

Herefordshire Council

STATEMENT OF CASE

TOWN AND COUNTRY PLANNING ACT 1990

APPEAL UNDER SECTION 78

By

Ian and Kathleen Griffiths and Gladman Developments Ltd, on behalf of Ian and Kathleen Griffiths and Gladman Developments Ltd against the decision of the County of Herefordshire District Council - Non determination for Outline planning application for the erection of up to 420 dwellings with public open space, land for community facilities, landscaping and sustainable drainage system (SuDS) with all matters reserved save for access. Dymock Road, Ledbury, Herefordshire,

Grid Reference:	370786, 236266
Planning Inspectorate Reference:	APP/W1850/A/w/19/3225309
Local Planning Authority Reference:	184032
Date of Statement of Case:	26th July 2019

1. Introduction and background

- 1.1 The appeal proposal seeks outline planning permission with all matters bar access reserved for the erection of up to 420 dwellings with public open space, land for community facilities, landscaping and sustainable drainage system (SuDS) with all matters reserved save for access.
- 1.2 The statement of case is submitted on behalf of Herefordshire Council with regards to the forthcoming public inquiry. The statement sets out the Councils position with regard to the appeal and explains why the Council consider the proposed development to be unacceptable. It also sets out a number of matters or material considerations that are not disputed or considered grounds of refusal, however require the Inspectors attention.
- 1.3 The planning application for the proposed development was received and validated by Herefordshire council on 1st November 2018 (application 184032/O).
- 1.4 Under the provisions of Article 5(2) of Part 3 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 and Section 62(3) of the 1990 Act and Regulation 4 of the Town and Country Planning (Applications) regulations 1988 (SI 1988/1812). Herefordshire Council formally requested that further information be submitted in support of the application as follows:
 - A site layout plan of the entirety of the development to a scale of at least 1:500 detailing all internal roads, private drives, driveways, footpath routes, cycle routes, the siting of all buildings, the parking / garaging areas, the vehicle manoeuvring areas, the plot boundaries, the landscape areas, the open & play space areas, the attenuation pond(s),
 - the precise siting and dimensions of all envisaged and / or proposed “community facilities” (if playing fields these must accord with Sport England & Sporting Governing body standards including in terms of levels / “run-off areas” etc)., all trees & hedges to be retained together with their root protection areas and all trees & hedges (if any) to be removed.
 - A full topographical; survey of the entire site a scale of 1:500 with each 0.5 metre contour interval shown;
 - Full details of all engineering works or “other operations” (e.g. earthworks, earth movements, retaining structures etc) on appropriately scaled metric scaled plans;
 - Full details of existing and proposed levels on appropriately scaled metric scaled plans;
 - A series of existing & proposed cross-sections on appropriately scaled metric scaled plans;
 - The size of each dwelling in terms of the number of bedrooms and the number of storeys;
 - The proposed open market housing size mix;
 - The proposed affordable housing size mix;

- The number of bedrooms proposed on each plot upon the layout plan; and
 - A revised Transport Assessment that also assesses the impact of the proposed “community facilities”
- 1.5 Under Article 37 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 the applicant is entitled to appeal to the Secretary of State against the LPA's Article 5(2) notice and their subsequent decision to not determine the outline planning application.
- 1.6 The statement sets out the Councils position with regard to the appeal and explains why the Council consider the proposed development to be unacceptable.

2. Appeal Site and surrounding area

- 2.1 The site comprises agricultural fields located in the countryside and comprises a greenfield site. The site adjoins to the North an ‘under construction’ residential development which benefits from a Reserved Matters approval for 275 dwellings as a phase 1 delivery, with a further 46 dwellings to be subject to a future Reserved Matters application. Dymock Road adjoins to the West against which the appeal site is delineated by mature hedgerows. Open countryside and agricultural farmland adjoins South and East.
- 2.2 Access to the appeal site relies on a sole means of access through the above referenced housing development crossing through the landscaping and amenity open space that formed part of the approved layout as mitigation and enhancement features intrinsic to the development.
- 2.3 Wider site descriptions will be advanced through the Statement of Common Ground that is being prepared.

