

DELEGATED DECISION REPORT

APPLICATION NUMBER

170198

Land at Kirby's Yard, Old Monmouth Road, Whitchurch, Hereford,

CASE OFFICER: Mr C Brace

DATE OF SITE VISIT: 8th March 2017

Relevant Development Plan 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
- RA1 – Rural housing distribution
- RA2 – Herefordshire's villages
- MT1 – Traffic management, highway safety and promoting active travel
- E2 - Redevelopment of existing employment land and buildings
- LD1 – Landscape and townscape
- LD2 – Biodiversity and geodiversity
- LD3 – Green infrastructure
- LD4 – Historic environment and heritage assets
- SD1 – Sustainable design and energy efficiency
- SD2 – Renewable and low carbon energy
- SD3 – Sustainable water management and water resources
- SD4 – Waste water treatment and river water quality

Relevant Site History: 152287/O – Proposed 9 no. two bedroom dwellings, turning, car parking and associated works – Withdrawn

CONSULTATIONS

	Consulted	No Response	No objection	Qualified Comment	Object
Parish Council	√		√		
Transportation	√		√		
Ecologist	√		√	√	
Environmental Health – Contaminated Land Noise	√ √		√ √		
Site Notice	√				
Other Drainage Economic Development	√ √		√	√	

Highways England	√		√	√	
Welsh Water	√		√	√	
Local Member	√		√		

PLANNING OFFICER'S APPRAISAL:

Site description and proposal:

The application comprises existing employment land located within the main built form of Whitchurch, a village identified under local plan policy RA2 as a sustainable location for development in rural Herefordshire. Whitchurch including this site, is located within the Wye Valley AONB, a statutory protected landscape. The A40 adjoins along the East boundary with a local road in turn serving the A40 forming the West boundary. The site adjoins existing residential development, village hall and furniture showroom.

The proposal is outline permission for Proposed 9 no. two bedroom dwellings, turning, car parking and associated works. Access, appearance, layout and scale are under consideration, with landscaping a reserved matter.

Representations:

The Council's Area Engineer has no objection, recommended conditions are attached to the recommendation, below.

The Council's Ecologist has no objection, however the proposal is within the River Wye SAC & SSSI valley and catchment area and so any application will need to be assessed through a Habitat Regulations Assessment screening – the 'likely significant effects' as the site is being connected to existing mains sewage systems is through the construction process and potential for a short term impact on wildlife and spills of materials and through machinery on site. To mitigate this and enable me to conclude through a basic HRA screening that this development will offer NO unmitigated 'likely significant effects' on the River Wye SAC, numerous details are required, if outline permission is granted, as part of a Reserved Matters application. This consists of a Construction Environmental Management Plan, Detailed landscaping plan, Biodiversity enhancements and Lighting details.

The Council's Environmental Health Officer, Contaminated Land has no objection requesting conditions if approval is granted.

The Council's Strategic Housing Officer has no comment as the proposal falls below the threshold for affordable housing to be required.

The Council's Economic Development Manager has no objection on the basis adequate marketing of the site is evidenced.

The Council's Drainage Officers: Subject to the Exception Test being passed, consider that the development is acceptable from a flood risk perspective. Conditions are recommended and the Applicant is required to issue an Emergency Plan for approval by Herefordshire Council.

The Council's Emergency Planning Team note that the major change is to section 5.0 Environment Agency Flood Warnings which now includes information on a Flood Alarm that will be installed. This will provide a useful trigger to the occupants for commencing any evacuation of the site. As mentioned in the plan the site does just sit outside of the Environment Agency (EA) areas however it would still be beneficial for residents to sign up to the Flood Warning Service as they will receive Flood Alerts that are relevant and provide an initial heads up. This information can still be included and the combination of the two systems should work well to mitigate the risk to both the site and the evacuation route.

They still have concerns over the safe access and egress routes directing residents through a flood zone however appreciate that the only alternative direction would send occupiers onto the A40, although there is a pedestrian footpath available. However, the plan contains sufficient detail to allow residents to make their own assessment based on each unique flood event.

