

Herefordshire Council

STATEMENT OF CASE

TOWN AND COUNTRY PLANNING ACT 1990

APPEAL UNDER SECTION 78

By

**RCA generation on behalf of Platform Housing
Refusal of Planning Permission:
Residential Development for up to 44 dwellings
At Land at Middleton Avenue, Ross on Wye**

Planning Inspectorate Reference:	APP/W1850/W/3260641
Local Planning Authority Reference:	193478
Date of Statement of Case:	24 March 2021

1 Introduction

1.1 This Statement of Case serves to provide an update to the Officer's Delegated Report, which was submitted with the Council's Questionnaire, and supplementary information in respect of the following:

- Herefordshire Local Plan - Core Strategy
- Ross Neighbourhood Development Plan
- Current Housing Land Supply position
- Comments on the Appellant's Statement of Case
- Conclusion

1.2 Planning permission was refused on 9 April 2020, under the Scheme of Delegation to Officers. Permission was refused for the following three reasons, as set out in the decision notice:

1. The provision of a 100% affordable scheme is considered to be contrary to housing policy, H3 of the Hereford Local Plan Core Strategy; the development is not a rural exception scheme and is not an allocated site within the Core Strategy. The number of dwellings on this site known as Stoney Stile/Hawthorne Fields is significantly in excess of the number proposed within the emerging Ross on Wye NDP and as such is noncompliant with the relevant aims and objectives of the emerging Ross on Wye Neighbourhood Development Plan, Hereford Local Plan Core Strategy and relevant aims and objectives of the National Planning Policy Framework (2019).
2. The applicant has not demonstrated compliance with MT1 or Para 109 of the NPPF (in so much that the additional movements will result in residual cumulative impacts on the road network would be severe). As such the proposal would fail to meet the requirements of policy MT1 of the Herefordshire Local Plan – Core Strategy and the requirements of the National Planning Policy Framework (2019).
3. The application has failed to demonstrate that sustainable methods of dealing with surface water generated and the proposal has not adequately demonstrated it mitigates impacts upon drainage. As such the proposal is contrary and unacceptable and contrary to Herefordshire Core Strategy policies SD3 and SD4.

1.3 A draft unilateral undertaking was submitted by the Appellant to the Council on 15 January 2021. The Council will consider the unilateral undertaking and work with the Appellant to provide an agreed unilateral undertaking 10 days before the date of the appeal hearing. The undertaking will be accompanied by a joint Community Infrastructure Levy Compliance Statement that will set out how the financial contributions, affordable housing and open space requirements will comply with the requisite Herefordshire Council Core Strategy policies.

1.4 The application was assessed on the basis of the following drawings:

- Drawing Number 5385-P-01 Site Location Plan:
- Drawing Number 5385-P-05 Existing Site Plan:
- Drawing Number 5385-P-100 rev H Proposed Site Plan
- Drawing Number 5385-P-200 rev A 1Bed Flat House Type GF
- Drawing Number 5385-P-201 rev A 1Bed Flat House Type FF
- Drawing Number 5385-P-202 rev A 2Bed Flat House Type GF
- Drawing Number 5385-P-203 rev A 2Bed Flat House Type FF
- Drawing Number 5385-P-204 rev A 1Bed Bungalow House Type GF
- Drawing Number 5385-P-205 rev A 2Bed Bungalow House Type GF
- Drawing Number 5385-P-206 rev B 2Bed House Type 1 GF
- Drawing Number 5385-P-207 rev B 2Bed House Type 1 FF