3. Planning Policies and evidence base

3.1 Herefordshire Local Plan Core Strategy (2011 – 2031)

The Local Planning Authority will refer to the Herefordshire Core Strategy 2011 – 2031 including the following policies:-

Vision, objectives & spatial strategy policies

- 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

Place Shaping Policies

- LB1 – Development in Ledbury
- LB2 – Land north of the viaduct

General Policies

- H1 – Affordable housing – thresholds and targets
- H3 - Ensuring an appropriate range and mix of housing
- SC1 – Social and community facilities
- OS1 Requirements for open space, sport and recreation
- OS2 – Traffic management, highway capacity and promoting active travel
- MT1 – Traffic management, highway safety and promoting active travel

Environmental Quality

- LD1 – Landscape and townscape
- LD2 – Bio-diversity 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 quality

Delivery, Implementation and Monitoring

- ID1 – Infrastructure delivery

3.2 Ledbury Neighbourhood Development Plan (Made January 2019)

The Council will refer to the NDP as a whole, background documents including the Examiners Report and the following policies within the Ledbury Neighbourhood Development Plan –

- SD1.1 Ledbury as a Self-Sustaining Community
- HO2.1 Reinforcing Balanced Housing Communities
- HO2.2 Housing Density
- BE1.1 Design
- BE2.1 Edge of Town Transition The density of housing in the vicinity
- NE1.1 Protecting Biodiversity
- NE2.1 Food Production in Ledbury
- NE4.1 Protecting Ledbury's Woods
- CL1.1 Young People's Facilities
- CL3.1 Sports Provision
- TR1.1 Footpaths & Cycleways

3.3 Malvern Hills AONB Management Plan 2014 - 2019

The LPA will refer to the Malvern Hills AONB Management Plan 2014-2019.

3.4 Planning Obligations Supplementary Planning Document (April 2008)

The LPA will refer to Herefordshire Council's 'Planning Obligations Supplementary Planning Document (April 2008)'.

3.5 Sports and Open Spaces Documents –

- Playing Pitch Assessment 2012: Ledbury Area
- Ledbury Sports Federation (Work undertaken April 2016)

3.6 Transportation Documents

- Manual for Streets
- Manual for Streets 2
- Providing for journeys on foot (IHT)
- The Framework (NPPF)
- DfT LTN 2/08 Cycle Infrastructure Design 2008
- 2011 Census Data
- National Travel Survey Data

3.7 Other Documents

The Council will also refer to the following documents –

- Herefordshire Council Landscape Character Assessment 2007
- Application reference 182628 Committee Report, Decision Notice and approved plans, details and supporting background information

3.8 National Planning Policy Framework

The Council will where relevant in evidence, also rely on relevant National Planning Policy (2019) or any revised NPPF that may be issued and Guidance, Supplementary Planning Guidance and Documents, other relevant publications, case law and appeal cases. These will be referenced fully in the respective Proofs of Evidence and incorporated as Core Documents where necessary.

4. The Case of the Council

The following matters do not form grounds of refusal however is material to the assessment of the proposals and the Council would therefore take the opportunity to outline their position as follows;

4.1 Education – Clarification in respect of the requirement for a school (as proposed)

4.1.1 The proposal offers land for community facilities and indicative plans show a primary school and its associated infrastructure.

4.1.2 The Council as the Education Authority confirms there is no need for a new school. A comprehensive comment from the Education Directorate is attached as **Annex 1**.

4.1.3 There is currently no shortage of primary school places in Ledbury and the surrounding area. The approach to adding school places if and when they are needed is likely to be twofold:

- Ledbury Primary School has the site area to enable an expansion by one form of entry without difficulty

- There could also be “rounding up” of admissions numbers to multiples of 30 at some of the rural schools with fairly modest additional building.

4.1.4 The council does not generally support the idea of new one form entry primary schools, as they can be financially unviable, especially if a full form of entry does not materialise. The new development would certainly not sustain a two form entry primary school, nor would the developer be prepared to offer sufficient land. Furthermore the site is on the extreme edge of the town and requires crossing Leadon Way, the Ledbury bypass. As such it would not be an attractive ‘draw’ for many residents to the North.

