



Appellant's Statement of Case

Flow House, Land to the north of Sheepcotts Court

Ullingswick, Herefordshire

HR1 3JQ



ERECTION OF A DWELLING OF OUTSTANDING DESIGN AND ASSOCIATED WORKS

LPA ref: P221177/F

Our ref: PP 19029

Client	Flow House
Project	Erection of one dwelling
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Our Reference	PP 19029
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1. Introduction

1.1 The appeal

1.1.1 This Statement of Case is prepared by Tompkins Thomas Planning on behalf of Mr & Mrs Perry (the Appellants) in respect of a Section 78 planning appeal against Herefordshire Council's (the Council) decision to refuse an application for planning permission under reference P221177/F for a development described as follows:

Erection of 1 no. dwelling of outstanding design and associated works including access, landscaping, outbuildings, infrastructure, lake creation and other engineering works

1.1.2 A valid application seeking full planning permission was submitted to the Council on 6th April 2022. The Planning and Regulatory Committee resolved to refuse the application for two reasons on 10th February 2023. A Decision Notice confirming the refusal is dated 14th February 2023.

1.1.3 The two reasons for refusal are set out on the Decision Notice but, in summary are as follows.

1) The design is not outstanding or in keeping with local character which causes harm to the appearance of the area whereby the proposal is unjustified residential development in the countryside.

2) The proposal will result in the loss of good to moderate agricultural land.

1.1.4 The Appellants contend that the reasons for refusal are untenable and thus makes this appeal in accordance with the *Planning Appeals Procedural Guidance – England (June 2023)* and in particular the advice contained within appendices D and J.

1.1.5 Having regard to *Article 35(1)(b) of the Town and Country Planning (Development Management Procedure) (England) Order 2015*, the Appellants reasonably assume that the Decision Notice clearly and precisely explains the Council's reasons for refusing planning permission and that it lists all planning policies which it alleges conflict with.

1.2 The Site and it's context

1.2.1 The appeal site is described in full in the Planning Statement submitted to Herefordshire Council

and which accompanies this appeal.

1.2.2 In brief, the site covers an area of 12.34ha comprising fields in pastoral use, a small woodland block, and an ornamental pond. The Site's topography rises 34m from its southeast corner to the northwest. The Site boundaries and inter-site field boundaries are mainly mature hedgerow of varying quality with occasional field oaks. The Site's boundary with Sheepcotts Court comprises a brown concrete retaining wall with wire fence atop, giving way to a post and rail fence along its final part.

1.2.3 The site is located 1.2km north-east of Ullingswick, a village which is identified for proportional residential growth by The Herefordshire Local Plan – Core Strategy. A small cluster of development, including the Grade II* listed St Luke's Church, is 70 metres to the east of the site at its southern extent.

1.3 Designations

1.3.1 The site is not directly affected by national or local environmental designations.

1.3.2 St Luke's Church is Grade II* listed and is 250 metres to the south-east of the closest part of the site, but 750 metres to the south-east of the location of the proposed dwelling.

1.3.3 Moreton Jefferies Church is also Grade II* listed and is 1.7 km to the south-east of the site and 2.3km from the site of the proposed dwelling.

1.3.4 The following Grade II listed buildings are within the study area:

- Barn and Hop Kiln North of Upper Court (Grade II) – 290 metres to the south-east of the closest part of the Site;
- Upper Court (Grade II) – 310 metres to the south-east;
- Lower Court (Grade II) – 400 metres to the south-east; and
- Barn East of Lower Court (Grade II) – 420 metres to the south-east.

1.3.5 Ullingswick Conservation Area¹ is 570 metres to the south-east of the location of the proposed dwelling and 70 metres east of the closest part of the site. The Conservation Area is the historic

¹ Map identifying Conservation Area at Appendix 1

core of the village and comprises a scattered group of farm buildings and other buildings having a distinctly rural setting. The Conservation Area does not benefit from a formal appraisal.

1.3.6 The River Lugg SSSI (and part of the River Wye SAC) is 5.5km northwest. There are also two Local Wildlife Sites within 2km of the site: Woodlands above Ullingswick (SO55/16) is c. 70 metres to the north-east of the site at its closest point and 'Jordan's Coppice (SO65/02) is c 1.07 kilometres to the east.

1.3.7 The Three Rivers Ride bridleway runs through the site along the inside of its southern boundary. The bridleway has reference FP UW1 at this point. There are other footpaths near to the site², many of which provide access to the Three Rivers Ride, as follows:

- FP LC11: Running along the northern edge of Red Hill Coppice, 220m north-east of the site boundary at its closest point, but screened by the intervening woodland;
- FP UW3: Running between the C1115 and Sheepcotts Court, 70m north-west of the site boundary at its closest point;
- FP UW14: Running between the Three Rivers Ride south of Broxash Wood and Ullingswick, 290m east of the site boundary at its closest point;
- FP (and bridleway) UW12: Running north along a made track between the Three Rivers Ride and Ullingswick, 30m north east of the south-eastern corner of the site at its closest point; and
- FP UW8, running between the lanes to the south of the site, 120m south east of the site boundary at its closest point.

1.3.8 The site is in Flood Zone 1 according to Environment Agency mapping, the development of which is preferred by planning policy for its lowest probability of fluvial flooding. The site is not known to suffer from pluvial flooding.

1.4 Planning History

1.4.1 A similar application, reference 202412/F³, was refused on 4th October 2021 for one reason;

² Map showing the site in the context of the PROW network (Appendix 2)

³ Decision Notice for 202412/F (Appendix 3)

that the development was not of outstanding design – an analogous reason to RfR1 of the Decision Notice to which this appeal relates.

1.4.2 The planning committee’s comments were more nuanced than the wording used in the RfR. That application was supported by detailed comments from Design:Midlands which advised that the proposals were *capable* of achieving outstanding design if some amendments were made. The suggested amendments were made to the design and the application was submitted on this basis and officers were satisfied that the changes made to the design delivered outstanding design. However, three members of the committee expressly stated that if they were to support the scheme, confirmation from Design:Midlands that the proposal was outstanding design was required. It was less that members had formed a view that the proposals were not outstanding design, more that they wanted those qualified in such matters to confirm the matter.

1.4.3 There are several applications at nearby Sheepcotts Court, relating to the renovation of the dwelling and outbuildings and landscaping of its grounds. These are summarised at the table following paragraph 2.4.4 of the Planning Statement but are of no relevance to the appeal.

1.5 Pre-application Engagement

1.5.1 The Appellants engaged the Council and Design:Midlands in their pre-application advice and Design Review Panel services respectively. These processes are described fully in chapter 2.5 of the Planning Statement. In brief summary, the Appellants first engaged the Council before even a design was drafted and worked with them over the course of more than three years to design a scheme which the Appellants and Council Officers agreed was of outstanding design.

1.5.2 Subsequent to the refusal of the original application and before the submission of the application to which this appeal relates, the Appellants returned to Design:Midlands to review the final design. The design has not changed since it was deposited for the original planning application.

1.5.3 Design:Midlands confirmed in writing that the proposal is outstanding design and a copy of their letter is at Appendix 4. NPPF Paragraph 133 requires that LPA’s have regard to the outcome from recommendations made by design review panels.

1.6 The determination of the application to which the appeal relates

- 1.6.1 The application was determined by the Planning and Regulatory Committee, the minutes for which are at Appendix 5. The minutes do not provide a detailed transcript of the meeting. The Appellants think it pertinent to note that two members of the Planning Committee expressed the view that they should not be having regard for the opinion of Design: Midlands, and should be free to arrive at their own decision. One of the members to express this view had, in considering the original planning application, expressly requested that the definitive view of Design:Midlands be sought to allow the committee to reach an informed decision. The Appellant regards the approach adopted by certain members of the committee to be contradictory.

2. The Appeal Proposal

2.1 Overview

2.1.1 The appeal proposal is for the erection of a dwelling of outstanding design and accompanying works, including extensive landscaping, access, and drainage.

2.1.2 The accompanying Design Statement by Seymour-Smith Architects provides a thorough description of the development proposal and explains how it responds to the local context. It also explains the evolution of the scheme design including how the landscape has influenced the proposal. The landscape baseline and influences are described further in the Landscape and Visual Appraisal. This chapter provides an overview of the proposal.

2.2 Access

2.2.1 The proposal would utilise the exiting access which serves Sheepcotts Court and which connects with the highway network at the U66005. A new access into the Site would be taken from the private road, through an existing hedgerow.

2.3 Landscaping and Development Strategy

2.3.1 The Site is divisible into three zones. Zone 3 is the northern part of the arable field, within which the dwelling would be constructed. It is divisible from the southern part of the field (Zone 2) by a historic field boundary which these proposals intend to reinstate. Zone 2 is the part of the site which, historically, was an orchard. Zone 1 is physically separated from the arable field and has a more formal character largely given the presence of an ornamental lake and its improved grassland.

2.3.2 The proposals build on the formality of Zone 1 and create a parkland character for this area. The existing lake will be retained, whilst a boat house will be erected, principally as a house to accommodate bats. New parkland trees will be introduced, and an avenue of lime trees will line the access route.

2.3.3 The proposals include the reinstatement of the orchard in Zone 2 over an area of c. 4.1 hectares. Given that perry is characteristic historically and with the Appellants' surname, a Perry Orchard is proposed. The reinstatement of the orchard is characteristic of the area and would bring with it substantial ecological benefits as quantified in the Ecology Enhancement

Report.

- 2.3.4 Zone 3 has a traditional meadow character such that the dwelling will appear to be at one with and rise out of its natural landscape.
- 2.3.5 The proposed access road meanders through the site and has a route which is predicated on the flowing topography of the hillside and the flow of water downhill. The exact route is influenced by the contours of the site such that the access road works with its landscape. In Zone 1, views of the dwelling would be largely screened by existing vegetation, as well as the orchard to be planted in Zone 2. Moving through the orchard, the dwelling would be occasionally revealed in glimpses stolen through aligned gaps in the trees. When one reaches the edge of Zone 3, the dwelling would be revealed in totality for the first time, rising out of its meadowed setting.
- 2.3.6 The theme of water is a central component of the landscaping proposals. Rainwater run-off is directed to an ornamental koi carp pool to the north of the dwelling with outfall being held in a balancing pond in front of the south elevation of the dwelling. The balancing pond would subsequently discharge via a rill to a lake in the south-east corner of the meadow (Zone 3) which, in turn, would feed into an existing ditch along the site's eastern boundary before discharging to a lake to be created in the southeast corner of the orchard (Zone 2). Accommodation for horseshoe bats would be provided at this pond in the form of a decorative cider mill and a lakeside seating area with interpretation boards provided for users of the Three Rivers Ride which is to the south. The ponds would create habitats for amphibians including great crested newts.

2.4 Architecture and the site of the dwelling

- 2.4.1 The proposed dwelling occupies a sloping site which allows for extensive views to the south and passive solar gain. It also allows for the rear of the dwelling to be buried minimising opportunity for heat loss.
- 2.4.2 The proposed dwelling is designed with converse living arrangements. Primary living space is proposed at first floor with bedrooms below. This allows for the views available from the first-floor level to be maximised. Further, given the slope of the site and that the house would be built into the bank, the parking area and main access into the dwelling would be at first floor level and as such the ground floor can be kept entirely private.

- 2.4.3 The building has a flat-roofed design which minimises the building's impact, particularly as most views of the building are from a lower level whereby one is usually looking up to the building. It also emphasises the horizontal form of the landscape and ensures that the building doesn't extend beyond the tops of trees to the rear so as not to be seen against the skyline or from the other side of the woodland trees to the north. The first floor is set back from the ground floor to create an outdoor space from which the views can be appreciated. However, to avoid overheating in the height of summer, and embracing comments from Design:Midlands, an overhang is proposed to extend over the outdoor space to the line of the ground floor. The overhang is an integral part of the external wall of the building whereby the building would have a uniform two-storey appearance albeit with the façade of the second storey set back.
- 2.4.4 The Design and Access Statement describes the dwelling as having a "two storey 'skin' which wraps around the house and follows the flowing form". The design tapers vertically at its edges to give the impression of flowing into and out of the landscape of which it is a part.
- 2.4.5 In terms of cladding, timber and stone have been chosen as the most appropriate materials to respond to the site's setting and local built form. Two stones have been sourced from Black Mountains Quarry, a Herefordshire quarry less than 20 miles from the site. A green-grey sandstone would be used at the building's east and west edges fading into a light green sandstone used on the central portion of the building. Such an approach serves to augment the recessive and dominant elements of the building's form. The stones were chosen for their locality as well as their appropriateness for the tonal qualities of the site's setting.

2.5 Internal design and sustainability

- 2.5.1 Rammed earth would be utilised for the internal central spine of the building. This would be constructed from spoil taken from the site, spoil which would otherwise be waste. The walling serves both a decorative and heating role. An attractive feature, rammed earth also absorbs a significant amount of heat during the day given its excellent thermal mass. This would then be released as the temperature drops during the night.
- 2.5.2 The proposed dwelling will be a Passivhaus; a building which retains heat from direct solar gains and activities such as cooking, watching television and showering through avoiding thermal bridging and promoting high levels of thermal insulation and airtightness. It distributes the heat to the house at cooler times. Overall, Passivhaus design eliminates the need for traditional

space heating such as a condensing boiler.

- 2.5.3 The proposals also include an Earth Energy Bank with GSHP, PVT, Ground Supercharger and three Tesla power walls, energy generation techniques which are fully explained in the Design Statement. Through extensive research, the architect has confirmed that no other dwellings have been designed to utilise a combination of the aforementioned energy generation techniques.
- 2.5.4 The proposal includes underfloor heating throughout and use of hot water cylinders which are heated by the aforementioned energy generating installations.

2.6 Drainage

- 2.6.1 In terms of surface water drainage, the new access road and areas of hardstanding around the house will be permeable. Surface water run-off from the house will be discharged initially, via a rill/swale, into an attenuation lake/pond where the flows will be attenuated to 2l/s. From the attenuation lake/pond the flow is discharged into the existing watercourse before entering a newly created orchard lake and finally into the watercourse that continues around the north and east of Ullingswick and off to the South.
- 2.6.2 The foul water treatment will be provided via a package sewage treatment plant feeding a drainage mound, plus a constructed wetland, before being discharged into either the surface water attenuation pond to provide dilution and further treatment due to the effects of aeration plus sunlight.

3. Planning Policy Context

3.1 The Development Plan and Other Material Considerations

- 3.1.1 Section 38(6) of the Planning and Compulsory Purchase Order 2004 explains that planning applications must be determined in accordance with the Development Plan unless material considerations indicate otherwise.
- 3.1.2 In this case, the statutory Development Plan for the area comprises the **Herefordshire Local Plan – Core Strategy** ('Core Strategy') and the **Ocle Pychard Group Neighbourhood Development Plan** ('NDP').
- 3.1.3 The **National Planning Policy Framework** ('NPPF' or 'Framework') declares itself an important material consideration for all planning applications in England. The Framework has important implications for Development Plan policies and decision taking here given that the submission seeks to respond to the guidance at paragraph 80.

3.2 The Herefordshire Local Plan – Core Strategy

- 3.2.1 The Core Strategy sets out a vision for the area for the period 2011 to 2031. The principal role of the Core Strategy is to deliver the spatial planning strategy for Herefordshire based on the needs of the area and its local characteristics. The following Core Strategy policies are referenced on the Decision Notice and are otherwise most pertinent to the appeal.
- 3.2.2 **Policy SS1** confirms that the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the Framework. It explains that planning applications which accord with the policies in the Core Strategy will be approved unless material considerations indicate otherwise. The policy also imports an equivalent test to that laid out at paragraph 11 of the Framework for scenarios where relevant policies are out-of-date.
- 3.2.3 Policy SS1 is referenced in RfR1 and is relevant to the appeal.
- 3.2.4 **Policy SS2** confirms that Hereford is the focus for new housing development, with the market towns in the tier below. In the rural areas new housing development will be acceptable "where it helps to meet housing needs and requirements, supports the rural economy and local services and facilities and is responsive to the needs of its community."

- 3.2.5 Policy SS2 is referenced in RfR1 and is relevant to the appeal.
- 3.2.6 **Policy SS3** acknowledges that the Council are required to demonstrate a five-year supply of housing land. It sets out the actions which the LPA will undertake in the event that housing completions fall below the trajectory set out in Appendix 4 of the Core Strategy.
- 3.2.7 Whilst Policy SS3 is referenced on the Decision Notice, as the Council contends that it can demonstrate an NPPF compliant housing land supply and the Appellants are not challenging this position, it is not relevant to the appeal.
- 3.2.8 **Policy SS6** is a strategic policy which sets out the Core Strategy's approach to development in terms of environmental quality and local distinctiveness. It refers to the enhancement of environmental assets that contribute towards the county's distinctiveness; its settlement pattern, landscape, biodiversity and heritage assets; especially those with specific environmental designation (of which there are none relevant to this case).
- 3.2.9 The policy is not referenced by RfR1, but provides context in that it explains the Council's approach to environmental matters.
- 3.2.10 **Policy SS7** is a strategic policy relating to addressing climate change. It advises that applications should have a sustainable location, be designed to reduce carbon emissions, promote decentralised or renewable energy, support affordable local food production, protect the County's best agricultural land where possible, and be resilient to climate change impacts, including through the use of passive solar design for heating.
- 3.2.11 The Policy is referenced by RfR2 and is relevant in so far as it relates to the alleged harm; the loss of land for agriculture. It is also relevant in that the Appellants rely on the provisions to highlight the sustainability and climate change benefits of the proposals.
- 3.2.12 **Policy RA1** is a detailed policy which begins to define how the spatial development strategy applies to housing outside of Hereford and the market towns. It explains that 5,300 homes should be provided over the plan period across the 221 identified rural settlements. Policy RA1 also divides the County into seven Housing Market Areas (HMAs) which have differing residential needs.
- 3.2.13 Whilst the policy isn't referenced on the Decision Notice, the policy provides useful context as to the Council's approach to housing in rural areas.

- 3.2.14 **Policy RA2** identifies the rural settlements and, in principle, supports development, which is in accordance with a made NDP or, where there is no NDP, within or adjacent to the main built-up part of the settlement.
- 3.2.15 Policy RA2 is referenced in the Decision Notice and provides useful context to proposals in rural areas. However, the policy doesn't reference proposals which are not located within settlements, that is to be dealt with by Policy RA3, whereby the proposal is not contrary to RA2.
- 3.2.16 In rural locations outside of identified settlements, **Policy RA3** explains that one of 7 exceptions must be met if residential development is to be acceptable. One of the 7 exceptions listed at Policy RA3 is for dwellings which are *"of exceptional quality and innovative design satisfying the design criteria set out in Paragraph 55 of the National Planning Policy Framework and achieves sustainable standards of design and construction."*
- 3.2.17 Policy RA3 is predicated on the original Framework published in March 2012. Since the Core Strategy has been adopted, three revisions of the Framework have been published. The most recent revision (July 2021) replaces the original Framework in full. Paragraph 80 of the revised Framework has, in effect, replaced the salient parts of paragraph 55 of the original Framework. It is uncontroversial to state that RA3 should simply be read as referencing paragraph 80 of the revised Framework.
- 3.2.18 The Policy is referenced in RfR1 and is the most important Development Plan Policy for the appeal.
- 3.2.19 **Policy RA6** relates to the Rural Economy. The policy relates to applications for employment generating proposals only, providing in principle support.
- 3.2.20 RfR 2 references Policy RA6. However, the appeal proposal is for housing, not an employment generating proposal, whereby Policy RA6 is not relevant to the harm alleged in RfR2 or the appeal in general.
- 3.2.21 **Policy LD1** requires that proposals demonstrate that character of the landscape and townscape has positively influenced the design, scale, nature of the proposal and site selection to ensure that the setting of settlements and designated areas are protected. It refers to the incorporation of new landscape schemes to ensure development integrates appropriately into its surroundings.

- 3.2.22 The Policy is referenced by RfR1 and is relevant to the appeal in that the RfR alleges harm to local character.
- 3.2.23 **Policy LD3** makes provisions for the retention of existing and the delivery of new green infrastructure. It requires that proposals identify and retain existing green infrastructure corridors and the protection of valued landscapes, trees, hedgerows, woodlands, water courses and adjoining flood plain. Policy LD3 also requires that new on-site green infrastructure is provided and explains that, “proposals will be supported where this enhances the network”.
- 3.2.24 RfR1 references Policy LD3, but neither the RfR nor any part of the Planning Committee meeting referenced any harm to Green Infrastructure. Indeed, the only impact on GI is the removal of a short section of hedgerow for access, whilst there is significant delivery through the planting of new hedgerows and a larger orchard. The policy is relevant to the appeal in that the Appellants rely on the provisions to highlight the GI benefits of the proposals, but the RfR does not allege harm that would conflict with LD3.
- 3.2.25 **Policy SD1** refers to sustainable design and energy efficiency, confirming that development proposals should create sustainable, well-integrated environments for all members of the community. Proposals should also safeguard neighbouring residential amenity whilst making efficient use of land taking into account the local context and site characteristics, echoing the advice of paragraph 122 of the Framework.
- 3.2.26 Policy SD1 is referenced in RfR1 and is relevant to the appeal.

3.3 The Ocle Pychard Group NDP

- 3.3.1 The Ocle Pychard Group NDP was made on 11th March 2019 and is a part of the statutory Development Plan.
- 3.3.2 **Policy OPG1** explains that the NDP will seek and balance four principles including enabling housing development to meet the needs of local communities and taking opportunities to protect and enhance the distinctive natural and historic environments and avoiding undue impacts on visual amenity, landscape character and biodiversity.
- 3.3.3 **Policy OPG2** acknowledges that housing need will be met by housing development within identified settlements, on specific site allocations and, importantly to the appeal, in rural locations where compliance with Core Strategy Policy RA3 is demonstrated.

- 3.3.4 The policy goes on to explain what type of development will be acceptable within the defined settlement boundaries for Burley Gate, Ullingswick and Ocle Pychard and on allocated sites. This, in effect, fleshes out the requirements of Core Strategy Policy RA2 but for the local context. However, there is no such counterpart to Core Strategy Policy RA3.
- 3.3.5 When read in the round, the NDP therefore advises that the principle of development for residential development in locations not dealt with by the settlement or allocation specific policies should be in accordance with Core Strategy Policy RA3.
- 3.3.6 Policy OPG2 is referenced in RfR1 and is relevant to the appeal.
- 3.3.7 Policy OPG11 explains that proposals should be able to demonstrate that they protect, conserve and enhance the natural environment in accordance with the principles of Core Strategy policies LD1, LD2 and LD3. It specifically requires, inter alia:
- conserving, restoring and enhancing sites and features of biodiversity interest in accordance with their status, including those identified in the Priority Habitats Inventory, Local Wildlife Sites, woodland, veteran trees, hedgerows, ponds and watercourses; and
 - maintaining, restoring and where possible enhancing the contribution of habitats to the coherence and connectivity of the Herefordshire Ecological Network, and taking into account their role as green infrastructure; and
 - ensuring that proposals respect the prevailing landscape character, as defined in the County Landscape Character Assessment, including associated views, trees and hedgerows and local features of interest.
- 3.3.8 Policy OPG11 is relevant to the appeal in respect of impact on local character, and the biodiversity and landscape enhancement provided by the appeal proposal.
- 3.3.9 **Policy OPG13** relates to design and access. It reflects the provisions of Core Strategy Policy SD1 in requiring proposals to respect local distinctiveness and landscape character, address sustainable building techniques and construction methods and to avoid undue environmental and amenity impacts. It also reflects the provisions of Policy OPG11 in requiring that proposals retain existing landscape and biodiversity features as far as is practicable and to make provision for landscape and biodiversity enhancements.

3.3.10 **Policy OPG13** is relevant to the appeal in respect of the high quality design of the proposal, impact on local character, and the biodiversity and landscape enhancement provided by the appeal proposal.

3.4 The National Planning Policy Framework

3.4.1 The NPPF (2021) was published in July 2021. It is the third revision of the National Planning Policy Framework and replaces the original NPPF (2012). The NPPF sets out the Government's planning policies for England and how these should be applied. It confirms that it does not supplant the statutory Development Plan, but it, and its policies are a significant material consideration when determining planning applications.

3.4.2 The NPPF post-dates the Core Strategy by nearly six years. **Paragraph 219** confirms that whilst existing policies aren't out of date simply because they were adopted prior to the publication of the NPPF, the closer the policies in the Development Plan are to the policies in the NPPF, the greater the weight they may be given.

3.4.3 The Decision Notice only mentions Paragraph 80(e) which the Appellant agrees is most pertinent to the principle of development here. In full, Paragraph 80(e) requires as follows:

Planning policies and decisions should avoid the development of isolated homes in the countryside unless ... (e) the design is of exceptional quality, in that it:

- *is truly outstanding, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas; and*
- *would significantly enhance its immediate setting and be sensitive to the defining characteristics of the local area.*

3.4.4 However, several other paragraphs are relevant to the appeal as follows.

3.4.5 **Paragraph 8** explains that achieving sustainable development is a notion comprised of three overarching objectives, economic, social and environmental, which are interdependent of each other, but which need to be pursued in mutually supportive ways. The courts have clarified that fulfilment of all three objectives is a rare occurrence and not a prerequisite of achieving planning permission.

- 3.4.6 **Paragraph 10** explains that to ensure that sustainable development is positively pursued, there is a presumption in favour of sustainable development which is at the heart of the Framework.
- 3.4.7 **Paragraph 11** is the cornerstone of decision taking. It explains that the presumption in favour of sustainable development means that development which accords with an up-to-date development plan should be approved without delay (11 c) and in cases where there are no relevant development plan policies or the policies which are most important for determining the application are out-of-date, permission should be granted unless one of the following applies (11 d):
- i. *the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*
 - ii. *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 .*
- 3.4.8 The Appellants' case is that the proposals comply with the Development Plan whereby the application should be approved without delay.
- 3.4.9 **Paragraph 14** clarifies the position in respect of made Neighbourhood Development Plans. It explains that in situations where the tilted planning balance applies, *"the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits"* on the proviso that the requirements of four explicit criteria are met.
- 3.4.10 In this case, the NDP is more than two years old whereby the provisions of paragraph 14 do not apply.
- 3.4.11 **Paragraph 60** explains that the Government's objective of significantly boosting the supply of homes requires that *"a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay."*
- 3.4.12 **Paragraph 98** identifies that access to a network of high-quality open spaces and opportunities for sport and physical activity is important for the health and well-being of communities.
- 3.4.13 **Paragraph 126** explains that achieving good design is fundamental to the planning process and

a key aspect of sustainable development.

3.4.14 **Paragraph 130** explains that planning decisions should ensure that developments:

- *Function well and add to the quality of the area;*
- *Are visually attractive as a result of good architecture;*
- *Are sympathetic to local character and history;*
- *Establish or maintain a strong sense of place;*
- *Optimise the site potential in terms of amount and mix of dwellings; and*
- *Create places that are safe.*

3.4.15 **Paragraph 133** explains that when assessing applications, decision makers should have regard to the outcome from recommendations made by design review panels.

3.4.16 **Paragraph 134** sets out that when determining applications, significant weight should be given to outstanding or innovative designs which help raise the standard of design more generally in an area, where they fit with the overall form and layout of their surroundings.

4. RfR1: Compliance with Paragraph 80(e)

4.1 The Reason for Refusal

4.1.1 RfR1 alleges that the proposal:

- Is not outstanding design;
- Is not in keeping with the character of the locality; and
- Has an adverse impact on the character and appearance of the area.

4.1.2 This Chapter focuses on the three harms alleged, but in the context of a wider assessment of the scheme's compliance with Paragraph 80(e).

4.2 Policy Context

4.2.1 Paragraph 80(e) explains that planning decisions should avoid creating isolated homes in the countryside unless the design is of exceptional quality and meets two detailed design criteria.

4.2.2 The Development Plan comprises the Core Strategy and the Ocle Pychard Group NDP. Core Strategy Policy RA3 supports development proposals which comply with Paragraph 55 of the original NPPF, which was the forebearer to paragraph 80 of the NPPF 2021. In turn, the NDP explains that development proposals which comply with Core Strategy Policy RA3 will be supported.

4.2.3 Therefore, the Appellants' view is that if a proposal complies with Paragraph 80(e) of the NPPF 2021, then by extension, it will comply with the Development Plan.

4.3 The requirements of Paragraph 80(e)

4.3.1 Paragraph 80 in the whole only relates to proposals which are isolated.

4.3.2 Criterion (e) supports isolated development which is of exceptional design where two detailed design criteria are met.

4.3.3 The first limb of paragraph 80(e) requires that proposals are, *"truly outstanding, reflecting the highest standards in architecture, and would help to raise standards of design more generally*

in rural areas”.

4.3.4 The limb asks three questions of a development proposal seeking to fulfil this clause. They are:

- Is the proposal truly outstanding?
- Would the proposals reflect the highest standards in architecture?
- Would the proposals help to raise standards of design more generally in rural areas?

4.3.5 The second limb of paragraph 80(e) requires that a proposal, “*would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area.*”

4.3.6 The limb asks two questions of a development proposal seeking to fulfil this clause. They are:

- Would the proposals significantly enhance its immediate setting?
- Would the proposals be sensitive to the defining characteristics of the local area?

4.3.7 The approach to breaking down each limb into constituent questions is in accord with the approach adopted by the Inspectors in their assessment of appeal schemes at Widcombe Lodge (Appendix 6)⁴, Goodrest Cottage (Appendix 7)⁵, Pentire House (Appendix 8)⁶, Yewtree Trout Farm (Appendix 9)⁷, and Avon Lodge (Appendix 10)⁸.

4.3.8 The answers to the questions posed by Paragraph 80 (e) are informed by a scheme’s design and its impact on setting. In this case, impact on setting is considered to embrace several environmental matters including Landscape Character and Appearance, Biodiversity, and the Historic Environment. We have therefore assessed the scheme under these headings before returning to assess the scheme’s compliance with Paragraph 80 (e) at sections 5.9 – 5.11.

4.4 The derivation of Paragraph 80(e)

4.4.1 The ‘countryside house clause’, as it is often termed, was first introduced in Planning Policy

⁴ Appeal Ref: APP/FO114/W/18/3208289 – Land to the south of Widcome Lodge, South Widcombe, Bristol

⁵ Appeal Ref: APP/Q3305/W/18/3200788 – Goodrest Cottage, Neighbours Lane, Oakhill, Somerset

⁶ Appeal Ref: APP/X2220/W/16/3158585 – Land adjoining Pentire House, The Leas, Kingsdown, CT14 8ER

⁷ Appeal Ref: APP/C1432/W/19/3223513 – Yewtree Trout Farm, Yew Tree Lane, Rotherfield, TN6 3QP

⁸ Appeal Ref: APP/J3720/W/18/3213454 – Avon Lodge, Ryon Hill, Warwick Road, Stratford, CV37 0NZ

Guidance 7 and carried forward into Planning Policy Statement 7. The policy wording read as follows.

“Very occasionally the exceptional quality and innovative nature of the design of a proposed, isolated new house may provide this special justification for granting planning permission. Such a design should be truly outstanding and ground-breaking, for example, in its use of materials, methods of construction or its contribution to protecting and enhancing the environment, so helping to raise standards of design more generally in rural areas. The value of such a building will be found in its reflection of the highest standards in contemporary architecture, the significant enhancement of its immediate setting and its sensitivity to the defining characteristics of the local area.”

- 4.4.2 The publication of the original National Planning Policy Framework (‘Framework’) in 2012 brought about the archiving of the suite of Planning Policy Statements. The new national policy brought about a subtle but significant amendment to the ‘countryside house clause’. That was a change of the conjunction used in the policy’s reference to design from ‘and’ to ‘or’. Paragraph 55 of the Framework required that a proposal was “truly outstanding or innovative”. The advent of the Framework therefore brought about two design routes to achieving a dwelling in the countryside; a dwelling of outstanding design or a dwelling of innovative design.
- 4.4.3 The requirement for innovation has, in the latest iteration, been removed entirely. The provision now only seeks “outstanding design”.
- 4.4.4 Other differences between paragraph 80 and its antecedents are purely presentational, moving away from a discussion-led paragraph to a more succinct bulleted list of requirements.

4.5 Landscape Character and Appearance

- 4.5.1 The application was and the appeal is supported by a *Landscape and Visual Appraisal* and *Landscape Enhancement Plan* prepared by Carly Tinkler CMLI. This chapter refers to critical findings in the context of relevant policies.
- 4.5.2 The LVA explains throughout that the proposals are truly landscape-led and have been subject to an iterative design process embracing ecology and green infrastructure as well as landscape architecture, *“involving in-depth survey and analysis of the surrounding landscapes, and the amenity of those who live in and use them”*.