Drawing Number 5385-P-208 rev B 2Bed House Type 2 GF
 Drawing Number 5385-P-209 rev B 2Bed House Type 2 FF
 Drawing Number 5385-P-210 rev B 3Bed House Type 1 GF
 Drawing Number 5385-P-211 rev B 3Bed House Type 1 FF
 Drawing Number 5385-P-212 rev B 3Bed House Type 2 GF
 Drawing Number 5385-P-213 rev B 3Bed House Type 2 FF
 Drawing Number 5385-P-214 rev A 4Bed House Type GF
 Drawing Number 5385-P-215 rev A 4Bed House Type FF
 Drawing Number 5385-P-216 rev A Bed House Type 3 GF
 Drawing Number 5385-P-217 rev A 3 Bed House Type 3 FF
 Drawing Number 5385-P-218 2Bed House Type 3 GF
 Drawing Number 5385-P-219 2Bed House Type 3 FF
 Drawing Number 5385-P-700 rev A Plots 1 - 2 Proposed Elevations
 Drawing Number 5385-P-701 rev A Plots 3 - 4 Proposed Elevations
 Drawing Number 5385-P-702 rev A Plot 5 Proposed Elevations
 Drawing Number 5385-P-703 rev B Plots 6 - 7 Proposed Elevations
 Drawing Number 5385-P-704 rev A Plots 8 - 9 Proposed Elevations
 Drawing Number 5385-P-705 rev A Plots 10 - 11 Proposed Elevations
 Drawing Number 5385-P-706 rev A Plots 12 - 13 Proposed Elevations
 Drawing Number 5385-P-707 rev B Plots 14 - 15 Proposed Elevations
 Drawing Number 5385-P-708 rev A Plots 16 - 17 Proposed Elevations
 Drawing Number 5385-P-709 rev C Plots 18 - 20 Proposed Elevations
 Drawing Number 5385-P-710 rev B Plot 21 Proposed Elevations
 Drawing Number 5385-P-711 rev A Plot 22 Proposed Elevations
 Drawing Number 5385-P-712 rev A Plot 23 Proposed Elevations
 Drawing Number 5385-P-713 rev B Plots 24 - 25 Proposed Elevations
 Drawing Number 5385-P-714 rev A Plots 26 - 27 Proposed Elevations
 Drawing Number 5385-P-715 rev A Plots 28 - 29 Proposed Elevations
 Drawing Number 5385-P-716 rev A Plots 30 - 31 Proposed Elevations
 Drawing Number 5385-P-717 rev A Plots 32 - 33 Proposed Elevations
 Drawing Number 5385-P-718 rev A Plots 34 - 35 Proposed Elevations
 Drawing Number 5385-p1000 Rev B – Boundary Treatment Plan
 Drawing Number 5385-P-719 rev A Plot 36 Proposed Elevations
 Drawing Number 5385-P-720 rev A Plot 37-38 Proposed Elevations
 Drawing Number 5385-P-721 rev B Plots 39-40 Proposed Elevations
 Drawing Number 5385-P-722 rev A Plots 41-42 Proposed Elevations
 Drawing Number 5385-P-723 rev A Plots 43-44 Proposed Elevations
 Drawing Number 0100 rev P04 Existing and Proposed levels
 Drawing Number 0101 rev P04 Existing and Proposed levels

2 Herefordshire Local Plan – Core Strategy (CS)

- 2.1 The Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended) (the 2012 Regulations) and paragraph 33 of the National Planning Policy Framework require a review of local plans to 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 then updating, as necessary. The CS was adopted on 15 October 2015 and a review was required to be completed before 15 October 2020. The decision to review the CS was made on 9 November 2020. This means that the CS cannot be considered as being 'up to date' for the purposes of applying the NPPF, and in particular paragraph 11(c).
- 2.2 The level of consistency of the policies in the CS with the NPPF therefore need to be taken into account when affording weight to those policies most important for determining the appeal. In terms of the principle of development the most important policies are: CS policies, RW1.

- 2.3 The CS housing policies are broadly consistent with the aims of the NPPF, in promoting growth in identified locations where there is good access to services and by limiting development in rural areas, unless there are special circumstances. In addition, in this case the CS must be read together with the emerging Ross on Wye Neighbourhood Development Plan, which promotes growth and further refines the assessment of suitable locations at the very local level. The Ross on Wye Neighbourhood Development Plan is currently at referendum stage and the referendum will take place on the 6 May 2021. Some changes have been made since the examination to Policy 5A.3. The first sentence now indicates around 15 dwellings, open space and allotments and a number of the criteria bullet points have been clarified. At this stage with regards to para 48 of the NPPF, significant weight can be applied to the Plan.
- 2.4 Turning to the reasons for refusal, CS policies MT1, SD3, SD4 and H3 are the policies most important for determining the appeal. The requirements of these policies are set out in the Delegated Report. In summary, they seek an appropriate range and mix of housing that contribute to the creation of a balanced and inclusive community, ensuring measures for sustainable water management and ensuring proposals promote active travel patterns and These objectives are consistent with those set out in the NPPF and as a consequence it is considered that they should be afforded significant weight.