4.1.5 The LPA and Education Authority would require a financial contribution in lieu of land from developers to put towards increasing capacity in the planning area, whether at Ledbury Primary School or at one or more of the village schools. Financial contributions towards secondary education would also be required.

4.1.6 On the basis of the above, the LPA rejects the proposition of a School on the site and as set out below, requests that land is given over to sports pitch provision as follows –

4.2 **Sports Pitch Provision**

4.2.1 Background

Playing Pitch Assessment 2012: Ledbury Area
Football:

- Deficiency in junior and mini pitches
- Undersupply of pitches to meet junior and mini football demands will be further compounded because of pressures at Ledbury Rugby Club where Ledbury Swifts FC play.
- Capacity at Ledbury Rugby club on peak days places pressure on car-parking and facilities.
- Ledbury Town FC – pressures for redevelopment and short term lease agreement
- Deficiency in training provision. 3G pitch supported.
- Loss of senior pitch on the cricket club site (now relocated and a junior pitch provided)

4.2.2 Ledbury Sports Federation (Work undertaken April 2016)

Current and Future Provision for inclusion in Ledbury Neighbourhood Plan: Ledbury Area, Ledbury Ward:

- Concluded 4.45ha (11 acres) land required to facilitate the needs for Ledbury Swifts FC and Ledbury Town FC

4.2.3 Ledbury Neighbourhood Development Plan adopted

- No land identified for outdoor sports.

4.2.4 Herefordshire Outdoor Sports Partnership:

Sport England, County Sports Partnership, Football Foundation and the Herefordshire Football Association recognise the deficiencies faced in Ledbury particularly for the two football clubs and support the delivery of a single football sports hub recognising that:

- Ledbury Swifts FC (Juniors) has no permanent home. The use of pitches at Ledbury Rugby Club but has no security of tenure and the continual pressure to accommodate both rugby and football provision is a threat to the future use by the Swifts. Ledbury Swifts FC has expanded continually over the last 8 years.
- Ledbury Town FC (seniors) play out of New Street which is on a short term lease and under pressure for the site to be redeveloped.
- The two football clubs have a good relationship, recognising the player development paths between the 2 clubs. The development of a jointly managed facility/hub will enable the sport to grow and create a sustainable facility under one banner.

4.2.5 Removing the School from the community facilities land and merging with offered sports pitch provision, At 4.88ha the proposal would meet the minimum quantum of 4.5ha required (and as evidenced) to provide a site to facilitate the development of a football hub to accommodate both Ledbury Town FC relocation and a home for Ledbury swifts FC to be developed under one banner. The proposal would meet an identified deficiency in the town.

4.2.6 The LPA understands the two clubs have subsequently agreed that if 4.88 ha is available for football only and the land was the only “gift” and offered through a UU this would be accepted on the understanding further funding to deliver the facilities for the Ledbury Swifts FC via s.106 and Football Foundation would be required. It should be noted land transfer agreement should be with the football clubs and that the land is not to be transferred to Herefordshire Council. The facility will need to be managed jointly by Ledbury Town FC and Ledbury Swifts FC.

4.2.7 Should the appellants not be agreeable to the 4.88ha being offered up solely for sports pitch provision for the football clubs a refusal reason will be advanced on the basis the evidence need has not been met by the development which is acknowledged by the appellants Statement of Case as a departure from policy and in part relies on wider social objective gains within the planning balance argument. This matter can be resolved through the Statement of Common Ground.

4.3 **Heritage**

4.3.1 The LPA has no explicit objection to the proposals on heritage grounds and has no objection or comments on archaeological grounds, however submits the following comments –

We would have no objections to the proposals, however any reserved matters application for the layout of the site should take into consideration the setting of Hazel Farm, in particular the treatment of the Western boundary of the site.

BACKGROUND

Description & Location of Development

The proposals are for a modern housing development to the S of Ledbury in Herefordshire.

