

DELEGATED DECISION REPORT

APPLICATION NUMBER

212393

Top Garage, Hereford Road, Bromyard, Herefordshire, HR7 4QU

CASE OFFICER: Mr C Brace

DATE OF SITE VISIT: Numerous, most recent 14 December 2021

Relevant Development Plan Policies:	SS1 – Presumption in favour of sustainable development SS2 – Delivering new homes SS3 – Releasing land for residential development SS4 – Movement and transportation SS5 – Employment Provision SS6 – Environmental quality and local distinctiveness; SS7 – Addressing climate change BY1 – Development in Bromyard RA3 – Herefordshire’s countryside E2 – Redevelopment of existing employment land and buildings H1 – Affordable housing – thresholds and targets H3 – Ensuring an appropriate range and mix of housing 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
Neighbourhood Development Plan:	Still being drafted
Relevant Site History:	DCNC2009/2377/F – Proposed extension to facilitate and use as a car salesroom – Approved w/conditions DC NC2002/3234/F – Proposed car wash, tank, kiosk and resiting of a jet wash – Approved w/conditions DCNC2002/1600/F – Proposed extension following demolition to create 2 no service bays – Approved w/conditions DCNC2000/3031/F – Proposed extension to the garage workshop – Approved w/conditions

CONSULTATIONS

	Consulted	No Response	No objection	Qualified Comment	Object
Town Council	√		√		
Transportation	√				
Ecologist	√				√
Landscape	√		√		
Environmental Health (noise/smell)	√				
Environmental Health (contamination)	√				√
Welsh Water	√				√
Press/ Site Notice	√				√ x 9
Local Member	√				√

PLANNING OFFICER'S APPRAISAL:
Site description and proposal:

The site is outside the built environs of Bromyard town, however creates a 'gateway' to the town when approaching along the A465. The site is visually prominent and important with regards to long range views towards the Malvern Hills and the associated Area of Outstanding Natural Beauty and Bromyard Downs.

The site comprises an existing petrol filling station and car showroom, however is not a building of any particular architectural quality, as shown below viewed from the Hereford Bromyard Road. The existing site arrangements allows accessed from the A465 and Panniers Lane.



The landscape character type is urban (on the very southern edge), with timbered plateau farmlands to the west and east. The site is adjacent to Birchyfield Un-registered park and garden which is of local historic interest. There is a group of trees on the southern 'point' of the plot that key landscape features and important to green infrastructure. A view of the site 'up' Panniers Lane is shown below.



No designated heritage assets are located on or adjoining the site.

The proposal is a Full application for the demolition of the existing garage and petrol station and erection of 5 no. Town Houses and 15 no. apartments. No s106 contributions or affordable housing is proposed based on viability claims.

Representations:

Bromyard Town Council supports the application.

Nine letters of objection have been received, comments are summarised –

- Impact on amenity, privacy and security of The Hope Centre
- Visibility of the proposals from surrounding roads and countryside
- Lack of open space, play areas and inadequate amenity on the development
- Concerns regarding highway safety
- Impact on already low water pressure
- Loss of employment land at a town where there insufficient supply
- Impact on adjoining established business
- Concern regarding sufficient parking on site and resultant parking in the area
- Concern regarding design, scale and size of development

The **Council's Transportation Manager** objects, noting the second reconsultation/submission of plans did not address any previously mentioned concerns (first consultation response 24/08/2021) and this is why it just referred back to the original comments in response dated 23/09/2021. A third set of plans was then consulted on and the response is slightly more favourable, albeit it was still an objection. The comments are dated 14/10/2021 and states –

Following the site redesign the local highway authority has the following comments:

