

**Herefordshire Council**

# **STATEMENT OF CASE**

**TOWN AND COUNTRY PLANNING ACT 1990**

**APPEAL UNDER SECTION 78**

**By**

**Mr Ben Greenaway, PO Box 937 on behalf of Mr C Morgan against the decision of the County of Herefordshire District Council - Refusal of Planning Permission for Outline application for the erection of 1 no. self-build dwelling. at Land north of The Forge Garage, Woonton, Hereford, HR3 6QH.**

<b>Grid Reference:</b>	<b>335200, 252279</b>
<b>Planning Inspectorate Reference:</b>	<b>APP/W1850/W/22/3312322</b>
<b>Local Planning Authority Reference:</b>	<b>221169</b>
<b>Date of Statement of Case:</b>	

## **1. Description & Proposal**

The current appeal is made under Section 78 of the Town and Country Planning Act 1990 (as amended) following the decision of Herefordshire Council to refuse outline planning permission for the erection of 1 no. self-build dwelling on land north of The Forge Cottage Woonton, Herefordshire. The Local Planning Authority (LPA) issued its decision on 23th August 2022 under reference P221169/O. The reasons for refusal were as follows:

1. Located outside Woonton's defined settlement boundary, the proposal would not be a suitable location for housing, contrary to Policy RA3 of the Herefordshire Local Plan – Core Strategy, Policy ALM11 of the Almeley Neighbourhood Development Plan 2019 and the National Planning Policy Framework 2021.
2. Development of the site with a dwelling would fail to retain the character, scale, form, layout and setting of the village, contrary to Policy SS1, SD1 and LD1 of the Herefordshire Local Plan – Core Strategy, Policy ALM11 of the Almeley Neighbourhood Development Plan 2019 and the National Planning Policy Framework 2021.
3. Having regard to the location of the nearby telephone box and its potential to obstruct driver visibility, the application fails to demonstrate that the development would deliver a safe access arrangement, contrary to Policy MT1 of the Herefordshire Local Plan – Core Strategy, Policy ALM15 of the Almeley Neighbourhood Development Plan 2019 and the National Planning Policy Framework 2021.
4. The application fails to demonstrate that the proposed means of surface water disposal is appropriate to the hydrological setting of the site and will not increase off-site runoff and adversely impact local drainage, contrary to Policy SD3 of the Herefordshire Local Plan – Core Strategy, Policy ALM11 of the Almeley Neighbourhood Development Plan 2019 and the National Planning Policy Framework 2021.
5. In the absence of sufficient information, the application does not demonstrate a foul water drainage solution which will not result in a likely significant effect on the water quality in the River Wye Special Area of Conservation, contrary to Policies SS1, SS6, SD3, LD2 and SD4 of the Herefordshire Local Plan Core Strategy, Policy ALM11 of the Almeley Neighbourhood Development Plan 2019, the Conservation of Species and Habitats Regulations 2017, as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019' (the 'Habitats Regulations'); the Natural Environment and Rural Communities (NERC) Act 2006, the Wildlife & Countryside Act (1981 amended) and the National Planning Policy Framework 2021.

The Officer Delegated Report submitted with the Council's Questionnaire provides a detailed appraisal of the scheme which lead to the reasons for refusal set out above. This Statement of Case serves to provide an update on the Officer Report and responds to the Statement of Case supplied by the Appellant.

The application was made in outline and the Council's determination was based upon the documents provided with the submission, as set out in the questionnaire. The Appeal submission is supported by the following additional document which, for the avoidance of any doubt, have not previously been seen by the Council:

- Percolation Test (Foul Part H Test & BRE 365 Test) from Wye Environmental products and services LTD (October 2022)

## **2. 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 comprises the Herefordshire Local Plan Core Strategy (CS) and the Almeley Neighbourhood Development Plan (NDP).

The Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended) (the 2012 Regulations) and paragraph 33 of the National Planning Policy Framework requires a review of local plans be undertaken at least every five years in order to determine whether the plan policies and spatial development strategy are in need of updating, and was updated in November 2020. The level of consistency of the policies in the local plan with the NPPF will be taken into account by the Council in deciding any applications. In this case, the policies relevant to the determination of this application have been reviewed and are considered to remain entirely consistent with the NPPF and as such can be afforded significant weight.