Highways England has no objection providing a condition is imposed requiring their approval of noise reduction measures along the boundary of the A40.

Welsh Water comments the proposed development is in an area where there are water supply problems for which there are no improvements planned within our current Capital Investment Programme AMP6 (years 2015 to 2020). However, this objection may be overcome and the applicant is advised to contact Welsh Water to discuss. The developer may be required to contribute, under Sections 40 - 41 of the Water Industry Act 1991, towards the provision of new off-site and/or on-site water mains and associated infrastructure. Requested conditions are attached to the recommendation, below.

Local Member updated by email on 3/5/2017, delegated approval agreed.

Pre-application discussion:

Under reference 140581 and following the withdrawal of application reference 152287. The applicant has been and is fully aware of identified constraints and requirement loss of employment land needs justifying through adequate marketing.

Constraints:

Impact on the character and appearance of an AONB
Loss of employment land
Flood Zone 3
Ecology and protected species
Setting of a listed building

Appraisal:

Legal and Policy Framework Assessment

The legal framework for AONBs in England and Wales is provided by the Countryside and Rights of Way Act (CROW) 2000 which reaffirms the primary purpose of AONBs: to conserve

and enhance natural beauty, and sets out responsibilities for their management. In particular relevance to the appeal are the following section –

Section 82 reaffirms the primary purpose of AONBs: to conserve and enhance natural beauty.

Section 84 confirms the powers of local authorities to take appropriate action to conserve and enhance the natural beauty of AONBs.

Section 85 places a duty on all public bodies and statutory undertakers to ‘have regard’ to the ‘purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty.

Sections 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 state the following:-

“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.”

Housing Land Supply

The local authority is currently failing to provide a 5 year Housing Land Supply, plus a 20% buffer, which must be met by all local authorities in accordance with paragraph 47 of the NPPF. Paragraph 49 of the NPPF states that *‘relevant policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites’*.

Where the existence of a five year land supply cannot be demonstrated, there is presumption in favour of granting planning permission for new sustainable housing unless the development can be shown to cause demonstrable harm to other factors that outweigh the need for new housing.

Paragraph 14 of the NPPF states that there *“is a presumption in favour of sustainable development and for decision taking this means... where the development plan is absent, silent or relevant policies are out of date, granting planning permission unless 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... or specific policies in this Framework indicate development should be restricted.”*

In reaching a decision upon new housing the housing land supply position will need to be balanced against other factors in the development plan and/or NPPF which could result in the refusal of planning permission. This site is therefore assessed and considered on its suitability as being sustainable in regards its location and material constraints and considerations.

This position has been crystalised following a recent Supreme Court Decision and the implications of this position following the *Suffolk Coastal DC v Hopkins Homes & SSCLG* and

Richborough Estates v Cheshire East BC [2017] UKSC 37 On appeals from: [2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and [2015] EWHC 410 (Admin).

The Supreme Court has delivered its verdict on the application and meaning concerning paragraphs 14 and 49 of the National Planning Policy Framework (NPPF), overturning the Court of Appeal's interpretation of the phrase "relevant policies for the supply of housing". The legal case brought the two together: Hopkins Homes v Suffolk Coastal District Council and Richborough Estates v Cheshire East Borough Council.

The Court of Appeal's judgment broadened the definition of the "relevant policies for the supply of housing" detail in paragraph 49 of the NPPF so that it can be taken to refer to all policies that create or constrain land for housing development, such as green belt designation. Therefore, where a local authority cannot demonstrate an up-to-date five-year land supply, these relevant policies were to be considered as not up to date.

The Supreme Court has considered and found that the Court of Appeal's interpretation of what "*relevant policies for the supply of housing*" means was wrong. It said that the "straightforward interpretation is that these words refer to the policies by which acceptable housing sites are to be identified and the five-years supply target is to be achieved. That is the narrow view".