- There appears to be two different car parking layouts – one as per the Site Plan (dwg 002 rev A) but the Proposed Ground Floor Plan (dwg 100 rev N) has two versions uploaded, one showing two car parking spaces directly outside the three detached dwellings and one showing three spaces. For the purpose of these comments the layout as per the Site Plan will be used.
- The LHA is pleased to see the removal of the access onto Panniers Lane and the general rationalisation of access points.
- Car parking is at an acceptable level, however, the spaces for the houses appear to be tight, particularly the semi-detached pair of houses and there is no provision for disabled parking. A plan demonstrating a large estate car turning into and out of all of the spaces for the semi-detached houses (including the end space which is presumably for the adjacent detached house) should be provided.
- A plan demonstrating the swept path of a large refuse vehicles turning into the site to access the bin store(s), turning around and exiting in a forward gear should be provided. Given the number of dwellings it is not acceptable for the vehicles to collect refuse from the side of the A465.
- The existing traffic island on the A465 should be shown on the plans to ensure vehicles, particularly refuse vehicles, can negotiate the access to and from all directions.
- The footpath from the site access to just before Ashfield Way should be 2m wide where possible. The footway on the western side of the A465 from the site to the proposed uncontrolled crossing should be 2m wide and the width of the footway on the eastern side of the A465 should be as close to 2m in width as possible. This is to be funded in full by the applicant via a S278 agreement.
- Generally the LHA would prefer developments not to be hidden behind hedging. The LHA would prefer the development to have an active frontage to warn drivers that they are entering an urban environment and to slow down.
- The footway on the southern side of the access is not required, except for approximately 3m adjacent to the access to allow those arriving on foot from the north to cross the access to reach the houses rather than being forced into the site where visibility of vehicles turning into the site is likely to be less than if crossing at the bellmouth where the footway is currently shown.
- Cycle storage should be provided for the houses, this should take for form of either a garden shed/store or cycle lockers at a rate of one space per bedroom. It is noted that a cycle store is provided for the flats, however, the area allowed does not appear to be large enough for the required number of bicycles (one per bedroom). Minimum dimensions for cycle storage can be found in our Highway Design Guide.

The LHA continue to object to the application.

The **Council's Landscape Officer** comments *I have seen the alteration to the site layout (dwg 002 rev A, dated 13/9/21), creating only one vehicle access point.* From a landscape position this has the benefit of creating continuous hedgerows along both main road boundaries, creating improved green infrastructure corridors and increased softening of the built infrastructure. Ideally the footpath in front of the houses would be a grass verge (to the southern half of Hereford Road boundary). This would greatly assist establishment and long term viability of the hedgerow by increasing the water infiltration and the root zone.

Previous comments stated –

Introduction

The landscape character type is urban (on the very southern edge), with timbered plateau farmlands to the west and east. The site is adjacent to Birchyfield Un-registered park and garden which is of local historic interest. There is a group of trees on the southern 'point' of the plot that are key landscape features and important to green infrastructure. The brownfield site already has hard surfacing, lighting, built infrastructure and vehicle movements on. The site and design has been subject to pre-application advice and review over the previous year. I have reviewed the submitted Landscape and Visual Assessment which follows recommended guidance and has covered all expected subjects.

Landscape character

The proposal will alter the character of the site from commercial to residential. The amount of built infrastructure will increase due to the number of houses and size of the apartment building proposed. In landscape terms a more gentle transition between urban and rural would be preferred, however the petrol filling station (PFS) on this unique site is already a landscape detractor and therefore the larger residential buildings, with space for the new boundary planting to mature, will be an enhancement in comparison with the existing conditions. In the wider landscape the setting of Birchyfield has been protected through the adequate protection of the existing off site trees and the addition of native hedgerow. The planting proposals also respect the character of the area with appropriately selected species.

Visual impact

The site is at a prominent position on a ridgeline within the surrounding landscape. The site itself is the gateway approach to Bromyard from the south west. In turn it has long distance views to and from the site due to the dominant landform of undulating relief, showing both the Malvern Hills and the Bromyard Downs. Typically the variations in topography within this landscape create a changing sequence of visual perspectives, ranging from open vistas on plateau summits (such as the site) to more secluded scenes along valley bottoms. The thorough visual assessment included with this application is welcome. It highlights that there are relatively close range public viewpoints where the proposals will be seen, but that the development is well designed and will not create a dominant detractor in the wider setting. The current white rendered building, canopy and signs are all discordant colours in the surrounding rural environment (on three sides of the site). Appropriate external materials have been chosen, which will integrate far more with the setting in terms of colour, texture, grain and form. Together with the boundary planting to soften the built development and carefully selected lighting and glazing, all of which reduce the visual impact of the proposals despite its prominent position.