3 Ross on Wye Neighbourhood Development Plan (RossNDP)

- 3.1 The Ross on Wye Neighbourhood Development Plan (RNDP) is currently at referendum stage and the referendum will take place on the 6 May 2021. As highlighted, there have been changes to the document since the examination and of relevance to Policy 5A.3. It now states 15 dwellings, open space and allotments as well as some of the criteria bullet points being clarified. At this stage with regards to para 48 of the NPPF, significant weight can be applied to the Plan. The Neighbourhood plan manager's comments on the appeal can be seen within Appendix iv.
- 3.2 The Council now considers the RNDP to be a 'post-examination draft neighbourhood development plan' as defined by Section 70 (2) (aza) of the Town and Country Planning Act 1990 (as amended) (referred to hence forth as 'the act'); and the Local Planning Authority have made the decision to hold a referendum for the RNDP as it meets the basic conditions set out in legislation (namely paragraph 12 (4) of Schedule 4B of the act (appendix 2). The Council therefore considers the plan to have significant weight as a material consideration in decision making for this appeal.

4 Current Housing Land Supply position

- 4.1 The Delegated Report notes the Council's Housing Land Supply deficit published position of 4.05 years at that time and accordingly turns to paragraph 11 of the National Planning Policy Framework (NPPF) in the assessment. Since the determination of the application the Council has published both its annual up to date housing land supply position (as of April 2020), which confirmed the supply to be 3.69 years, and subsequently the January 2021 Addendum, which confirms a supply of 4.22 years. These updated published position details are provided in the Appendices (Appendix II - Annual Position Statement at 1 April 2020 and Appendix III 2020 5 Year Housing Land Supply (2020-2025) January 2021 Addendum). The published housing land supply figure of 4.22 years has been agreed with the Appellant within the Statement of Common Ground (SoCG).
- 4.2 Although the housing land supply figure worsened between April 2018 and April 2020 (4.54 years, 4.05 years and 3.69 years, respectively), the January 2021 Addendum demonstrates that the level of housing completions in 2019-20 have risen, such that the County has provided 106% of its housing requirement over the 3 years to March 31st 2020. This effectively means that, at least for this year, a Housing Delivery Test Action Plan is not required. In addition, the

housing “buffer” required by the Council’s 5 year housing supply assessment has fallen from 20% to 5%. Consequently, the revised housing land supply figure is now 4.22 years, demonstrative of an upward trend.

- 4.3 It is considered that the assessment of the proposed development, as set out in the Delegated Report, remains valid. This is because the Council still has less than a 5 year housing land supply, but more than a 3 year supply.

5 Comments on the Appellants’ Statement of Case

- 5.1 The following comments are made in response to the appellant’s submitted grounds of appeal submitted within their appeal statement under ‘section 2 Main Issues’:

Reason for Refusal 1

- 5.2 The Appellants statement of case seeks to explore whether the appeal scheme for 100% affordable housing is contrary to the Core Strategy (policy H3) and the Emerging Ross NDP.
- 5.3 The local planning authority (LPA) concur that the mix as shown within the appellant’s SofC at 2.2 is the mix for which the application was determined on and the description at 2.3 which confirmed the mix of 17 affordable rented and 27 shared ownership. The LPA do not dispute the fact that the Council’s strategic housing officer has not objected to the proposal. However, the LPA clearly dispute the fact that the site does not align with principles of Policy H3 due to the non-provision of market housing on the site to facilitate an appropriate range of mix of housing within the Ross neighbourhood plan development area.
- 5.4 The National Planning Policy Framework (the Framework) seeks to deliver a sufficient supply of homes, noting that the size, type and tenure of housing needed for different groups should be reflected in planning policy, including affordable housing. Paragraph 62 of the Framework requires that planning policies should specify the type of affordable housing required to meet affordable housing needs and expect it to be met on-site unless off-site provision can be justified and the agreed approach contributes to the objective of creating mixed and balanced communities. Affordable housing comprises housing for sale or rent for those whose needs are not met by the market. The four types of affordable housing are defined in Annexe 2, including b) discounted market sales housing which is sold at a discount of at least 20% below market value, with eligibility having regard to local income and local house prices and it should remain at a discount for future eligible households. This scheme is proposing only to deliver affordable rented and shared ownership.
- 5.5 It is not disputed that strategic housing colleagues have confirmed there is a need for affordable housing within the County and the Ross HMA which covers the villages around Ross Town. However the application site has an allocation for 15 units within the NDP and application purposes a total number of 44 which is a just under 3 times this allocation and is an over concentration of affordable units numbers and goes against the need for balanced communities. As detailed within the submitted delegated report as this site is more than 10 dwellings then Policy H1 of the Core Strategy is applicable and this policy sets the threshold for the delivery of affordable housing at sites of more than 10 dwellings. The site is not a rural exception site (Core Strategy policy H2).
- 5.6 The LPA note the proposal will be offering a range of homes and tenures within the affordable housing objective but without market housing and it is acknowledged the provision of affordable provision (irrelevant of number) would be a ‘benefit’ of the development and was considered in the assessment of the planning application determination and taken into account in the planning balance of material planning considerations.