Limitations

These comments relate only to listed buildings and historic areas, and are based upon a desktop study and site visit.

Policy background

The analysis of the impact upon those aspects of the setting of listed buildings which contribute to their significance is based upon the current guidance from Historic England, (The Setting of Heritage Assets, Good Practice Guide 3). Where buildings are obviously too distant or un-affected by the proposals these are not included and the detail is proportionate to the importance of any building likely to be affected and the magnitude of significance and/or potential impact.

Section 66 of the P(LB&CA) Act 1990 states: *“In considering whether to grant planning permission for General 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.”*

Recent precedent has emphasised the interpretation of ‘special regard’. In the Barnwell Manor case (*Barnwell Manor Wind Energy Limited v East Northamptonshire District Council* 2014) the Court of Appeal held that ‘*decision-makers should give “considerable importance and weight” to the desirability of preserving the setting of listed buildings when carrying out the balancing exercise*’

Section 189 of the NPPF requires applicants to describe the significance of heritage assets and the impact of proposals upon this.

Section 193 of the NPPF states that great weight should be given to an assets conservation.

Section 196 of the NPPF states that where there is less than substantial harm to a heritage asset this should be weighed against the public benefits of the proposals.

The adopted Herefordshire Core Strategy policy LD4 states that “proposals affecting heritage assets... should. Protect, conserve and where possible enhance heritage assets and their setting in a manner appropriate to their significance...”

Outline applications which affect the setting of heritage assets or are within a Conservation Area would generally be refused as it is not possible to determine the extent of the impact. In this instance it is not felt development on the site would adversely affect the setting of the listed building. However a proviso is that any reserved matters application for the layout of the site should pay careful attention to the treatment of the Western boundary.

COMMENTS

The proposals would not affect the character or appreciation of the Ledbury Conservation Area. Whilst there is no statutory basis for the setting of Conservation Areas, there is precedent which allows us to consider this under the NPPF. Given the distance and topography it is not felt that the development on the site would affect the appreciation or experience of the conservation area.

Distant listed buildings such as ‘Underdown’ (Grade 2 some distance to the E) have been excluded from this consultation response as the proposals would have no impact upon their setting due to distance and subsequent inability to effectively experience the asset in the context of the site.

Immediately adjacent to the Western boundary of the site lies a milestone listed at grade 2 as "Milestone at National Grid Reference SO 7042 3642". This is not considered in detail. The key aspect of the setting of the milestone is that it is situated on the edge of the route to which it refers. There would be no change to aspects of its setting which contribute to its significance.

Of key interest in terms of potential impact is Hazel Farm, Previously Hazle Manor. This farmstead consists of a grade 2 listed C17 farmhouse ref 1082603 and a grade 2 listed Granary (ref1224716). There is an intriguing linear feature to the E of the site which from historic mapping and aerial photos may have existed in remnant form in the past 60 years as an avenue of trees. We would defer to the Council's Landscape specialist in terms of the current landscape impact of the proposals, the following is included to establish the relationship of the landscape feature to the significance and setting of Hazel Farmhouse.

The setting of Hazel Farmhouse is semi enclosed from the E, with glimpses into the property. From the property the wider agricultural setting is important to the understanding of the site as a Farmstead even though that functional relationship between the site and the landscape has to some degree lapsed.

An agreement of terms dating from 1719 lists various aspects of the former Manor at Hazle which alludes to various rows of trees, although it is not possible to determine where these are. (Warwick Archives G2/IV/4 MSS.382)

Hearth tax from 1665 assessed the Hazle at £200 with 10 hearths (Pinches Sylvia, 2009, Ledbury: a market town and its Tudor Heritage p68). Notwithstanding the intricacies of C17 tax considerations, the current building on the site has far fewer fireplaces than this which strongly suggests that in the late C17 a much larger manor house was in existence. It has not been able to determine whether, if there was a larger property on the site, what date it was built or when it was demolished.