A night time photograph of the existing conditions, taken from an appropriate mid distance viewpoint, together with a visualisation of the proposed scheme would have been useful. The night time impacts are considered in the LVA text, identifying that security lights on both the PFS and the adjacent Hope Centre are currently detractors and nuisance in this otherwise dark skies location. In landscape terms suitable measures have been incorporated into the proposed scheme to reduce light spill (ecologists will comment separately on the wildlife impact).

Landscape scheme

The landscape scheme has sought to fit in green infrastructure links across and around the site with retention of existing hedgerows, creation of new native hedgerows, tree planting and garden planting. Importantly adequate space has been left for them to mature and with appropriate maintenance this

will help to link the site with the surrounding landscape, particularly the nearby woodland at Birchyfield. The proposed external hedgerows and trees to soften close board fence boundaries is essential. The landscape proposals are fully integrated with a good range of ecological enhancements which is welcome, particularly given the dense nature of the scheme. This is also reflected in the need for specific tree pits with appropriate soil volume to allow long term establishment of the new trees that break up the hard sea of apartment car parking. Selected landscape materials work well with the building elevation palette and work with the sustainable urban drainage system.

Conditions

If the application is to be approved, then it would benefit from a landscape condition requesting a landscape and ecological management and maintenance plan.

Conclusion

The conversion of this petrol filling station to residential would have a relatively low landscape impact due to the improved building design that will better fit with the surrounding landscape setting. Overall the development proposals do demonstrate that the character of the landscape and townscape have influenced the design, scale, nature and site selection. The proposed landscape scheme will help the development to integrate appropriately into its surroundings. There is no objection in relation to Core Strategy Policy LD1.

The **Council's Arboriculturalist** has *No Objection*. The tree report demonstrates that the development is achievable without having a detrimental impact on retained trees, in particular I refer to the three Beech trees at the southern side. The planting plan will provide mix of native broadleaf species that are suitable for their proposed locations on the periphery of the site and within constrained parking areas.

The **Council's Ecologist** objects and comments –

The application site lies within the catchment of the River Lugg SAC, (Lugg Middle Frome) which comprises part of the River Wye Special Area of Conservation (SAC); a habitat recognised under 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') as being of international importance for its aquatic flora and fauna.

At present the levels of phosphates in the River Lugg exceed the water quality objectives and it is therefore in unfavourable condition. Where a European designated site is considered to be 'failing' its conservation objectives there is limited scope for the approval of development which may have additional damaging effects. The competent authority (in this case the Local Planning Authority) is required to consider all potential effects (either alone or in combination with other development) of the proposal upon the European site through the Habitat Regulations Assessment process.

Permission can only be granted if there is scientific certainty that no unmitigated phosphate pathways exist and that the HRA process can confirm 'no adverse effect on the integrity of the River Lugg (Wye) SAC'. Natural England; the statutory nature conservation body, advise that recent case law requires effective mitigation to be demonstrated on a case by case basis whilst the River Lugg Nutrient Management Plan is reviewed to ensure greater certainty that this can provide large scale mitigation development in the area.