- 5.7 The interpretation of Policy H3 to achieve delivery of mixed and balanced communities it is important to allow for a fuller range of which includes in the opinion of the Local Planning Authority market housing and ensure that the local area has a balance of local housing stock and offers a real choice to meet housing needs.
- 5.8 However, the council reiterate that Policy H3 requires a range and mix of housing units to be provided to deliver a balanced and inclusive community. The LPA has been supportive of housing schemes in some locations that deliver 100% affordable housing, where supported by evidence that demonstrates a satisfactory mix of tenures provides for an inclusive community.
- 5.9 Whilst policy H3 makes specific reference to larger housing sites of 50 or more dwellings, appeal decisions have suggested that it is equally applicable to smaller sites and as such the scheme is contrary to this policy (see appendix vi). As stated in this decision referencing 'ensuring the social benefits of providing a suitable mix of housing types'.
- 5.10 The LPA have also identified the proposal's conflict with the CS and the RNDP, due to the quantum of development being considerably over the identified circa 15 dwellings identified in the NDP allocated site of Stoney Stile/Hawthorne Fields (appendix 1). Looking at the site at a local level it is clear that the RNDP has not planned for the proposed quantum (44 units) on the site.
- 5.11 In regards to the Emerging NDP, it is noted that within the appellant's statement they acknowledge and identify the site known as Stoney Stile or Hawthorn field as having a capacity of 15 along with open space and allotments. The LPA do not dispute the fact the principle for residential development on the appeal site is acceptable, however dispute the quantum and lack of market housing. The proposed 44 dwellings on the site is over the suggested 15 as per the NDP and this is nearly threefold over. In regards to the comments by the appellant and the Town council relating to 'over development' of the site, as the NDP policy requires the provision of allotments/open space alongside the 15 dwelling then there is a perception the site which has 44 dwelling could be an over development.
- 5.12 Policy SS2 is a minimum delivery aspiration however, notwithstanding the fact this site has an allocated of 15.

Reasons for Refusal 2

- 5.13 Turning to the Appellant's comments to rebut RfR2, the Council's highway officers have had the opportunity to make further comment and this has been incorporated into the reply below.
- 5.14 It is acknowledged and noted that the appellant's highway consultants (CTP) have provided the local highway engineer with a technical note.
- 5.15 It is the view of the LPA that the issue that remained unresolved during the previous stages related to the relative lack of off-road parking for the existing dwellings on Middleton Avenue and the fact that this parking is further supplemented during times of school pick up and drop off as parents utilise Middleton Avenue for this purpose.
- 5.16 It is acknowledged that of the various highways factors that are applicable at the proposed site the majority of these were addressed through the application process. The remaining aspect that remained in dispute related to the access arrangement onto Middleton Avenue (U70713) and how the proposed access interacts with the character and usage of the route.
- 5.17 Middleton Avenue is of a different character to the adjacent road network of Archenfield Road (C1274) and Redhill Road (U70712). In addition Redhill Road, Near to the junction with Middleton Avenue has Ashfield School located near to it. Middleton Avenue is much wider

than the surrounding network and this appears to be a reflection of the lack of off road parking that is available to properties on Middleton Avenue. This is significantly exacerbated during school pick up and drop off times due to the relative narrowness of other routes and the proximity of the school when Middleton Avenue is an attractive opportunity for parents to park when dropping off children. This is an important use of the public highway network in this area and must be accounted for.