The avenue of trees is a landscape feature which relates more strongly in style to the C18. A hypothesis, based upon limited and scant evidence that these may have related to the earlier building described in the Hearth tax records of 1665. With the estate being consolidated into a larger holding it may be that by the late C18 and early C19 that the house became a farmhouse and a smaller sized building was more economical, with the functional link to the avenue no longer being relevant, by the mid C20 only remnants still in place with it disappearing by the late 1960's.

Whilst the avenue of trees was an interesting feature, only a single hedge remains. There is little evidence that this relates to the existing farmhouse on the site and it can only be argued that as a landscape feature they offer a residual evidential clue to the history of the wider site of the former Hazle Manor and this is down to the direction of the hedge in question. This landscape pattern could potentially be included within the layout designs for any housing scheme.

As an outline scheme it is not possible to determine the appearance of the Western boundary as this would be the subject of a reserved matters application. Whilst there would not be a strong visual connection with the farmstead at the former Hazle Manor and it is not felt that the principle and location of the development would harm the setting, the appreciation of the character and appearance in the immediate environs of the farmstead would have a minor impact on the understanding of the farmsteads former use. As such the maintenance of the agrarian character of the western boundary would be a key aspect of any reserved matters application.

4.4 Environmental Health – Noise

4.4.1 Comments are made with regard to potential noise and nuisance issues that might arise from development with it is noted access only under consideration at this stage.

4.4.2 The Council's relevant qualified Officer has commented

'I am in receipt of an updated noise assessment for this site dated October 2018. The report has been updated to reflect policy changes in the NPPF rather than any change in local circumstances and the same noise data has been used. The comments below made with reference to the noise assessment report dated November 2017 still stand'

The report highlights that road traffic noise has the potential to adversely impact on any proposed dwelling on the western boundary adjacent to Dymock Road. There follows a discussion about potential mitigation

We regard the noise assessment as identifying noise risk as low to medium at this site in accordance with Stage 1 of the ProPG guidance.

Should the applicant proceed to a reserved matters application an Acoustic Design Statement is requested in accordance with Stage 2 of the ProPG guidance. We would request this as a condition to the outline planning permission if the appeal is upheld and draw attention to the significant constraints and mitigation required to enable the adjoining permission references 141136 and 182628 to be issued.

The Acoustic Design Statement should set out how the acoustic environment – in this case road traffic noise from Dymock Road, has been taken into account in the design and layout of the site. In short, in as many dwellings as possible the desirable standards set out in BS8233 in internal noise sensitive rooms should be achieved with the windows partially open and of 50dB in external amenity areas (not 55dB as specified in the noise assessment on a greenfield site).'

In summary, whilst there is no in principle objection on noise grounds with regards to factory and traffic noise, if the appeal is upheld the proposed layout and design must take into account and mitigate for the noise constraints at the site which is the road traffic noise on Dymock Road and an Acoustic Design Statement is requested as a condition as above.

Councils Position

4.5 The Local Planning Authority will detail that that if an appeal had not been lodged against non-determination and requested documents provided as requested under section 5(2) of Part 3 of the Town and Country Planning (Development Management Procedure Order (England) Order 2015 and Section 62(3) of the 1990 Act and Regulation 4 of the Town and Country Planning (Applications) regulations 1988 (SI 1988/1812), that they would have refused the application on the following grounds:

4.6 **Principle, scale and impact of development on the built and natural environment**

4.7 The Local Planning Authority will explore the strategic spatial strategy for housing delivery in Herefordshire having regard to policies SS1, SS2, SS3, SS4, SS5, SS6 and SS7 of the Core Strategy. The Council acknowledges that Ledbury is identified as a main focus for new development within the Development Plan that will

accommodate a minimum of 800 new homes as set out in policies LB1 (Development in Ledbury) and LB2 (Land North of Viaduct) of the Core Strategy and within the Ledbury Neighbourhood Development Plan (Made January 2019) that clearly identifies the vision for the town and the key objectives, characteristics and policies that support growth but also acknowledges the pressures faced in delivering the wider range of employment opportunities, services and facilities to support the increasing population.