The following notes are made in respect of the HRA:

- The proposal is to create an additional 20 residential dwellings on the site of a Petrol Station/Garage facility.
- The creation of dwellings will create additional foul water flows.
- At this location foul water flows are managed by a mains sewer network connected to the Bromyard Wastewater Treatment Works.
- The Bromyard WwTW discharges outfall in to the River Lugg SAC/SSSI catchment.
- The additional flows create pathways for additional phosphate discharges in to the Lugg SAC catchment.
- No scientifically and legally demonstrated baseline for any existing 'phosphate allowance' and foul water flows created by the financially insecure usage levels of the existing facilities has been provided.
- No scientific or legally securable (for the life time of the development) alternative 'offsetting' or nutrient mitigation scheme has been supplied for consideration (see P calculator and supporting information at: https://www.herefordshire.gov.uk/downloads/download/2039/development_in_the_river_lugg_catchment)
- The HRA process is legally accepted to be based on precautionary principles and all evidence supplied in support of the HRA process must be clearly 'beyond scientific and legal doubt'
- The proposal to use a Sustainable Drainage System to manage all surface water flows 'onsite' is noted and subject to no discharges being made to the local mains sewer network confirmed and secured by condition this HRA 'effect' is likely to be considered as mitigatable on any HRA finally completed by the LPA.
- Potential 'Effects' from the demolition, site preparation and actual final construction processes on the Lugg SAC can be considered with comprehensive, detailed and specific mitigation measures secured through a fully detailed Construction Environmental Management Plan (see : https://www.designingbuildings.co.uk/wiki/Construction_environmental_management_plan for guidance). If not supplied for consideration and approval at the time any final HRA is completed by the LPA the CEMP can be secured by a pre-commencement condition on any planning consent finally granted.

The development as proposed will create additional phosphate pathways in to the River Lugg SAC. An ecology OBJECTION is raised as the application does not demonstrate compliance with Core Strategy SD4 (SS1, SS6 and LD2 also apply); 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'); NPPF; Wildlife & Countryside Act (1981 amended) and NERC Act duty of care.

Other ecology comments

The ecology report by Janet Lomas dated March 2021 and associated Biodiversity Enhancement Plan dated May 2021 are noted and appear relevant and appropriate. The ecology report is considered to remain valid for 18 months unless the nature of the site changes (eg becomes unused) then provided consent is granted by September 2022 an updated ecology report would not normally be required. The Working methods and Biodiversity Enhancement Plan is potentially relevant and appropriate unless an updated ecology report is triggered or any designs, layouts or plans are changed prior to any planning consent being finally granted. If plans are amended from those detailed in the report by Janet Lomas an updated Biodiversity Scheme should be submitted for consideration and approval based on plans to be actually granted any planning consent.

The **Council's Environmental Health Officer** – comments: in my view the report submitted [*"Top Garage, Bromyard, Herefordshire. Phase 1 Environmental Risk Assessment."* Prepared by Dice, Dated May 2021, Ref:100574/GS/MAY-21/01] is not in full accordance with what's required by the NPPF and BS10175 and as such insufficient information is available at this stage on risks from contamination. The report should be redrafted in accordance with guidance.

The **Council's Strategic Housing Officer** objects and states is *unable to support this application in its current form*. Whilst the proposed open market mix is acceptable the applicant is not providing a policy compliant scheme including 40% affordable housing.

I note in appendix 2 of the Design and Access statement, that the applicant believes that the housing threshold will increase on major sites from 10 to 40-50 and states "whilst at this present time the development attracts 40% affordable housing that it may not by the end of the year". I can confirm that the government advised on the 1st April 2021 that they do not consider this measure to be necessary at this stage.

As a result, unless the applicant is able to provide evidence that the site is not viable, there will be a requirement to provide 40% affordable housing on this site.

There is a need for affordable home ownership within Bromyard HMA and therefore Strategic Housing would look for the affordable units to be discounted market with local connection to Bromyard.

The **Council's Drainage Engineer** comments *We note the applicants proposals to discharge both surface water and foul water discharge to Welsh Water sewer assets*. In principle we have no objection to the proposed development, however further investigation, such as dye testing, should be undertaken to confirm the surface water foul outfall. The applicant should also discuss the surface water discharge with Welsh Water.

