information provided to date. Without any arboreal information it is also not possible to support this application, in addition to the concerns above. Similarly, there is also a lack of soft landscaping. In the absence of a BS5837:2012 tree survey which can detail the impact plot 2 may have on existing trees, the LPA cannot beyond reasonable doubt confirm the protection of TPO 620 without potential harmful impact. It would therefore be contrary to Policy LD3 of the Herefordshire Core Strategy.

Other considerations

The Herefordshire Local Housing Market Assessment produced by GL Hearn consultants (Appendix 6), forms part of the evidence base for the Core Strategy, provides an insight into local housing needs in terms of tenure and size for the period 2011-31. It deals not only with affordable housing, but also open market requirements across the county over the plan period.

Ashperton is located within the Ledbury Rural Housing Market Area (HMA), and for market housing, table 83 of the Local Housing Market Assessment specifies that the greatest demand is for three bedroom housing, (66.4%), followed by two bedroom housing (37% of needs). Four bedroom or larger housing is -8.7% of needs, given the oversupply of these dwelling types across the identified area. Therefore, there is not the need or indeed local appetite for 4 bedrooled dwellings in the Ledbury Rural HMA.

Table 83: Estimated Size and Type of Dwellings Required 2011 to 2031 – Market Housing (Ledbury HMA)

Type/size	Ledbury Urban		Ledbury Rural		Ledbury HMA	
	Number	%	Number	%	Number	%
1 bedroom	18	3.7%	18	5.2%	36	4.3%
2 bedroom	124	25.9%	126	37.0%	250	30.5%
3 bedroom	227	47.3%	225	66.4%	452	55.2%
4+ bedroom	111	23.1%	-29	-8.7%	82	10.0%
Total	480	100.0%	339	100.0%	819	100.0%
Houses	445	92.6%	336	99.3%	781	95.4%
Flats	35	7.4%	3	0.7%	38	4.6%
Total	480	100.0%	339	100.0%	819	100.0%

Source: Housing Market Model

Table 1 – Estimated Size and Type of Dwellings Required 2011-2031 – Market Housing (Ledbury HMA) taken from The Herefordshire Local Housing Market Assessment produced by GL Hearn consultants 2012.

Whilst the applicant has indicated on the application form that the proposal is for 1 no. 3 bedroomed dwelling, there is clearly a discrepancy as the drawings submitted show 1 no. 4 bed property. Using the same approach as the GL Hearn report this amounts to 100% of 4 or more bed properties, which is vastly disproportionate to the established needs of this part of the county. The Council considers that in maintaining and strengthening sustainable communities across rural Herefordshire, development proposals need to result in the delivery of a scheme which generates a size, type, tenure and range of housing required in particular settlements, reflecting local demand. Using the assessment above, the proposed development has not demonstrated compelling evidence of why this proposal meets such a need. The Council has clearly shown evidence above that there is a need for predominately three- and two-bedroomed dwellings and not 4+ bedroomed dwellings, to which the scheme proposes and the applicant does not have any substantive evidence to suggest the permitting of a four-bedroomed dwelling. As such, the proposed erection of 1 no. 4 bedroomed property on this site, does not adequately reflect the mix of development which is required in order to meet local identified need, and is contrary to Policy RA2 of the CS.

Planning Balance and Summary

The NPPF is clear in that its requirement that the planning system should be genuinely plan-led. Allowing development in this instance which conflicts with the development plan would undermine this requirement. Consequently, the adverse impacts of allowing the proposals, this being harm to the setting of two Grade II Listed Buildings; issues in respect of ecology; drainage and impact on the street scene, is considered to significantly and demonstrably outweigh the minor benefits of the addition of 1 no. dwelling, in addressing the county's lack of a five-year housing supply, acknowledging that the site lies in an RA2 settlement (Ashperton).

In closing, notwithstanding that the principle of development can be established, harm has been identified in this proposed development, which would not outweigh the minor social, economic and environmental benefits as outlined under paragraph 8 of the NPPF, notwithstanding the Council's lack of a five-year housing land supply at this time. There are clear material considerations which significantly and demonstrably the presumption in favour of sustainable development, outlined under paragraph 11 of the NPPF, which is considered in cases where there is a lack of a five-year housing land supply apparent.

As such, the application is recommended for refusal on the basis of the reasons detailed below. The local member has been informed of my recommendation and is subsequently content for the application to be determined as a delegated matter at this time.