4.8 The Local Planning Authority will describe the other major housing developments in the area that are either committed or proposed and how they fit with the Local Plan and Neighbourhood Development Plan spatial strategy for Ledbury (Chapter 6 of the Ledbury NDP). The Local Planning Authority will refer to the following major developments:-

- a) The Barratt Homes development for 321 dwellinghouses approved under LPA reference 143116 by Appeal Reference APP/W1850/W/15/3009456 and has 275 units under construction (LPA reference 182628 immediately to the west of the appeal site. The second phase of 46 units is to be deposited as a Reserved Matters application in due course.
- b) The 100 dwellinghouses committed with both an outline planning permission and reserved matters approval upon the Full Pitcher site, off New Street (LPA ref: 141651 & 172501);
- c) The allocated housing site for 625 dwellinghouses north of the viaduct in Ledbury that is the subject of a currently undetermined outline planning application (LPA ref: 171532). The application is programmed to be determined at Planning Committee September 2019
- d) The undetermined application LPA reference 192482 for up to 140 dwellings at land south of Leaddon Way

4.9 In respect of a, b and c above, the Ledbury Neighbourhood Plan confirms these allocated sites and sites with commitments, combined with windfalls, more than meets housing demand for the town during the Plan period.

4.10 The Ledbury Neighbourhood development Plan, expresses, in Chapter 8 (Built Environment) that its objective is to ensure that Ledbury maintains its character as a rural market town, with new development sympathetic in style and form to the immediate surroundings and with future development contributing to the preservation of the overall distinctiveness of the town and its setting. In particular, policies Objective BE2 and policy BE2.1 (Edge of Town transition) are key. The Council would contend that the proposed development fails to adequately demonstrate that the scale and quantum of development proposed is appropriate for its location and environment given the sensitivities of the landscape and the cumulative impact on the natural environment with particular reference to the landscape character and the setting of the Malvern Hills AONB noting the findings of the appeal inspector in relation to the decision on the adjacent site currently under construction at Appeal reference APP/W1850/W/15/3009456, attached as **Annex 4**.

4.11 In addition, the impacts upon the natural environment includes the assessment of the impact upon trees. There is a Tree Preservation Order protecting five individual Oak trees, one group of Oak trees and a woodland. Three of the individual oak trees, which are most likely to be impacted by development are confirmed as veteran and/or ancient trees within the Ancient Tree Inventory. Paragraph 175(C) of the NPPF states that 'development resulting in the loss of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly

exceptional reasons and a suitable compensation strategy exists. The development would introduce conflicts between human residential use, the provision of sports pitches of the site and protection of the trees. The Local Planning Authority are not satisfied that the information provided as part of this application sufficiently demonstrates that development of this site, to the scale proposed is possible without resultant loss or harm to the irreplaceable habitats / trees. Core Strategy policy LD1, Ledbury NPD policies BE2.1 and NE1.1 are also relevant in this regard.

Transportation / sustainable location

- 4.12 The application is in Outline with all matters reserved except for access. Access is defined as:

‘Access’ – 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.

- 4.13 The Core Strategy identifies that the approach of the strategy for movement and transportation is two fold. Firstly, the spatial strategy itself aims to direct the location of significant new development, proposed though the plan to more accessible locations in the county to promotes the use of existing nearby services to facilitate the use of active travel as well as public transport. This principle will apply to all new significant development proposals, of which this is one and policies SS4 and MT1 would apply - these seek to direct the location of development but also seek to minimise the impact of additional demand generated by new development on the transport network, so that journey times reliability, public realm and highway safety in the county do not deteriorate. The CS also identifies the need to work with developers to improve infrastructure. The Ledbury NDP considers the local perspective including their objectives for development.
- 4.14 The Local Planning Authority would contend that the development of the proposed site is considered contrary to key objectives of Herefordshire Core Strategy policies SS4 and MT1, the Ledbury Neighbourhood Development Plan and the National Planning Policy Framework in demonstrating a sustainable location which encourages and promotes the use of sustainable travel modes. The LPA are not satisfied that suggested improvements to pedestrian and cycle accessibility are deliverable, or that they will offer sufficient opportunities to promote walking, cycling and public transport that would make the development acceptable. The limited options and connectivity from the site to the towns services and facilities (via a single access point) do not adequately address the potential patterns of movements of a development of this scale and nature.
- 4.15 In addition, the Local Planning Authority are not satisfied that the single point of entry to the site, though the existing adjacent site residential development that is under construction, serving a development of the scale and nature proposed is of a specification that would be acceptable and that could absorb the traffic impacts of the development.
- 4.16 In line with the guidance contained within the NPPF (chapter 9) and requirements of the Herefordshire Core Strategy policies SS4, MT1 and LD1 and the Ledbury Neighbourhood Development Plan, the LPA will consider whether the proposed development has taken the appropriate opportunities’ to promote sustainable transport modes having particular regard to:

- Pedestrian and cycling provision – connectivity and permeability of site having particular regard to the single point of access through the site to the north and deliverability of the proposed improvements (off site)
 - The distance to services and facilities
 - Access to alternative modes of transport
- 4.17 The proposals will be assessed having regard to the policies of the Ledbury NDP that acknowledges the pressures on the local highway network and seeks to secure improvements to encourage cycling and walking connectivity (Policy TR1.1, TR2)
- 4.18 In addition, the LPA will describe and consider the acceptability of the means of vehicular access to the site to serve both the residential and non-residential elements of the scheme, having regard to the requirements of policies SS4 and MT1 of the CS, policy. Regard will also be had to the impacts of delivering any required transport related features of the proposal against relevant material considerations.
- 4.19 The LPA will be fully reviewing and agree as far is possible a Statement of Common Ground with the Appellants transport consultants as relates to transportation matters.

Amenity

- 4.20 Policy SD1 of the Herefordshire Local Plan – Core Strategy require that development proposals create safe, sustainable, well integrated environments. The Council will consider that the proposed development will impact upon the amenity of those future occupiers living in the recently approved housing development Land South of Leadon Way by Barratts, reference 182628 having regard to the suitability of the road network / pedestrian network. Approved plans are attached as **Annex 2**.
- 4.21 The Council will also consider the impacts of the proposed access having regard to the impacts upon the enjoyment of the public open space features that are intrinsic to the adjacent residential development referenced above and as attached as **Annex 3**.

Public Open Space and Play Provision

- 4.22 In accordance with Herefordshire Core Strategy Policies OS1 and OS2 and associated evidence bases the minimum on-site POS requirements for a development of 420 houses is as follows –

- 0.38ha (3800sqm) of Public Open Space (@ 0.4ha per 1000 population)
- 0.77ha (7700sq m) of Children's Play (@ 0.8ha per 1000 population) of which 0.24 ha (2400sq m) should be formal children's play. (@ 0.25ha per 1000 population)
- 1.54 ha (15400sq m) of Outdoor Sports (@ 1.6ha per 1000 population)

Total 2.72ha

- 4.23 The Proposed Public Open Space as shown on the illustrative framework features a Total area 10.02ha comprising:

- SuDS: total area unknown – these areas cannot be included in the overall quantum but are not shown to be large areas and fall within the areas to be utilised for football.
- POS: total area unknown

- Children's Play (formal) A total of 1400sq m of formal play (MUGA 1000sq m and LEAP 400sq m) is shown on Drawing no. 01-04 Preliminary Levels Layout.
- Outdoor sports : As detailed above the LPA requests the overall 4.88ha is to be used for football however is also on the basis the 4.88ha excludes the area take up for SUDS.

4.24 The applicant has not demonstrated that the policy requirements of 2400sq m for children's formal play can be met on site and will need to do so, however notes the layout plan is only indicative and additional natural play provision could be provided as play trails etc on other areas of Public Open Space.

4.25 The above also demonstrated why the LPA requested indicative layout details and Topographical information to be able to be satisfied the proposals could demonstrate that the scale of development could be accommodated within the site and assess resultant impacts of such delivery if achievable.

Unilateral undertaking

4.26 The Council will provide a compliance statement and undertakes to further discussions with the appellants to address the matter through the Statement of Common ground.