- 4.5.3 It explains, at paragraph 10.12 that, *“gentlemen’s residences - set in ‘minor’ historic parkland with associated productive orchards and pastures - are characteristic here”*. It goes on to explain that, as such, *“new ones could potentially be accommodated, so long as they were appropriately sited and designed, and did not disrupt the prevailing landscape and settlement patterns.”*
- 4.5.4 The following paragraph of the LVA (10.13) explains how the development proposal delivers such a characteristic development. It sets out that, *“In this case, whilst the new dwelling would introduce new built form into a relatively sparsely-settled landscape, due to its nature it would be characteristic. Furthermore, the new house relates well with existing built form in the area, in terms of both balance and ‘communication’. In addition, the proposed landscape and ecological mitigation and enhancement measures have been designed to reflect their local landscape context, and would noticeably / quantifiably improve many aspects of the existing landscape / ecological baseline situation.”*
- 4.5.5 Policy SS6 specifically requires consideration of lighting and its impact on landscape character and local amenity. The LVA explains at paragraph 8.4.12 that, *“in the wider landscape context a small amount of light emanating from the new dwelling would not be uncharacteristic in the area.”*
- 4.5.6 At paragraph 8.5.1, the LVA summarises that the proposals would have the following impacts on character:
- *Effects on national landscape character would be Negligible Positive.*
 - *Effects on regional landscape character would be Minor Positive.*
 - *Effects on local landscape character would be between Minor and Moderate Positive.*
- 4.5.7 The content and depth of analysis offered by the LVA demonstrates that the proposals have been influenced by the local landscape as required by Core Strategy LD1. Critically, the siting, layout and design was only finalised after rigorous assessment of character and following fine-tuning in the wake of the LPA’s pre-application advice and the Design Review Panel’s advice. The compliance with Policy LD1’s requirements in respect of landscape character are underscored by the achievement of net positive effects on character.
- 4.5.8 Turning to visual impact, the LVA explains that, *“generally speaking, if it is concluded that a new development may give rise to certain beneficial effects on landscape character, then the*

associated visual effects would also be beneficial.” However, it goes on to set out that the issue of ‘subjectivity’ must be factored in and that where there are few objectively beneficial impacts, such as removing an eye-sore, matters such as design may be perceived as a positive or negative, depending on the viewer.

4.5.9 It must also be borne in mind that, as is good practice, the Landscape Consultant has assumed the worst-case scenario for this assessment. Thus, the impacts could be far lesser in magnitude and viewed more positively.

4.5.10 Nevertheless, the LVA sets out at chapter 9.4, the effects of the proposals on views and visual amenity at 24 identified visual receptors as follows:

- *Levels of effects on receptors at 7 of the VPs would in fact be Neutral.*
- *Levels of effects on receptors at 8 of the remaining 17 VPs would range from Negligible to Minor Negative.*
- *Levels of effects would be between Minor and Moderate Negative at 5 VPs, and Moderate Negative at one VP.*

4.5.11 At one near-distance VP (VP8A at Linnett Farm), levels of effects could potentially be between Moderate and Moderate to Major Negative. However, it is a private property and was not visited, so this conclusion is based on assumptions which may not be accurate. For example, views of the upper part of the arable field / the new house may currently be screened by intervening mature vegetation. Also, if the new house was visible from Linnett Farm, receptors may perceive it as a high-quality building entirely appropriate in that location, giving rise to beneficial effects. As explained above, the worst-case scenario has been adopted.

4.5.12 At 2 VPs, levels of effects were judged to be Moderate Beneficial, on the basis that users of the Three Rivers Ride would enjoy the proposed improvements and enhancements.

4.5.13 The LVA also explains that the proposals come with extensive landscape enhancements, including:

- *Creation of historic parkland, with new trees and establishment / management of associated ‘wood pasture and parkland’ habitat (grassland, shrubs / scrub and trees).*

- *Restoration of old orchard in southern half of enlarged arable field, with orchard and associated wild flower meadow grassland habitats traditionally managed.*
- *Restoration of field boundary hedge which once bisected the arable field.*
- *Restoration of northern half of arable field to traditional wild flower / hay meadow.*
- *Existing woodland restored / improved, and new habitats created.*
- *Restoration of lost hedgerow along eastern boundary of woodland on west side of arable field.*
- *Other existing hedges restored / improved.*
- *New hedgerow oak and other native trees planted.*
- *Creation of new watercourses, features and bodies, and improvements to existing, especially ecological enhancements.*
- *New habitats for flora and fauna 'designed in' to the whole scheme, including the proposed buildings.*

4.5.14 Experience of Three Rivers Ride users would be improved by surfacing the route through the arable field and installing a more user-friendly arrangement of fencing and gates than exists at present. Also providing seating and interpretation boards, with views across the orchard lake to the perry mill.

4.5.15 The enhancements respond directly to bullets 3 and 4 of Policy LD1 insofar as they extend tree cover, protect existing trees and help assimilate architecture into its context. The planting scheme, particularly hedgerow restoration and extensive orchard planting, represents an uplift in character, helps assimilate the architecture with its context and better reveals the significance of the architecture. There is genuine synergy between the landscaping and architecture whereby the landscaping is a fundamental part of the development. The scheme would not achieve the very high standards of design which it does, if it were not for the way in which the landscaping scheme frames the way the architecture is experienced.

4.5.16 The landscape enhancements are a significant benefit of the scheme and are of a type and extent which would not be deliverable by an ordinary application for residential development

within an identified settlement. We also note that in previous decisions, namely Coombe Farm (P162041/F)⁹ and Hope End Farm (P150962/F)¹⁰, Herefordshire Council has given substantial weight to the perceived quality of landscaping schemes. The landscape enhancements have a magnitude which represents a significant planning benefit.

4.5.17 Overall, the LVA has explained that the proposals have been assessed thoroughly and robustly and have been subject of an iterative design process. It reports positive effects on landscape character and, necessarily assuming the worst-case scenario and factoring in subjectivity, finds visual effects which do not cause conflict with Core Strategy Policies SS6 or LD1. Further, the LVA identifies significant landscape enhancements, over and above that which might ordinarily be expected of a residential development.

4.5.18 For these reasons, and in agreement with the final paragraph of the LVA, the Appellants considers that the proposals comply with the Development Plan and Framework on matters of landscape and visual impact. They respond precisely to the guidance of Core Strategy Policy LD1. They also satisfy the requirements of Policy LD3, by protecting, managing and planning for the preservation of existing green infrastructure, and delivering new. Accordingly, the proposal is one which would have positive effects on and enhance the landscape, exceeding the 'preservation' requirements of strategic environmental policy SS6.

4.6 Biodiversity

4.6.1 The application was and the appeal is supported by an *Ecology Report and Ecology Enhancement Report* both prepared by Udall-Martin Associates Ltd.

4.6.2 The Ecology Report is predicated on a desk study, an extended phase one habitat survey, great crested newt HSI assessment, badger survey, bat roosting potential survey, bat activity surveys and hazel dormouse check. It explains that there are no statutory or non-statutory designations at the site but that there are two SWS within 2km of the site. The report describes the arable and grassland fields which make up the application site as of, "*limited botanical interest/ecological value*" but that their mature boundary hedgerows are of "*good quality and medium ecological value*" having good potential for faunal species.

4.6.3 The site was originally surveyed in 2019. However, due to the length of time the application

⁹ Committee Report for P162041/F (Appendix 11)

¹⁰ Committee Report for P150962/F (Appendix 12)

was being considered by the Council for, the original survey work expired. Updated surveys were therefore carried out on 1st March 2022. The findings at the latest survey were similar to earlier findings whereby the content of the report could reiterate its recommendations and conclusions.

- 4.6.4 The Ecology Report explains that the proposals would retain all mature boundary hedgerows to the arable fields and only short sections of hedgerows along the grassland field boundaries would be removed for the new driveway whereby a good network of habitats/wildlife corridors will be retained, *“providing connectivity around the site and beyond into the wider countryside”*. The proposals would also provide continued faunal habitat.
- 4.6.5 The Ecology Report advises that because great crested newts were previously recorded in ponds in the owners’ landholding, it is possible that reptiles may use the boundary features. The report therefore recommends precautionary mitigation to avoid adverse impacts to great crested newts, common amphibians and reptiles.
- 4.6.6 The Ecology Enhancement Report explains the extensive biodiversity benefits which the proposal would provide. It details proposed ecological enhancement, including plant species lists, details of faunal species boxes and general management measures. The Ecology Enhancement Report exhaustively lists individual enhancement measures at Table 1 overleaf.
- 4.6.7 Drawing on the findings of the Ecology Enhancement Report, paragraph 7.4 of the Ecology Report concludes that the scheme would deliver considerable biodiversity benefits. In full, it sets out that:

“We consider the proposed development has the potential to provide considerable biodiversity benefits. The creation of native species-rich wildflower meadow and a wildlife pond and planting of an orchard, parkland and native species-rich hedgerows on the site provides potential habitat for a range of protected and notable faunal species including great crested newt, reptiles, [REDACTED] roosting, foraging and commuting bats, hazel dormouse, birds and a variety of invertebrates. Mature orchard fruit trees provide potential habitat for a range of invertebrates including notable beetles and moths. All five habitats proposed are Priority Habitats of conservation concern on the national and county BAPs. The additional faunal enhancements, including bat houses for rare bat species, will provide further wildlife/biodiversity gains.” (our emphasis)

4.6.8 On the above basis, the proposals preserve priority species and their habitats in accordance with protective parts of Core Strategy Policy LD2 and NDP Policy OPG11. Specifically, through the extensive and integral biodiversity enhancement scheme, the proposals wholly fulfil the provisions of LD2(2), which requires restoration and enhancement of existing biodiversity features and connectivity to wider ecological networks, LD2(3), which seeks creation of new biodiversity features and wildlife habitats and OPG11(4) which, in essence, amalgamates those two provisions. This demonstrates significant biodiversity enhancement to the site.

4.7 The Historic Environment

4.7.1 There are no listed buildings on the site, nor is the site directly affected by any other heritage designation. The Decision Notice does not refer to heritage impacts or policies whereby the Council's view is that the impact on heritage assets is acceptable.

4.7.2 Nonetheless, in order to provide a full assessment of impact on setting as required by paragraph 80(e) the Appellants have considered the impact on heritage assets. The following listed buildings and a conservation area are identified within the study area.

- 1) St Luke's Church (Grade II*) – 250 metres to the south-east of the site;
- 2) Moreton Jefferies Parish Church (Grade II*) – 1.7 km to the south-east;
- 3) Barn and Hop Kiln North of Upper Court (Grade II) – 290 metres to the south-east;
- 4) Upper Court (Grade II) – 310 metres to the south-east;
- 5) Lower Court (Grade II) – 400 metres to the south-east;
- 6) Barn East of Lower Court (Grade II) – 420 metres to the south-east; and
- 7) Ullingswick Conservation Area – 70 metres to the south-east of the site at its closes point.

4.7.3 The provisions of the Planning (Listed Buildings & Conservation Areas) Act 1990 are relevant to the determination of this application and the specific impact of the development proposal on the significance of these assets is discussed herein.

4.7.4 S.66 of the Act records the general duty as respects listed buildings in exercise of planning

functions as follows: -

(1) 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.

4.7.5 S.72 of the Act confirms the general duty as respects conservation areas in exercise of planning functions: -

In the exercise, with respect to any buildings or other land in a conservation area, of any of the provisions mentioned in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. (Our emphasis).

4.7.6 The proposals do not affect the assets directly. However, as explained in the NPPF 2021, significance also derives from the setting of heritage assets. The Framework defines setting as:

“The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.”

4.7.7 **St Luke’s Church:** The Grade II* listed building is described at section 2.3. It has a high level of significance afforded by its Grade II* status. Its character is humble and unassuming and it is unlikely that St Luke’s was intended to be of great visual prominence. The building is almost entirely concealed from view behind tall, mature, mostly evergreen trees. Whilst the building is 250 metres from the site at its closest point, the proposed dwelling is some 750 metres from the heritage asset. By virtue of the distances involved and the intervening vegetation, we have not identified opportunity for co-visibility or inter-visibility, despite the proposed dwelling having a significantly higher AOD level. The site has no historic association with the church, nor does it aid understanding of the asset. Whilst the site extends closer to the church, given the appropriateness of the landscape proposals for the local landscape character, the wider rural setting of the church would be preserved. The scheme would have a neutral impact on the significance of St Luke’s Church.

- 4.7.8 **Moreton Jefferies Parish Church:** The Grade II* listed building is described at section 2.3. It has a high level of significance afforded by its Grade II* status. The building has a 19th Century Gothic Style. It has a simple rectangular plan form with a low gable roof and wooden bell tower at its western end. The building is 1.7km from the site at its closest point and 2.3km from the location of the proposed dwelling. Given the distances involved, the intervening vegetation, and the modest proportions of the church, we have not identified opportunity for co-visibility or inter-visibility. The site has no historic association with the church, nor does affect how one experiences the asset. The scheme would have a neutral impact on the significance of Moreton Jefferies Parish Church.
- 4.7.9 **Upper Court:** The Grade II listed building has reference 1275889 and was first listed on 9th April 1952. The 16th Century building was altered in the 17th Century and is of rubble and timber frame construction. The buildings significance derives from its architectural and historic interest. There is evident group value derived from its location relative to St Luke's Church and Barn and Hop Kiln North of Upper Court. Its immediate setting is limited to its garden area by virtue of boundary treatments and visual containment afforded by dense evergreen trees. The building is 310 metres to the south-east of the site and 810 metres from the location of the proposed dwelling. These distances combined with the sense of enclosure afforded to the asset ensure that the development would not affect the significance of Upper Court.
- 4.7.10 **Barn and Hop Kiln North of Upper Court:** The Grade II listed building has reference 1234910 and was first listed on 12th April 1973. It is 20 metres to the north of its host dwelling, Upper Court. The listing covers the 18th Century rubble stone barn and adjoining round brick hop kiln with slate conical roof. The buildings are listed for their group value. The immediate setting of the asset is limited to the area immediately surrounding the building. As with Upper Court, the asset is visually contained by boundary treatments and nearby dense, evergreen vegetation. The building is 290 metres to the south-east of the site and 790 metres from the location of the proposed dwelling. These distances combined with the sense of enclosure afforded to the asset ensure that the development would not affect the significance of the Barn and Hop Kiln North of Upper Court.
- 4.7.11 **Lower Court:** The Grade II listed building has reference 1275890 and was first listed on 9th April 1952. The building comprises the remains of a medieval structure, largely rebuilt in 1630. The building is constructed of timber framing and is entirely enclosed in weatherboarding. The building's significance derives from its architectural and historic interest. Its immediate setting

is limited to its extensive rear gardens by virtue of boundary treatments and visual containment afforded by dense evergreen trees and a woodland to the west. The building is 400 metres to the south-east of the site and 1km from the location of the proposed dwelling. These distances combined with the sense of enclosure afforded to the asset ensure that the development would not affect the significance of Lower Court.

4.7.12 **Barn East of Lower Court:** The Grade II listed building has reference 1234925 and was first listed on 12th April 1973. The building is of 17th century timber frame construction with plaster panelling and is listed for its group value. The immediate setting of the asset is limited to the area immediately surrounding the building. As with Lower Court, the asset is visually contained by boundary treatments and nearby dense, evergreen vegetation. The building is 420 metres to the south-east of the site and over 1km from the location of the proposed dwelling. These distances combined with the sense of enclosure afforded to the asset ensure that the development would not affect the significance of the Barn and Hop Kiln North of Upper Court.

4.7.13 **Ullingswick Conservation Area:** The Conservation Area is identified by Herefordshire Council but there is no formal description or appraisal. Nonetheless, it is apparent that the significance of the Conservation Area derives from its former status as the historic core of the village of Ullingswick. The Conservation Area encompasses the listed buildings listed above, save for Moreton Jefferies Parish Church, as well as more modern farm buildings which together, gives rise to a scattered grain of development. The Conservation Area has a distinctly rural character afforded by the very low density of development, the extensive vegetation both within and immediately around the Conservation Area, and its isolation from larger settlements.

4.7.14 The application site is 70 metres from Ullingswick Conservation Area at its closest point, although the proposed dwelling is some 670 metres away. Given the distances involved and the extensive vegetation we have not been able to identify opportunity for inter-visibility or co-visibility of the proposed dwelling and the asset. In their pre-application advice response, the Council advised that any proposal should respect the rural setting of the Conservation Area. In proposing an extensive landscaping scheme which has been confirmed to enhance the landscape character of the area, the proposals have been designed to ensure that the rural setting of the Conservation Area and thus its significance is upheld.

4.7.15 In conclusion on this matter, the proposals would not affect the significance of heritage assets. Accordingly, the scheme would conserve the setting of heritage assets through sympathetic

design and appropriate landscaping in accordance with the provisions of Core Strategy LD4 and NDP Policy OPG12 (1 & 2). Heritage harm is not identified in the RfR whereby the Council agrees this matter.

4.7.16 The scheme is considered to have a neutral impact on the historic setting of the site.

4.8 Paragraph 80: Is the development isolated?

4.8.1 Paragraph 80 is only applicable to development proposals which are isolated. The Court of Appeal clarified in *Braintree*¹¹ that the term ‘isolated’, should be given its ordinary meaning of *“far away from other places, buildings or people; remote”*. In handing down his judgement, Lord Justice Lindblom explained that, *“Whether a proposed new dwelling is, or is not, “isolated” in this sense will be a matter of fact and planning judgment for the decision-maker in the particular circumstances of the case in hand.”*

4.8.2 Lord Justice Lindblom went on to set out that the term ‘isolation’, *“Simply differentiates between the development of housing within a settlement - or village - and new dwellings that would be ‘isolated’ in the sense of being separate or remote from a settlement”*. Lord Justice Lindblom also sets out that ‘a settlement’ is undefined and that, in this context, it isn’t necessary for a ‘settlement’ to be adopted or identified in a local plan. It is further explained that a settlement need not have a minimum number of dwellings, buildings or services.

4.8.3 The proposed dwelling would be 420 metres from the closest building, which is an outlying outbuilding at Sheepcotts Court. The closest part of the main part of Sheepcotts Court is 80 metres further south. A cluster of industrial buildings operated by ‘Turners Farm Equipment Suppliers’ are 430 metres to the north of the proposed dwelling. Neither Sheepcotts Court nor Turners might reasonably be described as a settlement given the small number of buildings at each location and that they are in single ownership. In any event, the distance between the site of the proposed dwelling and the aforementioned building clusters is such that the proposed dwelling would be isolated therefrom.

4.8.4 The loosely knit cluster of buildings at Ullingswick Conservation Area, 570 metres to the south-east of the proposed dwelling might be described as a settlement and the village of Ullingswick, a larger and more nucleated cluster of buildings, some 1.2km to the south-west, is certainly a

¹¹ *Braintree District Council v Secretary of State for Communities and Local Government & Ors* [2018] EWCA Civ 610

settlement being identified as such in the Core Strategy. The site for the proposed dwelling is clearly isolated from both given the intervening distances.

- 4.8.5 On the above basis, the site is isolated in so much as it plainly does not comprise a part of any settlement and therefore benefits from the provisions of Paragraph 80.

4.9 Paragraph 80 (e) – Limb 1: Architecture and Design

Question 1: Is the proposal outstanding design?

- 4.9.1 Whilst the inception of a ‘flowing’ design is well-founded, being predicated on the flowing contours of the site, the organic ‘flowing’ ancient woodland and the flow of water throughout, it is the attention to detail which ensures the success of the design. The building’s solid massing at its central point gives way to a split-level form to its sides, with the second storey being set back significantly from the first. The route which the curvature of the dwelling and access track follow are based on the contours of the site. The overall effect is a dwelling which truly flows into and out of the landscape and which is of the hillside rather than merely on it, despite its truly unique form.
- 4.9.2 The proposals are also outstanding in their use of materials. Not only are they sourced locally ensuring incredibly low building miles, they’ve also been chosen for their colour and tonality relative to the sylvan backdrop against they would be seen. Materials are also used imaginatively to augment the building’s form, for example, through using two different stones across the building to recess the subordinate edges of the building and enhance the more dominant central part. The achievement of keeping all spoil on site, including the excavation required to bed the dwelling into the hillside, is also suggestive of outstanding design, as is the inventive use of excavated soil to build a rammed earth wall which would contribute to the dwelling’s heating strategy.
- 4.9.3 Internal experience of a paragraph 80 dwelling is also relevant. In this case, the way in which the views are delivered is crucial. The ‘flow’ of the building is utilised to provide a unique living space, but one which responds directly to the client’s brief. Crucially, it maximises outward views from the building towards each of the different landscape character ‘zones’ which lie beyond, and allows the architect to frame those views to achieve the desired effect. Indeed, the building achieves the much-sought marriage of providing extensive and breath-taking outward views, whilst not breaking the skyline when viewed in the landscape.

- 4.9.4 The way in which the afore-described views are delivered is an outstanding achievement of the design. Visitors will not appreciate the incredible southerly panorama at any point on their journey from the site access until they cross the threshold. This is through deliberate architectural direction and it affords the architect opportunity to frame the view reveal. As one crosses the threshold, and perhaps expects to focus on internal furnishings and fittings, one is immediately accosted by the view. The dual achievement of withholding the view, which enhances anticipation for it, and delivering the view from inside, thus retaining a focus on the wonderful situation of the dwelling, is a truly outstanding architectural achievement.
- 4.9.5 The extensive landscaping scheme is an integral component of the proposals; it is not merely a bolt-on. The scheme proposes to reinstate a traditional orchard, create a parkland setting and a hay meadow whilst new water bodies will also be created. Significant hedge planting is also proposed - including the restoration of two lost hedgerows - whilst existing hedges will be strengthened. The landscaping proposals not only lead to substantial landscape and biodiversity enhancements, but also have a significant positive effect on the proposed architecture. The landscaping carefully frames the way in which the building is experienced, momentarily revealing the dwelling and then hiding it from view again as one progresses along the access road, before finally revealing the dwelling in its full glory as one exits the orchard and enters the hay meadow.
- 4.9.6 The scheme has been evolved since the Design:Midlands panel confirmed the scheme, *“to be strong and had real potential to meet the requirements of Paragraph 80”* to a design which is outstanding. Design:Midlands has now confirmed in writing that the proposal is of outstanding design (Appendix 11).
- 4.9.7 The overall effect of the proposals is the achievement of a dwelling of an individually outstanding design which is carefully positioned to maximise views from the development and to limit potential landscape and visual impact. There are far reaching views to the Malvern Hills and Black Mountains from the dwelling, the delivery of which is maximised, whilst the building is designed to appear at one with the landscape. This is achieved by its flowing form, appropriate material choice, extensive and robust landscaping (particularly to the foreground of views from the south), and that the building is always seen against a vegetative backdrop ensuring that the skyline isn't breached. For these reasons, the building has exemplary and exciting architecture which is appropriate for and influenced by its landscape setting. It is the epitome of outstanding design.

Question 2: Does the proposals reflect the highest standards in architecture?

- 4.9.8 The truly outstanding design of the dwelling is predicated on, and indeed relies on, a detailed analysis of local built and natural character. The building has a bold and appealing appearance yet is one which is a part of the landscape. It also utilises sustainable building techniques and energy generation measures and minimises building miles by sourcing materials locally. The scheme also reflects attention to the brief, delivering an internal design which is both functional and highly attractive.
- 4.9.9 For these reasons, the proposals reflect the highest architectural standards. It is also relevant that the architect has considerable experience in delivering schemes which achieve this standard, including ‘paragraph 80’ dwellings (see DAS for further detail).

Question 3: Does the proposal help to raise standards of design more generally in rural areas?

- 4.9.10 The building’s design is inherently unique. However, the way in which it responds to its setting (particularly topography and vegetation), pays attention to detail, sources local materials, utilises innovative energy generation techniques, and benefits from a truly integral landscaping scheme (as opposed to being a bolt-on) are achievements which are not applicable to all developments. The exemplary execution in this case would inspire others, helping to raise standards generally.
- 4.9.11 Whilst the proposed dwelling is partially screened from public view, there are glimpses available from the Three Rivers Ride and further afield. These glimpsed views, as opposed to extensive, unobscured views, would raise intrigue for the building and encourage interested persons to find out more about the scheme and its architecture.
- 4.9.12 For these reasons, the proposals would inherently help to raise standards of design in rural areas.

4.10 Paragraph 80 (e) – Limb 2: Setting and Local CharacterQuestion 1: Is the proposal sensitive to the defining characteristics of the area?

- 4.10.1 The LVA fully sets out the defining characteristics of the area. Most notably, it explains at paragraph 10.12 that ‘gentlemen’s residences’ set in ‘minor’ historic parkland with associated productive orchards and pastures are characteristic here. The LVA also explains, at paragraph

4.5.8 that, *“historically and characteristically, ‘the country house’ was usually built for gentlemen or women of standing, and would be sited in a prominent, or even dominant position, either for protection, or to reflect social standing.”*

4.10.2 Thus, the LVA also concludes at paragraph 10.13 that, *“whilst the new dwelling would introduce new built form into a relatively sparsely settled landscape, due to its nature it would be characteristic”*. Accordingly, the proposed building is sensitive to the defining characteristics of the area.

4.10.3 The development also proposes an integral landscaping scheme which is similarly sensitive to the defining characteristics of the area. The landscaping scheme would deliver new historic parkland, a restored traditional orchard, two restored field boundary hedges, other hedgerow improvement, woodland improvement and native field tree planting, all of which are characteristic to the landscape character type hereabouts.

4.10.4 Accordingly, the proposals have understood and are designed to be sensitive to the defining characteristics of the area.

Question 2: Does the proposal significantly enhance its immediate setting?

4.10.5 This provision of Paragraph 80(e) must be predicated on there being a presumption in favour of erecting a building on greenfield land. This point is underscored in the Inspectors Report for Pentire (Appendix 8) where Inspector Papworth sets out at paragraph 22 that, *“The requirement in the Framework to enhance is predicated on there being a new building placed where none existed, since one of the other special circumstances or Development Plan policies allow for re-use or replacement.”* Accordingly, the requirement to ‘significantly enhance setting’ must be viewed through that prism. Nevertheless, there must be a balance between erecting a building of a quality which is worthy of being seen and a proposal which retains the rural qualities of the area.

4.10.6 The proposed building has an outstanding and unique design which responds to and is wholly influenced by the site and setting. Its siting and scale is such that the building avoids breaking the skyline from any identified public vantage point ensuring that it has a vegetative backdrop which provides a textured palette with which a building could reasonably harmonise. The building has an intriguing and attractive form, yet one which is wedded to its landscape. Its massing is distributed to appear to flow in and out of the Site’s topography, a design technique

which is further aided by its outstanding use of materials. The lighter colours and tones used centrally appear to bring this, the main mass of the building forward in views whilst, contrarily, the darker coloured stones at the edges of the building recess these parts. The Design Statement explains on page 36 that, *“this would produce a jewel-like effect in distant views, very much in keeping with the guidance received from the MADE Design Review Panel.”*

- 4.10.7 The varied textures and natural appearance of the locally quarried stone help to assimilate the building with its natural, mainly sylvan backdrop. The building will be a positive element in the landscape and one which will be appreciable from the well-traversed Three Rivers Ride PROW.
- 4.10.8 The thoroughly considered landscaping scheme is integral to the success of the development, with only glimpses of the building being afforded from public vantage points and elsewhere by the carefully planned orchard and Site topography. This increases intrigue in the architecture and establishes a relationship between the landscape and the building. The landscaping also filters views of the building such that it doesn't impose on its setting whereby the building might otherwise overwhelm the defining natural characteristics of the area. The building, as framed by integral landscaping, will enhance people's enjoyment and experience of the countryside hereabouts, most notably through its adding a distinctive, yet characterful point of interest on views along the Three Rivers Ride.
- 4.10.9 The proposals also deliver extensive landscape and biodiversity enhancements across the large site which improve the character and visual appearance of the landscape and significantly enhance the floral and faunal value of the site. The landscaping scheme also includes planting to the Site's shared boundary with the existing Sheepcotts Court which would screen existing development which is presently a detractor. The provision of small architectural 'gems' in the form of a decorative perry mill and boat house will also increase the public's visual experience of the countryside hereabouts.
- 4.10.10 The biodiversity enhancement proposed is extraordinary in both the range and extent of provision. It is unlikely that such enhancement could be provided within an identified settlement on the basis that sites within settlements rarely, if ever, have such a large area of land available for biodiversity and landscaping schemes. Planning policy for sites within settlements simply doesn't require the delivery of such extensive enhancement and developers are unlikely to reduce the amount of land available for development voluntarily. Furthermore, the application site, by virtue of its open countryside location, is afforded a unique opportunity

to link into and enhance the vast network of ecosystems in the area, an opportunity which the accompanying Ecology Report confirms is fully utilised.

4.10.11 The public's understanding and enjoyment of the site and the wider countryside, particularly its biodiversity, will be improved through the placing of information boards along the Three Rivers Ride and the provision of an attractive sitting area at the new lake at the south-east side of the proposed orchard, with views over the lake to the perry mill. These provisions respond directly to the Framework which promotes the quality of open spaces at paragraph 96 and seeks the enhancement of public rights of way, including through the providing of better facilities for users at paragraph 99. The LVA confirms that these provisions are appropriate from a landscape and visual perspective.

4.10.12 Notably in the case of Hope End Farm ref. P150962/F (Committee Report at Appendix 12), Herefordshire Council interpreted the proposal, with greater emphasis on the landscaping than the building, as significantly enhancing its immediate setting despite the Council's Conservation (Built Heritage) Manager finding the proposals to harm the setting of a Grade II listed building. In this case, the development proposals have no more than a neutral impact on any facet of the environment. If comparing the two cases, the net positive impact on setting is superior in the instant case.

4.10.13 For the above reasons, it is our view that the proposals achieve the high bar of significantly enhancing immediate setting.

4.11 Section Conclusion

4.11.1 This section has assessed the principle of development embracing environmental matters which inform setting. The design is explained as being of the highest standards, whilst it is established that the proposals would minimise visual intrusion and have a positive effect on landscape character. The scheme would also deliver significant biodiversity benefits whilst being neutral in terms of its impact on the historic environment.

4.11.2 On this basis, and in the context of Paragraph 80(e) of the Framework, we summarise that the proposed scheme, including the dwelling and associated works, is of an outstanding design, which reflects the highest standards of design and helps to raise design standards in rural areas. **This matter is confirmed and agreed by Design:Midlands.** Complimented by the extensive and integral landscaping scheme, the architecture is also sensitive to the defining characteristics of

the area and would significantly enhance immediate setting both in terms of landscape character and biodiversity value.

4.11.3 Accordingly, the proposals comply with Paragraph 80(e) of the Framework and by extension, the principle of development complies with the Development Plan. Thus, the Appellant disagrees with the alleged harm in RfR1.

5. RfR2: The Loss of Good to Moderate Agricultural Land

5.1 The Reason for Refusal

5.1.1 The RfR alleges that the site is good to moderate rated agricultural land and that this is contrary to the Development Plan.

5.2 Policy Context and Guidance

5.2.1 The RfR refers to Core Strategy Policies SS7 and RA6. As explained at Chapter 4 of this statement, the Appellants' case is that RA6 is not relevant to the appeal proposal. Policy SS7 does seek to protect the best agricultural land where possible.

5.2.2 NPPF Paragraph 174(b) is also relevant in requiring that the benefits of best and most versatile agricultural are recognised.

5.2.3 The NPPF and Core Strategy define best agricultural land as comprising land which is Grade 1, 2, and 3a.

5.3 The Appellants' Case

5.3.1 The Governments *Guide to Assessing Development Proposals on Agricultural Land* explains that there are five grades of agricultural land; ranging from Grade 1 (the best) to 5 (worst). Grade 3 termed "Good to Moderate" and is subdivided into class 3a and 3b.

5.3.2 The RfR alleges that the Site is Grade 3. The Appellants agree. However, the Appellants are of the view that the land would be classified as grade 3b.

5.3.3 *Guide to Assessing Development Proposals on Agricultural Land* defines Subgrade 3a land as being capable of consistently producing moderate to high yields of a narrow range of arable crops, especially cereals, or moderate yields of crops including:

- cereals
- grass
- oilseed rape
- potatoes
- sugar beet

- less demanding horticultural crops

5.3.4 It defines Subgrade 3b land as being capable of producing moderate yields of a narrow range of crops, principally:

- cereals and grass
- lower yields of a wider range of crops
- high yields of grass which can be grazed or harvested over most of the year.

5.3.5 The Site is not suitable for rape, beet or potatoes given its soil quality, awkward shape and sloping land (particularly the part of the site on which the dwellings is proposed). It is principally used for grazing and wheat. Thus, the Appellants' view that the land classification should be Grade 3b which is not BMV Agricultural Land.

5.3.6 It is also relevant that the proposed site would predominantly remain in agricultural use. It is only the dwelling and immediate setting (Zone1) which would no longer have an agricultural use. Zone 3 would continue to be grazed and the productivity of Zone 2 would be enhanced with the planting of a perry orchard, the fruit from which would be harvested and sold.

5.3.7 For the two reasons above, the Appellants consider that the proposal does not give rise to a negative effect on BMV Agricultural Land. However, if some harm is identified, the Appellants are of the view that it is very limited whereby it would not be sufficient to result in conflict with the Development Plan when read in the round and in the context of the substantial benefits.