"In neither case is there any reason to treat the shortfall in the particular policies as rendering out of date other parts of the plan which serve a different purpose."

At practical level, if as an example heritage or landscape policies direct you to refuse, then that assessment and decision is not contrary to the requirements of the NPPF.

According to the Supreme Court, the important question is not how to define individual policies, but whether the result is a five-year supply in accordance with the objectives set by paragraph 47.

"If there is a failure in that respect, it matters not whether the failure is because of the inadequacies of the policies specifically concerned with housing provision, or because of the over-restrictive nature of other non-housing policies. The shortfall is enough to trigger the operation of the second part of paragraph 14."

Like the Court of Appeal, the Supreme Court said it is paragraph 14, not paragraph 49, that provides the "*substantive advice by reference to which the development plan policies and other material considerations relevant to the application are expected to be assessed*".

This means permission should be granted unless adverse impacts would significantly and demonstrable outweigh the benefits when assessed against the NPPF's policies taken as a whole. This would also apply where specific policies in the NPPF indicate development should be restricted.

Summarised, the Supreme Court confirmed –

- Primacy of the development plan
- NPPF no more than "guidance"
- Narrow class of paragraph 49 deemed out-of-date policies

- Planning judgment is for the decision-taker
- If housing supply policies not up-to-date plan retains statutory force but focus shifts to other material considerations
- Policies can be out-of-date if requirements are not up-to-date or are not being met
- Futility of relying on sites that have no realistic prospects of delivery
- Weight to be judged against the needs for development
- Rigid enforcement of restrictive policies may prevent 5YS and the object of the NPPF for delivery

The Council considers that the site is locationally sustainable as it is within the main built core of a settlement identified under Core Strategy RA2 as a suitable location for residential development. However, sustainability is more than a matter of location. The NPPF states that good design is a key aspect of sustainable development and indivisible from good planning. It is not just a matter of aesthetics. Amongst other things, it says that decisions should aim to ensure that developments function well and add to the overall quality of the area; and optimise the potential of the site to accommodate development. Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

The National Planning Policy Framework (NPPF) has 'sustainable development' central to planning's remit and objectives. The NPPF also seeks positive improvements in the quality of the built, natural and historic environment and in regards people's quality of life.

The National Planning Policy Framework is a material consideration in the assessment of this application. The following sections are considered particularly relevant:

- Introduction - Achieving sustainable development
- Section 7 - Requiring good design
- Section 11 - Conserving and enhancing the natural environment

Paragraph 14 of the Framework sets out the presumption in favour of sustainable development. For decision-taking this means that where the development plan is absent, silent or relevant policies are out of date, granting permission unless any adverse impact of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole, or specific policies in the Framework indicate that development should be restricted.

The NPPF sets out 12 core land-use planning principles in paragraph 17 which should underpin decision taking. These include the principle to '*proactively drive and support sustainable economic development to deliver homes, businesses and industrial units, infrastructure and thriving places that the country needs*'.

Policies specific to protected landscapes (including AONBs) are detailed at paragraphs 115 and 116. Paragraph 115 states –

Great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty. The conservation of wildlife and cultural heritage are important considerations in all these areas, and should be given great weight in National Parks and the Broads. Paragraph 116 relates to major development

If a proposal is considered to represent sustainable development, then the decision taker is required by paragraph 14 of the NPPF and Core Strategy policy SS1 to engage the positive presumption in favour of the proposal. The Government's definition of sustainable development is considered to be the NPPF in its entirety, though a concise list of core planning principles is offered at paragraph 17. In terms of residential development, bullet points 4, 5 and 7 of this paragraph to be most relevant in requiring that planning and also where the application is deficient or does not comply:

4. always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings;

5. takes account of the different roles and character of different areas, recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it;

7. contribute to conserving and enhancing the natural environment and reducing pollution

Section 11 of the NPPF, titled 'Conserving and enhancing the natural environment' in its opening paragraph 109, sets out *The planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes.*

Core Strategy policy SS6 describes proposals *should conserve and enhance those environmental assets that contribute towards the county's distinctiveness, in particular its settlement pattern, landscape, biodiversity and heritage assets and especially those with specific environmental designations.*

Policy SS6 then states in its list of criteria states –

Development proposals should be shaped through an integrated approach and based upon sufficient information to determine the effect upon landscape, townscape and local distinctiveness, especially in Areas of Outstanding Natural Beauty.