4.27 The Council does not accept transfer of land to its possession. The appellants will have to agree any such transfer with the intended recipients. If the football clubs do not agree and sign up to any land transfer the public and social benefits of the proposal through delivery of 4.88ha of pitch provision falls away.

4.28 A reason for refusal is suggested as no UU was provided with the application however the matter can be resolved with dialogue between the Council, football clubs and appellants before the inquiry.

5. Appellants Grounds of Appeal

5.1 The LPA will consider the appellants claim the presumption in favour of sustainable development set out in the Framework at paragraph 11 applies. The LPA will have regard to relevant appeal decisions and Case Law. It is noted Ledbury benefits from a Neighbourhood Development Plan. The Ledbury Neighbourhood Development Plan was made on 11 January 2019. It now forms part of the Development Plan for Herefordshire.

5.2 NPPF paragraph 12 reaffirms the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted.

5.2 NPPF paragraph 14 states *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 over the previous three years.

6. Conclusions

The LPA on the basis of all information before it would have been minded to REFUSE the application as follows –

- 1. The proposal represents unsustainable unjustified development by virtue of its size, scale and location is unacceptable in that it would fail to have regard to the spatial strategy to deliver proportionate growth for Ledbury as detailed within Core Strategy policies SS2, SS3, LB1 and the Ledbury Neighbourhood Development Plan. The Council contends that further large-scale, unplanned growth in this sensitive edge of town location would conflict with the key aims and objectives of the policies of the Herefordshire Core Strategy and Ledbury Neighbourhood Development Plan and the guidance contained within the National Planning Policy including but not limited to Paragraph 8c, 11, 12, 13, 14, 29, 72, 148 and 150b**
- 2. The Local Planning Authority are not satisfied that in addition to the sites location, the suggested improvements to pedestrian and cycle accessibility are deliverable, or that they will offer sufficient or desirable opportunities to promote walking, cycling and public transport. The limited options and connectivity from the site to the town services and facilities do not adequately address the potential patterns of movements of a development of this scale and nature. As such the proposal is considered contrary to key objectives of Herefordshire Core Strategy policies SS1, SS4 and MT1, the Ledbury Neighbourhood Development Plan and the relevant aims and objectives of the National Planning Policy Framework.**
- 3. The delivery of the proposed site access arrangements has not been confirmed and the strategy is considered contrary to Policy SS4 and MT1 of the Herefordshire Core Strategy in demonstrating a safe and appropriate access arrangement.**
- 4. The individual and cumulative scale of the development hereabouts would have an adverse impact on the character and appearance of the landscape character hereabouts, the setting of Ledbury and setting of the Malvern Hills Area of Outstanding Natural Beauty contrary to Herefordshire Core Strategy policies SS1, SS2, SS6, LD1 and LD1, the Ledbury Neighbourhood Development Plan and relevant aims and objectives of the National Planning Policy Framework.**
- 5. The proposal has not demonstrated the site can accommodate the scale of development proposed without removal or harm or long term risk to a woodland, individual and groups of trees individually and cumulatively covered by Tree Preservation Orders some of which are classified as ancient or veteran trees contrary to Herefordshire Core Strategy policies SS6, LD2 and LD3, the Ledbury Neighbourhood Development Plan and Paragraph 175 of the National Planning Policy Framework.**

6. Having particular regard to the siting and means of access to the site via Land to the south of Leadon way, the proposals would have an adverse impact on the residential amenity of the occupiers of the dwellings permitted and under construction on adjoining land to the North of the site and the enjoyment of public open amenity space intrinsic to that development, contrary to Herefordshire Core Strategy policies SS1, and SD1, the Ledbury Neighbourhood Plan and the relevant aims and objectives of the National Planning Policy Framework, particularly Paragraph 127 and 180
7. 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) and the provisions of the National Planning Policy Framework.

The Inspector is therefore respectfully requested to support the Council's decision to refuse consent and, for the above reasons to **DISMISS** this appeal.

Annexes:

1. Comments from Education
2. Approved plans from LPA reference 182628
3. Approved landscape plans and details from LPA reference 182628
4. Appeal Decision APP/W1850/W/15/3009456