5.4 Section Summary

5.4.1 In summary, the Appellants case is that:

- 1) The Site is Grade 3b land which is not BMV and there is no policy conflict;
- 2) If the Site is considered BMV that the majority of the site would remain in agricultural use, and productivity would be improved with the planting of commercial orchards;
- 3) If there is a residual harm caused by using a small part of the Site for non-agricultural purposes, this harm would not outweigh the very significant benefits of the proposal.

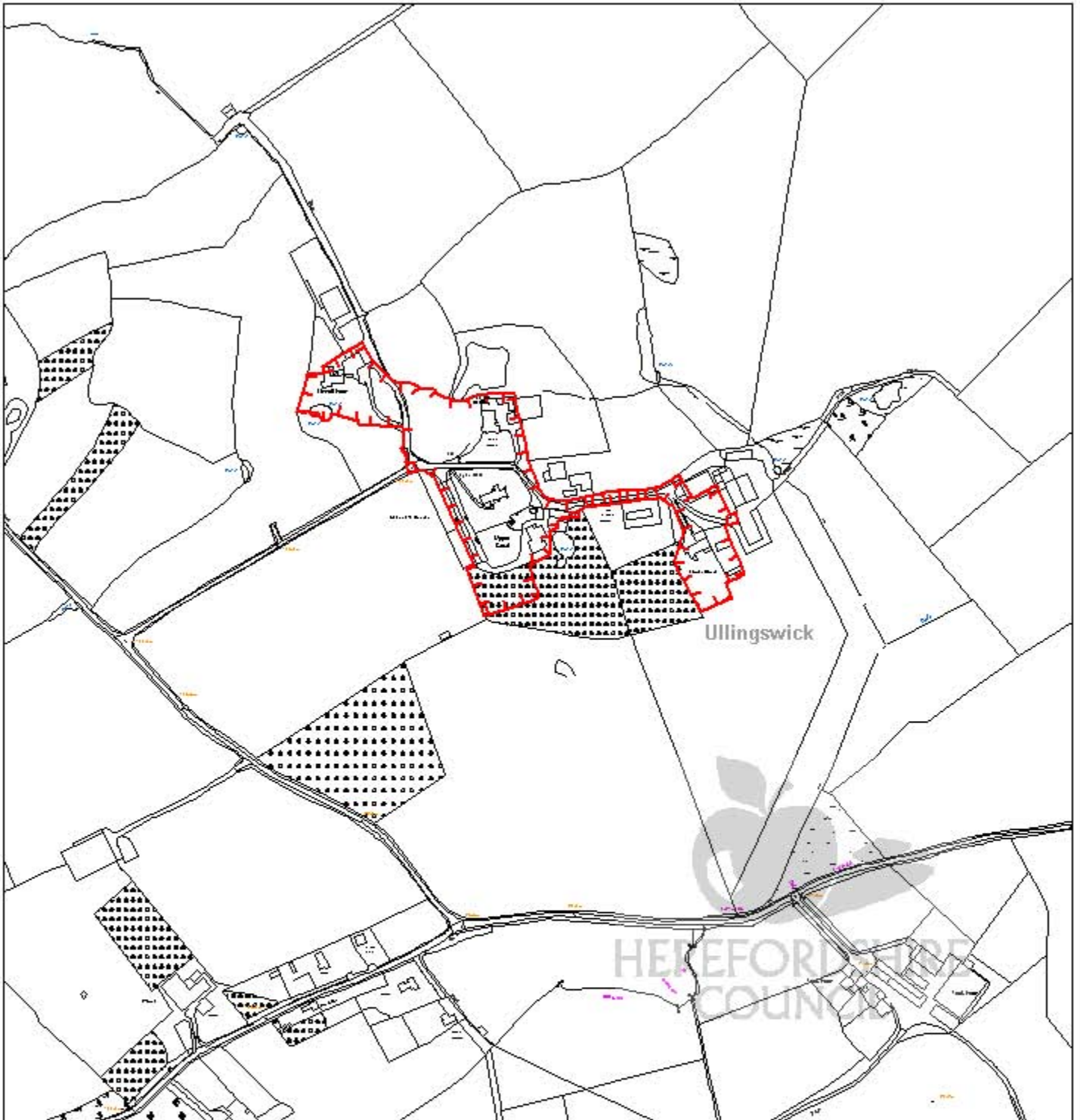
5.4.2 In either of the three cases presented, the Appellant contends that the policy conflict alleged in the RfR is not created and should not lead to permission being refused.

6. Summary and Conclusions

- 6.1.1 Primary legislation requires that planning decisions are made in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan is the Core Strategy and the Ocle Pychard NDP. The NPPF is an important material consideration.
- 6.1.2 Whilst the Site is outside a settlement identified for growth in the Development Plan, the appeal is made on the premise that the scheme complies with the 'countryside house clause' enshrined in Policy RA3 of the Core Strategy and Paragraph 80€ of the Framework.
- 6.1.3 RfR1 alleges that the proposal is not of outstanding design whereby it represents an unjustified dwelling in the open countryside.
- 6.1.4 This statement in concert with the Planning Statement, Design and Access Statement, LVA, and Ecology Report, demonstrate that the proposal has an outstanding design. This matter is agreed by Design:Midlands whose advice the NPPF requires that decision makers have regard for.
- 6.1.5 Moreover, through its high-quality architecture and extensive landscape and biodiversity improvements, the proposals would significantly enhance the immediate setting of the site; this point is made confidently based on the findings of the robust and thorough LVA and Ecology Report which accompanied the planning application and this appeal..
- 6.1.6 Accordingly, the proposals accord with the provisions of Paragraph 80€ of the Framework and thus the scheme is an exceptional form of development which is permitted by Core Strategy Policy RA3 and, by extension, NDP Policy OPG2. The principle of residential development thus complies with the Development Plan and the harm alleged in RfR1 does not occur.
- 6.1.7 RfR 2 alleges that there would be a loss of BMV Agricultural Land. At no point during the pre-application advice or the determination of either planning application was BMV Agricultural Land mentioned by officers.
- 6.1.8 The Appellants' case is that the Site is Grade 3b land which is not BMV and that the majority of the Site would remain in agricultural use, with increased productivity created by planting a commercial orchard. If there is a residual harm caused by using a small part of the Site for non-agricultural purposes, it would not outweigh the very significant planning benefits. The harm alleged in RfR2 is not tenable.

6.1.9 In conclusion, the proposal complies with the Development Plan whilst other material considerations tell in favour of the development. Accordingly, primary legislation supported by paragraph 11 of Framework requires that the appeal is allowed and planning permission is granted.

Appendix 1: Map identifying Conservation Area



Conservation Area (HBA6)



Scale 1:5000

North

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Inset Map 76

Ullingswick
Conservation Area

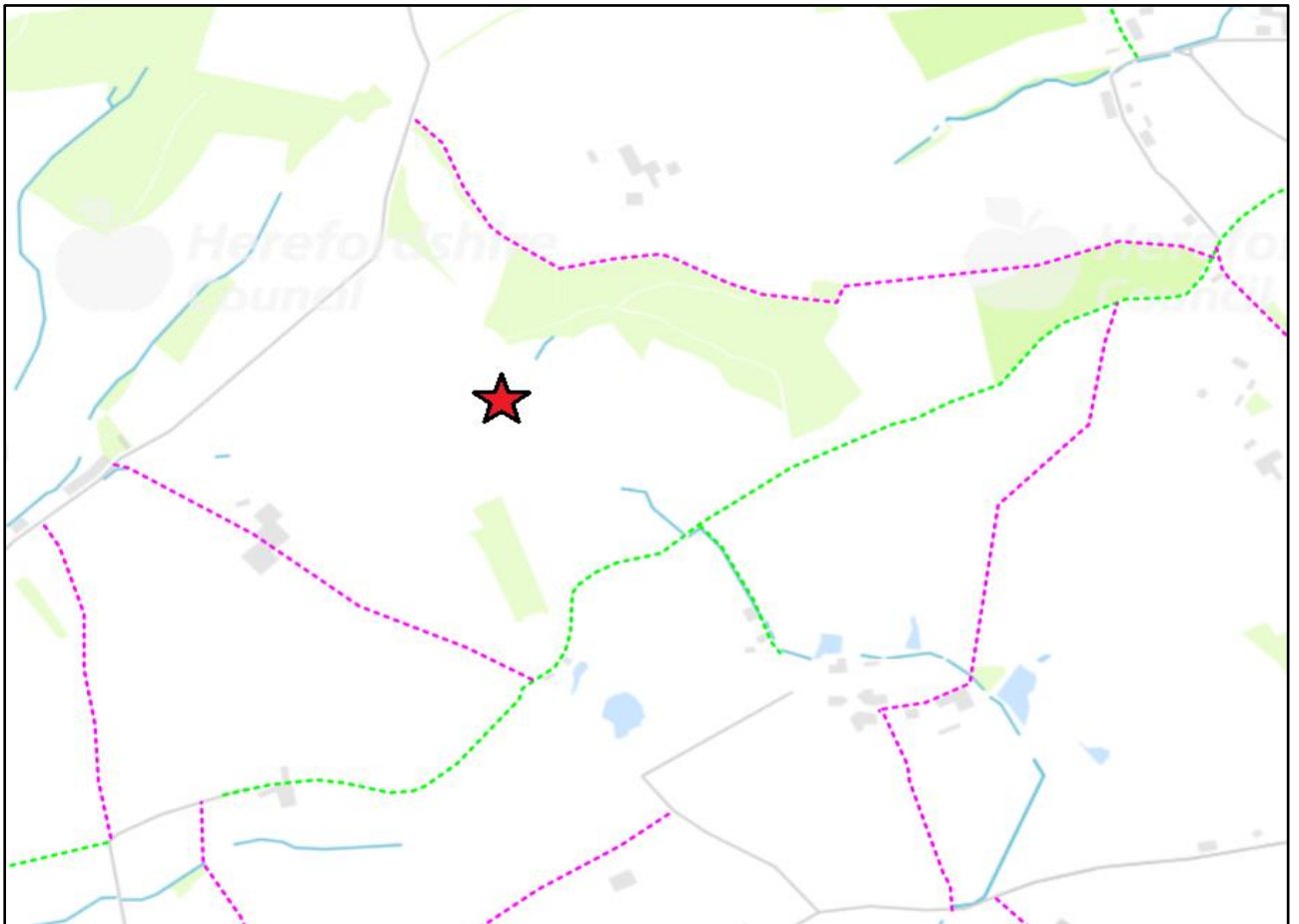


Herefordshire Unitary
Development Plan

March 2007

The Written Statement contains general policies relating to the area covered by this map

Appendix 2: Map showing the site in the context of the PROW network



Town and Country Planning Act 1990
Planning and Compensation Act 1991

REFUSAL OF PLANNING PERMISSION

Applicant:

Mr & Mrs P Perry
Sheepcotts Court
Ullingswick
Herefordshire
HR1 3JQ

Agent:

Mr Matt Tompkins
Tompkins Thomas Planning
10 Grenfell Road
Hereford
Herefordshire
HR1 2QR

Date of Application: 14 August 2020

Application No: 202412

Grid Ref:359238:250185

Proposed development:

SITE: Flow House - Land North of Sheepcotts Court, Ullingswick, Herefordshire, HR1 3JQ

DESCRIPTION: Erection of 1 no. dwelling of and associated works including access, landscaping, outbuildings, infrastructure, lake creation and other engineering works

THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL hereby gives notice in pursuance of the provisions of the above Acts that PLANNING PERMISSION has been REFUSED for the carrying out of the development described above for the following reason:

- 1 In light of the Local Planning Authority being able to demonstrate a five-year housing land supply, the proposal, by virtue of its design and scale, would not be considered outstanding or in keeping with the character of the locality, leading to adverse harm upon the landscape character and appearance of the area, and the adjacent Ullingswick Conservation Area, meaning it would not be representative of sustainable development. As such, the proposal is contrary to Policies SS2, SS3, RA3, LD1 and LD4 of the Herefordshire Local Plan – Core Strategy.

Informatives:

- 1 The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against planning policy and any other material considerations and by identifying matters of concern with the proposal and clearly setting these out in the reason(s) for refusal. Furthermore, Members of the planning committee which took the decision to refuse planning permission have been asked to consider whether there are opportunities to amend the development to address this harm. Where a potential way forward has been identified, this has been communicated to the Applicant. The Local Planning Authority is willing to provide formal pre-application advice in respect of any future application for a revised development.

- 2 The applicants attention is also drawn to the matter relating to the sites location within the extent of Lugg catchment, which forms part of the River Wye Special Area of Conservation (SAC), and the nature of the proposal triggers the requirement for a Habitat Regulations Assessment (HRA) to be undertaken. Under 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')), there is a requirement to establish with certainty, and beyond all reasonable scientific doubt, that there will not be any adverse effect on the integrity of the River Wye SAC. The Lugg catchment however suffers from the effects of point source and diffuse water pollution and phosphate levels in the river have already exceeded conservation objectives. The proposal in this case would add to this through the generation of additional phosphates. To positively determine the application, the competent authority, through an HRA Appropriate Assessment, must only conclude that there would be an unmitigated adverse effect on the integrity on the River Lugg (Wye) Special Area of Conservation and that there are no considerations of overriding public interest under Habitat Regulations, Part 6, Section 64.

Planning Services
PO Box 4,
Hereford,
HR4 0XH



KELLY GIBBONS
DEVELOPMENT MANAGER

Date: 4th October 2021

YOUR ATTENTION IS DRAWN TO THE FOLLOWING NOTES

NOTES

Appeals to the Secretary of State

- If you are aggrieved by the decision of your local planning authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State under Section 78 of the Town and Country Planning Act 1990.
- If you want to appeal, then you must do so within 6 months of the date of this notice, or 12 weeks if the scheme is for that of "household" development using a form which you can get from The Planning Inspectorate, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN.
- The Secretary of State can allow a longer period for giving notice of an appeal, but he will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.
- The Secretary of State need not consider an appeal if it seems to him that the local planning authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.
- In practice, the Secretary of State does not refuse to consider appeals solely because the local planning authority based their decision on a direction given by him.

Right to Challenge the Decision of the High Court

Currently there are no third party rights of appeal through the planning system against a decision of a Local Planning Authority. Therefore, if you have concerns about a planning application and permission is granted, you cannot appeal that decision. Any challenge under current legislation would have to be made outside the planning system through a process called Judicial Review (JR).

The decision may be challenged by making an application for judicial review to the High Court. The time limits for bringing such challenges are very strict, and applications need to be made as soon as possible after the issue of the decision notice. So, if you think you may have grounds to challenge a decision by Judicial Review you are advised to seek professional advice as soon as possible.

These notes are provided for guidance only and apply to challenges under the legislation specified. If you require further advice on making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000). For further information on judicial review please go to <http://www.justice.gov.uk>

The Council has taken into account environmental information when making this decision. The decision is final unless it is successfully challenged in the Courts. The Council cannot amend or interpret the decision. It may be redetermined by the Council only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

Purchase Notices

- If either the local planning authority or the Secretary of State refuses permission to develop land or grants it subject to conditions, the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state nor render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.
- In these circumstances, the owner may serve a purchase notice on the Council in whose area the land is situated. This notice will require the Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.



Design:Midlands | Pera Business Park | Melton Mowbray | Leicestershire | LE13 OPB
Email: julie@designmidlands.org | www.designmidlands.org.uk

Phil Perry
Sheepcotes
Ullingswick
HR1 3JQ

22.11.2021

Dear Mr. Perry,

Design Midlands Design Review Panel – Friday 12th November 2021
Tabletop Design Review of Flow House - Ullingswick (Our Ref: DMDR2147)

Thank you for asking us to return to review (by Zoom video conference) your scheme at Flow House and for your architect's presentation. We also thank Herefordshire Council for attending this session.

As you know, the Panel (Geoff Wright, Chair and Carl Holloway) saw earlier versions of your scheme in March 2019 and undertook a site visit prior to the first meeting. This letter supersedes the previous letter but should be read in conjunction with it to appreciate the earlier background context and recommendations that were offered at that time. The Local Planning Authority (LPA) are considering this proposal under the provisions of paragraph 80 of the NPPF given the isolated character of this location for a new dwelling.

The scheme was submitted as a planning application to Herefordshire Council in September 2021 and was refused as the Planning Committee were unclear if the scheme had improved sufficiently in response to questions raised in the earlier design review panel report. Therefore, this design review panel is requested to advise on whether the design is of 'exceptional quality' and meets in particular para. 80 criterion (e).

The previous DRP report focussed on three main areas in their assessment: siting of the dwelling, landscape strategy and architectural design.

The Panel on reviewing the current scheme are satisfied with the landscape approach and the siting of the building within it – the landscape strategy remains excellent and has been further improved in refining the positioning for the building so that landscape and building will together deliver the strong 'flow' concept for the whole site. The focus for this design review is on architectural design.

The Panel commended the architect on the evolution of the design which shows significant progress to deliver the aim of achieving the concept outlined by the quote from Frank Lloyd Wright, *'No house should ever be on a hill or on anything. It should be of the hill. Belonging to it. Hill and house should live together each the happier for the other'*.

The Panel commend the greater architectural coherence that has evolved from the earlier scheme. In particular, the Panel welcome removal of the turret, the introduction of the enveloping stone clad external wall, and the enhancement of the window design with recessed and projecting elements, achieving interesting subtle variation of shadow lines as the seasons change.

The Panel applaud the clearer arrival narrative given by each of the gated entrance points as you move towards the property through the three distinct landscape character zones. Their earlier concern that there could be undue encroachment of light into dark skies due to the site's possible prominence, have been satisfied by the longer distance studies. Overall, the architecture is meeting the Frank Lloyd Wright vision of 'being of the hill', and the links into the landscape, orchard and the lake are very strong.

Design review

The Panel offered further aspects to consider that might further enhance 'the flow'.

- **Further attention to detailing** and materials taking particular care in how the building elements will meet; walls to landscape, pathways to entrances, windows into curved walls- in all cases to illustrate 'flow' and avoid any harsh 'man-made' edges. Attention to craftsmanship and material quality can ensure the vision is achieved without compromise. The approach of selecting stone colours to achieve subtle colour change from dark edges with surrounding landscape to lighter stone around the main living areas was supported. This idea might perhaps be extended to show some colour transition from ground to sky as well. The architect will need to trial materials and build techniques to ensure the desired finish is achieved. There was discussion on whether it will be practicable to use stone slips to achieve curves and variety of colour and the treatment of finish. Slips are usually used in panels hung from support framing but the Panel were reassured that stone slips would be mortared (preferably with recessed mortar lines) onto the external blockwork and thus not restricted to a mechanistic hanging system - but caution was raised that this should be tested thoroughly to ensure the intended overall stone finish can be achieved satisfactorily on a curve with subtle rebate details can especially be achieved around openings.
- **A third layer** could potentially be conceived in the mansard/eaves layer – that could perhaps be a change in materials or colour or texture. It needs to be tested and consideration given to preferences – could the parapet line be softened? Working with more simplicity in some of

the details could enhance and elevate the explanation of the design. Perhaps a subtle addition of a third colour of stone?

- **Boundary walls** - to the left of the main entrance around the pool area, a curving boundary wall blends down into the landscape. However, to the right the wall of the courtyard entrance is instead held as a strong, tall horizontal line. The Panel suggest testing if this parapet line could also 'flow' or 'crumble' in height and/or colour into the adjacent landscape. The Panel suggest that 'screening' such elements by trees would best be avoided, it is better to have a concept that is pure and strong to the overall vision. The semi-underground garage itself works well but can you make the walls that screen it flow more convincingly into the landscape?

Conclusion

The Panel consider that overall, this is now an exceptional design bringing so many things together well, proportions and elevations, materials, sustainability and in particular a special relationship between the building and a significantly enhanced surrounding landscape. The external frame and fenestration are now elegant and well-conceived. The building has a presence, rightly so. The architect has kept to a pure narrative, stayed true to the flow house concept.

The Panel urged the architects to continue to resolve the construction detailing so that the execution of the design does not fall short of the high-quality concepts now apparent. The LPA may wish to ensure that conditions are attached that ensure the detailing of the building will maintain exceptional standards and that the concept is not watered down and stays true to its ambition. In terms of the suggestions above, we have every confidence that your architect will respond positively in considering any additional variations, that will not interfere with the wider vision.

We wish you well in taking your project forward.,

Yours sincerely

Julie Tanner
Chief Executive
Design Midlands

Cc Herefordshire Council
Helen Seymour-Smith

Design:Midlands Design Review adheres to the ten principles for design review as follows:

1. **Independent:** It is conducted by people who are separate from the scheme promoter and decision-maker, and it protects against conflicts of interest.
2. **Accountable:** It records and explains its advice and is transparent about potential conflicts of interest.
3. **Expert:** It is conducted by suitably trained people who are experienced in design and know how to criticise constructively. Review is usually most respected where it is carried out by professional peers of the project designers, as their standing and expertise will be acknowledged.
4. **Advisory:** It does not make decisions. It acts as a source of impartial advice for decision-makers.
5. **Accessible:** Its findings are clearly expressed in terms that decision-makers can understand and use.
6. **Proportionate:** It is used on projects whose significance warrants the public investment of providing design review at national, regional and local level, as appropriate. Other methods of appraising design quality should be used for less significant projects.
7. **Timely:** It takes place as early as possible in the life of a design because this saves the most time and costs less to make changes. If a planning application has already been made, it happens within the timeframe for considering it. And it is repeated when a further opinion is required.
8. **Objective:** It appraises schemes in the round according to reasoned, objective criteria rather than the stylistic tastes of individual Panel members.
9. **Focused on outcomes for people:** It asks how this building or place can better meet the needs of the people using it, and of the public at large who are affected by it.
10. **Focused on improving quality:** It constructively seeks to improve the quality of architecture, urban design, landscape, highway design and town planning.



Minutes of the meeting of Planning and regulatory committee held at The Kindle Centre, Belmont Road, Hereford, HR2 7JE on Wednesday 8 February 2023 at 10.00 am

Present: Councillor Paul Rone (vice-chairperson)

Councillors: Paul Andrews, Polly Andrews, Dave Boulter, Sebastian Bowen, Elizabeth Foxton, John Hardwick, Mark Millmore, Jeremy Milln, Felicity Norman, Ann-Marie Probert, Nigel Shaw, Kevin Tillett and Yolande Watson

In attendance: Councillors Jonathan Lester and William Wilding

Officers: Lead Development Manager, Development Manager - North Team, Development Manager - Majors Team and Legal Representative

64. APOLOGIES FOR ABSENCE

Apologies were received from Councillors Clare Davies, Terry James and Tony Johnson.

65. NAMED SUBSTITUTES (IF ANY)

Councillor Kevin Tillett acted as a substitute for Councillor James.
Councillor Nigel Shaw acted as a substitute for Councillor Johnson.

66. DECLARATIONS OF INTEREST

Councillor John Hardwick declared an other interest in respect of agenda item no. 6, application 220370, Woodfields Fruit Ltd; the applicant was a known associate.

Kevin Bishop declared an other interest in respect of agenda item no. 7, application 221177, Sheepcotts; the applicant was a known associate.

67. MINUTES

RESOLVED: That the minutes of the meeting held on 18 January be approved.

68. 220370 - WOODFIELDS FRUIT LTD, WOODFIELDS WESTON UNDER PENYARD, ROSS-ON-WYE, HEREFORDSHIRE, HR9 7PG

The principal planning officer gave a presentation on the application.

In accordance with the criteria for public speaking; a statement was read on behalf of Weston-under-Penyard Parish Council; a statement was read on behalf of Mrs Reynolds, local resident, in objection to the application; and Mrs Joseph, the applicant's agent, spoke in support of the application.

In accordance with the council's constitution the local ward member spoke on the application. In summary he explained that the application impacted on existing rights of way across the site; if the application was approved footpaths should be diverted. Residents in the local Dairy Cottages had complained of noise from the site; the relocation of the welfare block would not

reduce the level of noise experienced by local residents. The green buffer zone was supported but there was concern workers would congregate in the area during warmer weather and cause noise, affecting local residents. The proposed barbecue area should be enlarged and covered to encourage the workers to congregate away from the Dairy Cottages. The noise management plan needed to include more detail of the monitoring that would take place and whether staff would be available to deal with complaints from local residents when they occurred. There was concern regarding waste water on the site; the smell of sewage was evident in summer. The state of the road to the site was in a poor condition.

The committee debated the application.

The local ward member was given the opportunity to close the debate. He explained concern regarding: the re-siting of the welfare block, noise from which would have an impact on local residents; the possibility of overflowing sewage; the increase in the number of caravans in the application; and the requirement for a diversion of public rights of way on site.

A motion that the application be deferred and a delegation be provided to offices to finalise the noise management plan was proposed by Councillor Felicity Norman and seconded by Councillor Sebastian Bowen. The motion was put to the vote and was lost by simple majority.

A motion that the application be approved in accordance with the case officer's recommendation but with a time limited period of 5-years for the permission, after which time a review of the effectiveness and implementation of the noise management plan would be undertaken, was proposed by councillor Nigel Shaw and seconded by councillor Paul Andrews. The motion was put to the vote and was carried by a simple majority.

RESOLVED:

That planning permission be granted subject to the following conditions and any other further conditions and amendments considered necessary by officers named in the scheme of delegation to officers:

1. Time

The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: Required to be imposed by Section 91 of the Town and Country Planning Act 1990.

2. Approved Plans

The development shall be carried out strictly in accordance with the approved plans and materials:

- **Location Plan: Drg No 1418/5**
- **Proposed Site Plan: Drg No 1418/1/B**
- **Plan of existing footpaths**
- **Landscape Strategy: Drg No: 21300.101 D**
- **Proposed staff welfare unit and Cold Store Rev B**

except where otherwise stipulated by conditions attached to this permission.

Reason. To ensure adherence to the approved plans in the interests of a satisfactory form of development and to comply with Policy SD1 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

Pre-Commencement Conditions

3. Development shall not begin until details and location of the following have been submitted to and approved in writing by the Local Planning Authority, and which shall be operated and maintained during construction of the development hereby approved:

- i) A method for ensuring mud is not deposited onto the Public Highway
- ii) Construction Traffic Management Plan

The development shall be carried out in accordance with the approved details for the duration of the construction of the development.

Reason: In the interests of highway safety and to conform to the requirements of Policy MT1 of Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework

4. Development shall not begin until an implementation programme setting out details of the:

- phasing of the caravan siting (relocation of caravans from Rock Farm and existing caravans on site)
- erection and occupation of the welfare building
- implementation of the noise management plan

shall be submitted work submitted to and approved in writing by the Local Planning Authority.

Reason: To safeguard the amenity of the area in order to conform with policies SS6, LD1 and LD3 of the Herefordshire Local Plan - Core Strategy and the National Planning Policy Framework

Pre Occupation Conditions

5. Resiting / Removal of existing mobile homes

Prior to the occupation of the 30th mobile home hereby approved the mobile homes as detailed on location plan shall be removed and land reinstated as detailed on landscaping plan (21300.101 rev D).

Reason: To define the terms of permission as presented and to comply with the requirements of Policy SD1 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

6. PROW/Siting of mobile homes

Prior to occupation of any of the caravans/mobile homes hereby permitted and while awaiting the public right of way diversion order the caravans shall be sited as shown on plan 1418/1 rev B (proposed site plan).

Reason: To ensure that the materials harmonise with the surroundings so

as to ensure that the development complies with the requirements of Policy SD1 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

7. Cycle Parking Provision

Prior to the first occupation of the development hereby permitted full details of a scheme for the provision of covered and secure cycle parking facilities shall be submitted to the Local Planning Authority for their written approval. The covered and secure cycle parking facilities shall be carried out in strict accordance with the approved details and available for use prior to the first use of the development hereby permitted. Thereafter these facilities shall be maintained.

Reason: To ensure that there is adequate provision for secure cycle accommodation within the application site, encouraging alternative modes of transport in accordance with both local and national planning policy and to conform with the requirements of Policies SD1 and MT1 of Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

8. Travel Plan

Prior to the first occupation/use of the development hereby approved, a Travel Plan which contains measures to promote alternative sustainable means of transport for staff and visitors with respect to the development hereby permitted shall be submitted to and be approved in writing by the Local Planning Authority.

The Travel Plan shall be implemented, in accordance with the approved details, on the first occupation of the development. A detailed written record shall be kept of the measures undertaken to promote sustainable transport initiatives and a review of the Travel Plan shall be undertaken annually. All relevant documentation shall be made available for inspection by the local planning authority upon reasonable request.

Reason: In order to ensure that the development is carried out in combination with a scheme aimed at promoting the use of a range of sustainable transport initiatives and to conform with the requirements of Policies SD1 and MT1 of Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

9. Landscape Biodiversity Management Plan

Before the development is first occupied, a landscape biodiversity management plan and maintenance plan for a period of 10 years shall be submitted to and approved in writing by the local planning authority. Maintenance shall be carried out in accordance with the approved schedule.

Reason: To ensure the successful establishment of the approved scheme, local planning authority and in order to conform with policies SS6, LD1 and LD3 of the Herefordshire Local Plan - Core Strategy and the National Planning Policy Framework.

Compliance Conditions

10. Ecology Plan

The ecological protection, mitigation, compensation and working methods scheme and the Habitat Protection and Biodiversity Enhancement Plan, as recommended in the two reports by J Lomas both dated May 2020 shall be implemented and hereafter maintained in full as stated unless otherwise approved in writing by the local planning authority.

Reason: To ensure that all species are protected and habitats enhanced having regard to the Wildlife and Countryside Act 1981, Conservation of Habitats and Species Regulations (2017), National Planning Policy Framework, NERC Act (2006), Herefordshire Local Plan - Core Strategy policy LD2

- 11. The caravans / seasonal workers mobile homes hereby permitted shall be permanently removed from the site within 5 years of commencement of the start of this permission (the applicant shall notify the Local Planning Authority in writing no less than 14 days before the commencement of the development to determine the date of commencement as detailed in condition 4) and the land shall be restored to its former condition in accordance with details to be agreed in writing with the Local Planning Authority beforehand.**

Reason: To enable the Local Planning Authority to retain effective control over the site and to reassess noise and disturbance of the site workers accommodation having regard to the requirements of policies SD1 of the Herefordshire Local Plan Core Strategy and SB1 of the made Weston Under Penyard NDP and the guidance contained within the National Planning Policy Framework.

- 12. Occupation restriction**

The occupation of the caravan/ mobile homes hereby approved shall be limited to persons solely employed in agriculture and associated activities on land owned or farmed by Woodfield Farms Ltd and BH Savidge and Son.

Reason: Planning permission has only been granted having consideration for the needs of the agricultural enterprise operating at Woodfield Farms Ltd and to maintain control over the scale of the accommodation provided in order to clarify the terms of this planning permission to conform with Policies RA3, RA4 and RA6 of the Herefordshire Local Plan Core Strategy, the and the guidance contained within the National Planning Policy Framework.

- 13. Occupation**

Each caravan will have a maximum capacity for up to four people.

Reason: To safeguard the character and amenities of the area and to comply with Policy SD1 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

- 14. Occupation**

No more than 236 no. people shall be resident on the application site.

Reason: To safeguard the character and amenities of the area and to

comply with Policy SD1 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

15. Noise Management

The operation / use of the premises shall be undertaken in accordance with the details contained within the Noise Management Plan submitted with this application (the Site Management noise Plan submitted Referenced as Woodfields campsite noise management plan dated October 2022). The Noise Management Plan shall be reviewed, and the review recorded in writing (acknowledging any complaints, concerns, actions or training recorded) that have arisen) annually thereafter by 1 March in each successive year. Any alteration to the Noise Management Plan shall be submitted to and approved in writing by the Local Planning Authority before being implemented. The noise management plan shall be implemented in line with timings submitted and confirmed within the phasing plan (condition 4).

Reason: To ensure that there is sufficient and adequate noise mitigation in place, and that there is flexibility to address concerns as they arise, in the interests of amenity in accordance with the requirements of policy SD1 of the Herefordshire Local Plan - Core Strategy and guidance contained within the National Planning Policy Framework

16. Colour of caravans

The caravans located on the edge on the site next to the Northern site boundary shall be painted with an Ardenne (RAL 7022) or Olive Green (BS12B27 or RAL 1000 30 20) colour and the roofs repainted with an Anthracite (RAL 7016) colour prior to occupation and thereafter maintained as such.

Reason: In order to maintain the visual amenities of the area and to conform with Policy LD1 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

17. Removal of Caravans

In the event that the caravans hereby permitted become redundant for purpose the caravans and all other associated development shall be removed and the land re-instated to its original condition within nine months.

Reason: In order to maintain the visual amenities of the area and to conform with Policy LD1 and RA3 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

18. Lighting

At no time shall any external lighting, except low power (under 550 lumens), 'warm' LED lighting in directional down-lighters on motion operated and time-limited switches, that is directly required in relation to the immediate safe use of the approved worker accommodation be installed or operated in association with the approved development and no permanently illuminated external lighting shall be operated at any time, without the written approval of this Local Planning Authority.