The following development plan policies are considered to be most relevant to the matters forming the substance of the appeal:

### **Herefordshire Local Plan – Core Strategy (CS):**

SS1 – Presumption in favour of sustainable development  
 SS4 – Movement and transportation  
 SS6 – Environmental quality and local distinctiveness  
 SS7 – Addressing climate change  
 RA2 – Housing in settlements outside Herefords and the market towns  
 RA3 – Herefordshire’s countryside  
 MT1 – Traffic management, highway safety and promoting active travel  
 LD1 – Landscape and townscape  
 LD2 – Biodiversity and geodiversity  
 SD1 – Sustainable design and energy efficiency  
 SD3 – Sustainable water management and water resources  
 SD4 – Waste water treatment and river water quality

The CS together with relevant supplementary planning documentation can be viewed on the Council’s website by using the following link:-

[https://www.herefordshire.gov.uk/info/200185/local\\_plan/137/adopted\\_core\\_strategy](https://www.herefordshire.gov.uk/info/200185/local_plan/137/adopted_core_strategy)

### **Almeley Neighbourhood Development Plan (NDP):**

ALM1 – Promoting Sustainable Development  
 ALM2 – Maintaining and Protecting the Landscape and its Features  
 ALM5 – Design  
 ALM6 – Sustainable Design  
 ALM11 – Housing Development in Woonton  
 ALM15 – Highway Requirements  
 ALM16 – Sewage and Sewerage Infrastructure

The Almeley NDP together with any relevant supplementary documentation can be viewed on the Council’s website by using the following link:-

### **National Planning Policy Framework (NPPF) – July 2021**

Chapter 2 Achieving sustainable development  
Chapter 6 Building a strong competitive economy  
Chapter 11 Making effective use of land  
Chapter 12 Achieving well-designed places  
Chapter 15 Conserving and enhancing the natural environment

The Council is currently able to demonstrate a five-year housing land supply (6.9 years). As such, the policies of the development plan mentioned above may be considered up-to-date and can be afforded full weight.

### **3. Appraisal**

The central issues in the determination of the appeal are the principle of development; the impact of the development upon the character of the area; highway safety; surface and foul water drainage.

Following last year's survey work, the LPA can confirm that the Housing Land Supply for 2022 is 6.19 years and the 2021 delivery test is 103%, as the result is more than 95% delivery rate, there is no requirement to undertake a Housing Delivery Test action plan for 2022. Effectively this means that the housing policies in the adopted Core Strategy and made Neighbourhood Development Plans can be considered to be up-to-date and given full weight in decision making. Para 11d of the National Planning Policy Framework (NPPF) is not engaged, as the development plan policies are not deemed 'out of date'. As a result paragraph 14 of the NPPF is not engaged.

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

In locational terms Policies SS2 (Delivering new homes) and SS3 (Releasing land for residential development) of the CS clearly set out the need to ensure sufficient housing land delivery across the County. In order to meet the targets of the CS the Council will need to continue to support housing growth by granting planning permissions where developments meet with the policies of the CS, (and, where relevant with policies in other Development Plan Documents and Neighbourhood Development Plans).

Policy RA1 relates to rural housing distribution. A minimum of 5,300 new dwellings will be provided between 2011 and 2031 to contribute to the county's housing needs. New dwellings will be broadly distributed across the county's rural areas on the basis of seven Housing Markets Areas (HMA). This acknowledges that different areas of Herefordshire have different housing needs and requirements.

This site is within the Kington HMA, which is earmarked for a 12% indicative housing growth and Woonton is listed in Figure 4.15 as a settlement where proportionate housing is appropriate.

The CS outlines that to maintain and strengthen locally sustainable communities across Herefordshire, sustainable housing growth will be supported in or adjacent to those settlements outlined under Policy RA2. Woonton is a settlement identified by Policy RA2 of the Core Strategy as being appropriate for proportionate housing growth.

The NDP policy ALM11 identifies a settlement boundary for Woonton where new housing is appropriate. The application site here lies outside this boundary, although it is adjacent on three sides. Policy ALM11 makes no reference to adjacency unlike the CS, and as the most recently adopted document, the NDP has primacy in the decision-making process.

Furthermore, the Appellant's Statement makes reference to the proposed dwelling being categorised as a self-build. With this, the LPA is required to maintain a Self and Custom Build Register of people interested in self and custom building in Herefordshire. However, only limited weight is attributed to this as self-build does not constitute one of the exception criteria to new housing development in the open-countryside and the overarching relevant principles as set out through Paragraph 80 of the NPPF.

Outside of these settlements new housing will be restricted to avoid unsustainable patterns of development. Residential development will therefore be limited to those proposals which meet the criteria listed in Policy RA3. The proposed residential scheme does not appear to meet any of the seven criteria identified above and therefore, it is the LPA's view that the proposal is contrary to CS Policies RA2 and RA3 and NDP ALM11.