- 5.18 The LPA again reiterate and note that the site was identified in the NDP for circa 14 houses and now 15 houses. The access strategy for this quantity would be slightly different to that for the number of dwellings proposed as the intensification of the movements in this point of the network would clearly be less.
- 5.19 During the application process it became clear that there is an 'unofficial' one way system that local people observe to make this situation work with the existing demand. It is the view of the local highway authority that some kind of mitigation or access arrangements that recognised the existing demands on Middleton Avenue. The application was refused prior to reaching an agreement.
- 5.20 As highlighted above since the refusal, Cotswold Transport Planning (CTP) have directly contacted the LHA and set out a mitigation scheme that relied on an informal arrangement. The LHA were not of the opinion that this would appropriately and fully manage the mitigation of this site, but both parties realised that mitigation on the access point could probably be designed, particularly as engineering is essentially problem solving. It seems likely to the LHA that in order to manage this some kind of movement restrictions might be appropriate to develop a robust and deliverable access strategy, however it is not clear what this might be and it is right that this is properly consulted on for the local community to be involved in the solution, as would have been the case for bringing forward a site in line with the NDP parameters.
- 5.21 During these discussions CTP have suggested either that these details could be secured by condition, or a Section 106 where an amount of funding is made available to monitor and then provide future mitigation of the development.
- 5.22 In considering these the S106 option is considered undesirable, it appears to move the issue of making the development acceptable in highways terms onto the LHA for dealing with at a future point, as a result of this the development may not be appropriate and may result in a cumulative impact that could be classed as severe (taking into account the existing uses of, particularly, Middleton Avenue) on day 1, as is the case with the application at the point that it was refused. The application of a condition may be a more appropriate route, however this is not without issue as it effectively defers resolution of the access arrangements to a future consideration under a Discharge of condition.

Reason for Refusal 3

- 5.23 In regards to comments on drainage the local planning authority reiterate that the comments made in all the consultation responses V1.0 (4/11/2019), V2.0 (19/03/2020) and V3.0 (14/4/2020) have been consistent. However, please note that the LPA are willing to work with the Appellant and have encouraged them to submit further infiltration test results to enable drainage officers to offer further advice on whether the concerns of the LPA on the reasons for refusal 3 can be overcome. However, it is important to highlight at this state that if the infiltration tests results were to come back negative, making the proposed surface water strategy unfeasible then our comments regarding the need for attenuation and discharge offsite would still stand. The LPA are not convinced due to the number of proposed dwellings on the site that attenuation could be achieved within the site edged red as submitted.

6 Conclusions

- 6.1 It is the Council's case, as set out in the Delegated Report and updated by this SoC, that the development would result in a development which will not ensure the appropriate range of mix of housing (in particular the lack of market housing) within the Ross on Wye area, has an unacceptable impact on the highway and the required mitigation on the access point has not been achieved, and finally the proposal has not demonstrated that sustainable methods of dealing with surface water generated and impact upon drainage has been successfully mitigated for.
- 6.2 The objective of the NPPF to significantly boost the supply of housing is fully appreciated and due to the consistency of the CS and Ross NDP policies with the NPPF they plan for delivery of the necessary growth. Nevertheless, the NPPF does not change the position that the planning system should be genuinely plan-led. Together the CS and Ross NDP provide a framework for addressing housing needs and the local people of Ross on Wye have utilised the opportunity to shape their surroundings through the progression of the RNDP.
- 6.3 The Inspector is respectfully requested to dismiss this appeal. If, however, permission is granted the conditions that the Council wish to be imposed are provided, without prejudice, in Appendix VI and are as agreed in the SoCG (dated 29th March 2021).

APPENDICES

Appendix I	Ross NDP Appeal site
Appendix II	Annual Position Statement (April 2020)
Appendix III	2020 5 year housing land supply – January 2021 Addendum
Appendix IV	Council's Neighbourhood Plan Manager comments on the SoC
Appendix V	Conditions -
Appendix VI	Appeal decision