The **Council's Strategic Planning Manager** comments *the marketing of the business has shown little demand as a going concern*. Although the site was not assessed within the Employment Land Study it appears to have limited value. Bromyard has a small employment market and this proposed development could help to meet the housing needs of the area, though is not policy compliant in delivering any affordable housing.

The **Environment Agency** has *no objection to the proposed development and would recommend that the following comments and conditions be applied to any permission granted*. The EA comments –

The site is located above a Secondary Aquifer but falls outside of any Source Protection Zones (SPZs).

The site is occupied by a petrol filling station and garage repair site. Whilst the DICE Environmental Risk Assessment (May 2021) acknowledges this past use, there is limited information relating to the onsite infrastructure. Further information must be provided, as part of the conditions provided below, in relation to the site infrastructure including tanks, pipes, drainage, interceptors and any chemical storage (repair garage, fuel station and car wash) etc to ensure that site investigation scope is appropriately targeted.

Reference is made to the need for a geotechnical site investigation. A detailed and targeted environmental site investigation will also be required.

The conceptual model makes reference to made ground being present and the potential associated contaminants, but there is no reference to the wider range of contaminants associated with the petrol filling station and garage repair activities. Such contaminants have the potential to be present both in the ground/groundwater at site.

The Environmental Risk Assessment must therefore be expanded upon significantly before it can be used to support the environmental site investigation. Given the findings of the preliminary desk study, a more detailed desk study, a detailed environmental site investigation, risk assessment and, if necessary, remedial options appraisal/works must be undertaken.

In addition, the drainage statement (June 2021) notes that as a result of the former potentially contaminative site activities, surface water infiltration to ground should not be adopted. However there is reference to permeable (porous) paving on the landscape plan and a cross section of a 'grease and oil trap' suggests that the porous areas are not lined. It is therefore not clear as to how infiltration to ground will be prevented.

Clarification will be required to determine that the proposals are appropriate and will not result in mobilisation of any ground contamination.

We are aware that, as the site was a former petrol filling station, underground fuel storage tanks will be present on the site. We will expect a comprehensive site investigation to determine the location of these tanks and associated garage/repair garage infrastructure and land and groundwater quality in the vicinity.

Herefordshire and Worcestershire Clinical Commissioning Group comments *A developer contribution will be required to mitigate the impacts of this proposal.* Herefordshire and Worcestershire CCG calculates the level of contribution required in this instance directly relating to the number of dwellings to be £7,567. Payment should be made before the development commences.

Welsh Water comments and confirm *capacity exists within the public sewerage network in order to receive the domestic foul only flows from the proposed development site.* We can advise that Bromyard WwTW does not have a phosphate permit. This matter will need to be considered further by the local planning authority.

Turing to the potable water supply, the area suffers from low pressure and the existing infrastructure cannot support the entire development. We acknowledge there is an existing supply and demand drawing from the network. We have equated the water consumption from the commercial presses and can confirm that 2 residential properties can be served before any reinforcement works are required. In order to investigate the matter further and understand the full extent of the solution required the applicant will need to commission a hydraulic modelling assessment.

In the absence of the solution we cannot support the entire development, if you are minded to grant planning permission we request that the following Conditions and Advisory Notes are included within any subsequent consent.

Conditions

No more than 2 residential dwellings shall be constructed or occupied until a potable water scheme to serve the remainder of the proposed development has been first submitted to and approved in writing by the Local Planning Authority. The scheme shall demonstrate that the existing water supply network can suitably accommodate the proposed development site. If necessary a scheme to upgrade the existing public water supply network in order to accommodate the site shall be delivered prior to the occupation of any building. Thereafter, the agreed scheme shall be constructed in full and remain in perpetuity.

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

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.

Comments from **Welsh Water** dated 12 August 2021 stated *The watermains serving this area are known to have minimal pressures at times of peak demand. Any increased demand will exacerbate the situation and would adversely affect our service to existing customers and potential users of this proposed development. We consider the proposal to be PREMATURE and therefore OBJECT to the development.*

Local Member updated by email and phone numerous times. Confirmed in phone conversation on 6 December 2021 Delegated Refusal acceptable. Adjoining Ward Members were updated by email due to the nature of the application.