Core Strategy policy LD1 criteria requires new development must achieve the following:

- demonstrate that character of the landscape and townscape has positively influenced the design, scale, nature and site selection, including protection and enhancement of the setting of settlements and designated areas;
- conserve and enhance the natural, historic and scenic beauty of important landscapes and features, including Areas of Outstanding Natural Beauty, through the protection of the area's character and by enabling appropriate uses, design and management

Policy RA2 states housing proposals will be permitted in settlements such as Whitchurch where the following criteria are met:

1. Their design and layout should reflect the size, role and function of each settlement and be located within or adjacent to the main built up area;

2. Their locations make best and full use of suitable brownfield sites wherever possible;
3. They result in the development of high quality, sustainable schemes which are appropriate to their context and make a positive contribution to the surrounding environment and its landscape setting; and
4. They result in the delivery of schemes that generate the size, type, tenure and range of housing that is required in particular settlements, reflecting local demand.

The Wye Valley AONB Management Plan is a material consideration in the assessment of this application. The Wye Valley AONB Management Plan 2015 – 2020 sets out activities and pressures in the AONB, including those in relation to housing and the built environment. Pressures on the AONB include development located in places that are dependent on car use and unsympathetic and standardised designs of much modern housing. Positive impacts that new development has on the AONB are places for people to live and work in or near the spectacular landscapes of the AONB, facilitating appreciation of special qualities of the AONB. Negative impacts that development has on the AONB are poor design of buildings and curtilages that can detract from landscape character, e.g. urbanising rural areas. The following policies are particularly applicable to this assessment –

WV-D2 – Encourage and support high standards of design, materials, energy efficiency, drainage and landscaping in all developments, including Permitted Development, to ensure greater sustainability and that they complement and enhance the local landscape character and distinctiveness including scale and setting and minimise the impact on the natural environment. *[see also WV-L3, WV-D4, WV-U1, WV-U3, WV-T2, WV-S4 and WV-P5]*

WV-D3 – Resist inappropriate development which will create a persistent and dominant feature out of keeping with the landscape of the AONB and/or if it damages Special Qualities in the AONB, including through high levels of noise and/or light pollution or any SAC, SPA or Ramsar site or other sites designated as environmentally important. *[see also WV-L3, WV-F3, WV-U1, WV-U3, WV-T2 and WV-S4]*

Assessment of Proposal

As advised previously to the applicant through their agent, there are, notwithstanding the sustainability of the location and Council's housing land supply position, three significant constraints that must be addressed for any residential development to be approved. These are all considered to outweigh the housing land supply position within the planning balance unless adequately addressed and are –

- Justification for loss of employment land
- Noise, from A40
- Fluvial flood risk

Loss of employment land

The supplied evidence of the marketing of the site for employment use is appropriate and the outcomes of subsequent enquiries demonstrates no demand for the site. Whilst it would lead to a loss of employment land the site is somewhat constrained by the neighbouring housing

which may impact on potential end uses. It is noted that there is other employment land supply in the vicinity both across the A40 and at Wyastone Business Park, both sites are within a couple of minutes car journey. As such It would be difficult to demonstrate that the loss of the site for employment use would have a negative impact in the overall strategic supply of employment land, given the relatively small size of the site and its peripheral location to the south east of the county and away from the major urban centres such as Ross and Hereford.

Amenity

The Council's Environmental Health Officer, on the provision of amended plans and further details has no objection on the basis of noise and the amenity impact upon future occupiers of the proposed dwellings. As such it is considered that issue is addressed.