Reason: To ensure that all species and local intrinsically dark landscape

are protected having regard to The Conservation of Habitats and Species Regulations 2017, as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019' (the 'Habitats Regulations'), Wildlife & Countryside Act (1981 amended); National Planning Policy Framework, NERC Act (2006) and Herefordshire Local Plan - Core Strategy policies SS1, SS6, LD1-3.

19. Drainage

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.

20. Drainage

Except where otherwise stipulated by condition, the development shall be carried out strictly in accordance with the following document: Flood Risk Assessment and Drainage Statement document reference: 4640-peny-ics-xx-rp-c-07.001 dated 31 January 2022

Reason: in order to ensure that satisfactory drainage arrangements are provided and to comply with policies SD3 and SD4 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework

21. Landscape Implementation

Except where otherwise stipulated by condition, the development shall be carried out strictly in accordance with the following documents and plan: Landscape Strategy Proposals. All planting, seeding or turf laying in the approved landscaping scheme shall be carried out in the first planting season following the occupation of the first caravan or the completion of the development, whichever is the sooner.

Any trees or plants which die, are removed or become severely damaged or diseased within 5 years of planting will be replaced in accordance with the approved plans.

Reason: To ensure that the development is carried out only as approved by the Local Planning Authority and to conform with Policies LD1 and LD3 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

22. Implementation of one permission only

This permission shall be implemented only in lieu of and not in addition to, the planning permission 200444 granted 15 October 2020.

Reason: To define the terms of this permission, having regard to submitted information and in the interests of amenity and the impact upon landscape character of the area having regard to policies SS6, LD1 and SD1 of the Herefordshire Local Plan – Core Strategy and guidance contained within the National Planning Policy Framework

23. No conversion of Welfare Block to habitable accommodation

The building hereby approved shall only be used for the stated purpose and shall at no time be converted to, or used as, habitable accommodation. Reason: Having regard to Policy RA3 of the Herefordshire Local Plan – Core Strategy, Policy H2 of the Weston under Penyard Neighbourhood Development Plan and the National Planning Policy Framework the local planning authority are not prepared to allow the introduction of a separate unit(s) of residential accommodation in this rural location.

Reason: Having regard to Policy RA3 of the Herefordshire Local Plan – Core Strategy, Policy H2 of the Weston under Penyard Neighbourhood Development Plan and the National Planning Policy Framework the local planning authority are not prepared to allow the introduction of a separate unit(s) of residential accommodation in this rural location.

INFORMATIVES:

- 1. The applicant may need to apply to Dwr Cymru / Welsh Water for any connection to the public sewer under S106 of the Water Industry Act 1991. If the connection to the public sewer network is either via a lateral drain (i.e. a drain which extends beyond the connecting property boundary) or via a new sewer (i.e. serves more than one property), it is now a mandatory requirement to first enter into a Section 104 Adoption Agreement (Water Industry Act 1991). The design of the sewers and lateral drains must also conform to the Welsh Ministers Standards for Gravity Foul Sewers and Lateral Drains, and conform with the publication "Sewers for Adoption"- 7th Edition. Further information can be obtained via the Developer Services pages of www.dwrcymru.com**
- 2. The applicant is also advised that some public sewers and lateral drains may not be recorded on our maps of public sewers because they were originally privately owned and were transferred into public ownership by nature of the Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011. The presence of such assets may affect the proposal. In order to assist us in dealing with the proposal the applicant may contact Dwr Cymru Welsh Water to establish the location and status of the apparatus. Under the Water Industry Act 1991 Dwr Cymru Welsh Water has rights of access to its apparatus at all times**
- 3. It is an offence under Section 148 of the Highways Act 1980 to allow mud or other debris to be transmitted onto the public highway. The attention of the applicant is drawn to the need to keep the highway free from any mud or other material emanating from the application site or any works pertaining thereto.**
- 4. It is the responsibility of the developer to arrange for a suitable outfall or discharge point. It cannot be assumed that the highway drainage system can be used for such purposes.**
- 5. In connection with Condition 8 the applicant is advised that advice on its formulation and content can be obtained from the Sustainable Travel Officer, Herefordshire Council Transportation Unit, PO Box 236, Plough Lane, Hereford HR4 0WZ**
- 6. The applicant's attention is drawn to the requirement for design to conform to Herefordshire Council's 'Highways Design Guide for New Developments' and 'Highways Specification for New Developments'.**

7. **A public right of way crosses the site of this permission. The permission does not authorise the stopping up or diversion of the right of way. The right of way may be stopped up or diverted by Order under Section 257 of the Town and Country Planning Act 1990 provided that the Order is made before the development is carried out. If the right of way is obstructed before the Order is made, the Order cannot proceed until the obstruction is removed.**
8. **The Authority would advise the applicant (and their contractors) that they have a legal Duty of Care as regards wildlife protection. The majority of UK wildlife is subject to some level of legal protection through the Wildlife & Countryside Act (1981 as amended), with enhanced protection for special “protected species” such as all Bat species, Great Crested Newts, Otters, Dormice, Crayfish and reptile species that are present and widespread across the County. All nesting birds are legally protected from disturbance at any time of the year. Care should be taken to plan work and at all times of the year undertake the necessary precautionary checks and develop relevant working methods prior to work commencing. If in any doubt it advised that advice from a local professional ecology consultant is obtained.**

There was an adjournment at 11:13 a.m.; the meeting reconvened at 11:25 a.m.

Cllr Yolande Watson joined the meeting at 11:25 a.m.

Kevin Bishop left the meeting at 11:25 a.m.

69. 221177 - SHEEPCOTTS, ULLINGSWICK, HEREFORDSHIRE, HR1 3JQ (Pages 11 - 12)

The development manager north team gave a presentation on the application and updates/representations received following the publication of the agenda as provided in the update sheet and appended to these minutes.

In accordance with the criteria for public speaking Mr Tompkins, the applicant’s agent, spoke in support of the application.

In accordance with the council's constitution the local ward member spoke on the application. In summary, he explained that he was unable to support the application due to the size and scale of the development and its impact on the landscape. The judgement as to whether the development was outstanding, as defined paragraph 80(e) of the National Planning Policy Framework (NPPF), was a subjective determination for the committee to make. The application was felt to be contrary to core strategy policies SS1, SS2, LD1, RA3 and also contrary to the Neighbourhood Development Plan.

The committee debated the application.

The local ward member was given the opportunity to close the debate, he explained that due to the size and scale of the development, its impact on the Landscape was unacceptable.

A motion that the application be approved in accordance for the case officer’s recommendation was proposed by Councillor John Hardwick and seconded by Councillor Dave Boulter. The motion was put to the vote and was lost by simple majority.

A motion that the application be refused for those reasons set out below was proposed by Councillor Yolande Watson and seconded by Councillor Jeremy Milln. The motion was put to the vote and was carried by a simple majority.

The proposal represents new residential development in the open countryside. By virtue of its design and scale it is not considered to be of outstanding design or in keeping with the character of the locality, leading to adverse harm upon the character and appearance of the area. As such, the proposal does not comply with the principles of Paragraph 80(e) of the National Planning Policy Framework and is not considered to be representative of sustainable development, contrary to Policies SS1, SS2, SS3, SS7, RA2, RA3, LD1, LD3 and SD1 of the Herefordshire Local Plan – Core Strategy and Policy OPG2 of the Ocle Pychard Group Neighbourhood Development Plan.

As a result of the scale of development proposed, the scheme will result in the loss of good to moderate agricultural land, contrary to Policies SS7 and RA6 of the Herefordshire Local Plan – Core Strategy.

RESOLVED – that planning permission is refused for the following reasons:

The proposal represents new residential development in the open countryside. By virtue of its design and scale it is not considered to be of outstanding design or in keeping with the character of the locality, leading to adverse harm upon the character and appearance of the area. As such, the proposal does not comply with the principles of Paragraph 80(e) of the National Planning Policy Framework and is not considered to be representative of sustainable development, contrary to Policies SS1, SS2, SS3, SS7, RA2, RA3, LD1, LD3 and SD1 of the Herefordshire Local Plan – Core Strategy and Policy OPG2 of the Ocle Pychard Group Neighbourhood Development Plan.

As a result of the scale of development proposed, the scheme will result in the loss of good to moderate agricultural land, contrary to Policies SS7 and RA6 of the Herefordshire Local Plan – Core Strategy.

The meeting ended at 12.47 pm

Chairperson

221177 - ERECTION OF 1 NO. DWELLING OF OUTSTANDING DESIGN AND ASSOCIATED WORKS INCLUDING ACCESS, LANDSCAPING, OUTBUILDINGS, INFRASTRUCTURE, LAKE CREATION AND OTHER ENGINEERING WORKS AT SHEEPCOTTS, ULLINGSWICK, HEREFORDSHIRE, HR1 3JQ

For: Mr & Mrs Perry per Mr Matt Tompkins, Lane Cottage, Burghill, Hereford, Herefordshire HR4 7RL

ADDITIONAL REPRESENTATIONS

Officers are aware that committee members have received direct email correspondence from two objectors asking them to refuse planning permission. The correspondence does not raise any new issues. It reiterates views previously expressed that the proposal does not accord with Paragraph 80 of the NPPF, that it will not significantly enhance landscape setting, that the application states that the proposal will have a minor to moderate negative effect when viewed from a nearby bridleway and therefore cannot be considered to enhance the landscape setting and that it will increase light pollution.

OFFICER COMMENTS

The matters referred to in the correspondence are dealt with in detail in the appraisal section of the officers report

CHANGE TO RECOMMENDATION

No change to the recommendation

Appeal Decision

Hearing Held on 12 February 2019

Site visits made on 12 & 15 February 2019

by S J Papworth DipArch(Glos) RIBA

an Inspector appointed by the Secretary of State

Decision date: 1 March 2019

Appeal Ref: APP/F0114/W/18/3208289

Land to south of Widcome Lodge, South Widcombe, Hinton Blewett, Bristol.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr & Mrs Cotterell against the decision of Bath & North East Somerset Council.
 - The application Ref 18/00505/FUL, dated 5 February 2018, was refused by notice dated 10 May 2018.
 - The development proposed is new house of exceptional quality & innovative nature of design.
-

Decision

1. I dismiss the appeal.

Application for Costs

2. At the Hearing an application for costs was made by Mr & Mrs Cotterell against Bath & North East Somerset Council. This application is the subject of a separate Decision.

Procedural Matter

3. The National Planning Policy Framework current at the time of the application and the Council's Decision was that of 2012. By the time of the Hearing this had been revised as the 2018 publication. A further revision was published on 19 February 2019, but this did not alter any matters or references related to this Decision.

Preliminary Findings

4. The proposal is for a dwelling outside of a Housing Development Boundary, and within the Mendip Hills Area of Outstanding Natural Beauty. It was promoted specifically as meeting the requirements of the fourth bullet point to paragraph 55 of the 2012 National Planning Policy Framework. That is now paragraph 79e) of the 2019 revision, being one of the circumstances that could allow an exception to the statement in the main body of the paragraph that planning policies and decisions should avoid the development of isolated homes in the countryside.

5. The meaning of the word 'isolated' was the subject of the 'Braintree' judgments¹ and should be given its ordinary objective meaning of '*far away from other places, buildings or people; remote*'. The Appeal Court Judge stated that whether a proposed new dwelling is, or is not, 'isolated' in this sense will be a matter of fact and planning judgment for the decision-maker in the particular circumstances of the case in hand.
6. This matter was raised with the parties at the Hearing and whilst the appellants remained of the view that the proposed house should be regarded as being isolated, at least spatially, due to the nature of the site and the vegetation, the Council did acknowledge that consideration had been given to the 'Braintree' Judgments but that the criteria in paragraph 79e) were tested and had been found not to be met.
7. The settlement pattern is shown on a map in the Landscape and Visual Impact Assessment. The site is located on the spring line, a location described as being a strong characteristic of settlements in the area, and South Widcombe is described as a characteristic hamlet. There is a cluster of dwellings and built form following the road such that South Widcombe is recognisable as a hamlet to the turn in the road at Tudor Farm. Whilst the appellants assert in the Assessment that the site integrates well into the topography and the hamlet, and that will be tested later in this Decision, the conclusion is that the site should not be considered isolated, and the proposed house would not appear isolated in the terms of the 'Braintree' judgment. The fact that there is a perception of a threat to privacy at Widcombe Lodge, and that too will be tested later, reinforces that view.

Main Issue

8. Having regard to the Preliminary Findings above, the main issues are;
 - The effect of the proposal on the character and appearance of South Widcombe and the Mendip Hills Area of Outstanding Natural Beauty.
 - The effect of the proposals on the living conditions of nearby residential occupiers with particular regard to privacy.
 - The effect of the proposals on highway safety and the free flow of traffic.
 - The weight to be attached to other considerations in favour of the proposals.

Reasons

Policy

9. Policy D1 of the Bath and North East Somerset Placemaking Plan 2017 concerns general urban design principles, and Policies D2 and D3 set out requirements regarding local character and distinctiveness, and how development should contribute positively to the urban fabric. Policy NE2 states that development will be permitted where it conserves and enhances local landscape character, incorporates green space that positively contributes to creating a high quality environment, contributes positively to the local area and conserves and enhances important views. Development should seek to avoid

¹ Braintree District Council v Secretary of State for Communities and Local Government & Others [2017] EWHC 2743 (Admin) of 15 November 2017, and subsequently in the Court of Appeal judgment of 28 March 2018

or adequately mitigate any adverse impact on landscape. The provision of essential dwellings for rural workers in the subject of Policy RE4 which states that new dwellings will not be permitted outside a Housing Development Boundary in the open countryside unless there is an essential need for a rural worker to live permanently at or near their place of work in the countryside, and then subject to criteria.

10. The Chew Valley Neighbourhood Plan was 'made' on 12 April 2017 and Policy HDE1 seeks the conservation of the characteristic rural features of the area and under Policy HDE2 development must demonstrate how the locally distinctive design attributes including scale, materials and density, are reflected, conserved and enhanced. Policy HDE3 sets out requirements regarding the effect on important views, those being identified in numbered illustrations.
11. The Council have also referred to the Mendip Hills Area of Outstanding Natural Beauty Management Plan and the Supplementary Planning Guidance '*Agricultural Building Design Guideline for the Mendip Hills AONB*'.
12. As a result of the Preliminary Findings, the exception and criteria in paragraph 79e) of the Framework do not apply, although paragraph 131 on achieving well-designed places contains elements of those criteria, stating that when determining applications, great weight should be given to outstanding or innovative designs which promote high levels of sustainability, or help raise the standard of design more generally in an area, so long as they fit in with the overall form and layout of their surroundings.
13. Paragraph 172 refers to Areas of Outstanding Natural Beauty and states that great weight should be given to conserving and enhancing landscape and scenic beauty, the designated areas having the highest status of protection in relation to these issues.
14. More generally, paragraph 124 states that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Paragraph 170 states that planning policies and decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan); and recognising the intrinsic character and beauty of the countryside.

Character and Appearance

15. The facts with regard to the nature of the landscape are set out in the appellants' submissions as well as in the Officer's Report and do not need restating. Viewpoints VR3, Prospect Stile and VR14, Western Lane give a good overview of the area from opposing high-level locations and show a pastoral landscape of mainly small fields interspersed with groups of buildings and roads with the large Chew Valley Lake more distant.
16. Whilst within the Area of Outstanding Natural Beauty, the landscape shows signs of significant human intervention, in the field pattern, buildings and in particular the Lake, which the informative panel at VR3 describes as having been artificially formed. However, that intervention has for the most part worked with the natural features; topography, vegetation, stone and watercourses. There are detractors and where pertinent to the consideration of

the proposal, these have been identified in the submissions, but for the most part the area displays the high level of natural beauty that the designation denotes.

17. The proposals would place a large dwelling in a currently vacant field, and towards the upper boundary away from the road that passes through the hamlet. It is acknowledged that the chosen walling materials and aspects of the massing, and distribution of that massing, have been designed with an agricultural aesthetic, and it is of interest that within a short distance of the site there are two differing presentations of agricultural groups. That to the north at Widcombe Farm is an attractive group with a stone boundary and appears well-detailed as seen from the road, whereas Tudor Farm to the south appears more utilitarian in form and materials. The Council accept that whilst the Design Guidelines seek to influence the form of agricultural development, much could be permitted development.
18. However the roof form and plan form in particular are an interpretation of that aesthetic that introduce a strident arrangement of planes and angles that is not found in agricultural buildings. Also the proposed distribution of built form across the site and the relationship to adjacent ground levels is uncharacteristic of a truly agricultural grouping. It is accepted that the allusions to agricultural forms can and should only go so far, and that the proposal would appear as a residential building, with the use of land likely to be evident as domestic.
19. There are important difference between the considerations relevant to an isolated home in the countryside under paragraph 79e) and those relevant to this location under paragraph 131. In that there are a lesser number of explicit criteria in in the former, the bar may be considered lower, but the addition of the word '*truly*' in the latter need not, in plain English, mean an enhanced level of requirement. It is noted that the circumstances in paragraph 79 are no longer described as '*special*' and that the need to significantly enhance the immediate setting and be sensitive to the defining characteristics of the local area is covered by the more explicit requirement in paragraph 131 to *fit in* with the overall form and layout of the surroundings.
20. Following the 'Braintree' judgments it is clear that there would not be other buildings let alone dwellings to be sensitive to in an isolated location, whereas in the present case and in this location, the overall form and layout of the surroundings must include the buildings and dwellings in the hamlet.
21. The overall form and layout of the surroundings is smaller in scale than is proposed so far as the domestic buildings are concerned, and whilst the agricultural buildings are larger, the allusions to their form rightly stops short of attempting to mislead as to the use, and they are not so closely associated with the appeal site. Those domestic buildings make use of a limited palette of materials and detailing, and their shapes are decidedly traditional. Their location along the road in a close and pleasing relationship would not be followed in the location of the proposed dwelling, and the proposed size, form, use of materials and location on the site would be at odds with that of the hamlet.
22. The degree to which the building would be seen or experienced in association with those of the hamlet would depend on the boundary and other vegetation, and the Council are of the view that what is proposed is in the way of mitigation rather than enhancement. Be that as it may, there would be a

tension between the building being considered worthy of being seen for its qualities, and being screened to avoid the risk of not fitting in with the surroundings. That is a tension that would be far less of a concern in a truly isolated, paragraph 79e) proposal where being visible is often one of the proposed benefits in order to display the architectural quality.

23. No matter the intrinsic quality of the design in this case, and that will be explored further in the planning balance, due to the size and nature of that design, the proposal would fail to fit in sufficiently, and hence would cause visual harm to the appearance of the area, while any successful filtering or screening of views would itself introduce uncharacteristic planting forms that would also cause visual harm.
24. To conclude, the nature of the proposal and its size and design relative to that of the nearby buildings and spaces would not accord with the requirement in paragraph 131 to fit in with the overall form and layout of the surroundings, and would be contrary to Development Plan policies and national guidance which seek to protect the character and appearance of the countryside and recognise its intrinsic character and beauty, and to protect Areas of Outstanding Natural Beauty in particular. Whether this failing is outweighed by other considerations will be considered in the planning balance which follows the next 2 main issues.

Living Conditions

25. This is not an issue supported by the Council, the Officer's Report referring to the distances concerned between the proposed house and Widcombe Lodge, and the significant reinforcement of the boundary planting. That nearby residence has three wall planes that are predominantly glazed with sliding/folding doors which give onto the patio area and lawns. It is clear that this is a part of the dwelling that would be used for recreation. The lower part of the appeal site was apparently once part of the garden to Widcombe Lodge, and displays a different character and appearance when compared with the land higher on the hill. The occupier of the Lodge enjoys the view over than land, which would be lost if boundary treatment were to be enhanced.
26. However, that view cannot be protected in planning considerations and any enhancement would not be so close as to cause visual harm to the outlook. Although the proposed house would be a significant height at a higher ground level than the patio, the distances concerned, the use of the nearest proposed internal spaces and the ability to filter any view with planting within the site all lead to the conclusion that no real harm would occur in planning terms.

Highways

27. The access would be where there is already a field access at the top of the site, and the 'Technical Note on Access' sets out the considerations. Part of the access passes over common land and Certificate B was served on an owner and a tenant. The Note concludes that appropriate visibility splays can be achieved in both directions. However, local residents asserted at the site inspection that this relied on cutting back vegetation that was not in the appellants' control and that a stone wall impeded the view in any event. The Council did not support that assertion, appearing neutral on that matter.

28. The visibility to the right is acceptable, due to the bend in the road and its narrow width meaning that oncoming vehicles would be seen well in advance. To the left, the presence of the wall and vegetation would reduce the 2.4m dimension, but the raised level of the access, since no reduction in the gradient is proposed or required, would allow an adequate view and again, the narrow width of the road would ensure that vehicles are seen approaching at an adequate distance.
29. Concern was also expressed over the process for site deliveries and site operative's parking, and the location of a place for lorries to pull in and offload over the boundary near the junction was pointed out. There may be a need to break some consignments into smaller loads or some other special arrangements as entry onto, or near, the site for large vehicles would not be feasible. A Construction Management Plan would allow control of this aspect of the construction in order to minimise disruption to road users and residents.

Other Considerations

30. The proposal has been promoted to be in line with the requirements of paragraph 79e) and as previously stated, paragraphs 124 and 131 seek high quality buildings and outstanding and innovative designs. In order to fully weigh the proposal in the balance it is appropriate to consider the submissions on all of the criteria for isolated homes. In this analysis the findings of the Design Review Panel will be considered and the weight to be afforded those findings will be determined.

Truly outstanding;

31. The design process has been fully described in the submissions from the initial contact with the clients and learning about their lifestyle, expectations and requirements; translating that into a series of interconnected spaces, to the point where the finished proposals are presented. The process has obviously been rigorous, borne out of considerable experience and success at promoting this type of proposal. The appellants' comments are acknowledged, that whilst style may be considered a subjective matter, the quality of design stems from an objective and thorough process. Nevertheless there should be a 'creative leap' which differentiates the human and personal involvement above a merely mechanical and dispassionate process. From all that has been submitted and explained, it is concluded that the design should be regarded as being, in isolation, of a truly outstanding quality.

Innovative;

32. This is an alternative to the previous consideration and in a paragraph 79e) case need not necessarily be pursued further. However this is being looked at as part of a general planning balance and it is right that weight is apportioned as appropriate. There is innovation in the use of materials and massing, but it is the technical response to the brief that will be considered now. The appellants clearly have an expertise and interest in the energy equations, and there are aspects of the longer-term storage of generated energy that would be innovative, in fact it is their untried and untested nature that is objected-to in representation. Whilst there is room for laboratory testing as suggested, real-time and real-life usage is still necessary even with the attendant risk of under-performance or failure and the conclusion is that the proposal reaches the standard required.

Reflecting the Highest Standards in Architecture;

33. The considerable experience and success at promoting this type of proposal referred to in the first criterion gives a body of work from this architect to test against. Although context should be a consideration, and this proposal has been found wanting in that respect, it is concluded that, again in isolation, the proposal does meet this requirement.

Helping to Raise Standards of Design More Generally in Rural Areas;

34. A well-designed house that is perceived as being attractive and being sited in the right place could be an inspiration to achieving high standards in other rural developments, and there are aspects of this design that could do that, but the failure to respond appropriately to the overall form and layout of the surroundings limits the weight that can be attributed to this point.

Significantly Enhance its Immediate Setting;

35. For the reasons set out in the first main issue, this criterion would not be met since the immediate setting includes at the least Widcombe Lodge and should reasonably be taken to include the buildings along both limbs of the road at the foot of the lane leading to the site.

Be Sensitive to the Defining Characteristics of the Local Area;

36. Similarly, the local area has been studied and its defining characteristics are the road-side development of limited size of buildings within small to medium sized plots, utilising a limited palette of materials and design details, set within the landscape of fields, trees and a topography influenced by the watercourses. The proposed large dwelling placed across the site divorced from the roadside would not be sensitive to this defining characteristic.
37. To conclude on this test against the paragraph 79e) criteria, the failings with regard to its effect on the immediate setting and the defining characteristics of the local area stem from the fact of the site not being isolated. The site is not one that requires enhancement, and neither the historical use of the land as the site for a one-time dwelling, nor the domestic nature of the lower area with its tennis court add to their being an overriding benefit in developing the land.

Planning Balance and Conclusions

38. The site is not isolated as determined in the 'Braintree' judgments and the appeal falls to be decided on the provisions of the Development Plan and national guidance on the quality of design, as well as the protection of the countryside and the Area of Outstanding Natural Beauty, rather than the exception allowed for in paragraph 79e). This finding limits the weight to be afforded the conclusions of the Design Review Panel.
39. There would be no planning harm to the privacy of adjoining occupiers, and road safety both during the construction and occupation of the proposed dwelling could be assured.
40. In addition it is acknowledged that the proposal should be regarded as being an outstanding design and on the right site, possibly as a stand-alone sculptural form in an isolated landscape, would be of the standard allowed for in parts of the paragraph 79e) exception. Innovation could be assured through conditions, as demonstrated by work carried out by the main parties following

the close of the Hearing, it being essential to be able to conclude on that in the planning balance.

41. However, the nature of this site and its location militate against all of the paragraph 79e) criteria being met as a way of testing the credentials of the design, but in any event the requirements of paragraph 131 on achieving well-designed places should take precedence. The failure of the proposal to acceptably fit in with the overall form and layout of its surroundings is an overriding consideration as visual harm would be caused through the building's size and form.
42. The proposal does not accord with Policies D2, D3, NE2 or RE4 of the Bath and North East Somerset Placemaking Plan, or Policies HDE1 and HDE2 of the Chew Valley Neighbourhood Plan. There are no other considerations such as the quality of the design or the proposed level of innovation that outweigh the harm identified and the policies of restraint outside of a Housing Development Boundary should not be set aside in this case. For the reasons given above it is concluded that the appeal should be dismissed.

S J Papworth

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

M Almond	Planning and Enforcement Officer Bath & North East Somerset Council
C O'Kelly	Landscape Officer Bath & North East Somerset Council
R Stott	Planning and Enforcement Officer Bath & North East Somerset Council

FOR THE APPELLANTS:

R Hughes	Principal Partner Hughes Planning
R Hawkes	Director Hawkes Architecture
M Young	Partner Squires Young
A Cotterell	Appellant

INTERESTED PERSONS:

Cllr T Warren	Ward Councillor
S Keith	Local Resident
T Merrett	Merrett & Co, advisor to S Keith
A & P Peters	Local Resident
A & H Sandon	Local Resident
C Pritchard	Local Resident
M Shaw	Local Resident

DOCUMENTS

Document	1	Full A3 version of ' <i>Architectural and Landscape Design Proposals</i> ' submitted by appellants
Document	2	Map showing route and viewpoints taken by Design Review Panel 13 September 2017 submitted by appellants
Document	3	' <i>Agricultural Building Design Guideline for the Mendip Hills AONB</i> ' Supplementary Planning Guidance revised 2013 submitted by Council
Document	4	Agreed conditions and e-mail from appellants formally agreeing to those to be 'pre-commencement'.

Appeal Decision

Hearing Held on 8 May 2019

Site visit made on 8 May 2019

by S J Papworth DipArch(Glos) RIBA

an Inspector appointed by the Secretary of State

Decision date: 17 May 2019

Appeal Ref: APP/Q3305/W/18/3200788

Goodrest Cottage, Neighbourne Lane, Oakhill, Somerset BA3 5BQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Stephen Powell against the decision of Mendip District Council.
 - The application Ref 2016/0112/FUL, dated 14 January 2016, was refused by notice dated 24 October 2017.
 - The development proposed is new house.
-

Decision

1. I dismiss the appeal.

Procedural Matter

2. The National Planning Policy Framework current at the time of the application and the Council's Decision was that of 2012. By the time of the Hearing this had been revised as the 2019 publication with changes to the wording and requirements relevant to the consideration of this appeal.

Preliminary Findings

3. The proposal is for a dwelling outside of any Development Plan settlement boundary and it was promoted specifically as meeting the requirements of the fourth bullet point to paragraph 55 of the 2012 National Planning Policy Framework. That is now paragraph 79e) of the 2019 revision, being one of the circumstances that could allow an exception to the statement in the main body of the paragraph that planning policies and decisions should avoid the development of isolated homes in the countryside.
4. The meaning of the word 'isolated' was the subject of the 'Braintree' judgments¹ and should be given its ordinary objective meaning of '*far away from other places, buildings or people; remote*'. The Appeal Court Judge stated that whether a proposed new dwelling is, or is not, 'isolated' in this sense will be a matter of fact and planning judgment for the decision-maker in the particular circumstances of the case in hand.
5. This matter was raised with the parties prior to the Hearing, and the appellant accepted that due to the presence of a number of dwellings in the immediate

¹ Braintree District Council v Secretary of State for Communities and Local Government & Others [2017] EWHC 2743 (Admin) of 15 November 2017, and subsequently in the Court of Appeal judgment of 28 March 2018

vicinity of the proposed dwelling that might constitute a hamlet, it would be difficult to present a credible argument such that the proposed dwelling could be identified as 'isolated' for the purposes of paragraph 79 of the Framework.

6. With the benefit of an unaccompanied visit to the area on the day before the Hearing, I announced my view in opening that the location should not be considered 'isolated' in the terms of the Framework, and that view did not change as a result of the later accompanied site inspection.
7. Although the proposal does not benefit from the exception set out at paragraph 79e) of the Framework, and the location places the proposal as being contrary to the Development Plan and national policies of restraint on new dwellings in the countryside, section 38(6) of the Planning and Compulsory Purchase Act 2004, provides for material considerations to indicate a decision otherwise than in accordance with the Development Plan, and the Hearing proceeded on that basis, as will this Decision.

Main Issues

8. Having regard to the Preliminary Findings above, the main issues are;
 - The effect of the proposal on the character and appearance of the area.
 - The effect of the proposal on the living conditions of nearby residential occupiers with particular regard to privacy.
 - The weight to be attached to other considerations in favour of the proposals.

Reasons

Policy

9. Core Policy 1 of the Mendip District Local Plan 2006-2029, adopted in 2014 states that all new development is expected to contribute positively towards delivering components of the Vision for the District and the associated strategic objectives. The policy sets out how the most sustainable pattern of growth will be accommodated according to the five principal settlements, primary villages, secondary villages, and other villages and hamlets. Development in the open countryside will be strictly controlled but may be exceptionally permitted in line with the provisions of Core Policy 4 on sustaining rural communities. Core Policy 2 is entitled 'supporting the provision of housing' and sets out the locations for a minimum of 9,635 additional dwellings.
10. Development Policy 1 requires all development proposals to contribute positively to the maintenance and enhancement of local identity and distinctiveness across the District, and in section 2 and 3 sets out more detailed requirements. Mendip's landscape is the subject of Development Policy 4 and proposals for development that would, individually or cumulatively, significantly degrade the quality of the local landscape will not be supported. Development Policy 7 concerns the design and amenity of new development with criteria to support high quality design which results in usable, durable, adaptable, sustainable and attractive places.
11. As a result of the Preliminary Findings, the exception and criteria in paragraph 79e) of the Framework do not apply, although paragraph 131 on achieving well-designed places contains elements of those criteria, stating that when

determining applications, great weight should be given to outstanding or innovative designs which promote high levels of sustainability, or help raise the standard of design more generally in an area, so long as they fit in with the overall form and layout of their surroundings.

12. More generally, paragraph 124 states that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Paragraph 170 states that planning policies and decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan); and recognising the intrinsic character and beauty of the countryside.

Character and Appearance

13. The appeal site as denoted by the red line is quite tightly drawn around the location of the proposed dwelling and there is blue-edged land beyond that to the boundaries with other properties and the road. The site slopes markedly from east to west, that is to say from the road to the boundary with other properties, but within that slope there are variations and a plateau is evident to the north corner. A public footpath crosses the site, and whilst the definitive line may differ from that habitually in use, neither is directly affected by the proposal. There are various dwellings along the east side of the road and on each side further south, together with a cluster of dwellings at the bend at the foot of the hill. It is the presence of these dwellings that have led to the conclusion regarding a lack of isolation.
14. The land has been described as 'unused' and comments indicated that there is a more overgrown character to it than previously. It appears likely that the nearby dwellings have been developed on the parts of the roadside that are more readily conducive to traditional design and building, leaving the undeveloped land of the site between. This response to topography in the layout of built form is an important contributor to the character and appearance of the area. Within that character and appearance, the land appears as a pleasant green wedge at the double bend and change in levels, which contributes to the loosely developed rural nature of this small group of buildings. The sporadic built form along the road, with clusters at the foot of the hill and at the crossroads by the telephone box, results in the rural nature of the larger area being hardly affected by the presence of these buildings.
15. The proposed dwelling would also respond to topography by running along the contours, and being partly buried within the slope, so that the greenery behind the roadside wall would be encouraged to extend over the near-flat roof, as seen from the east. That possible public view could be screened or filtered with additional planting on the blue-edged land, secured by condition. The 2 wings to north and south would thus present only a limited impression of change, evidenced by the lay-lights and a likely change to the nature of planting where on a roof with more limited depth of soil. The access and driveway would be sufficiently away from the building, down-slope and edged by vegetation as to limit the impact on the character and appearance of the upper road.
16. As a result, whilst there would be change to the view from the upper road where it is over the garage or sleeping wings, the longer vista across the valley, such as to Ashwick and its Church, would tend to 'take-the-eye', and

the lack of obvious built form above the apparent ground level would result in no perceptible harm to that view.