Moving onto the second reason for refusal and the proposals impact of the development upon the character of the area, it is acknowledged that the application was made in outline and the drawings submitted show indicative plans only. However, by virtue of the proposal being located outside the identified settlement boundary, a boundary that was set through the neighbourhood planning process where the local community determined which sites have potential to be developed for residential purposes in a manner that retains the village's character, scale, form, layout and setting. It therefore follows that development of the site with housing, irrespective of its design or siting, would not retain the village's local character.

The third reason for refusal relates to highway safety and a telephone box appearing to restrict visibility to the north. Further advice has been sought on the proposed arrangement from the Local Highways Authority. The response if the Lead Engineer is included below as well as within the attached appendices:

*Whilst no plans demonstrating the achievable visibility splays at the access were submitted as part of the planning application, in the absence of any speed survey data, it would be reasonable to request visibility splays of 2m x 25m to the north due to the presence of the junction and likely slow moving vehicles and 2m x 33m to the south. The splays are commensurate with speeds of 20mph and 25mph respectively. It is the local highway authority's belief that these splays could be achieved in the absence of the telephone box which is located within the northern splay.*

*The presence of the telephone box obstructs the splay and therefore visibility for vehicles turning out of the access onto the C1079 is blocked and the view of vehicles turning off the A480 onto the C1079 is significantly hindered. Whilst Manual for Streets is accepting of some obstructions within the visibility splay, for example, narrow tree trunks, wider and tall obstructions such as telephone boxes are not considered to be acceptable.*

*Given that a safe access cannot be achieved the application is contrary to policy MT1 of the Core Strategy and policy ALM15 of the Almeley Neighbourhood Plan which states 'Development proposals should ensure: a) There is safe access onto the adjacent roads....'.*

In the view of the Council, without a drawing to adequately demonstrate the proposed visibility splays the Council would maintain its view that the scheme is unacceptable from a highways perspective and would respectfully request that the third reason for refusal is upheld.

The final two refusal reasons relate to Habitat Regulations Assessment and the proposal drainage strategy.

The site is within the catchment of the River Wye SAC. There is a need to protect the integrity of the SAC, in particular relating to water quality and nutrient levels relating to supporting river habitats. The SAC currently suffers from the effects of point source or diffuse water pollution, and from elevated phosphate levels in particular. Provision of new housing within the catchment would therefore have the potential to cause additional pollution from foul waste that would add to those. The proposed development would therefore give rise to the possibility of likely significant effect on the SAC through pollution from foul waste. Without adequate provision for disposal of such waste the proposed development, in combination, would have the potential to significantly impact upon the SAC's features and to threaten its integrity. The HRA process therefore applies to the proposed development which requires legal and scientific certainty that such impacts can be adequately mitigated.

In determining the original application P221169/O, the application was not supported by an advanced drainage strategy providing the required certainty that mitigation can be secured via the appropriate assessment stage to adequately control the transference of pollutants to the River Wye SAC. As such the proposal failed to protect the integrity of the SAC and does not comply with CS Policy LD2, SD4 and ANDP Policy ALM11.

The appeal submission has provided a drainage report by Wye Environmental dated 8th October 2022. This shows that all foul water will be managed through a property specific private foul water system, and demonstrates that a Package Treatment Plant discharging to a soakaway drainage field within the curtilage of the new dwelling is achievable in this location. All surface water has been demonstrated and proposed to be managed through an appropriately sized Sustainable Drainage System utilising on-site infiltration.

The Council's Ecologist has completed an appraisal of the appeal scheme and has concluded that the proposal would have no likely significant effects on the River Wye SAC and therefore can be screened out of further Habitat Regulations Assessment. The proposal is considered to accord with policies SS1, SS6, SD3, LD2 and SD4 of the Herefordshire Local Plan Core Strategy, Policy ALM11 of the Almeley Neighbourhood Development Plan 2019, the Conservation of Species and Habitats Regulations 2017, as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019' (the 'Habitats Regulations'); the Natural Environment and Rural Communities (NERC) Act 2006, the Wildlife & Countryside Act (1981 amended) and the National Planning Policy Framework 2021.

Therefore at this point in time, subject to an appropriate condition being included if the scheme is allowed the Council does not wish to uphold refusal reasons 4 and 5.

#### **4. Conclusions**

Overall, it is considered that the very limited benefits of the two dwelling scheme would be significantly and demonstrably outweighed by the adverse impacts of the scheme in terms of its conflict with CS and NDP policies detailed above.

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:**

- A. Officers delegated report**
- B. Decision Notice**
- C. Area Engineer comments**
- D. Ecology comments/ completed HRA**
- E. Suggested Planning Conditions**