Flood risk

Review of the Environment Agency's Flood Map for Planning indicates that the site is located within the high risk Flood Zone 3: Flood Zone 3 comprises land where the annual probability of flooding from fluvial sources is greater than 1% (1 in 100). The source of this flood risk is from the ordinary watercourse located approx. 27m to the northwest of the proposed development site.

The proposed dwellings will be raised to a minimum finished floor level of 30.09m AOD which provides a freeboard of 0.60m above the 1 in 100 year (+35% CC) water level of 29.49m AOD. Owing to the risk of culvert blockage or collapse, Drainage advisors concur with the proposal to utilise the 1 in 100 + 35% climate change flood level of 29.49m AOD. Based on use of this level, the development would require compensatory flood storage. However as the model is considered to overestimate flow in the culvert, it is considered that the flood extent is lower and so compensatory flood storage is not needed.

Safe access and egress has been discussed and accepted by the Emergency Planning Team on the basis of the Flood Warning and Escape Plan provided on 30/6/2017.

The FRA provided demonstrates that Flood Risk will not be increased elsewhere. The Local Planning Authority must therefore confirm that this development provides wider sustainability benefits to the community that outweigh the flood risk.

For the Exception Test to be passed, the site-specific FRA has to demonstrate:

- It is not possible for the development to be located on land with a lower probability of flooding;
- The development provides wider sustainability benefits to the community that outweigh flood risks informed by the forthcoming SFRA, and;
- The development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.

The proposal utilises a brownfield site within the village which adjoins existing residential development and services. The proposal will provide dwellings, upgrade the character and

appearance of the village and wider AONB. These benefits combined with the demonstration the proposal will not increase flood risk elsewhere and ability to mitigate on site surface and foul water leads to the recommendation the proposal be approved and exception test passed.

Other matters

Grade II listed Norton House and its listed outbuilding are located opposite the site. Although there is at present a limited connection between the two, it is considered the proposal will enhance the wider setting of these listed buildings through securing a well designed development utilising appropriate materials. This will be an improvement over the existing situation. As such policies SS6, LD1 and LD4 are satisfied along with the relevant heritage aims and objectives of the NPPF.

Summary

On the basis of the above approval is recommended. The proposal provides a sustainable residential development utilising a brownfield site, delivering housing and upgrading the character and appearance of the area. The proposal is considered to satisfy relevant local and national policies as detailed.

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

CONDITIONS & REASONS:

1. C02
2. C03
3. C04
4. C05
5. C06 – plans
6. No development shall take place until a potable water scheme to serve the site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall demonstrate that the existing water supply network can suitably accommodate the proposed development site. If necessary a scheme to upgrade the existing public water supply network in order to accommodate the site shall be delivered prior to the occupation of any building. Thereafter, the agreed scheme shall be constructed in full and remain in perpetuity.

Reason: To ensure the site is served by a suitable potable water supply.

7. No surface water and/or land drainage shall be allowed to connect directly or indirectly with the public sewerage network

Reason: To prevent hydraulic overloading of the public sewerage system, to protect the health and safety of existing residents and ensure no pollution of or detriment to the environment

8. CAB 60M 2.4 south, 33m 2.4 north
9. CAE
10. CAH
11. CAP
12. CAL
13. CAJ
14. CAS
15. CAT
16. CAZ
17. CB2
18. CE6

19. The development hereby approved shall not be implemented until the proposed scheme of noise reduction measures, relating to the boundary of the site with the A40, have been submitted to and approved in writing by the local planning authority in agreement with Highways England. The scheme shall comply with the requirements of DfT Circular 02/2013 Annex A: Special Types of Development, Noise Fences, Screens etc. The scheme approved by the Local Planning Authority shall be implemented and completed in full prior to the first occupation of the development and thereafter be maintained as such.