17. However, that cannot be said of the situation to the central part of the dwelling, where the living room and kitchen would enjoy a higher ceiling and a greater degree of lighting by way of a raised roof and clerestory windows facing the road. There is some ambiguity over the extent of laylights and/or solar panels in this area, although that could be addressed by condition, but the fact appears to be that some form of intrusion could be present to the otherwise 'green-roof'.
18. The result of this raising of the roof in this area is that even with a complete 'green-roof' a less-natural land form would be evident, with sheer sides to the lower wings and the rearward facing clerestory windows further drawing attention to the presence of the house. This raised section would be less likely to be seen-over or ignored in the long view, rather it would be more likely to intrude into that view, introducing an alien feature of a window at ground level. The more limited depth of ground between this feature and the road, together with the need for retaining structures to hold back the road, would limit the ability to introduce effective screening, or risk that screening itself appearing contrived and unnatural.
19. It is clear that the design has evolved to take full advantage of the topography of the site and the extensive views out from it. Whilst the fenestration to the sleeping wing and the office and garaging would be restrained and limited, the earth being brought up to a relatively high cill level to the sleeping wing in particular, the central area would have floor to ceiling windows across the full width of the room. There was some discussion at the Hearing as to the use of blinds, curtains or the like to restrict the appearance of such a large lit area within views from both the near footpath and the accessible paths further across the valley, but even if a condition could be devised, doubts would remain as to it being reasonable or enforceable.
20. Such an expanse of glazing in this location would, in any event, present a risk of reflection during the day that would appear out of character with an area comprising buildings having a more traditional ratio of solid to void, and more controlled light emittance and reflection as a result. The expanse of glazing proposed would draw attention to the size of the building and its extent along the slope, that size being out of character with the overall form and layout of the surroundings.
21. The visual relationship with Corner Cottage was a matter of particular study at the site inspection, that dwelling to the north-west of the site being set low compared with the adjacent ground levels, with retaining structures to the rear. Whilst the animal pens along the mutual boundary with the blue-edged land rise with the ground level, it is clear that the north-west corner of the proposed sleeping wing would be close to, but at some elevation above, the cottage. There have been some changes in this relationship during the evolution of the design, as shown by the different amendment numbers on drawings, but such as drawing 113/4 shows what appears to be an abrupt drop in land and an extent of flank wall exposed at the north end on the building.
22. This could be a matter for detailed design, although with Building Regulation approval of plans having been obtained, the design has clearly progressed from that originally presented for planning permission. It is possible that the 2-

dimensional drawings are not able to fully show this relationship, given the slope of the land and the curve of the building, but there remains a concern that the building would present an unattractive and overbearing visual relationship with Corner Cottage.

23. There is a footpath running across from the lower part of the road around Corner Cottage and the part running along the top of the site, and this appears to provide part of a wider network of paths. Local residents assert that it is well-used. Be that as it may, the view from that path would be of the exposed faces of the sleeping and service wings, along with the raised living room part, shown at an elevated level and with the lip of the green roof on the skyline. The scale of the building and its proximity to the path would appear intrusive to the rural character and there would be insufficient architectural interest to counteract this unwelcome effect.
24. To conclude only on the effect of the building on the character and appearance of the area, the proposed dwelling fails to respond in an appropriate manner to the built and natural context of the site, contrary to the aims of Development Policy 1, would not be compatible through siting and design with the landscape in the vicinity of the site, contrary to Development Policy 4, and would not be of a scale, mass, form and layout appropriate to the local context, as sought in Development Policy 7. Other requirements of these policies will be considered as part of the benefits of the scheme and the planning balance. The proposal fails to satisfy the requirement in paragraph 131 of the Framework in the effect on the surroundings.

Living Conditions

25. This was not a matter supported by the Council, the Officer's Report identifying 2 immediate neighbours, but concluding that they would not be adversely affected by the siting or scale of the proposal and would not suffer overlooking or overshadowing.
26. There is an appreciable difference in level between the site of the proposed dwelling, its roof being at or near the level of road, and that of the dwellings of Sumach House and Pear Tree Cottage, which are situated adjoining the lower boundary of the blue edged land. Whilst the distance between the proposed dwelling and these properties would be considered acceptable, and the nature of their rooms on the facing elevation appear to be less sensitive to any loss of privacy, the extent of glazing proposed on the west elevation of the proposed dwelling together with the difference in level would risk a perception of overlooking in the minds of those adjoining residents when in their garden or front driveway.
27. The shortcomings in the design and its effect on the surroundings, identified in the first main issue, would also be particularly felt by those residents, leading to a sense of the dwelling appearing to overwhelm the modest scale of those dwellings lower down the slope.
28. Whilst not a reason for refusal, and alone not a reason to dismiss this Appeal, these concerns expressed by the immediate neighbours are clearly strongly felt and moderate weight attaches, further indicating that the proposal does not fit in with the overall form and layout of its surroundings, as sought in paragraph 131 of the Framework.

Other Considerations

29. As stated, the location of the site renders the proposal for residential use contrary to policies of restraint, and the exception in paragraph 79e) of the Framework does not apply. Nevertheless, material considerations can indicate a decision other than in accordance with the Development Plan. The wording of paragraph 131 coincides with significant parts of paragraph 79e) such that the appraisal carried out by the South West Design Review Panel is a useful tool in judging the credentials of the scheme at Appeal;

Truly Outstanding;

30. The Design Review Panel makes clear that the exception test in the Framework is a 'high bar' and that the quality of the architecture is an alternative to being innovative. The design responds to the topography of the site and the requirements of the client in having gallery space, leading to the relatively wide but shallow form, the rationale of having a lower sleeping and service wing either side of the higher living room would provide an interesting internal experience. Whilst the Panel praise the idea of the meadow grass roof, that feature would risk being seen as an unnatural addition to what is an open, if untended area of land. The use of earth-sheltering is not wholly successful and the visible elements do not display truly outstanding architectural design.

Innovative;

31. This is also an alternative in paragraph 131 and the main thrust of the argument concerns the use of stone quarry waste as a mass walling and retaining material. The Panel describe the proposal as 'promising' but there is clearly work to be done to finalise the proposal, although the Building Regulation approval has provided a separate check of structural calculations. The use of the material is feasible, and as an alternative to cement-based products is to be commended. As pointed out by the Panel, the use of a mass rather than reinforced material would likely require greater thicknesses, but the rock substrate on the site lends itself to the proposed use.

32. From the information provided this should be regarded as being innovative, but there is no-site specific reason why it must be used here, rather than on a scheme within a settlement boundary, other than being within a reasonable vicinity of the quarry source. It is accepted that the greater thickness likely to be required may militate against use on a more restricted site.

Sustainability

33. The paragraph 131 requirement is that the outstanding or innovative design should promote high levels of sustainability, and the re-use of an otherwise waste material would be in line with Development Policy 7 on using locally sourced or recycled materials. Whilst the photographs in the Construction Method Statement indicate a quarry with significant and unsightly waste tips, it is understood that the aggregate quarries more locally do not have the same high level of environmental adverse effects due to the nature of the product, and local residents asserted that waste is offered for re-use already.

34. Nevertheless, the beneficial use of a greater percentage of the dug material and within a short distance is a benefit to the sustainability of the quarrying process, and cement-based products as the more usual alternative can be very energy consuming.

Raising the Standard of Design

35. For similar reasons, the introduction of this use of material could assist in meeting this aspect of the Framework paragraph, the weight attaching to this being tempered by the apparent need for thicknesses that may not suit all situations, and as distances from the source increase, the economic and environmental equation could change. The appellant is of the view that other sources of quarry waste could perform similarly to the basalt under consideration, which could widen the choice. The architectural design itself is however very site-specific and the degree to which it would lend itself to a more general application or raising of standards is less clear.

Biodiversity

36. The proposal includes well-developed plans to improve the biodiversity of the land, and this is clearly feasible given the amount of blue-edged land in addition to that occupied by the building. However, although the land is described as unused, and comments were made at the site inspection as to its condition having been allowed to deteriorate, such 'unused' land within a rural agricultural area has an ecological value if left alone.

Planning Balance and Conclusions

37. Paragraph 79 is specific as applying to 'isolated' dwellings and this reference has not been altered in the 2018 nor 2019 editions of the Framework, notwithstanding the 'Braintree' judgments predating those revisions. An appraisal of a paragraph 79e) proposal would therefore be less likely to involve nearby buildings and the need to significantly enhance its immediate setting and be sensitive to the defining characteristics of the local area, as contained in that test, is substantially different from the requirement in paragraph 131 to fit in with the overall form and layout of the surroundings.
38. It is quite possible that a truly isolated site could be enhanced by the addition of high-quality built form, and permissions have been granted in various cases for such proposals. However, as made clear in the Development Plan and the Framework, context is important and in this case that context includes existing patterns of development, and the requirements of paragraph 131 on achieving well-designed places should take precedence. The failure of the proposal to acceptably fit in with the overall form and layout of its surroundings is an overriding consideration as visual harm would be caused through the building's scale, disposition on the land and elevated position.
39. The proposal does not accord with Development Plan policies on the location of development and the need to respond appropriately to the context of the site. There are no other considerations such as the quality of the design or the proposed level of innovation that outweigh the harm identified and the policies of restraint outside of a settlement boundary should not be set aside in this case. For the reasons given above it is concluded that the appeal should be dismissed.

S J Papworth

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

C Langford	Planning Officer Mendip District Council
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FOR THE APPELLANT:

K Evans	TLT Solicitors
M Williams	MJW Architects
K Brown	Structural Engineer KB2 Consulting Engineers
A Crossman	Ecologist Crossman Associates
S Powell	Appellant

INTERESTED PERSONS:

A Goulding	Resident
N & M Housley	Resident
L Francis	Resident

DOCUMENTS

Document	1	Notification letters submitted by Council
Document	2	Extract of footpath map submitted by Council
Document	3	Proposed conditions and appellant's agreement to pre-commencement conditions

Appeal Decision

Hearing Held on 5 July 2017

Site visit made on 5 July 2017

by S J Papworth DipArch(Glos) RIBA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 13th July 2017

Appeal Ref: APP/X2220/ W/16/3158585

Land adjoining Pentire House, The Leas, Kingsdown CT14 8ER

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr David English against the decision of Dover District Council.
 - The application Ref DOV/15/00457, dated 8 May 2015, was refused by the Council by notice dated 10 May 2016.
 - The development proposed is erection of detached dwelling.
-

Decision

1. I allow the appeal and grant planning permission for erection of detached dwelling at Land adjoining Pentire House, The Leas, Kingsdown CT14 8ER in accordance with the terms of the application, Ref DOV/15/00457, dated 8 May 2015, subject to conditions 1) to 14) on the attached schedule.

Main Issues

2. The site is outside the settlement boundary and the development is promoted specifically to meet the provisions of the National Planning Policy Framework with regard to an isolated new home in the countryside. The main issue is therefore;
 - The extent of compliance with the fourth bullet point of paragraph 55 of the National Planning Policy Framework and in particular the requirement to 'significantly enhance its immediate setting' and 'be sensitive to the defining characteristics of the local area', having regard to the site location within an Area of Outstanding Natural Beauty and the Heritage Coast.

Reasons

Site Designations and Policy

3. The site lies within the open countryside and the Kent Downs Area of Outstanding Natural Beauty, and is also within an area defined as Heritage Coast. It is adjacent to, but not within, a Special Area of Conservation, a Site of Special Scientific Interest and protected open space. It is within the North Downs National Character Area as a landscape that extends from the Hogs Back in Surrey to the White Cliffs at Dover.
4. The Saxon Shore Way passes along a strip of grassland on the further side of The Leas, between it and the cliff-edge. This footpath is also designated as The England Coast Path which is a National Trail, and The White Cliffs Trail.

5. The Core Strategy adopted in 2010 contains the following policies of relevance to the appeal proposal;

- DM1 Settlement Boundaries, development will not be permitted on land outside the urban boundaries and rural settlement confines shown on the proposals map unless specifically justified by other development plan policies, or it functionally requires such a location, or it is ancillary to existing development or uses.
- DM8 Replacement Dwellings in the Countryside, states that proposals will be permitted subject to criteria on the nature of the existing building and provided that the proposal does not harm the character of the countryside.
- DM15 Protection of the Countryside, development which would result in the loss of, or adversely affect the character or appearance, of the countryside will only be permitted if it is:
 - i) In accordance with allocations made in Development Plan Documents, or
 - ii) justified by the needs of agriculture; or
 - iii) justified by a need to sustain the rural economy or a rural community;
 - iv) it cannot be accommodated elsewhere; and
 - v) it does not result in the loss of ecological habitats.

Provided that measures are incorporated to reduce, as far as practicable, any harmful effects on countryside character.

- DM16 Landscape Character, development that would harm the character of the landscape, as identified through the process of landscape character assessment will only be permitted if:
 - i) It is in accordance with allocations made in Development Plan Documents and incorporates any necessary avoidance and mitigation measures; or
 - ii) It can be sited to avoid or reduce the harm and/or incorporate design measures to mitigate the impacts to an acceptable level.
- GCP7 Green Infrastructure Network, the integrity of the existing network of green infrastructure will be protected and enhanced through the lifetime of the Core Strategy. Planning permission for development that would harm the network will only be granted if it can incorporate measures that avoid the harm arising or sufficiently mitigate its effects. Proposals that would introduce additional pressure on the existing and proposed Green Infrastructure Network will only be permitted if they incorporate quantitative and qualitative measures, as appropriate, sufficient to address that pressure. In addition, the Council will work with its partners to develop the Green Infrastructure Framework and implement proposed network improvements.

6. The saved policies of the Dover District Local Plan include;

- CO5 which states that development will only be permitted on the Undeveloped Heritage Coasts if;

- i) a coastal location is essential and no suitable alternative site exists,
- ii) the development is not in an area of eroding cliffs or unstable land
- iii) it would not result in the need for coastal protection works; and
- iv) there is no adverse offshore impact.

Additionally on the Heritage Coasts, development will not be permitted if it would adversely affect the scenic beauty, heritage or nature conservation value of a Heritage Coast or the Undeveloped Coast.

7. The Kent Downs Area of Outstanding Natural Beauty Management Plan 2014 – 2019 contains the following policies;
 - SD1 on the need to conserve and enhance the natural beauty is recognised as the primary purpose of the designation.
 - SD3 new development will be opposed where they disregard or run counter to the primary purpose.
 - LLC1 the protection, conservation and enhancement of special characteristics and qualities, natural beauty and landscape character of the Area of Outstanding Natural Beauty will be supported and pursued.
8. The National Planning Policy Framework sets out Central Government policy which includes;
 - Paragraph 7, the three dimensions of sustainable development.
 - Paragraph 14, the presumption in favour of sustainable development.
 - Paragraph 55, the special circumstances for new isolated houses in the countryside, and in particular the fourth bullet point on the exceptional quality or innovative nature of the design.
 - Paragraph 56, the Government attaches great importance to the design of the built environment; good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people.
 - Paragraph 63, which states that great weight should be given to outstanding or innovative designs which help to raise the standard of design more generally.
 - Chapter 11 on conserving and enhancing the natural environment and in particular, paragraph 115, on the great weight that should be given to conserving landscape and scenic beauty in, among other places, Areas of Outstanding Natural Beauty.

Planning History

9. The site is undeveloped and there have been previous applications of relevance to the present case;
 - DOV/88/00976; the Council refused an outline application for a single dwelling on the site and a subsequent appeal was dismissed.
 - DOV/98/01125; the Council refused an application for a single two storey dwelling on the site.

- DOV/10/00530; an application for a new dwelling on the site was withdrawn prior to determination.
10. Further afield, the Council draw attention to the following;
- DOV/14/0176; the Council granted permission for the replacement of 3 dwellings at the far south end of The Leas with 2 new dwellings to a largely contemporary design.
 - DOV/15/0491; the Council refused permission for a greenkeepers' building on the golf course, to the rear of the line of dwellings at the south end of The Leas, and this was dismissed at appeal on its effect on the character and appearance of the area.
11. The 2 replacement dwellings would have been determined under the permissive Policy DM8, but it is clear that consideration of the character and appearance of the area, taking account of the various designations and the proximity of the footpath, would have been a necessary part of the decision making exercise. Little can be read into the earlier decisions at the appeal site in view of the time that has elapsed and the dwellings not being promoted under the same policy framework. Nevertheless, the intrinsic qualities of the landscape would no doubt have been the same. The greenkeepers' building would have involved a different set of considerations, and is in a different location, but within much the same wider landscape designations.

Paragraph 55 Compliance

12. Paragraph 55 requires that local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as are listed in the four bullet points. The fourth is the only relevant one to this proposal and this requires an exceptional quality or innovative nature of design of the dwelling. The passage continues; such a design should; be truly outstanding or innovative, helping to raise standards of design more generally in rural areas; reflect the highest standards in architecture; significantly enhance its immediate setting; and be sensitive to the defining characteristics of the local area.
13. The Statement of Common Ground confirms agreement as to the outstanding qualities of the energy efficiency measures and that the matters of whether the proposals significantly enhance the immediate setting and are sensitive to the defining characteristics of the local area are the main areas of disagreement. Nevertheless, since the application is before the Secretary of State as if made to him in the first instance, it is necessary to consider those matters of agreement in addition.
14. The appellant gave a presentation of the design process and ethos for the building and its site treatment, and it is clear that the project has been designed in a thorough and highly competent way. The requirements of the client have, quite rightly, been at the forefront of the arrangement of spaces and their location on the site together with their orientation to take account of views and sunlight at any particular time of day. To those functional requirements has been overlaid consideration of the constraints of the site and its surroundings, the public viewpoints around the site and the technical requirements of the house's intended environmental and ecological credentials.

15. Whilst it is undoubtedly the case that a primary aim of the design is to meet the criteria of paragraph 55, as that is the only provision available in either the Development Plan or national policy for development of this site for the type of housing proposed, it is clear that the driving force has been to design a scheme, including the landscaping, of the highest quality not only to meet the needs of the client but to address those who would experience the intervention as part of their everyday life and those who visit the area for its visual and other qualities. Those aims will be considered against the requirements of the fourth bullet point of paragraph 55.
16. The premise of paragraph 55 is to avoid new isolated houses in the countryside and there is no doubt that in planning terms the site is within the countryside. The term 'isolated' is not defined, but other special circumstances provided for such as rural worker's housing or that concerning heritage assets or redundant buildings need not be truly isolated but could be part of a cluster in such as a farm. The Council make no point as to whether the site is particularly isolated or not, being within the countryside is sufficient for their consideration. That approach appears correct with regard to this site.
17. The paragraph is within a section of the Framework whose stated aim is to deliver a wide choice of high quality homes. Its predecessor in paragraph 11 of Planning Policy Statement 7 '*Sustainable Development in Rural Areas*' prefaced the requirements with the words '*very occasionally*' but that wording does not appear in the Framework. Looking then at the elements of the requirement:
18. Be truly outstanding or innovative: These two limbs are stated as alternatives, and it was agreed at the hearing that innovation is of necessity a moving target; what was innovative at one could become a mainstream expectation sometime later. For that reason any condition seeking to secure the benefits of the proposal in that respect should not be over-prescriptive. The Statement of Common Ground agrees that the energy efficiency of the proposed dwelling would be 'truly outstanding', but in these paragraph 55 houses that should be a reasonable expectation. The use of the chalk roof appears innovative in combining a technical function of heat retention outside the insulation with a visual link to the underlying rock and its outcrop on the cliff-face.

The appearance of the building and its landscaping would be outstanding in its use of materials and response to the topography and orientation, being a free-flowing sculptural form that is elevated where desirable for the internal functions and outward views, and low where those considerations do not apply and a more immediate link with its garden is appropriate. The plan form and sectional shape combine to present an exciting but restrained form, punctuated where required by openings and enlivened by the articulation along the north facing walls.

Taking full account of the information provided and enlarged upon at the Hearing, it is concluded that this part of the requirement is met and that in fact there are sufficient aspects of the overall scheme that are both outstanding and innovative.

19. Helping to raise standards of design more generally in rural areas: The key requirement is the raising of standards of design generally, also in furtherance of the Government's stated aims in paragraphs 56 and 63 of the Framework as previously cited. There is limited reason why the standards proposed in this

case, on a relatively limited site area, should not be applicable to rural, as well as suburban or some urban sites.

That the building is proposed to be sited in a publicly accessible location where many people would be able to view it, and with the publicity that often follows such developments, in both technical and lay press, there is every opportunity for the publication of the theories and practices employed. This prominent location is a positive factor in Helping to raise standards of design more generally and that would include in rural areas.

20. Reflect the highest standards in architecture: There are other paragraph 55 houses and each would have displayed particular qualities. In addition, the United Kingdom has a wealth of examples of high quality architecture from all ages, and certainly some at the cutting edge of design. In that the requirement is to reflect those high standards, the appeal proposal succeeds on a functional and aesthetic basis.
21. Be sensitive to the defining characteristics of the local area: For the purposes of this Decision, the last two limbs of the bullet point are reversed, since consideration of this one should inform the conclusion on the other. This requirement is in line with Plan Policies DM15, DM16, GCP7 and CO5 which are couched in the terms of avoiding harm rather than enhancing. It is clear however that there is no requirement in the national guidance to copy the existing built forms nearby. It is necessary first to identify what the defining characteristics of the local area are;

The site is located in a sporadic line of dwellings on The Leas, between the managed, and in places manicured, grass of the golf club and the managed but more natural-looking swathe of land on the cliff-top. The narrow road has development only on its west side, the east being open to the cliff-edge. The wider landscape is of rolling or undulating land derived from the dry valleys of the chalk geology, sometimes falling towards the cliff and at other times rising to the edge, depending on how past foreshore and cliff erosion has cut through the valleys. The sea is an ever-present feature of considerable significance, sometimes seen in its full width before being cut-off by land, and sometimes glimpsed between or over man-made features or the 'natural' landscape of the Golf Club. Notwithstanding the Area of Outstanding Natural Beauty designation, the degree to which what can be experienced is truly 'natural' is limited. However, the beauty of much of the landscape is clear to see and experience and that derives from natural flora and landforms.

It is not possible to exclude built form from the defining characteristics of the local area, as a significant aspect of the experience of walking along the footpaths near the cliff-edge is the sporadic development of often sizeable houses and an almost unbroken barrier to wider views to the west across the golf course. The nature of that development changes at the crest of the ridge adjacent to Tybryn, that to the north being more closely arranged and facing the sea to the east, whilst to the south the development becomes more spacious and addresses the views towards the sea, valley and headland to the south-east. The development of the 2 replacement dwellings at the far south end of The Leas is too far away to be part of the defining characteristic of the local area, but do terminate the run of built form and signal the start of a different, more open, more natural character area.

The site is therefore at two transitions, between the closer-spaced built form to the north and the more spacious to the south, and between the highly managed land of the golf course and the lighter touch employed on the land towards the cliff-edge. With the response of the building form to the topography, the references to the chalk cliff-face and the partial infilling along an established line of built form, the proposal is sensitive to the defining characteristics of the local area and the layout, building design and landscaping would mediate successfully between the varied characteristics displayed locally.

22. Significantly enhance its immediate setting: The requirement to enhance goes beyond the terms of the Development Plan policies, but is a term used in the Area of Outstanding Natural Beauty Policies SD1 and LLC1. One of the core planning principles stated in the Framework is to enhance and improve places in which people live, and public rights of way and the natural and local environment are to be enhanced under paragraphs 75 and 109 respectively of the Framework.

The base condition would be an empty plot of no particular value other than its vacancy, with its narrow width not being enough to establish its own character, rather to appear as an unused area within a built-up frontage. The immediate setting of that plot is however limited, and an extensive walking tour of the surrounding publicly accessible spaces during the site inspection showed visibility to be only available over a relatively short part of the cliff-top footpath, and a shorter part yet for any close view. To the rear, west side, the intervening golf course restricted views to around 800m distance with a significant amount of other focal points to dilute the vista.

Looking at the cliff-top footpath views, the elevated front and brise soleil would appear beyond the front of Pentire House when approaching from the north, a moving view point in which Tybryn on its higher ground, and the boundary foliage would provide a backdrop. Directly in front of the plot, the building and its landscaping would appear more dramatically, as a clearly different intervention, but adding interest to the scene and inviting curiosity in the viewer. The intended blending of the planting on the site frontage with that on the cliff-top, in the way that has been so successful at Moonraker to the south would avoid the harsh domestic edge present here and nearby, and would enhance the presentation of both the cliff-top swathe and the road frontage. This would enhance the ecological value of the site and the verge.

Approaching from the south, the site and its building would not be readily seen until very late due to the ridge at Tybryn, that building itself, and the intervening indigenous vegetation which appears likely to be retained. When seen it would appear low and sleek against the backdrop of Pentire House, with a roofline dropping to the rear.

From the rear the lowest part of the building would be largely subsumed, at the distance available for a view, into the foliage of the adjoining boundaries with only a small length of either of the footpaths giving a direct view through the site of the horizon. In any event, the wide views available of sea and coastline to Thanet to the north would take the eye and the addition of the proposed development would pass largely unnoticed.

The requirement in the Framework to enhance is predicated on there being a new building placed where none existed, since one of the other special circumstances or Development Plan policies allow for re-use or replacement.

Paragraph 55 makes no mention of the provisions not being applicable to an Area of Outstanding Natural Beauty. The immediate setting in this case is limited and the proposed dwelling, along with its landscaping as an essential component secured by condition, would be a significant enhancement.

23. The proposed development would therefore accord with the Government's policies that aim to encourage new dwellings of the highest standards as a today's contribution to the architectural heritage of the country.
24. With regard to the Development Plan policies, the proposal would accord with Policy DM15 in that the ecology of the site would be enhanced and there would be no harmful effects on the countryside character so far as it is evident in this location. With regard to Policy DM16 the proposal has been designed and sited to avoid harm with mitigation measures being an intrinsic part of that design. The Green Infrastructure Network would not be harmed and users of it would experience an enhancement within the built environment of The Leas, under Policy GCP7.
25. Policy CO5 would be accorded with as the development would not adversely affect the scenic beauty, heritage or nature conservation value of the Heritage Coast or the Undeveloped Coast, and the sections which seek to avoid adverse offshore of cliff stability impacts have been shown to be satisfied within the 100 year life of the development. In that paragraph 55 does not prevent such houses in the Area of Outstanding Natural Beauty, policies SD1, SD3 and LLC3 and the purposes of the designation would not be offended against by development of this restricted size of site and by a modest size of dwelling.
26. The economic roles of sustainable development as set out in paragraph 7 of the Framework would be furthered through the innovation displayed and to a limited extent, the economic activity of the construction phase; the high quality built environment proposed and the extent to which it would assist in meeting the low carbon needs of society in general would meet a social role, and the environmental role would, on the balance set out previously in this Decision, be met through the steps taken to reduce energy use in ways that could be replicated in other developments. The proposal should be regarded as being sustainable development.

Conditions

27. The Council suggested conditions and these were discussed, amended and agreed at the Hearing. Control should be exercised over materials, landscaping and trees, refuse storage, parking and turning, and sight lines onto The Leas. In view of the advice received and the undeveloped nature of the plot, it is necessary to seek a programme of archaeological works and a scheme for biodiversity enhancement. Concerns have been raised as to services, and a drainage scheme, rather than the proposed '*strategy*' should be provided to ensure safe and efficient control. The building has been carefully designed and weight has been afforded this as provided for in Paragraph 55; for those reasons permitted development rights should be removed. There were instances where the Council's proposed trigger for details was '*no development shall take place above ground*' but to ensure an holistic design approach, this is changed to being before any development takes place.
28. There was discussion in particular over the details of the Construction Management Plan and whether it is permissible to control the routing of

vehicles off-site on the public highway. In the event there are highway controls, weight limits and a signposted route via Walmer, so that a re-worded condition would ensure control. The condition for the energy strategy, as worded was too prescriptive, and the appellant suggested an alternative that had been used previously. This matter could evolve further if the full 3 year for implementation was utilised and it is right that a less prescriptive form of words should be used.

29. Lastly, a condition is required detailing the drawings to which this permission relates, for the avoidance of doubt and in the interests of the proper planning of the area.

Conclusions

30. Objectors expressed concern over the risk of a precedent being set, having mind to the large plots along The Leas and the possibility of sub-division. However, by definition, any very similar scheme would not be sufficiently innovative to surmount the high test in paragraph 55 and any different scheme coming forward for consideration would need to be considered on its merits. Significant weight has been attached to this scheme and its setting within the more tightly grouped northern part of The Leas.
31. The proposal satisfies the requirements of paragraph 55 of the Framework for the provision of an isolated new home in the countryside by reason of being truly outstanding or innovative, helping to raise standards of design more generally in rural areas; reflecting the highest standards in architecture; significantly enhancing its immediate setting; and being sensitive to the defining characteristics of the local area. As such it accords with the provisions of the Framework on good design and the Development Plan on the protection of the character and appearance of the area and the designated landscapes in which it is sited and abuts. For the reasons given above it is concluded that the appeal should be allowed.

SJ Papworth

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

L Blaskett	Principal Planner Dover District Council
B Kachchhi	Planner Dover District Council

FOR THE APPELLANT:

R Hughes	Principal Partner Hughes Planning
R Hawkes	Director Hawkes Architecture
M Young	Partner Squires Young
D English	Appellant

INTERESTED PERSONS:

J Proctor	Neighbour
J Proctor	Neighbour
P Finch	Local Resident
J Bird	Local Resident

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 124_DR_PL_2020_A, 124_DR_PL_2021_A, 124_DR_PL_2022_A, 124_DR_PL_2023_A, 124_DR_PL_2024_A, 124_DR_PL_2025_A, 124_DR_PE_3035_A, 124_DR_EL_2200_A, 124_DR_PE_3036_A, 124_DR_EL_2021_A, 124_DR_PE_3037_A, 124_DR_PL_2022_A, 124_DR_PL_2023_A, 124_DR_DE_2300_A, 124_DR_PL_2026_A
- 3) No development shall take place until samples of materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 4) No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written specification and timetable which has been submitted to and approved in writing by the Local Planning Authority.
- 5) No development shall take place until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The said plan shall include details of: control of large vehicle

- movements; loading and unloading of plant and materials; on-site parking for construction workers; hours of construction working; temporary lighting; measures to control the emission of dust and dirt during construction; and temporary hoarding/fencing. The approved Construction Management Plan shall be fully complied with throughout the construction period.
- 6) The approved refuse storage area, as shown on drawing number 124_DR_PL_2026_A, shall be provided before the dwelling is first occupied and shall thereafter be kept available for their approved purpose at all times.
 - 7) No development shall take place until a scheme for the enhancement of biodiversity on the site, based upon the Preliminary Ecological Assessment at Land off The Leas, Kingsdown, Kent by Icen Ecology, has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall include a timetable for implementation. The development shall be carried out in accordance with the approved details and the approved timetable.
 - 8) The areas shown on the approved drawing, 124_DR_PL_2024_A, as vehicle parking space and turning space shall be provided, surfaced and drained before the first occupation of the development, and shall be retained for that use thereafter whether or not permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking, and re-enacting that Order with or without modification).
 - 9) No development shall take place until a drainage scheme detailing the proposed means of foul and surface water disposal or treatment and an implementation timetable has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved scheme and timetable.
 - 10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, (or any Order revoking or re-enacting that Order with or without modification), no development shall be carried out within Classes A, B, C, D and E of Part 1 of Schedule 2 of that Order and Classes A and C of Part 2 of Schedule 2 of that Order.
 - 11) Before the access is first used a strip of land 2m in depth measured from the vehicular carriageway edge and running along the entire frontage of the shall be cleared of all obstruction in excess of 0.6m above carriageway level and thereafter the strip shall be so maintained at all times.
 - 12) The development hereby permitted shall not be occupied until a landscaping scheme for the site has been submitted to and approved in writing by the Local Planning Authority. The said scheme shall include: tree/hedge/shrub planting plans; written specifications; schedules of species, sizes and proposed numbers/ densities where appropriate. Thereafter, the approved landscaping scheme shall be carried out fully within 12 months of the completion of the development. Any trees or other plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a

similar size and species unless the Local Planning Authority give prior written consent to any variation.