RECOMMENDATION: **PERMIT** ☐ **REFUSE** ☒

CONDITION(S) & REASON(S) / REASON(S) FOR REFUSAL:

(please note any variations to standard conditions)

1. The proposed development has failed to consider and demonstrate that the prevailing character of the street scene, settlement pattern and surrounding development has positively influenced the proposal. As such, by virtue of the proposed design, scale and nature of site selection, the proposal would not conserve or enhance the uncharacteristic arrangement of the existing, permitted and proposed dwellings at The Ditch and the setting of 42 and 43 Ashperton Road, both Grade II Listed Buildings. By not positively contributing towards local distinctiveness hereabouts, with particular reference to impacts on settlement pattern; landscape; design and heritage assets, the proposal would give rise to less than substantial harm, particularly on the setting of 42 and 43 Ashperton Road, which would not be outweighed by the benefits of 1 no. dwelling. The proposal is contrary to Policies SS1; SS6; RA2; LD1; LD4 and SD1 of the Herefordshire Local Plan – Core Strategy; as well as the relevant sections of the relevant sections of the National Planning Policy Framework, namely sections 11, 12 and 16.
2. In the absence of a detailed ecological survey, as requested, including any identified ‘optimal period’ survey requirements, the local planning authority is unable to assess the potential impact upon protected species, in particular crevice dwelling bat species and nesting birds. The proposal is therefore contrary to Policy LD2 of the Herefordshire Local Plan – Core Strategy, paragraph 99 of circular 06/2005 and the relevant aims and objectives of the National Planning Policy Framework.
3. The proposed development would give rise to unacceptable levels of overlooking on neighbouring properties, to the detriment of residential amenity. The NPPF and Herefordshire Local Plan – Core Strategy sets out a clear emphasis creating high quality places as a fundamental aspect of the planning process, developments should function well, be visually attractive as a result of good layout and ensure a strong sense of place. The proposed development is not considered to have achieved this and fails to improve the character of the area and the way it functions, thus not according with paragraph 130 of the NPPF. The application is therefore considered to be also contrary to policies SS6, LD1 & SD1 of the Herefordshire Local Plan – Core Strategy, which strives to ensure that residential amenity for future occupiers is safeguarded.
4. The site lies within the Lugg sub-catchment of River Wye SAC (within 50m of the actual River Lugg SAC) and triggers the requirement for a Habitat Regulations Assessment. Under the Regulations, there is a requirement to establish beyond all reasonable scientific doubt that there will not be an adverse effect on the integrity of the River Wye SAC (Lugg sub catchment) which is already failing in terms of foul water/phosphate. Currently in line with standing advice from Natural England, no HRA process that involves any assessment of applications involving the creation of additional Phosphate levels (Foul water) can be progressed for any of the Lugg catchment. Notwithstanding the above, the application has failed to provide a viable means of foul water disposal which takes account of ground conditions on the site and ensures the proposed development would not be detrimental to the wider environment or undermine the achievement of water quality targets. As such, in the absence of information to allow the Local Planning Authority to undertake a Habitat Regulations Assessment, the proposal does not comply with policies SD3, SD4 & SS6 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework (NPPF), together with the provisions set out in The Conservation and Habitats and Species Regulations 2017.

5. The application as submitted cannot confirm beyond reasonable doubt that there would not be an adverse impact on TPO 620 and its long-term longevity without being in some way comprised and in the absence of a BS5837:2012 survey, the development proposal cannot confirm that existing green infrastructure on site would be protected and retained without potential harmful impact. The development proposed would also involve the loss of a recorded National Priority Habitat (Habitat of Principle Importance - HPI) – a Traditional Orchard (HERE4004 on the National Traditional Orchard Inventory) and is considered that the benefits of the proposed development is not outweighed by the loss of these veteran trees. As such, the proposal is contrary to: the Habitats and Species Regulations (2018), the National Planning Policy Framework (2019), Herefordshire Local Plan – Core Strategy Policies LD1, LD2 and LD3 and the NERC Act 2006.
6. The proposed introduction of 1 no. 4-bedroom detached dwelling is not reflective of the open market housing need in Ashperton under the Ledbury Rural Housing Market Area, as evidenced by the Herefordshire Local Housing Market Assessment produced by GL Hearn consultants, which forms part of the evidence base for the Core Strategy. The scheme would not deliver the size, type, tenure and range of housing required for the settlement of Ashperton, failing to contribute to local demand and needs. As such, it conflicts with Policy RA2 of the Herefordshire Local Plan Core Strategy and the National Planning Policy Framework.

Informatives

1. IP5
2. The proposed plans should clearly show all features on site and namely the red line should show a safe means of access to the nearest public highway.

J.P.B.

Signed: Dated: 14/10/19

TEAM LEADER'S COMMENTS:

DECISION:

PERMIT ☐

REFUSE ☒

Signed:

A.B.

..... Dated: 14/10/19