Reason: To ensure that the A40 trunk road continues to serve its purpose as part of a national system of routes for through traffic in accordance with Section 10(2) of the Highways Act 1980, in the interests of the users of the development with regard to noise pollution in relation to the close proximity of the A40 trunk road and to comply with Herefordshire Core Strategy policies SS4 and MT1 and relevant aims and objectives of the National Planning Policy Framework.

20. Prior to the commencement of the development hereby permitted, the following written details and plans shall be submitted to the Local Planning Authority for written approval –

- Provision of a detailed drainage strategy that demonstrates that opportunities for the use of SUDS features have been maximised, where possible, including use of infiltration techniques and on-ground conveyance and storage features;
- A detailed surface water drainage strategy with supporting calculations that demonstrates there will be no surface water flooding up to the 1 in 30 year event, and no increased risk of flooding as a result of development between the 1 in 1 year event and up to the 1 in 100 year event and allowing for the potential effects of climate change;
- Evidence that the Applicant is providing sufficient on-site attenuation storage to ensure that site-generated surface water runoff is controlled and limited to agreed discharge rates for all storm events up to and including the 1 in 100 year rainfall event, with an appropriate increase in rainfall intensity to allow for the effects of future climate change;

- Evidence that the Applicant has sought and agreed permissions to discharge foul water runoff from the site with the relevant authorities;
- Demonstration of the management of surface water during extreme events that overwhelm the surface water drainage system and/or occur as a result of blockage;
- Demonstration that appropriate pollution control measures are in place prior to discharge.
- Confirmation of the proposed authority responsible for the adoption and maintenance of the proposed drainage systems.

The development shall be carried out in strict accordance with the approved details and thereafter be maintained as such. The above must be implemented and functioning prior to the first occupation of any dwelling hereby permitted.

Reason: To ensure adequate drainage arrangements are in place, to minimise the impact of the development on adjoining land and property and to comply with Herefordshire Core Strategy policies SS1, SS7, SD1, SD2 and SD3 and the relevant aims and objectives of the National Planning Policy Framework.

Informatives

1. Pro active Reason 1
2. I11
3. I09
4. I45
5. I08
6. I05
7. I47
8. I35
9. The following are required to support any future Reserved Matters application following this Outline Planning Permission or to inform a future Full application superseding this permission –
 - Construction Environmental Management Plan – this should include site management and construction risk avoidance measures, a detailed retained tree and hedgerow protection plan and arboricultural working methods (BS5837:2012), ecological risk avoidance measures (based on existing ecological report) and confirmation from the statutory undertaker that connection to the mains sewer system has

been formally accepted. I note the site is indicated as potentially contaminated land due to historic commercial use and this potential risk should be investigated and covered within the CEMP)

- Detailed landscaping plan – all tree and shrub planting should utilise native species, where possible of stock plants of local or UK provenance. Details should be provided of planting locations, species, tree stock specifications, planting and protection methodology and a 10 year establishment and management plan.
- Biodiversity enhancements – As outlined in NPPF guidance all developments should show how they will enhance the local biodiversity value of an area. Given the proximity to the A40(T) all proposed enhancements should be carefully and appropriately sited. I would request that a detailed plan and enhancement specifications is supplied for approval and should include provision for improving bat roosting, bird nesting and insect/pollinator homes. This detail could be included within the required detailed landscaping plan.
- Lighting – The site falls within the Wye Valley AONB and as per DEFRA/NPPF 'Dark Skies' Guidance (2013) no new external lighting should increase illumination levels beyond those already existing on site. This is in order to protect the local 'dark skies' and to ensure no additional illumination that could impact upon nocturnal species.
- The Flood Warning and Escape Plan, as submitted on 30th June 2017 should be provided to every owner/ occupier of each dwelling and be available to any subsequent owner/ occupiers.

A handwritten signature in black ink, appearing to be 'CJ' or similar, written in a cursive style.

Signed:

Dated: 11/7/2017

TEAM LEADER'S COMMENTS:

DECISION:

PERMIT

☒

REFUSE

☐

Signed:



..... Dated: 17 July 2017