- 13) The approved development shall be carried out in such a manner as to avoid damage to the existing trees, including their root systems, and other planting to be retained by putting in place the following measures prior to commencement of the development:
- i) All trees to be preserved shall be marked on site and protected during any operation on site by temporary fencing in accordance with BS 5837:2005 (or as may be subsequently amended). Such tree protection measures shall remain throughout the period of construction
 - ii) No fires shall be lit within the spread of branches or downwind of the trees and other vegetation;
 - iii) No materials or equipment shall be stored within the spread of the branches or root protection area of the trees and other vegetation;
 - iv) No roots over 50mm diameter shall be cut, and no buildings, roads or other engineering operations shall be constructed or carried out within the spread of the branches or root protection areas of the trees and other vegetation at any time;
 - v) Ground levels within the spread of the branches or root protection areas (whichever the greater) of the trees and other vegetation shall not be raised or lowered in relation to the existing ground level.
 - vi) No trenches for underground services shall be commenced within the root protection areas of trees which are identified as being retained in the approved plans, or within 5m of hedgerows shown to be retained without the prior written consent of the local planning authority. Such trenching as might be approved shall be carried out to National Joint Utilities Group recommendations.

These measures shall be retained as such for the duration of the construction period.

- 14) Prior to the commencement of development, details shall be submitted and approved in writing by the Local Planning Authority indicating the methodology and measures of the proposed energy and sustainability strategy as set out in the Design and Access Statement April 2015, updated to the point of submission of these details. The details shall include those of any boreholes for their effect on ground stability. Development shall not take place otherwise than in accordance with the approved details.

Appeal Decision

Hearing Held on 3 September 2019

Site visit made on 3 September 2019

by S J Papworth DipArch(Glos) RIBA

an Inspector appointed by the Secretary of State

Decision date: 18 September 2019

Appeal Ref: APP/C1435/W/19/3223513

Yewtree Trout Farm, Yew Tree Lane, Rotherfield TN6 3QP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr & Mrs Schumacher against the decision of Wealden District Council.
 - The application Ref WD/2018/1467/F, dated 6 July 2018, was refused by notice dated 16 November 2018.
 - The development proposed is redevelopment of commercial fishery for one new dwelling house of exceptional quality and design, garage, ancillary buildings, landscape enhancements and associated works.
-

Decision

1. I allow the appeal and grant planning permission for redevelopment of commercial fishery for one new dwelling house of exceptional quality and design, garage, ancillary buildings, landscape enhancements and associated works at Yewtree Trout Farm, Yew Tree Lane, Rotherfield TN6 3QP in accordance with application Ref WD/2018/1467/F, dated 6 July 2018 and subject to conditions 1) to 19) on the attached schedule.

Preliminary Finding

2. It was clear at the site inspection the degree to which the site is visually contained by tree growth and the railway embankment albeit the area contained is large; and that the entry through the railway arch forms a visual constraint to wider views until the bridge is past. That topography has been heavily influenced by the previous earth movement to form the fishery
3. As a result it has not proved appropriate in writing this Decision to separate readily the effect on the Area of Outstanding Natural Beauty from the requirements in national policy for an isolated house to significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area. As a result, there is the single main issue as follows.

Main Issue

4. This is the extent of compliance with paragraph 79e) of the National Planning Policy Framework having regard to the location within the High Weald Area of Outstanding Natural Beauty.

Reasons

Policy

5. Saved Wealden Local Plan Policy EN6 was quoted in the Refusal Notice and states that development within the High Weald Area of Outstanding Natural Beauty will only be permitted if it conserves or enhances the natural beauty and character of the landscape and particular care will be paid to the siting, scale, layout and design of development. There follows a list of matters for which particular regard is to be had and these will be considered in detail later in this Decision.
6. The Refusal Notice also referred to emerging Policy EA5 of the Wealden Local Plan Submission Document of January 2019 which concerns the High Weald Area of Outstanding Natural Beauty, where development will only be permitted if it conserves and seeks to enhance natural beauty, and there is reference to the character components and functions as set out in the High Weald AONB Management Plan. Whilst the emerging Plan is part-way through the Examination, this policy has similar aims to the adopted policy with regard to the Area of Outstanding Natural Beauty and should be afforded significant weight.
7. Whilst these were the only policies cited in the Refusal Notice, it was agreed at the Hearing that there are other relevant policies. In the Core Strategy the planning objectives in Policies SPO1, SPO3, SPO7 and SPO13 concern the management of countryside resources, the need for and location of homes, reducing the need for travel, the development of high quality, safe and attractive living environments and addressing climate change. The Rural Areas Strategy is set out in Policy WCS6 although the Development Plan Document on delivery and site allocations that is referred to has not been progressed and national policy on isolated homes in the rural area should apply as stated in supporting paragraph 6.44. Policy WCS12 sets out requirements on biodiversity and Policy WCS13 refers to green infrastructure, while WCS14 states the presumption in favour of sustainable development.
8. The adopted Local Plan contains Policy GD2 on development outside boundaries, which will be resisted, and Policy DC17 states that housing development will not be allowed outside development boundaries unless it conforms with other policies in the Plan. Sustainable development is the aim of Policy EN1, Policy EN14 seeks landscaping in appropriate cases and Policy EN27 sets criteria for layout and design. Transport Policies TR3 and TR16 set out requirements for traffic generation, access and on-site parking.
9. Further emerging policies identified from the Wealden Local Plan Submission Document are Policy WLP4 on development outside development boundaries and WLP7 on housing targets by parish. Policies AF1 and AF2 set out requirements on air quality with reference to the Ashdown Forest Special Area of Conservation. Biodiversity is the subject of Policy EA1, the Ashdown Forest Special Protection Area is covered by Policy EA2 and requirements on green infrastructure are set out in Policy EA3. Policy RAS2 permits isolated dwellings in the countryside where, among other circumstances, the dwelling is of exceptional quality. Light pollution is to be controlled under Policy NE3 and Policies BED1 and BED2 concern the built environment and design.

10. Two paragraphs of the National Planning Policy Framework were cited in the Refusal Notice. Paragraph 79 within the section on rural housing, states that planning policies and decisions should avoid the development of isolated homes in the countryside unless certain circumstances apply. The one referred to in this application is e) which requires a design that is of exceptional quality, in that it is truly outstanding or innovative, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas; and would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area. Paragraph 172 states that great weight should be given to conserving and enhancing landscape and scenic beauty in Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to these issues.
11. For the avoidance of doubt, the site is agreed to be isolated in the terms of paragraph 79 of the Framework having regard to the findings of the 'Braintree' case on that subject. The proposal has been promoted on the basis specifically of section e) to that paragraph although other benefits are also put forward.

Isolated Homes in the Countryside

12. The site is currently in use as a trout fishing facility with lakes formed by damming streams fed by ghylls that are an identified feature of the High Weald area, the site also containing ancient woodland, grassland and many trees. A disused railway line runs along near the eastern boundary, mostly on an embankment but dropping to natural land level and a limited amount of cutting to the south-east. The site entry is through a tall but narrow brick arched bridge under the track formation and there is a public footpath running between the main road and Yew Tree Lane on the far side of the railway line, behind a belt of trees.
13. The limited built form comprises the lodge and associated decking, the railway bridge and the small timber bridge onto an island. There was some discussion over whether the railway bridge should be regarded as a non-designated heritage asset pursuant to section 16 of the Framework, and whilst there is no official recognition of such status, it does represent part of the cultural and industrial history of the area and performs an important role in the visual experience of the site.
14. The site is attractive and well maintained, with enhancement to landscape features already evident, although the appellants are clear that there can be no guarantee of this continuing indefinitely. That attractiveness derives very much from the man-made interventions as opposed to the natural beauty, although it is the case that the wider High Weald Area of Outstanding Natural Beauty derives much of its value from historic interventions such as agriculture, forestry and iron working.
15. There had been a previous scheme for a dwelling on the site, located on the west side of the main lake and to a significantly different design, but the present location is substantially better in its relationship with the lake and the dam, as well as responding more appropriately to the layout of the entry, reducing the amount of hard landscaping and taking the location presently occupied by the lodge. To that extent there is an element of making use of previously developed land.

16. The appellants' *Architectural and Landscape Design Proposals* provide much background to the evolution of the chosen design with information on the Zone of Theoretical Visibility showing much of this to be constrained within the site boundary and only very limited visual effects beyond that. A study of the site characteristics, sub paths and views led to a design strategy based on 3 distinct types of view, or 'experience', the lowest at the edge of the lake being short views foreshortened by the low level, the next long views down the lakes and the highest being the wide, sweeping view encompassing the lakes and the far shore to the boundary woodland. This has informed three distinct parts of the building and the uses put within them.
17. The railway arch would be used to constrain and frame the approach and on the far side would allow a more open view towards the site of the house. The design would take many visual and material cues from a railway aesthetic, the use of brick batters, buttresses and arches, while the long low elements would be reminiscent of the rhythm of a railway carriage windows. The rounded roof and barrel-vaulted construction of the lowest part, offering the first type of 'experience' close to the water level, would reinforce that aesthetic.
18. The second level of experience would be set back away from the water and in front of the barrel-vaulted part, with the brick detailing from the railway arch to act as what are described to be 'blinkers' to guide the outward view, and this part would provide a solid base for the lighter-weight aesthetic of the third 'experience' above and jettied slightly over the brickwork. This part would house bedrooms with the privacy that the elevated level would give and directing a view over the wider landscape. This arrangement would relate well to the site features and topography and the passing acknowledgment of the proximity of the former railway line would be subtle but meaningful, wholly appropriate to the site and the house's location.
19. Whilst planning may well be more concerned with the external appearance and the relationship with the surroundings, the judgement of exceptional quality, and the highest standards in architecture must go beyond that consideration and it is the case here that the internal spaces and how they have been designed to address the wider landscape would be of the highest standard and would continue the theme of the railway aesthetic, with the internal vaulting, brick arches and the regular pattern of vertical rather than horizontal windows.
20. It was explained that the house has not been designed to cater for all eventualities of guests and special occasions, which could so easily have led to an over-large but mostly underused building, with all the attendant running costs. The proposal is to house occasional guests in 3 free-standing, self-contained 'railway carriage' structures spaced along the track bed of the former railway line to the south of the bridge, and accessible only on foot from the car park area. These would each be raised with a deck reminiscent of a platform, an elliptical roof form and 'tumblehome' at the bottom of the wall, with corridor connections at the ends, all features found in railway carriages.
21. This solution to the need for additional room on occasions would control the size of the house whilst responding in an appropriate way to the history of the site and presence of the railway line and would be a light-touch and suitably light-hearted addition to the site. Whilst they would provide facilities for independent use, a condition could ensure that they are only occupied ancillary to the use of the main house.

22. The last building to be considered would be the garage block with integral store and greenhouse, placed on the site of the present fishery car park, where there is presently an unattractive shipping container used as a store and which sits within the root protection area of a significant tree. The site would be a low point behind the dam and although possibly the first indication of built form when approaching through the railway arch, would not be out of place or disruptive to the rural surroundings, being visually contained by trees to the rear and the dam to the south.
23. In addition to the built form, the proposals include enhancements and changes to the landscape through new native species planting of woodland and hedging, preserving the ancient woodland, new reed beds, and biodiversity improvements. The appellants made clear that they have no requirement for a formal garden, their preference being for native species and natural planting. A condition could ensure delivery of the proposal and limit the extent of domestic curtilage; a necessary requirement on such a large site, one that relies on openness within constrained views. It is clear that the building and the landscape have been designed in tandem from the outset.
24. The building has been designed with energy efficiency in mind with what is described as a 'fabric first' approach; by taking advantage of the orientation for passive solar gains from a low winter sun while avoiding harmful gains from a high summer one; and by integrating renewable technology. This approach responds appropriately to the site topography and lack of over-shadowing, with some timber available for the 'recreational' use of a biomass boiler.
25. Looking in detail at the requirements of Framework paragraph 79e);

Being truly outstanding, reflecting the highest standards in architecture, and helping to raise standards of design more generally in rural areas. The rigorous approach to the site analysis and the requirements of the appellants have led to a singular building and its surrounding landscape that is of the highest standards of design, drawing on the unusual nature of the altered topography and the industrial heritage of the site. This approach results in a building that at the least reflects the highest standards in architecture and in many aspects exceeds them. Whilst not publicly visible and being designed as a private house, the appellants refer to the possibility of being open at times under the National Gardens Scheme, but in any event news spreads of such designs, and this can only help to raise standards as sought.

As an alternative, being innovative. The site requires an attractive, visually outstanding building and landscape design and whilst innovation has been employed to that end, the thermal performance and use of energy does not seek to be truly innovative, rather it uses tried and tested methods to achieve an energy and carbon footprint significantly less than a standard house. There is nothing wrong with this approach and this is allowed for in the alternative within paragraph 79e).

Significantly enhancing its immediate setting, and being sensitive to the defining characteristics of the local area. The setting is not degraded but the man-made interventions have resulted in a managed landscape without a focal-point other than the low-key and recessive lodge building. In the true traditions of country houses, the placement of a well-designed building as proposed would provide that suitable focal-point and make sense of the landscape forms, the lakes and the valley, on the removal of the fishery use.

The proposals would be sensitive to the defining characteristics of the site, and the local area, they being the line of the railway and the various embankments, bridges and cuttings along its length, and the features of the wider Area of Outstanding Natural Beauty from which the site is largely visually divorced but the enhancements proposed would further the aims of the designation. The proposal would as a result significantly enhance the immediate setting.

It is concluded from the foregoing that the proposal would be of exceptional quality as sought as an exception under paragraph 79e) to the general policy of avoiding isolated homes in the countryside.

26. Saved Policy EN6 contains detailed matters to which particular regard is to be had;

(1) the landscape characteristics of the sub-areas identified in the High Weald landscape assessment. The constrained nature of the site limits the wider effects, and the landscape characteristics of the site are unusual and not representative of the sub-area or the wider designated Area.

(2) the well-wooded appearance, especially Ancient Woodlands, together with other woods, tree belts and hedges. The proposal has no adverse effect on such features and seeks to enhance the protection of the ancient woodland. Conditions could secure enhancements that would not be guaranteed otherwise.

(3) undeveloped steep valleys ,and ghylls. There are such steep valleys and ghylls within the site boundary on the perimeter of the lake and above its dammed water level. The proposals would have no adverse effects and would secure enhancement and protection.

(4) open heathland. This does not appear appropriate to the site location.

(5) undeveloped ridge positions and other visually exposed locations. This does not appear appropriate to the site location; the site is not exposed to inward views other than in some limited places along Sherriff's Lane, where augmentation of tree cover could further filter views if required.

(6) areas of unspoilt or remote character. The site is isolated in policy terms but not truly remote and is not unspoilt natural topography. The proposal would enhance the character and appearance of the site by providing a focal-point to the man-made lakes in the traditions of the English country house.

(7) the traditional settlement pattern, building styles and materials. The local pattern is of sporadic development along lanes and beyond, and the proposal would not upset that pattern. The building would draw on local styles introduced by the railway but seen in nearby premises and would use locally sourced materials.

(8) the High Weald Management Plan. The nature of the site and its history of intervention mean that the proposals result in no harm to the aims of the Plan and there is no overall policy preclusion of paragraph 79e) houses within Areas of Outstanding Natural Beauty. The requirement of paragraph 172 of the Framework to conserve and enhance landscape and scenic beauty would be met.

The conclusion is that the proposal accords with this Policy.

27. The appellants put forward some improvements to the footpath route in that it appears people are, wrongly, using the railway line which is not a right of way. The proposal is to regularise the route from that desire-line back to the definitive right of way footpath, and to enhance planting to prevent use further to the north. This is a reasonable response of a landowner but would result in some enhancement of the walking experience.
28. Another benefit of the scheme is a reduction in the traffic entering and leaving the site from that likely to be generated by the present 12-rod fishery. The effect on the Ashdown Forest Special Protection Area is to be considered with regard to the Agreement entered into by the appellants and the Council, but having mind to the rural nature of the Lane and local area, and the aims of the High Weald Management Plan, that reduction would be a benefit.
29. The proposal has been found to accord with the specific local and national policies cited in the Refusal Notice, but in addition the proposal would accord with or further the aims of the policies previously outlined with regard to the management of countryside resources, the need for homes and their location, addressing climate change, biodiversity, green infrastructure, the provision of landscaping, good layout and design, and on traffic generation, access and parking.
30. To conclude, the proposal of new house and landscaping together reach the standard sought in order to allow an isolated home in the countryside and would not cause harm to the character and appearance of the Area of Outstanding Natural Beauty; planning permission should be granted.

Conditions and Agreement

31. On the former, the Council and appellants had discussed conditions, and the Officers' Report that had recommended approval contained a set of conditions also. The conditions in the Statement of Common Ground had not been agreed by the time of the Hearing, but they were discussed and amended at that time. The Council and the appellants then produced an agreed set should the appeal be allowed.
32. These conditions satisfy the six tests set out in the Framework and the web-based Planning Practice Guidance, and agreement has been given to the necessary use of pre-commencement conditions.
33. Turning to the Agreement, there are identified pathways by which harm might be caused to the Ashdown Forest Special Protection Area through the introduction of additional residents. The Inspector is the Competent Authority at appeal stage and an Assessment is required. There are 7 steps to the Assessment and once one of the steps has been met there is no requirement to go on to consider the remaining steps;

Step 1, is the proposal directly connected with or necessary to the management of a protected site? No, that is not the case.

Steps 2 and 3, is the proposal likely to have a significant effect on the interest features of the site, alone or in combination? If it is or such a risk cannot be excluded on the basis of objective information, then an Appropriate Assessment must be undertaken to determine whether or not the development will have an adverse effect on the integrity of the site. The development would risk having such an effect through traffic and recreational use.

Step 4, if any adverse effects are identified, can they be mitigated or overcome by conditions or other restrictions such as a section 106 agreement or undertaking? The appellant has entered into an Agreement with the Council as follows. Contributions are covenanted towards the Air Quality Mitigation Strategy, the Strategic Access Management and Monitoring Strategy, and the provision of Suitable Alternative Natural Greenspace, the latter being at Crowborough which is closer to the site than the Forest. These are calculated on a per-dwelling basis and meet the 3 tests in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 of being necessary to make the development acceptable in planning terms, being directly related to the development and being fairly and reasonably related in scale and kind to the development.

34. It is concluded that the possible adverse effects of proximity to and the accessibility of the Ashdown Forest Special Protection Area can be mitigated or overcome by the Agreement and that it is not necessary to continue further with the Assessment.

Conclusions

35. The particular circumstances of the site lead to the conclusion that the proposed new dwelling would, along with the attendant landscaping secured by conditions, be of the quality sought as an exception under paragraph 79e) to the general policy of avoiding isolated homes in the countryside. Whilst the site is within the High Weald Area of Outstanding Natural Beauty, no harm would be caused to the designated area's character and appearance, and its scenic beauty would be conserved and enhanced.

S J Papworth

INSPECTOR

- 7.1.7 Proposed House Integration,
 - 7.2.2_B Proposed Site Plan,
 - 7.2.3 Proposed Ground Floor Plan,
 - 7.2.4 Proposed First Floor Plan,
 - 7.2.5 Proposed Roof Plan,
 - 7.2.7 Proposed North-East Elevation,
 - 7.2.9 Proposed Section AA,
 - 7.2.11 Proposed Section BB,
 - 7.2.13 Proposed Section CC,
 - 7.2.15 Proposed South-East Elevation,
 - 7.2.16 Proposed North-West Elevation,
 - 7.2.19_A Proposed South-West Elevation,
 - 7.2.22 Proposed Material Application,
 - 7.3.1 Proposed Garage and Greenhouse Plan,
 - 7.3.2 Proposed Garage and Greenhouse Elevations,
 - 7.3.3 Proposed Train Carriage Location Plan,
 - 7.3.4_A Proposed Train Carriages,
 - 8.1.1 Proposed Access Strategy,
 - 8.1.2 Proposed Swept Path Analysis and Visibility Splay,
 - 8.1.3 Proposed Dwelling Access.
- 3) The residential curtilage shall be confined to the area demarcated by a solid green line as shown on the Proposed Site Plan included as 7.2.2_B (received on 5 September 2019) and shall not include or be deemed to include the remaining land within the site edged with a solid red line.
- 4) The development shall not be occupied until the Local Planning Authority has approved, in writing, a scheme to secure further mitigation of vehicles crossing the Ashdown Forest Special Area of Conservation and Special Protection Area. That mitigation shall include:
- i) Details of the provision of an electric vehicle charging point at the site.
 - ii) Provide a personalised travel plan for incoming residents to the site; and
 - iii) Details of the ability of the dwelling to connect to high speed broadband.
- The details shall include details of phasing and timing of all works to secure delivery of the mitigation and thereafter the development shall proceed strictly in accordance with the agreed further mitigation.
- 5) The development shall not be occupied until the Local Planning Authority has approved, in writing, a scheme to secure mitigation of the additional recreational pressures to the Ashdown Forest Special Area of Conservation and Special Protection Area, together with an appropriate mechanism to secure delivery of the mitigation.

- 6) The 3No 1-bedroomed detached railway carriage-styled accommodation shall not be occupied or let independently of the main dwelling and shall not be used as holiday-lets or sold off separately.
- 7) No development, including demolition, shall take place until a Demolition and Construction Environment Management Plan (DCEMP) has been submitted to and approved in writing by the Local Planning Authority. The DCEMP shall include:
 - i) The phases of the Proposed Development including the forecasted completion date(s).
 - ii) Details of the method of protection for the railway arch from construction and contractors' vehicles entering and exiting the site.
 - iii) A commitment to apply to the Council for prior consent under the Control of Pollution Act 1974 and not to commence development until such consent has been obtained.
 - iv) A scheme of how the contractors will liaise with local residents to ensure that residents are kept aware of site progress and how any complaints will be dealt with reviewed and recorded (including details of any Considerate Constructor or similar scheme)
 - v) A scheme of how the contractors will minimise disturbance to neighbours regarding issues such as noise and dust management, vibration, site traffic and deliveries to and from the site.
 - vi) Details of hours of construction including all associated vehicular movements.
 - vii) Details of the construction compound.
 - viii) A plan showing construction traffic routes.

The construction shall be carried out in accordance with the approved CEMP.

- 8) Before preparation of any groundworks and foundations within the area edged green as shown in Proposed Site Plan included as 7.2.2_B received on 5 September 2019, an Arboricultural Method Statement shall be submitted to and approved in writing by the Local Planning Authority which shall include numbering and detailing trees, confirming root protection areas, routing of service trenches, overhead services and vehicular and pedestrian access positions and any details of no dig techniques along with associated use of geotextiles and an indication of the methodology for necessary ground treatments to deal with compacted areas of soil. The works shall implemented in accordance with the approved details.
- 9) Before preparation of any groundworks and foundations on site for the development hereby approved, a detailed scheme of landscaping within the area demarcated by a solid green line as shown on the Proposed Site Plan included as 7.2.2_B received on 5 September 2019 from the landscape proposals set out at section 7.1 of the *Architectural and Landscape Design Proposals* document date stamped 2 August 2018 shall be submitted to and approved in writing by the Local Planning Authority and shall include full plans and specifications for all hard and soft landscape works and indications of all existing trees and hedgerows on the land, including those to be retained together with measures for their protection in the course of the development, including details as appropriate:

- i) Proposed finished levels or contours,
- ii) Means/method of enclosure,
- iii) Vehicle and pedestrian access and circulation areas,
- iv) Hard surfacing materials,
- v) Proposed and existing functional services above and below ground (eg drainage, power, communication cables, pipelines, etc, indicating lines, manholes, supports etc),
- vi) Planting plans,
- vii) Written specifications (including cultivation and other operations associated with plant and grass establishment),
- viii) Schedules of plants and trees, noting species, planting sizes and proposed numbers / densities where appropriate,
- ix) Implementation timetables.

All planting, seeding and/or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building(s) or the completion of the development, whichever is the sooner, and any trees, shrubs, hedges or plants which within a period of five years from the completion of development die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation. All hard landscaping comprised in the approved details of landscaping shall be carried out before the completion or first occupation of the development, whichever is the sooner.

- 10) A Landscape Management Plan, including long term objectives, management responsibilities, enhancement and maintenance schedules for a minimum period of five years and details of the arrangements for its implementation for all landscape areas within the remaining red edged site as shown on Site Location Plan_A (scales 1:2500 and 1:500) dated 05 September 2019, other than within the area demarcated by a solid green line as shown on the Proposed Site Plan included as 7.2.2_B received on 05 September 2019, including proposed and existing woodlands, meadows and watercourse/s, shall be submitted to and approved by the Local Planning Authority prior to the occupation of the development or any phase of the development, whichever is the sooner, for its permitted use.
- 11) A path shall be provided as shown on the drawing Footpath Plan_A dated 5 September 2019 within and adjacent to part of the southern boundary of the application site to link the former railway track bed to the existing public footpath, Rotherfield 33 for use as a public footpath. The path shall be no less than 3m in width and constructed to details that shall be submitted to and approved in writing by the Local Planning Authority. The footpath shall be implemented in accordance with details to be approved and provided within three months of occupation of the dwelling and thereafter so retained.
- 12) Before construction above lowest slab level of any dwelling, or ancillary building, which forms part of the development hereby approved, a schedule and samples of external facing materials including details of brick bonds, jointing and pointing shall be submitted to and approved in writing

- by the Local Planning Authority. The approved materials and details shall be used in the implementation of the development.
- 13) Prior to preparation of ground levels for the construction of the development hereby approved, a scheme for the enhancement of the site for biodiversity purposes, in accordance with section 5.2 of the submitted *Preliminary Ecological Appraisal Including a Protected Species Assessment of Land at Yew Tree Lakes, Yew Tree Lane, Rotherfield, East Sussex dated 18th June 2018* to include timescales for implementation and future management, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme of enhancements shall be implemented in accordance with the approved details and thereafter so retained.
 - 14) Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no buildings, structures or works as defined within Part 1 of Schedule 2, classes A-E inclusive of that Order, shall be erected or undertaken on the site.
 - 15) Notwithstanding the provisions of Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking and re-enacting that Order with or without modification), no gates, fences, walls or other means of enclosure and no building as defined in Section 336 of the Town and Country Planning Act 1990 shall be erected at the site.
 - 16) Upon commencement of the development, the use of the site as a commercial fishery shall cease.
 - 17) Before any works commence on site, a scheme shall be submitted to and approved in writing by the Local Planning Authority which confirms the manner in which the brick railway arch shall be protected during the construction of the development and the arch shall be retained thereafter.
 - 18) Prior to first occupation of the dwelling, an Energy Performance Certificate (EPC) rating of "A" with a SAP (Standard Assessment Procedure) score in excess of 100 must be achieved building fabric efficiency of floor, roof, walls, and windows to be constructed to no less than the U-values set out in the application document page 9.2.2 (Rule 1: Fabric First Approach) of the *Architectural and Landscape Design Proposals* document (June 2018); and a permeability result no greater than $2\text{m}^3/\text{h.m}^2@50\text{Pa}$. to be achieved. Certificates confirming these results shall be submitted to and approved in writing by the Local Planning Authority.
 - 19) The heat and power demands of the dwelling shall be met through the use of technologies as proposed in the application documentation pages 9.2.6, 9.2.7 and 9.2.8 of the *Architectural and Landscape Design Proposals* document (June 2018), full details of which shall be submitted to and approved in writing by the Local Planning Authority. All systems are to be fully functional prior to full occupation of the dwelling. Any subsequent development or alteration of the approved technologies providing the heat and power demand of the dwelling shall be submitted to and approved in writing by the Local Planning Authority prior to their implementation.

Appeal Decision

Site visit made on 5 February 2019

by S J Papworth DipArch(Glos) RIBA

an Inspector appointed by the Secretary of State

Decision date: 22 February 2019

Appeal Ref: APP/J3720/W/18/3213454

Avon Lodge, Ryon Hill, Warwick Road, Stratford-upon-Avon CV37 0NZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Dr Eghbal Hamidy against the decision of Stratford on Avon District Council.
 - The application Ref 17/01594/ FUL, dated 30 May 2017, was refused by the Council by notice dated 26 July 2018.
 - The development proposed is detached dwelling with associated landscape works.
-

Decision

1. I dismiss the appeal.

Main Issue

2. These are;
 - The effect of the proposal on the character and appearance of the area.
 - The effect of the proposal on the aims of policies which seek to direct the location of new residential development and whether there are other considerations such as in paragraph 79 of the National Planning Policy Framework sufficient to permit the proposal.

Reasons

Policy

3. Policy CS.9 of the Stratford on Avon Core Strategy sets out requirements on ensuring high quality design. Policy CS.15 on the distribution of development details the settlement hierarchy based on a pattern of balanced dispersal, in accordance with the distinctive character and function of the wide range of sustainable locations across the District. Housing development is the subject of Policy CS.16 and the numbers and locations for meeting the objectively assessed housing need are set out. Policy AS.10 on countryside and villages lists the forms of development that are acceptable in principle, including a new single dwelling in open countryside which is of exceptional quality and design and makes a positive contribution to the character of the local area.
4. This latter provision is similar to that in paragraph 79 of the 2019 National Planning Policy Framework which states that decisions should avoid the development of isolated homes in the countryside unless one or more of certain circumstances apply. The relevant section is part e); that the design is of exceptional quality, in that it *'is truly outstanding or innovative, reflecting the*

highest standards in architecture, and would help to raise standards of design more generally in rural areas; and would significantly enhance its immediate setting, and be *sensitive to the defining characteristics of the local area*'.

Character and Appearance

5. The site is a long relatively narrow finger of land running parallel to the main road, the first length behind a brick wall and later, as the road falls within a cutting, the site rises to a higher level beyond a bank of trees and understorey. The short southern boundary is at or about the brow of the hill before the land falls to the River Avon valley floor and that point commands long views including towards Stratford-upon-Avon. It is at this end of the site that the proposed dwelling would be placed.
6. The appellant describes the condition of the site as being mostly overgrown poor grassland and with pockets of dereliction and builder's debris. It is a fact that, when compared with the apparently tended nature of the land adjoining to the east and south, there are signs of the site not being in a beneficial use and not being actively managed. There does not appear to be any inherent difference in the nature of the two areas of land, more in the degree of intervention and management.
7. The site entry already exists serving Avon Lodge by turning to the north, and the proposed access to the appeal property would turn south from the shared driveway with a field gate currently in that location. There would be some minor changes to the views into the site at this highway entry, but the wing walls of Avon Lodge are in place and already signal development. The sinuous arrangement of the driveway, enhanced planting and the existing brick wall would limit the effect of any change to the entry in public views along the road, and these would inevitably be fleeting to road users, or from the far side of the road for pedestrians, that being the only hard footway in this section of road.
8. The wider landscape is dominated by the rise in the land from the valley floor to form Ryon Hill with the road cutting through that rise. To the west of the road is a more gently undulating landscape of large fields with intervening hedgerows and some trees, and this is designated as Green Belt and a Special Landscape Area. On the valley floor the main road is bounded by substantial hedgerows and sporadic farm buildings and dwellings. To the north of the site entry there is the prominent and imposing road entry to the business park where there is substantial built form, and there are various buildings on the road frontage to either side. There is a cluster of buildings including dwellings to the east of the appeal site around Fairfax House.
9. It is clear from the appellant's representation, and the MADE design review documents that the rationale for placing the built form at the southern end of the site is to take advantage of the 'key views' identified in the site analysis drawing. These only occur at the south end and extend from about north-north-west over the road round to about south-east over the adjoining land and valley. The accepted corollary of this siting is that the house becomes visible on the skyline when viewed from the main road below, and on approaching from the south. It appears that discussion took place with the design panel over how to satisfactorily resolve this.
10. There would be a 'lip' or 'ha-ha' to shield views of the patio and activity taking place there and the earth sheltering of the building as it abuts the east

boundary would reduce the effect here. However, there would remain the design intent of large areas of glazing at first floor level, with terraces beyond in order to make the most of the views for occupiers. The design panel report accepts that whilst the house has been carefully positioned, levels have been articulated and boundary treatment has been employed, the house will be visible, but is seen by the panel as a 'positive element in the landscape in the manner of a distant eyecatcher'. One particular element of the design is the Blue Lias natural stone chimney which would, of necessity, protrude above the flat roof of the building and the earth shelter, with other lesser elements such as the rooflights protruding also.

11. It is appropriate to consider whether the effect on the character and appearance of the area is acceptable, or justified, in the next main issue, as the requirements to significantly enhance its immediate setting and be sensitive to the defining characteristics of the local area are key determinants in the consideration of paragraph 79 of the Framework on isolated homes in the countryside. However, from this preamble it is concluded that the main effect would be through the placement of the building to take advantage of the views, that it would as a result be visible on the skyline and that the extent of glazing could catch the eye at some distance as well as closer to.

The Location of Development

12. The site is within the open countryside in policy terms. Whilst the 'Braintree'¹ Judgements determined the definition of the word 'isolated' in the Framework and there are a significant number and size of buildings in the vicinity, the Council's case is based on this being a dwelling that needs to satisfy Policy AS10, to which paragraph 79 of the Framework is considered to provide robust criteria for that assessment. The Judge in the Appeal Court stated that whether a proposed new dwelling is, or is not, 'isolated' in this sense will be a matter of fact and planning judgment for the decision-maker in the particular circumstances of the case in hand. In this case the degree of isolation from other buildings is such that the proposal should be considered as one for an isolated home in the countryside.
13. The requirements have been set out in the Policy section above and each of these 'criteria' are considered below. Whilst being outstanding is an alternative to being innovative, there is nothing in that paragraph to suggest that any of the other 'criteria' need not be met.

Truly Outstanding.

14. The scheme has been developed to a substantial level of detail and has taken account of, and responded to, the constraints of the site itself and the opportunities that it presents. The progression from the road entry to arrive at the building would be attractive and well designed, including the landscape enhancements. The arrival courtyard would be welcoming with the entrance and other elements readily understood. This part of the scheme would be somewhat sheltered from outside view (section c-c on Barry Chinn plan) and would allow parking and other activities to be introduced to the site without harm.

¹ Braintree District Council v Secretary of State for Communities and Local Government & Others [2017] EWHC 2743 (Admin) of 15 November 2017, and subsequently in the Court of Appeal judgment of 28 March 2018.

15. The earth sheltering and the use of glazing would be an attractive juxtaposition of the heavy, more cellular and enclosed construction of the bedroom and service wing, against the light and airy openness of the lounge, kitchen and dining wing. The slightly rising plane of the roof over the glazing and the integration of the earth shelter into that line would emphasise the more important use of that area and take advantage not only of the views but of passive solar energy. The protruding chimney would be an honest expression of the activity below and would relate well in its use of materials to the ground floor courtyard elevation. The progression from the smaller footprint of the garage block to the wider terrace and the wider-still overhang of the roof, with the slight wave in the form and the continuous expression of the structural edge would be dramatic and would unify the design of the lounge area.
16. Having regard to these matters and the full detail available in the submissions, it is concluded that the design should be regarded as being truly outstanding as a stand-alone building.

Innovative.

17. Various elements of energy conscious design, smart technologies, monitoring and dissemination have been put forward and it should be expected that such a dwelling promoted under paragraph 79 would perform well in its use and generation of energy. This dwelling is stated to perform better than Carbon Zero. MADE also referred to innovation in the integration of the house with landscape, although good design should do that, and it is less clear why a building that achieves this level of design quality should be considered innovative; possibly unusual or rare, but not innovative.
18. To conclude on this part of the analysis, there are many elements of the proposal that are good practice, or perhaps more thoroughgoing in their approach to sustainable design than is usual, but they do not amount to innovation, and when reading through the sentence to include the word 'truly', the proposal does not reach that standard. Nevertheless, as this is an alternative to a 'criterion' that has been found to be met, no adverse weight attaches to this failure.

Reflecting the Highest Standards in Architecture.

19. This requirement does not restrict itself to either domestic architecture or rural buildings, and the use of the sheer glazed wall and overhanging roof supported by a limited number of slender columns behind the glass would reflect much that is attractive in the highest quality commercial and public buildings. In addition, architectural design of the highest standard is more than just appearance and should reflect an attention to the brief and the intended use. It is apparent that the appeal dwelling meets this standard.

Help to Raise Standards of Design More Generally in Rural Areas;

20. The proposed dissemination of the building's energy performance would be of value, and the existence of high-quality architecture can inspire others to achieve similar. 'More generally' could be taken to imply raising standards in the design of rural buildings that do not aspire to meet the paragraph 79 exception, such as agricultural or service buildings, whereas much of what has been found to be outstanding in this scheme concerns its approach to domestic

architecture. Be that as it may, the building would be an exemplar of good design and could satisfy this requirement.

Significantly Enhance its Immediate Setting,

21. Certainly the site itself is unkempt and degraded, but as previously stated, there does not appear to be any intrinsic reason why it should not be improved and put to use without a dwelling being developed. The nature of the land is not readily apparent from public viewpoints; the wire fence is seen on the skyline but at some distance and the view through the existing entry is limited.
22. There would be some enhancement in appearance but not fully appreciated from a public viewpoint, and uncared-for land can already be relatively diverse in habitats. It is however accepted that without the impetus of the new house being developed, the enhancement that is proposed would not be so likely to be carried out. The site is small and unlike some paragraph 79 proposals, the immediate setting is small also. There would be an enhancement of that setting, but not reaching the level of being 'significant'.

Be Sensitive to the Defining Characteristics of the Local Area.

23. The defining characteristics of the local area are the large fields, with hedgerow boundaries and trees on the hill and other higher ground, and the flatlands of the valley floor with dispersed built form. For the land to the west of the main road, paragraph 133 of the Framework states that the essential characteristics of Green Belts are their openness and their permanence.
24. The business park is a significant departure from this pattern, but other than the road entry and views within the complex and from Stratford Road as pointed out by the appellant, these large commercial buildings do not define the area likely to be affected by the appeal proposal. In any event, the decision to permit that development would have relied on a different set of planning considerations than does an isolated home in the countryside.
25. There is however an awkward tension in the design and use of materials for the lounge, dining and kitchen part, the clearly stated rationale of placing the building in this part of the site and the extent of glazing is to take advantage of the views. Whilst steps have been taken to hide the patio and other outdoor activity areas, that design rationale would inevitably result in a reverse view of parts of the building. Elevation 2 of the proposed elevations sheet 1 shows the depth of glazing relative to a standing person as being in the order of 3.4m at the most and that height would diminish only slightly over a length of something like 12m on the south facing part. The enjoyment of the view, even if restricted by the 'lip' or 'ha-ha' to a standing person and that appears an unlikely restriction on the occupiers, would result in a significant height and hence area of glazing visible in the landscape.
26. It is accepted that the images indicate a limited exposure from the chosen viewpoints, but the inference is that there will be places within the area encompassed by the views from the house that will feature an expanse of glazing in their view. The nature of such glazing is of reflection and the overhang of the roof would be insufficient to wholly prevent this at times. Added to that concern is that the placement so close to the southern site boundary would not allow control of any of the present vegetation off-site, and

the trees shown to 'frame views and provide screening' could not fully carry out the latter function while preserving the former.

27. A further concern is over the presentation of the house and the glazing after dark. Whilst the imperative for traditional curtains for privacy and heat retention may not be so great due to the location and the possibility of triple glazing and high performance glass, and whilst that are technological solutions available in any event, there would be a risk of the large expanse of glazing appearing as a 'beacon' over a large area of reverse view, and the use of conditions to guard against that eventuality, through such as internal or external operating blinds would be both unreasonable and difficult to enforce.
28. The appellant describes the illusion of this being a single-storey set at the peak of the hill, but that single storey would be the almost totally glazed element of a height more akin to a storey-and-a-half. The earth sheltering would continue the greenery of the adjacent land to the east but would itself introduce an uncharacteristic landscape form and the addition of the chimney and rooflights negate much of the benefit of this device.
29. As a result, it is concluded that the design of the house would not be sensitive to the defining characteristics of the local area, which includes adjacent Green Belt land and a Special Landscape Area causing harm to the rural character and appearance through the introduction of alien building forms in an over prominent position. It appears most unlikely given the rationale of the siting, orientation and design ethos, that further landscaping could be employed to overcome this shortcoming.

Planning Balance and Conclusions

30. In conclusion, the design of the building is outstanding, although it is not truly innovative, this being an alternative in any event. The design reflects the highest standards in architecture which could help to raise standards more generally. There are unattractive elements to the immediate setting that would be enhanced, but not necessarily to the level of being a significant enhancement, and the effect on the defining characteristic of the local area, including as it does Green Belt and a Special Landscape Area would be harmful due to the apparent tension between taking advantage of the views and disadvantaging the character and appearance of the area. The design does not meet the stated requirement of paragraph 79e) of exceptional quality.
31. The proposal does not make a positive contribution to the character of the local area, so that the full requirements Policy AS.10 would not be met, and the design does not reach the standard sought in Policy CS.9 with regard to reflecting the character and distinctiveness of the locality.
32. The Council are able to demonstrate a 5 year supply of specific deliverable sites as required under paragraph 73 of the Framework and hence the policies of the Development Plan that seek to direct the location of housing should not be considered out-of-date. As a result, the restrictions in Policies CS.15 and CS.16 should therefore prevail. For the reasons given above it is concluded that the appeal should be dismissed.

SJ Papworth

INSPECTOR

DELEGATED DECISION REPORT

APPLICATION NUMBER

162041

Land at Coombe Farm, Coombe Lane, Ridgeway Cross, Cradley,

CASE OFFICER: Mr C Brace

Relevant Development Plan Policies:

- SS1 – Presumption in Favour of Sustainable Development
- SS2 – Delivering New Homes
- SS4 – Movement and Transportation
- SS6 – Environmental Quality and Local Distinctiveness
- SS7 – Addressing Climate Change
- RA1 – Rural Housing Strategy
- RA2 – Herefordshire’s Villages
- RA3 – Herefordshire’s countryside
- MT1 – Traffic Management, Highway Safety and Promoting Active Travel
- LD1 – Landscape and Townscape
- LD2 – Biodiversity 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 Water Quality

Relevant Site History:

- 143395/CE – Pre application advice proposed new dwelling
- 140859/F – Proposed new dwelling – Withdrawn
- 131836/CE – Pre application advice proposed new dwelling

CONSULTATIONS

	Consulted	No Response	No objection	Qualified Comment	Object
Parish Council	√			√	
Transportation	√	√			
Historic Buildings Officer	√				
Ecologist/Landscape Officer	√ x 2		√ x 2		
Site Notice/ Newspaper	√		√ x 63		√ x 7
Local Member	√		√		

PLANNING OFFICER'S APPRAISAL:

Site description and proposal:

The application is located in an open countryside location featuring land associated with Coombe Farm, a Grade II listed building located 200 metres away to the North. The site is in an elevated hillside position with extensive views running 180 degrees North/ South towards Worcestershire. The application site is located on 1.62 ha and features a manege. The site is bordered to the West by an unclassified single track road from which access is proposed and currently served by a field gate. This boundary is, apart from the access point, delineated by mature tree lined hedgerow. Similarly the North, South and East boundaries are delineated by existing tree lined hedgerow, all of which then adjoin further agricultural land.

The Malvern Hills and its AONB are visible to the South East however is over 1500 metres away. There are no formal landscape designations on the site.

The proposal is a new dwelling.

Representations:

Cradley Parish Council comments *it would welcome this application if Hereford Council decide that it meets the criteria for Paragraph 55 but the Parish Council do not feel qualified to make that decision.*

7 letters of objection have been received, comments are summarised as –

- Concern regarding light pollution
- Concern regarding noise
- Concern over highway safety
- Concern regarding access
- No details regarding construction
- No comments from Senior Conservation Officer
- Does not satisfy NPPF policy paragraph 55
- Impact on amenity and privacy
- Sunlight glare
- Planting is insufficient
- Not sensitive to the local area or landscape
- Impact on rural character
- Ecological impact
- Precedent

63 letters of support have been received, comments are summarised as –

- The proposal is of outstanding/ high quality design
- The proposal meets paragraph 55
- High level sustainability credentials
- Example for others
- Sensitive design
- Minimal impact

The CPRE objects to the proposals, noting the site is in attractive rolling countryside, a setting worth preserving, and outside any settlement area. It is against Council policy to build residences in the open countryside except in specific circumstances, none of which appear to apply in this case. To permit development in these circumstances would create an undesirable precedent. The nature of the building proposed does not seem relevant.

The Council's Area Engineer has not returned comment. As such it is considered, as Council policy dictates, as being no objection.

The Council's Senior Landscape Officer has no objection, requested conditions are attached to the recommendation below.

The Council's Ecologist has no objection. Requested conditions are attached to the recommendation, below.

The Council's Senior Conservation Officer has not returned comment.

Local Member was updated by email on 8/9 and delegated approval agreed by return.

Pre-application discussion:

Under reference 143395/CE – detailed extensive discussions with applicant and agent with Planners and Senior Landscape Officer over nearly two years. Many site meetings and schemes developed through negotiation, cumulating with a 'Final' Draft submitted to MADE for assessment. Thereafter, further modest revision and detailed landscape proposals agreed and application put forward on that basis.

Constraints:

Impact on the character and appearance of the open countryside
Nearby Area of Outstanding Natural Beauty – Malvern Hills AONB – approx. 1660m to East
Grade II Listed Buildings, nearest Coombe Farm approx. 200m to North
Agricultural Land Classification – Grade 2 Very good soils,
Flood zones and Ground Water Sensitivity areas – None on site
Footpath – CD32B approx. 630m to the East
Protected species
Trees

Appraisal:

Policy Assessment

Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 requires local planning authorities to determine

applications in line with the provisions of the local development plan unless material circumstances dictate otherwise.

Paragraph 14 of the NPPF clearly defines 'presumption in favour of sustainable development' as the golden thread running through the NPPF. It goes on to state that for decisions taking this means approving development proposals that accord with the development plan without delay 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 the NPPF indicate development should be restricted.

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 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 Appeal Court Decision and the implications of this position following the *Suffolk Coastal DC v Hopkins Homes & SSCLG* and *Richborough Estates v Cheshire East BC & SSCLG*[2016] EWCA Civ 168 were described by the Court thus –

We must emphasize here that the policies in paragraphs 14 and 49 of the NPPF do not make "out-of-date" policies for the supply of housing irrelevant in the determination of a planning application or appeal. Nor do they prescribe how much weight should be given to such policies in the decision. Weight is, as ever, a matter for the decision-maker (as described the speech of Lord Hoffmann in Tesco Stores Ltd. v Secretary of State for the Environment [1995] 1 W.L.R. 759, at p.780F-H).

Neither of those paragraphs of the NPPF says that a development plan policy for the supply of housing that is "out-of-date" should be given no weight, or minimal weight, or, indeed, any specific amount of weight. They do not say that such a policy should simply be ignored or disapplied. That idea appears to have found favour in some of the first instance judgments where this question has arisen. It is incorrect.

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'*.

NPPF section 12 sets out the position regarding conserving and enhancing the natural environment. Specific principles and policies relating to the natural environment and its assets and development are found in paragraphs 109 – 125.

Herefordshire Core Strategy

Core Strategy Policy SS1 – *Presumption in favour of sustainable development*, in line with the NPPF, has a positive approach to such development. Furthermore, planning permission will be granted unless the adverse impact of the permission would significantly and demonstrably outweigh the benefits of the proposal.

Core Strategy Policy SS2 – *Delivering new homes* sets out Herefordshire is to deliver a minimum 16,500 dwellings during the plan period and that designated rural settlements play a key role in that delivery and support the rural economy, local services and facilities. Such settlements will deliver a minimum 5,600 dwellings.

Core Strategy policy SS7 – *Addressing climate change* describes how development will be required to mitigate their impact on climate change, and strategically, this includes:

- focussing development to the most sustainable locations
- delivering development that reduces the need to travel by private car and encourages sustainable travel options including walking, cycling and public transport

Core Strategy policy RA1 – *Rural housing distribution* sets out the strategic way housing is to be provided within rural Herefordshire and to deliver a minimum 5,600 dwellings. Herefordshire is divided into seven Housing Market Areas (HMAs) in order to respond to the differing housing needs, requirements and spatial matters across the county.

Core Strategy policy RA2 – *Housing outside Hereford and the market towns* identifies the settlements in each HMA area where both the main focus of proportionate housing development will be directed, along with other settlements where proportionate housing growth is appropriate.

Core Strategy policy RA3 – *Herefordshire's countryside* identifies exceptional circumstances where residential development can occur within the open countryside outside settlements listed under RA2 or Hereford city and the market towns. Criterion 6 allows for dwellings of *exceptional quality and innovative design satisfying the design criteria set out in paragraph 55 of the NPPF and achieving sustainable standards of design and construction.*

Assessment

Paragraph 55 permits dwellings in the open countryside where the proposal is of exceptional quality or innovative nature of the design of the dwelling. Such a design is required to:

- be truly outstanding or innovative, helping to raise standards of design more generally in rural areas;
- reflect the highest standards in architecture;
- significantly enhance its immediate setting; and
- be sensitive to the defining characteristics of the local area.

Sustainable development and sustainability are 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.

Section 7 (*Requiring good design*) of the NPPF requires developments should function well and add to the overall quality of an area, establishing a sense of place to create attractive places to live, work and visit through responding to local character and history and reflecting local identity, whilst at the same time not stifling innovation. This approach is reinforced through Core Strategy policies SS6, LD1 and SD1 and the criteria of policy RA3. Attention is required to be paid to the form, layout, character and setting of the site and its location, resulting in the highest quality of sustainable development and design.

As such, given the in principle acceptability of a rural exception dwelling as assessed against NPPF paragraph 55 and Core Strategy policy RA3, the decision making process turns to the assessment of material considerations and the proposal meeting those significant demanding requirements and criteria.

Paragraph 55/ Core Strategy policy RA3 Assessment

The Innovation requirement of Paragraph 55 requires a constant raising of the bar, whether in respect of design, construction techniques, materials or functionality. Done once, by definition, it cannot be replicated. As such a Paragraph 55 dwelling is a 'one off' and should be considered in terms of being a 'landmark building'. As outlined in the landscape section, above, the design should also be unique to and only achievable on the site on which its located.

Paragraph 55 and policy RA3 requires such a development must –

- be truly outstanding or innovative and raise standards of design in rural areas;
- reflect the highest standards in architecture;
- significantly enhance its immediate setting; and
- be sensitive to the defining characteristics of the local area.

The proposal was on Officers' advice submitted to MADE for their panel's review. A positive response received on stated –

The approach and iterations which have led to the designs we were shown were clearly presented and compelling. The house has been positioned to take best advantage of the stunning views and also to utilise the existing terrace in the hillside. We applaud the general approach that has been taken to the form of the house and the access and driveway arrangements.

We interrogated the choice of a convex curve and concluded that this was appropriate, maximising views out and passive solar gain, bringing more light into the house and allowing the 'ends' to merge into the landscape.

We also examined the choice of creating a wooded landscape beneath the house. From the plans this appeared somewhat formal but we were reassured by the visualisations that the result would be a more natural looking wooded block similar to those found across the surrounding countryside. An open field below would have been an equally valid choice but the wooded option does help the house to nestle in the landscape. The choice should not be driven by any desire to hide views of the house.

We felt that the proposal to front the lower part of the house with a green wall was an inappropriate and potentially high-maintenance attempt at concealment. Instead we proposed that in line with some of the earlier design ideas, the lower part should be read as an old stone wall, almost part of the historic landscape and possibly with a battered profile. This would allow the lighter and more overtly modern upper floor to rise out of it.

We also questioned the rather utilitarian design of the internal staircase which perhaps did not have the presence one would expect in a house of this quality and failed to reflect the drama of the entrance hall and its views of the countryside.

We would expect any Paragraph 55 to show strong ambitions in terms of energy and water efficiency, promotion of biodiversity and sustainable construction.

In conclusion, this is a really inspirational site which presents a great opportunity but also a difficult challenge to match the beauty of the landscape with appropriate architecture. The panel concluded that this proposal does have the potential to meet the test of Paragraph 55 provided more work was done to give the lower level a more rugged personality, contrasting with the upper part.

Following this assessment further discussion between the applicants', architects and LPA took place. A landscape architect was commissioned by the applicants to create and ensure an appropriate landscaping strategy and masterplan. Further work also evolved the detailed finish of the dwelling, responding to the critique of MADE. The replacement of the 'green wall' was agreed and further use of local stone incorporated into the design to better integrate the proposal and landscape. This along with other slight adjustments such as the stairs and covered entrance to the house have been redesigned and the external wall to the lower floor has been kept as stone with curved batters at low level using coarser stone. The flanking embankments to each end of the lower terrace have been reshaped and roughened by incorporating large rocks, some of which are from the site itself and the landscaping masterplan resulted in the proposal assessed and consulted on here.

The site for the proposed dwelling is partly on a former ménage which currently, apart from the existing lake, is the only significant piece of man-made engineering on the land. By developing this particular site, an unnatural feature elevated and reasonably prominent within the landscape and what can be considered an intrusion on the landscape, can be transformed, creating an opportunity to enhance the landscape and furthermore biodiversity.

The house is orientated between the original contours of the site and be low lying, with only one two storey elevation. The plan form is curved, with the convex face addressing the views while the single storey concave face forms a courtyard centred on a prominent oak tree on the western boundary.

The design approach, articulated from detailed assessment and consideration of the landscape, setting and context by the applicants', their Architects and LPA, is considered to create a dwelling which merges with the landscape and is a response to this particular location

A two storey dwelling would be constructed within the ménage where the lower floor would be underground except for a single facade while the upper floor, containing the living accommodation emerges above the existing ménage level with the ground brought up and over each end of the house, thereby creating a green roof, improving its thermal performance and reducing energy use. In this way there is a balance of cut and fill, with about 860 cubic metres of material taken out to bury the lower floor and the same amount being used in the adjustment of levels to the sides of the building. The use of a green roof will in turn integrate the house into the landscape. By building the lower floor underground the dwelling will benefit from geothermal mass and heat exchange, staying cool in summer and warm in winter.

Following detailed discussion and negotiation, access is formed off a short drive that provides access to a connecting garage across a private courtyard area behind the house. This area is screened from public vantage points, particularly the adjoining unclassified road from which access is served by existing maintained and enhanced planting. As a result of this all ancillary building requirements are incorporated in the one structure without the further need for the various sheds and outbuildings resulting in a clean, finished piece of architecture, negating future needs or requirements for ancillary structures or buildings – an important part of ensuring the long term quality of the development, landscaping and demonstrating a sustainable approach to dwelling design.

Following the recommendation from MADE, The exposed facade of the lower floor is now set into the ground and emerge as a rough coursed random rubble stone wall that becomes finer with increasing height, as opposed to the originally proposed 'green wall'. Stone is sourced from the site, nearby demolished buildings and a local stone quarry. Coursed random rubble walls can be found along Coombe Lane. The use of this very local stone adds to the connectivity of the proposal with its landscape and setting, being built from the very ground in which it will be located. Curved battering of the walls at low level and the inclusion of large rocks at the extremities of the lower terrace will 'blur' the interface between the wall and the ground, again following MADE's advice. The terrace itself will be finished with well compacted gravel. Where not glazed, the exposed facades of the upper level will be clad with Siberian Larch and feature vertically set 'sleepers'. This detail extends to form the finish to the retaining walls at the ends on the building, where vegetation will also be allowed to take hold, so blending the upper level into the natural surrounds. This, coupled with a backcloth of

mature trees and hedgerow, will give an organic feel to parts of the building, which becomes increasingly clean and contemporary as one moves towards the centre of the building. With a choice of just two natural materials, both of which are to be commonly found naturally and on existing buildings and structures locally, the building will sit comfortably in the landscape and responds to its context. The garage doors will be timber clad to match the adjacent wall to give a unified appearance from the entrance courtyard. Glazing generally will be in narrow profile powder coated aluminium frames while the main areas of glazing on the east facing upper floor will be frameless glass. The ground will be swept up and over the garage from the north, over the building with an extensive green roof and down to the south end to meet the incoming drive. Here a low stone wall at the edge of the drive reduces the gradient of the embankment and better defines the end of the building. The selection of planting will minimize the maintenance requirements whilst maximizing opportunities for biodiversity, which will be encouraged. The upper terrace will be finished with timber decking with a structural glass guarding.

Following the above assessment and conclusion the proposal satisfies the exception criteria of Paragraph 55 and Core Strategy policy RA3 due to the proposal being truly outstanding or innovative and raising standards of design in rural areas, reflecting the highest standards in architecture – both qualified by the comments from MADE, it is left to assess whether the proposal significantly enhances the immediate setting and is sensitive to the defining characteristics of the local area. This assessment is considered against material considerations regarding built heritage, landscapes and ecology.

Heritage Assessment and Impact

Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states *"In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."*

NPPF section 12 sets out the position regarding conserving and enhancing the historic environment. Specific principles and policies relating to the historic environment and heritage assets and development are found in paragraphs 126 – 141.

The NPPF sets out in paragraph 126 that there should be a positive strategy for the conservation of the historic environment. It is recognised that heritage assets are an irreplaceable resource and conserve them in a manner appropriate to their significance taking into account of:

- The desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation
- The wider social, cultural, economic and environmental benefits that conservation of the historic environment can bring
- The desirability of new development making a positive contribution to local character and distinctiveness
- Opportunities to draw on the contribution made by the historic environment to the character of a place.

Paragraph 131 – 133 sets out what and how LPA's should consider in determining planning applications featuring heritage assets. This includes:

- The desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- The positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
- The desirability of new development making a positive contribution to local character and distinctiveness.

The Core Strategy sets out heritage policy under LD4. The historic environment is defined as all aspects of the environment resulting from the interaction between people and places through time, including all surviving physical remains of past human activity, whether visible, buried or submerged, and landscaped and planted or managed flora. Those elements of significance with statutory protection are referred to as designated heritage assets. Policy LD4 is applicable to heritage assets throughout Herefordshire whether formally designated e.g. listed buildings and conservation areas, or not.

Policy LD4 – *Historic environment and heritage assets* requires Development proposals affecting heritage assets and the wider historic environment should:

- Protect, conserve, and where possible enhance heritage assets and their settings in a manner appropriate to their significance through appropriate management, uses and sympathetic design, in particular emphasising the original form and function where possible;
- The conservation and enhancement of heritage assets and their settings through appropriate management, uses and sympathetic design. Where opportunities exist, contribute to the character and local distinctiveness of the townscape or wider environment, especially within conservation areas;
- Use the retention, repair and sustainable use of heritage assets to provide a focus for wider regeneration schemes;
- Record and advance the understanding of the significance of any heritage assets to be lost (wholly or in part) and to make this evidence or archive generated publicly accessible and where appropriate, improve the understanding of and public access to the heritage asset.

The application, including the development and site as a whole has been assessed regarding its impact on all heritage assets hereabouts. Particular regard is had to Coombe Farm, a Grade II listed dwelling and nearest listed building to the application site. The following are the nearest listed buildings and have been assessed regarding the impact upon them and their setting from the proposal –

Coombe Farm, Grade II listed, described as *Early c19 painted stone with toe roof with early C17 timber, frame end crosswing, plaster panels, two storeys, modern casements, slate roof, stone stack. Long modern flat roof dormer.* Coombe Farm is some 200 metres North of the proposal, with agricultural land and existing vegetation inbetween. Substantial planting is proposed between the proposal and Coombe Farm as part of the overall landscaping and

design masterplan. The significant landscaping proposals provide a buffer between Coombe Farm and the development. This protects and provides a long term guarantee to the protection of this listed building and its setting and in particular, views from the development itself. As such the setting of this listed building is widely protected and indeed, its historic context enhanced through the reintroduction of orchard planting around it. It is considered the harm is less than substantial.

Bank Cottage is a Grade II listed cottage some 500 metres North of the proposal. This dwelling has no visual relationship with the application site and Coombe Farm is inbetween, along with topography and vegetation creating no linkage. Through its existing setting, topography, intervening buildings and layout and landscaping of the proposal, Bank Cottage is considered to suffer no demonstrable harm to its setting over that already existing. As such it is considered the harm is less than substantial.

Heath Cottage is a Grade II listed cottage some 570 metres North of the proposal. Again, there is no visual relationship with the application site due to topography and vegetation. Through its existing setting, topography, intervening buildings and development and layout and landscaping of the proposal, Heath Cottage is considered to suffer no demonstrable harm to its setting over that already existing. As such it is considered the harm is less than substantial.

Upper House is Grade II listed some 450 metres North East of the proposal. Upper House lies 'down slope' of the hillside the proposal is located on and overlooks. Upper House is described as *C17 timber frame with two crucks possibly medieval. Painted brick nogging and plaster panels. Gables. Tile roof. Two storeys casement windows. Massive stone stack. picturesque.* Substantial planting is proposed between the proposal and Upper House as part of the overall landscaping and design masterplan. The significant landscaping proposals provide a buffer between Upper House and the development. This protects and provides a long term guarantee to the protection of this listed building and its setting and in particular, views from and to the development itself. Upon maturation of the planting, it is likely there will be no intervening views due to the level of screening planted. The design of the proposed dwelling is discrete and partly submerged into the landscape. Protrusions are dressed in stone. As such the setting of this listed building is widely protected and indeed, its historic context enhanced through the reintroduction of orchard and other planting around it. It is considered the harm is less than substantial.

Beanhouse is Grade II listed some 830 metres North East of the proposal, described as *Early C19. Painted brick. Three storeys. Five windows (three on second floor). Sashes with glazing bars, architraves. Centre door with rectangular fanlight. Hipped slate roof with overhanging eaves. Casements on ground floor.* Substantial planting is proposed between the proposal and Beanhouse as part of the overall landscaping and design masterplan. The significant landscaping proposals provide a buffer between Beanhouse and the development. This protects and provides a long term guarantee to the protection of this listed building and its setting and in particular, views from and to the development itself. Upon maturation of the planting, it is likely there will be no intervening views due to the level of screening planted. It is also noted existing development exists between the proposal and Beanhouse. This has more 'impact' on its setting than the proposal over 800 metres away. As such the setting of this listed building is not adversely impacted to a significant degree over any existing harm. It is considered the harm from the proposal, if there is any, is less than substantial.

As such it is considered that there is no demonstrable, significant adverse impact upon these heritage assets or their setting that can be considered to represent substantial harm to justify refusal. There is also positive consideration and strategy to ensure the setting of these assets is adequately protected and maintained in the longer term through the detailed landscaping masterplan intrinsic to the proposal. Quite simply, if it is considered the impact of the proposal would justify refusal on the basis of substantial harm upon the setting of these adjoining heritage assets, it would be reasonable to conclude no development could take place *anywhere* within or adjoining any listed building and its curtilage. Accordingly Core strategy policies SS6, RA2, LD1, LD4 and SD1 and the heritage aims and objectives of the NPPF are considered to be satisfied as the proposal results in harm that is considered to be less than substantial on adjoining heritage assets and their setting.

Landscape

Paragraph 17 of the NPPF describes twelve core planning principles. This includes taking 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, and contributing to conserving and enhancing the natural environment and reducing pollution

Section 11 of the NPPF – *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 that *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 – *Landscape and townscape* states Development proposals should:

- Demonstrate that character of the landscape and townscape has positively influenced the design, scale, nature and site selection, 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, nationally and locally designated parks and gardens and conservation areas; through the protection of the area's character and by enabling appropriate uses, design and management;
- Incorporate new landscape schemes and their management to ensure development integrates appropriately into its surroundings; and
- Maintain and extend tree cover where important to amenity, through the retention of important trees, appropriate replacement of trees lost through development and new planting to support green infrastructure.

There are no formal landscape designations applicable to the site or its location

Inextricably linked into the concept of accounting for the locality within a Paragraph 55 dwelling is the landscape design. This requires that landscaping is an afterthought, rather landscape design is a fundamental aspect of the whole scheme. It is considered such a proposal should be presented on the basis of the whole site and its context rather than just the house. Not every plot of land is suitable for a paragraph 55 dwelling, and as an example of the incredibly high threshold applied to such proposals, these should be a house that can only be achieved on that particular site. It is on this basis that so many such applications are unsuccessful and it is upon this reason and approach taken that having regard to the proposal, approval is recommended – in this application, landscape consideration, context and understanding, along with an overall enhancement of the landscape setting has underpinned and influenced the design and resultant proposal as a whole.

Herefordshire Landscape Character Assessment describes the application site as being in landscape character type *Timbered Plateau Farmlands*. The Main Characteristics are: *'field boundary hedgerows are thrown into visual prominence by the landform with wooded valleys and dingles and an ancient wooded character'*. Secondary characteristics are *'mixed farming land use with a linear pattern of woodland, organic enclosure patterns and medium-open views'*.

Landscape and Visual effects

The Malvern Hills Area of Outstanding Natural Beauty lies to the east of the proposal site approx. 1660m away. Approx. 630m to the east of the proposed site there is a public right of way footpath CD32B. There are views of the proposed development from this footpath CD32B along with views of the proposed development from a property to the north east of the site, Upper House. Based on the Landscape Proposal Plan, Drawing no CLC002, No Revision, Dated March 2016 there will be visual mitigation and landscape enhancement seen from these viewpoints in the future. The proposed native woodland and orchard tree planting on the north eastern slope of the site will in time (a minimum of five years) contribute to the local environment by providing local landscape character context, biodiversity value and visual amenity.

The proposed development site is on a raised area of imported soil and hard soil material. The site other than this area of raised land is on a soil which is considered to be a Grade 2, Very Good soil. The proposal has demonstrated that the proposed new dwelling is to be on poorer quality land in preference to higher quality land.

The Timbered Plateau Farmlands Landscape Character is being enhanced through the planting of native woodland trees on the north eastern side of the site. Also the green native grassland wildflower roof proposal will also contribute to the biodiversity of the site. The use of local natural stone within the dwellings frontage will also contribute to the counties distinctiveness.

With reference to the Landscape Proposal Plan, Drawing No CLC002, No Revision, Dated March 2016 the proposed access drive will be screened by a native holly and hornbeam hedgerow. The garage and domestic requirements are on the western side of the proposed

dwelling out of sight from visual receptors to the east of the proposal. The native woodland proposal and the orchard proposal will also integrate into the surrounding landscape while providing new green infrastructure.

With reference to the Landscape Proposals Plan, Drawing No CLC002, No Revision, Dated March 2016 there are several landscape proposals which will conserve, restore and enhance the biodiversity assets of Herefordshire. These include the native woodland and woodland edge proposals with their associated native woodland plug planting ground cover. The wetland woodland area and the orchard proposals with local and traditional varieties, along with their wildflower meadow ground cover. Also the existing native hedgerows where required will be gapped up with native hedgerow species. The proposed green roof for the dwelling with native grasses and wildflowers will also provide further biodiversity value and visual integration and mitigation.

The retention of important trees and hedgerows on the site boundary will support the existing green infrastructure of the site.

As such Core Strategy policies SS6, LD1, LD4 and SD1 and the relevant landscape aims and objectives of the NPPF are satisfied.

Ecology

The Council's Ecologist has inspected and considered the information in both the 2014 full ecological survey and 2016 update by Swift Ecology and the supplied Landscape & Ecology Management Plan (Carly Tinkler June 2016). It is considered that the recommendations for working methods, mitigation and enhancements are relevant. It is a shame that the new orchard planting only includes a limited number of trees on the vigorous rootstocks required to achieve a Traditional (Standard) Orchard. Overall the landscaping scheme will be a habitat/ecological enhancement.

In order to ensure the security and enhancement of the ecology of the site numerous Conditions recommended by the Ecologist are added to the recommendation, below.

As such Core Strategy policies LD2 and LD3 are satisfied along with the relevant aims and objectives of the NPPF.

Highways

The Area Engineer has not returned comment, however, highways have been assessed by Officers. The junction of the unclassified road serving the proposal and A4103 is substandard and is located at a point featuring a cross roads and over taking lane. The significant intensification of the junction would not be supported however the movements associated with the proposal and very low movements from the lane lead a conclusion that the highway risk is not significantly increased over the existing situation. I also note the Area Engineer responding with no objection to application reference 140859/F from 2014 and raised no concern regarding the impact of a single new dwelling served from the unclassified road or the intensification of the junction with the A4103 from such a development. As no new dwellings have been permitted accessing from the unclassified road the proposal utilises

since the Area Engineer's assessment, it is considered there is no justification to find a contrary opinion to that position established two years ago.

Furthermore conditions are recommended regarding access and construction details. As such Core Strategy policy MT1 is satisfied.

Other Material Considerations/ Issues raised by Consultees and third parties

Amenity and Privacy

The nearest third party dwellings are –

- Coombe Cottage, approx. 80 metres South
- Coombe Ridge House, approx. 110 metres South
- The Farmhouse, Pullens Farm, approx. 280 metres West
- Upper House, approx 400 metres East

Coombe Farm, Coombe Ridge House and The Farmhouse are all set 'behind' and above the proposal on the far side of the unclassified road from which access is gained. Mature established tree and hedgerow is located between. Having regard to the design, location and siting of the proposal and the existing context, it is considered there is minimal impact on the amenity of these dwellings, limited to vehicular movements associated with the proposal. It is not considered the impact from a single dwelling having regard to all of the above generates harm justifying refusal.

Upper House is located over 400 metres to the East at a significantly lower land level to the proposal. Existing and proposed landscape planting will further mitigate the dwelling along with its design. Having regard to distances, it is not considered this creates an unacceptable amenity or privacy impact. Regarding sunlight glare from the proposed dwelling, a condition is attached requiring specification of all glazing to minimise glare and associated impact.

A condition is recommended requiring details of external lighting are submitted for approval. This will address concerns over light pollution, particularly given the elevated position of the proposal and exercise control exceeding that applicable to any other dwelling hereabouts.

There is no precedent within Planning, the fact a Paragraph 55 dwelling was approved nearby is coincidental. Each paragraph 55 dwelling is assessed on its own merits. The fact there are such proposals hereabouts is a 'good thing' raising design standards locally and within Herefordshire. Such architecture is a positive and beneficial to the local area from a quality and aspirational consideration. This proposal and the other permission hereabouts have been supported and assessed by MADE ensuring the highest standards of paragraph 55 are met. Without this, the recommendation would not be what it is.

Conclusion

On the basis of the above, it is considered and concluded the proposal, as required by Paragraph 55 and Core Strategy policy RA3, significantly enhances its immediate setting, improving a despoiled landscape and removing a detrimental built form with a well executed

integrated dwelling that is clearly sensitive to the defining characteristics of the local area through its design, form, materials and landscaping strategy, which enhances the landscape character and biodiversity of the area.

RECOMMENDATION: PERMIT REFUSE

CONDITIONS & REASONS:

1. C01
2. C07 – plans and documents

Planning Application Form
Plans, received 28th June 2016 –
Site Location Plan, Drawing No. 3918 Sla
Site Plan, Drawing No. 3918.P10
Block Plan, Drawing No. 3918 BPa
Tree Constraints Plan, Ref: CMB/TCP/001
Landscaping Plan, Drawing No. 3918.P11
Existing Site Plan, Drawing No. 3918.001
Ground Floor Plan, Drawing No. 3918.P01
First Floor Plan, Drawing No. 3918.P02
Roof Plan, Drawing No. 3918.P03
Elevations 1, Drawing No. 3918.P04
Elevations 2, Drawing No. 3918.P07
Section AA, Drawing No. 3918.P08
Site Section, Drawing No. 3918.P09
Topographical Survey, Reference JA/CF/001

Landscape and Visual Analysis
Landscape and Ecological Masterplan by Carly Tinkler
Preliminary Ecological Appraisal 2014 by Swift Ecology
Ecological update 2016 by Swift Ecology

Plans and documents, received 13th July 2016 –
Design and Access Statement

Drawing received 16th September 2016
Site Plan, Domestic Curtilage, received 30th September 2016

3. The recommendations for ecological working methods as detailed in Section 5.2 'Potential Impacts and Recommendations' of the ecological report (Swift Ecology – 2014) listed under Condition 2 of this Decision Notice shall be followed and implemented as stated unless otherwise agreed in writing by this planning authority.

Reason: To ensure that all species are protected and habitats enhanced having regard to the Wildlife and Countryside Act 1981 (as amended), the

Conservation (Natural Habitats, &c) Regulations 1994 (as amended) and Policy LD2 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

4. The landscaping, biodiversity and habitat enhancements as detailed in the Landscape & Ecology Management Plan (Carly Tinkler June 2016) listed under Condition 2 of this Decision Notice shall be implemented in full unless otherwise agreed in advance and confirmed in writing by the planning authority.

Reason: To ensure that all species are protected having regard to the Wildlife and Countryside Act 1981 (as amended), the Conservation (Natural Habitats, &c) Regulations 1994 (as amended) and Policy LD2 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

5. The planting proposals, planting layout and hard surface materials should be carried out in accordance with the Landscape Proposals Plan, Drawing No CLC002 listed under Condition 2 of this Decision Notice. The planting of the proposed trees detailed should be carried out in the first planting season available for tree planting following the commencement of the development hereby permitted.

Reason: To regularise the development, and to ensure the landscaping proposals which are a key component of this NPPF paragraph 55 exceptional dwelling are carried out as approved and in the interests of enhancing the landscape and local setting and to comply with Herefordshire Core Strategy policies SS6, RA3, LD1, LD2, LD3 and SD1 and paragraph 55 of the National Planning Policy Framework.

6. The root protection areas of existing trees on site should be carried out in accordance with the details provided in the Root Protection Areas Arboricultural Implications Assessment by Adrian Hope, Dated January 2016, as listed under Condition 2 of this Decision Notice.

7. The Landscape and Ecological maintenance should be carried out in accordance with the Landscape and Ecological Management Plan listed under Condition 2 of this Decision Notice.

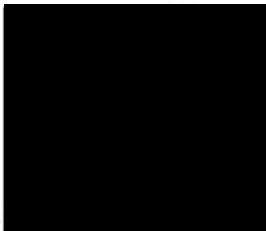
Reason: To ensure the landscaping and ecological details and proposals, which are a key component of this NPPF paragraph 55 exceptional dwelling are carried out and maintained in the interests of enhancing the landscape, ecological resources and local setting and to comply with Herefordshire Core Strategy policies SS6, RA3, LD1, LD2, LD3 and SD1 and paragraph 55 of the National Planning Policy Framework.

8. CA3
9. C13
10. C24
11. C32

- 12. C59
- 13. C64 – land
- 14. C65
- 15. C66
- 16. C95
- 17. CA9
- 18. CAD
- 19. CAE
- 20. CAL
- 21. CE6
- 22. CBK
- 23. The residential curtilage and its extent is as defined by the red line on drawing titled Site Plan, Domestic Curtilage received 30th September 2016 and the associated permitted development rights over this land and buildings are removed as described under Condition of this Decision Notice.

Informatives

- 1. Pro active Reason 1
- 2. I09
- 3. I35
- 4. I45



Signed: [Redacted] Dated: 30/9/2016

TEAM LEADER'S COMMENTS:

DECISION: PERMIT REFUSE

Signed: Dated: 3/10/16.....



MEETING:	% PLANNING COMMITTEE
DATE:	15 JULY 2015
TITLE OF REPORT:	150962 - PROPOSED CONSTRUCTION OF A 3 BED SINGLE STOREY PASSIVHAUS, ASSOCIATED LANDSCAPING, BIO-DIVERSITY ENHANCEMENT, ACCESS AND FLOOD PREVENTION FOR ADJACENT LISTED BUILDINGS AT LAND TO THE NORTH OF HOPE END FARM, RIDGEWAY CROSS, CRADLEY For: Mr and Mrs Iwanczuk per Mr Dean Benbow, 21-22 Mill Street, Kington, Herefordshire, HR5 3AL
WEBSITE LINK:	https://www.herefordshire.gov.uk/planning-and-building-control/development-control/planning-applications/details?id=150962&search=150962
Reason Application submitted to Committee – Contrary to policy	

Date Received: 30 March 2015

Ward: Bishops Frome and Cradley **Grid Ref:** 371981,247171

Expiry Date: 26 May 2015

Local Member: Councillor PM Morgan

1. Site Description and Proposal

- 1.1 The application site is physically divorced from and has no such spatial, architectural or visible relationship with the defined settlement area comprising Cradley, rather it is one of a number of isolated dwellings in a sporadic pattern of development north of Cradley village and around the Ridgeway Cross area.
- 1.2 Hope End Farm is a Grade II Listed former farmhouse. The farm complex has been subdivided into 5 separate residences through a number of conversions. Two residences use the original driveway and three residences, including Hope End Farm, use a driveway that was newly created in 2008. The Farmhouse itself no longer has any attached farmland apart from a steeply sloping area of rough grassland to the north of the property which extends to some 5.8 acres. Divorced from any working agricultural unit this land currently has no purpose apart from a small area at the base of the slope that is currently used for vegetables and fruit growing. This land forms the application site and associated land that will provide landscape planting.
- 1.3 The steep slope combined with the open character of the field has created flooding problems in the past for the residences at the base of the field.
- 1.4 The field is completely enclosed by mature hawthorn hedgerow interspersed with mature trees around the site boundaries. The site itself is completely open rough grassland and featureless.

Further information on the subject of this report is available from Mr C Brace on 01432 261947

apart from two lines of telephone poles that cross the site and the small area of fruit frames in the southwest corner. The site is elevated with a south facing aspect.

- 1.5 The application proposes a 3 bed single storey Passivhaus, associated landscaping, biodiversity enhancement, access and flood prevention for adjacent listed buildings.

2. Policies

2.1 National Planning Policy Framework (NPPF):

The following sections are of particular relevance:

Introduction	-	Achieving Sustainable Development
Section 4	-	Promoting Sustainable Transport
Section 6	-	Delivering a Wide Choice of High Quality Homes
Section 7	-	Requiring Good Design
Section 8	-	Promoting Healthy Communities
Section 11	-	Conserving and Enhancing the Natural Environment

2.2 Herefordshire Unitary Development Plan:

S1	-	Sustainable development
S2	-	Development requirements
DR1	-	Design
DR2	-	Land use and activity
DR3	-	Movement
DR4	-	Environment
DR7	-	Flood risk
H6	-	Housing in the smaller settlements
H7	-	Housing in the open countryside outside settlements
LA2	-	Landscape character and areas least resilient to change
LA6	-	Landscaping schemes
NC1	-	Biodiversity and development
NC6	-	Biodiversity Action Plan priority habitats and species
NC7	-	Compensation for loss of biodiversity
NC8	-	Habitat creation, restoration and enhancement
NC9	-	Management of features of the landscape important for fauna and flora

2.3 Draft Core Strategy:

SS1	-	Presumption in Favour of Sustainable Development
SS4	-	Movement and Transportation
RA3	-	Herefordshire Countryside
MT1	-	Traffic Management, Highway Safety and Promoting Active Travel
LD1	-	Landscape and Townscape
LD2	-	Biodiversity and Geodiversity
SD1	-	Sustainable Design and Energy Efficiency
SD2	-	Renewable and Low Carbon Energy
SD3	-	Sustainable Water Management and Water Resources

2.4 Neighbourhood Plan

Cradley Parish Council has successfully applied to designate the Parish as a Neighbourhood Area under the Neighbourhood Planning (General) Regulations 2012. The area was confirmed on 7 August 2013. The Parish Council will have the responsibility of preparing a Neighbourhood Development Plan for that area. There is no timescale for

proposing/agreeing the content of the plan at this early stage, but the plan must be in general conformity with the strategic content of the emerging Core Strategy. The plan is presently being drafted therefore no weight can be attached in the decision making process.

- 2.5 The Unitary Development Plan policies together with any relevant supplementary planning documentation can be viewed on the Council's website by using the following link:-

<https://www.herefordshire.gov.uk/planning-and-building-control/planning-policy/unitary-development-plan>

3. Planning History

None

4. Consultation Summary

Statutory Consultees

- 4.1 Severn Trent Water has no objection, subject to conditions.

Internal Consultees

- 4.2 Transportation Manager has no objection.

- 4.3 Conservation Manager (Historic Buildings) It is rare and inspiring to see a scheme of the highest "production values" being evolved by client and architect. Clearly, every effort has been made to take account of the landscape and the setting of the listed building, and there will be, paradoxically, little effect on the immediate surroundings of the listed group because of the particular land form and planting there. The listed building setting experienced when close to or in the buildings themselves will not be harmed.

I must however raise a concern about views of the listed complex in the landscape. These are readily obtainable views from Tanhouse Lane and the footpaths to the north of it. Hope Ends stands quite magnificently against the open hillside as seen in the public view from Tanhouse Lane.

The proposed range of terraces, walls and glass façade, and the inevitable paraphernalia of domestic life which, in the above view, would extend across the whole width of the listed group, will have a profound impact on this aspect of the setting of the building, and that must, unfortunately be considered a harmful effect.

I understand that this scheme is being put forward under "Clause 55". Whilst this scheme is head and shoulders above the majority of applications that come before us, it does not, as you note in your pre-application advice, meet the very exceptional demands of Clause 55 in terms of innovation and specialness.

In this case, when the many complex issues are balanced, you may consider that setting is the more weighty matter.

- 4.4 Conservation Manager (Ecology) has no objection confirming following further information provided and exchanged emails with the applicant's ecologist, he is happy to accept their perspective on protected species provided a requested condition is attached to any approval.

- 4.5 Public Rights of Way Manager has no objection.

5. Representations

5.1 Cradley Parish Council objects to the proposal commenting we cannot support the precedent of development in rural areas outside the settlement boundary and do not consider that this proposal satisfies the requirements as set out by Para 55 of the NPPF to allow the exception of development in open countryside. We acknowledge the positive elements of woodland planting and the proposed orchard but do not consider this sufficient to offset the potential impacts of development ie the property is visible from the AONB and footpath No. CD14 passes across the valley field where the development is proposed.

5.2 Thirty-six letters of support have been received, comments are summarised as –

- The proposal is of a high/ the highest design standard
- The proposal enhances the landscape
- The proposal is environmentally sensitive and considerate
- The proposal reflects the local landscape character
- Biodiversity enhancements
- The flood mitigation is welcomed
- This sets very high standards for future development in the countryside
- this proposal for a zero-carbon house is exciting and should be of interest to the wider public
- If possible, the owners should be 'forced' to share their experience with experts
- The proposal will not add load on to the existing sewerage infrastructure
- The impact of the building will be negligible on neighbours
- The proposal is entirely in line with the village plan
- The proposal enhances the setting of Cradley
- Herefordshire is leading the way in 'eco homes'
- This is the most researched, well-thought out and sensitive application
- The knowledge and experience should be shared with any other local builders; this might help to reduce the impact of any further developments.

5.3 Three letters of objection have been received, comments are summarised as –

- the applicant should rethink the design and density of this development
- This type of triple level contiguous housing is more suited to cities
- These properties will have very little recreational space for children and are not in keeping with the rest of the village
- The large windows are only required due to the developer choosing a north orientation
- Four properties would allow for alternative orientation and more green space, around two story housing in keeping with the rest of the village housing stock.
- It looks odd that most of those in favour don't even live next to the proposal
- It's a pity that support seems to be driven by a friendship motive rather than out of consideration for the application
- Other schemes have been opposed and rejected due to lack of amenities
- The Red Lion is the village pub not the British Legion as the map suggests

Further information on the subject of this report is available from Mr C Brace on 01432 261947

- The village shop closed. The shop on the map is a butchers.

5.4 The Campaign to Protect Rural England (CPRE) object to the proposal, commenting the site is in the open countryside some 300 metres from Westfield village. A public footpath runs through it roughly south-north, ending at the crossroads where the A4103 is crossed by the B4220, Council policy rules out residential development in the open countryside and none of the exceptions to this rule appear to apply in this case. To make an exception would, in our view, create an undesirable precedent for any future applications to build outside the Westfields settlement area.

5.5 The consultation responses can be viewed on the Council's website by using the following link:-

<http://news.herefordshire.gov.uk/housing/planning/searchplanningapplications.aspx>

Internet access is available at the Council's Customer Service Centres:-

<https://www.herefordshire.gov.uk/government-citizens-and-rights/customer-services-enquiries/contact-details?q=customer&type=suggestedpage>

6. Officer's Appraisal

6.1 The application site is considered to be unsustainably located away from facilities and services contrary to the NPPF and as such it is not suitable for residential development. In order to reach services and facilities necessary for most day to day living, there would therefore be a strong likelihood of a significant reliance on the use of the car. Numerous appeals in comparable locations have been dismissed at appeal on this basis.

6.2 Notwithstanding the unsustainability of the site, NPPF Paragraph 55 permits dwellings in the open countryside where the proposal is of exceptional quality or the design of the dwelling is of an innovative nature. Such a design is required to:

- be truly outstanding or innovative, helping to raise standards of design more generally in rural areas;
- reflect the highest standards in architecture;
- significantly enhance its immediate setting; and
- be sensitive to the defining characteristics of the local area.

6.3 Inextricably linked into the concept of accounting for the locality is the landscape design. This must not and cannot be landscaping as an afterthought, rather landscape design is a fundamental aspect of the whole scheme. It is considered such a proposal should be presented on the basis of the whole site and its context rather than just the house. Not every plot of land is suitable for a paragraph 55 dwelling, and as an example of the incredibly high threshold applied to such proposals, these should be for a house that can only be achieved on that particular site. It is on this basis that so many such applications are unsuccessful and it is upon this reason and approach taken that having regard to the proposal, approval is recommended. In this application, landscape consideration, context and understanding has underpinned and influenced the design and resultant proposal as a whole.

6.4 Furthermore, the Innovation requirement requires a constant raising of the bar, whether in respect of design, construction techniques, materials or functionality. Done once, by definition, it cannot be replicated. As such a Paragraph 55 dwelling is a 'one off' and should be considered in terms of being a 'landmark building'.

6.5 The proposal was on Officers' advice submitted to MADE for their panel's review. A positive response received on 29th January 2015 stated –

The woodland is a very important part of the concept, and whilst an overall natural character is appropriate, this should not exclude some imaginative planting arrangements; pathways through the woods and blocks of different tree species could create areas of distinctive character within the woods. Extending part of the woodland down one side of the site would also contribute to the control of water run-off.

The panel suggested that more detail would be required for Planning Committee members to appreciate the concept and subtleties of this scheme, including the quality of materials that are proposed to be used. A model would also be beneficial to help appreciate how it sits within its wider setting. A clear presentation should emphasise that the woodland, the house and its walls, and the meadow are integral elements of a comprehensive design concept.

In conclusion, the panel concluded that this project, with its high architectural standards and sensitivity to its context, is on its way to meeting the criteria in paragraph 55, subject to a more developed approach to the landscape design to further enhance the setting.

- 6.6 Following this, a scale model was created and, with Officers, the landscape design reconsidered and evaluated to the proposal now considered. It is Officers' opinion the proposal satisfies the exacting standards of Paragraph 55. This exception clause follows in the similar manner to that that was in PPG7 and its successor PPS7. The uniqueness of such approvals and the recommendation is demonstrated in that less than 100 dwellings have been reported to have been built in 15 years or so since the exemption was introduced.
- 6.7 The proposal divides the site into three areas, although this is done in a seamless way. The upper part of the site is to be planted with indigenous species of deciduous trees, whilst the lower part of the site will be replanted as wildflower meadow and orchard. This creates the new context within which the single storey dwelling will occupy the margin between the two landscapes. The building will have an elongated linear appearance so it resembles a landscape feature such as a boundary wall and in doing so integrate into the new landscape. The proposed solution is generated from an understanding and appreciation of both the immediate and wider landscape context and built form heritage hereabouts. Stone walls both as a means of enclosure or as part of structures around the site are the defining built form feature.
- 6.8 Over 50% of the site is allocated to woodland tree planting. The purpose of this is fourfold:
- To provide a landscaping context that ensures the proposed dwelling will integrate successfully into the site and the surrounding area
 - To alleviate flood risk to the properties at the base of the slope by reducing the volume and slowing the rate of run off
 - To increase the bio-diversity of the site by providing a wider range of habitats
 - To create a sound barrier to the traffic noise from the A4103 that passes north of the site.
- 6.9 Whilst the comments of MADE were noted, the applicant and Officers agreed that the landscaping and planting should not itself create a feature or landscape pattern that was pronounced or not in keeping with the wider setting. An agreed enhancement proposal that has a neutral/ natural appearance was formulated and is as now presented. The wildflower meadow is fronted by a stone terrace that further integrates and ties the stone wall of the dwelling to the existing stone walls of the listed farmhouse and its enclosure. This reoccurring linear stone wall helps anchor the proposal to the existing built form repeating and building on the relationship between these existing stones structures. This is helpful in the overall proposal immersing into the existing and proposed context when viewed from public vantage points.
- 6.10 The design concept utilised is to construct a simple form structure that is a single storey, single aspect dwelling designed and constructed to the Passivhaus standard. A pre construction Passivhaus verification assessment has been undertaken by a suitably qualified professional

and demonstrates the Passivhaus standard can/ will be achieved. It should be noted this in itself does not result in a dwelling being paragraph 55 compliant as Passivhaus is not new or in this instance unique to this proposal.

- 6.11 The habitable space is contained in a simple rectangle to achieve the most thermally efficient building envelope. This space is built into the bank to minimise its impact and a wildflower planted roof will further integrate the proposal into its context. Stone terracing below the building will create a visual link between the proposals and the existing complex of stone buildings further down the slope.
- 6.12 The building is laid out so the principal habitable spaces (kitchen/dining/living, bedroom, office) and therefore the majority of the glazing faces due south to maximise passive heat gains and maximise light. To prevent overheating and to minimise the impact of the glazing within the landscape the facade is set back behind a colonnade supporting a large framed opening punched through a stone wall which extends the length of the proposed building and beyond. The main visible element of the building will be the stone wall and this stone will be sourced from the site itself further emphasising the link between the development and its location and reinforces the sustainability of the development in terms of 'resource mileage' as it will be built, literally, from the landscape in which it will sit. This also ensures the stone is the same and therefore does not clash with or detract from the listed stone farmhouse and barns when viewed in the wider landscape creating a uniform, harmonious natural material palette over the site.
- 6.13 The extended wall masks the separate timber clad garage/workshop block, vehicle parking area and an area for ground array photovoltaic panels from wider public views and in particular the setting of the listed farmhouse and its complex. This unifying element creates a strong visual identity for the property whilst simultaneously suppressing the domestic paraphernalia that accompanies a dwelling. The concept of the stone wall is based on the characteristics of the adjoining listed building and its surrounding setting.
- 6.14 In addition to and over the Passivhaus qualities of the proposal the dwelling will also include the installation of ground array photovoltaic panels, and rainwater harvesting and aims to attain a "zero carbon" rating alongside the Passivhaus standard. The building will feature over 300mm of insulation to walls, floors and roof together with triple glazed windows and doors, Mechanical Ventilation Heat Recovery and very high standards of build quality to achieve the standard of airtightness required.
- 6.15 There is a record of surface water flooding at Hope End Farm as a result of runoff from the site of the proposed development. In addition to the significant planting and soft landscaping which will help address this existing issue, a surface water management plan has been devised, which recommends measures to ensure that runoff can be managed on site and does not increase flood risk elsewhere. The runoff from the new residence and any hardstanding are routed into an attenuation pond, limiting runoff from the site to a rate no greater than the 1:100 year Greenfield runoff rate of 12.144 l/s/ha. The attenuation pond then will discharge through an orifice at a controlled rate, to an existing drainage pond which will ultimately outflow to the Cradley Brook, south east of the proposed pond.
- 6.16 In conclusion, with regard to the requirements of paragraph 55 it is considered Innovation can be interpreted in a design context. Innovation is in general something that fits in more naturally with contemporary schemes but it doesn't mean that traditional schemes can't be used. This proposal has a contemporary form, however, it utilises a nod to tradition, replicating and utilising the concept of a stone wall as the 'dominant visible feature' of the dwelling and shows how a design concept has evolved through a contemporary style utilising a particular innovation in a design feature, in this instance through use of perspective, materials and layout. Innovation can also be interpreted in terms of the home's engineering – 'the house as

machine', and this proposal, as described, in terms of functionality and efficiency has been designed with this and the landscape context as the main emphasis. It is considered the proposal fulfils the innovation requirement.

- 6.17 The significant point about this development is the opportunities it provides for an integrated approach to a sustainable, low energy, environmentally-friendly style of living. The house is designed as part of a wider sustainable and mutually dependent system involving home and landscape using best environmental practices and technologies. The concept is linked to a hillside rural open countryside setting and landscaping scheme designed to provide for the needs of the local environment and occupants. The proposal is considered innovative in the way it marries heritage, landscape, living and working aspects, existing and integrated in the proposal.

RECOMMENDATION

That planning permission be granted subject to the following conditions:

- 1. C01%%Time limit for commencement**
 - 2. C07%%Development in accordance with approved plans and details**
 - 3. C13%%Samples of external materials**
 - 4. Details of windows, doors and other external details and finishes**
 - 5. C61%%No balconies/roof amenity area**
 - 6. C65%%Removal of permitted development rights**
 - 7. C67%%No new windows in specified elevation**
 - 8. C97%%Landscaping scheme%%Implementation**
 - 9. C98%%Hedgerow, tree and landscape%%planting**
 - 10. CA1--Landscape management plan**
 - 11. CC2%%External lighting**
 - 12. The development hereby permitted shall not commence until drainage plans for the disposal of surface water and foul sewage have been submitted to and approved by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details before the development is first brought into use.**
- Reason: To ensure that the development is provided with a satisfactory means of drainage as well as to reduce the risk of creating or exacerbating a flooding problem and to minimise the risk of pollution and to comply with Herefordshire Unitary Development Plan policies DR2 and DR7.**
- 13. The recommendations set out in of the ecologist's report should be followed in relation to species mitigation and habitat enhancement. Prior to commencement of the development, a species and habitat enhancement plan integrated with the landscape proposals should be submitted to, and be approved in writing by, the local planning authority, and the work shall be implemented as approved. Any further information on protected species gathered from the site together with any proposed mitigation should also be submitted.**

Reasons: To ensure that all species are protected having regard to the Wildlife and Countryside Act 1981 (as amended), NERC Act 2006, the Conservation of Habitats and Species Regulations 2010, relevant aims and objectives of the National Planning Policy Framework and Policies NC1, NC6, NC7, NC8 and NC9 of the Herefordshire Unitary Development Plan

- 14. An appropriately qualified and experienced ecological clerk of works should be appointed (or consultant engaged in that capacity) to oversee the ecological mitigation work and site clearance.

Reasons: To ensure that all species are protected having regard to the Wildlife and Countryside Act 1981 (as amended), NERC Act 2006, the Conservation of Habitats and Species Regulations 2010, relevant aims and objectives of the National Planning Policy Framework and Policies NC1, NC6, NC7, NC8 and NC9 of the Herefordshire Unitary Development Plan

- 15. **C89%** Retention of existing trees/hedgerows/ development in accordance with Tree Survey & Arboricultural Impact Assessment
- 16. Hard landscaping details and implementation

INFORMATIVE:

- 1. The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against planning policy and any other material considerations, including any representations that have been received. It has subsequently determined to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

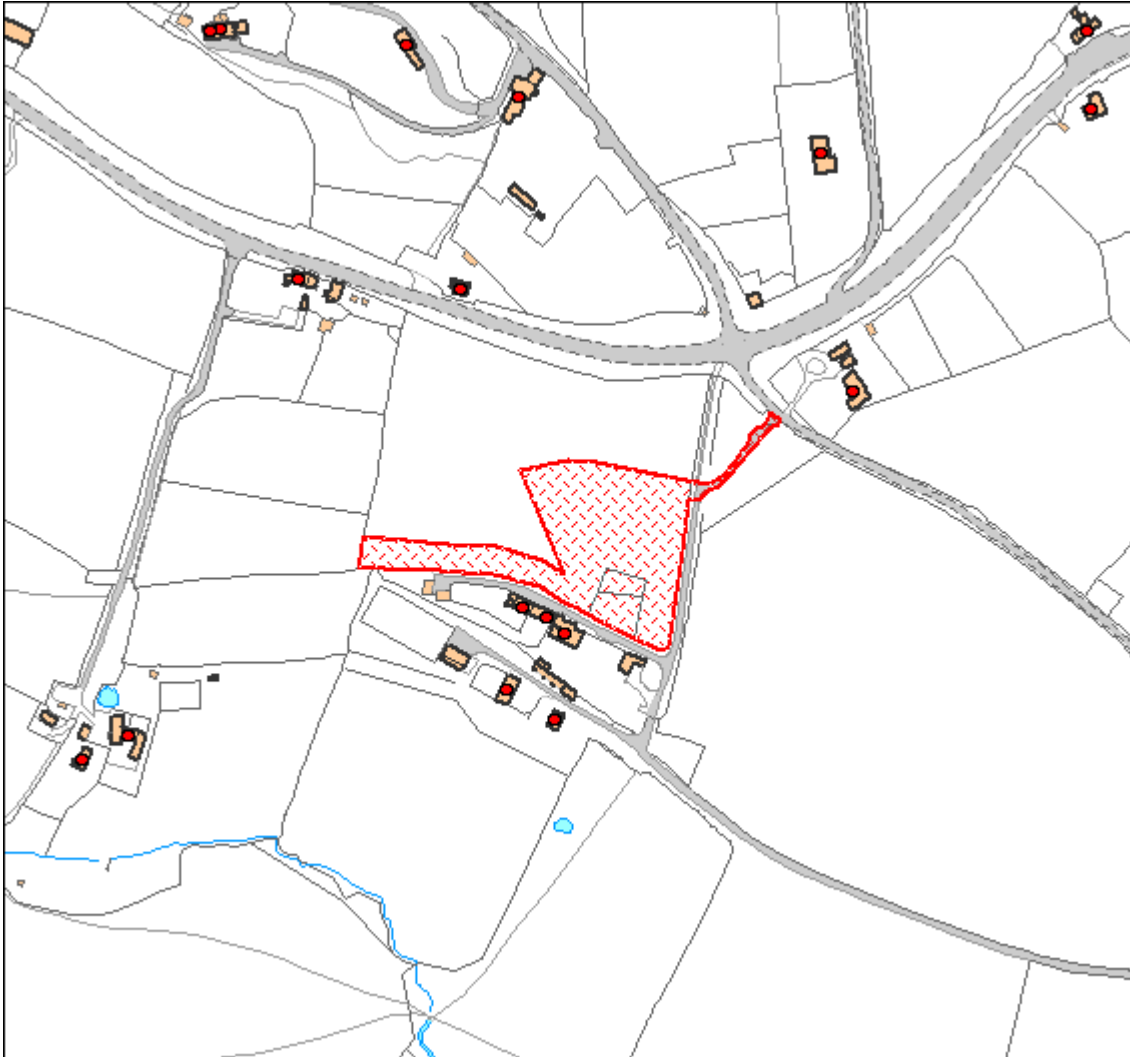
Decision:

Notes:

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Background Papers

Internal departmental consultation replies.



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APPLICATION NO: 150962

SITE ADDRESS : LAND TO THE NORTH OF HOPE END FARM, RIDGEWAY CROSS, CRADLEY, HEREFORDSHIRE

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Further information on the subject of this report is available from Mr C Brace on 01432 261947