Pre-application discussion:

Under 203499. The design and landscape advice has been followed, however the applicants were advised suitable marketing evidence of the site and HRA issues would need to be addressed. Officers advised in principle support based on a high quality architectural landscape led approach was caveated on those headline matters. Viability arguments would be deferred to the District Valuer, whose position would be binding. The betterment secured in landscape terms could be balanced then against concerns regarding sustainability.

Appraisal:

Legislation

Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states as follows *“If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”* The development plan is the Herefordshire Core Strategy.

The legal framework for AONBs in England and Wales is provided by the Countryside and Rights of Way Act (CRoW) 2000 which reaffirms the primary purpose of AONBs: to conserve and enhance natural beauty, and sets out responsibilities for their management. In particular relevance to the proposal is following section –

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

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

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

Herefordshire Local Plan Core Strategy

The Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended) (the 2012 Regulations) and paragraph 33 of the National Planning Policy Framework requires a review of local plans be undertaken at least every five years in order to determine whether the plan policies and spatial development strategy are in need of updating, and should then be updated as necessary. The Herefordshire Local Plan Core Strategy was adopted on 15 October 2015 and a review was required to be completed before 15 October 2020. The decision to review the Core Strategy was made on 9th November 2020. The level of consistency of the policies in the local plan with the NPPF will be taken into account by the Council in deciding any application.

Policy H3 – *Ensuring an appropriate range and mix of housing* requires Residential developments should provide a range and mix of housing units which can contribute to the creation of balanced and inclusive communities. Also, Policy H3 indicates that the latest *Local Housing Market Assessment* will provide evidence of the need for an appropriate mix and range of housing types and sizes. Whilst it is not in dispute these are policies for the supply of housing they also have wider implications in terms of ensuring the social benefits of providing a suitable mix of housing types.

Core Strategy Policy SS4 – Movement and transportation states New developments should be designed and located to minimise the impacts on the transport network; ensuring that journey times and the efficient and safe operation of the network are not detrimentally impacted. Furthermore, where practicable, development proposals should be accessible by and facilitate a genuine choice of modes of travel including walking, cycling and public transport.

The policy sets out development proposals that will generate high journey numbers should be in sustainable locations, accessible by means other than private car. Alternatively, such developments will be required to demonstrate that they can be made sustainable by reducing unsustainable transport patterns and promoting travel by walking, cycling and public transport. Proposals to provide new and improved existing public transport, walking and cycling infrastructure will be supported. Where appropriate, land and routes will be safeguarded as required in future local or neighbourhood development plans and developer contributions, which meet the statutory tests, sought to assist with the delivery of new sustainable transport infrastructure, including that required for alternative energy cars.

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

Policy SS6 then states in its list of criteria states *Development proposals should be shaped through an integrated approach and based upon sufficient information to determine the effect upon landscape, townscape and local distinctiveness, especially in Areas of Outstanding Natural Beauty.*

Core Strategy Policy SS7 – *Addressing climate change* states Development proposals will be required to include measures which will mitigate their impact on climate change. At a strategic level, this will include:

- focussing development to the most sustainable locations;
- delivering development that seeks to reduce the need to travel by private car and which encourages sustainable travel options including walking, cycling and public transport;
- designing developments to reduce carbon emissions and use resources more efficiently;
- promoting the use of decentralised and renewable or low carbon energy where appropriate;
- supporting affordable, local food production, processing and farming to reduce the county's contribution to food miles*;
- protecting the best agricultural land where possible

Key considerations in terms of responses to climate change include:

- taking into account the known physical and environmental constraints when identifying locations for development;
- ensuring design approaches are resilient to climate change impacts, including the use of passive solar design for heating and cooling and tree planting for shading;
- minimising the risk of flooding and making use of sustainable drainage methods;
- reducing heat island effects (for example through the provision of open space and water, planting and green roofs);
- reduction, re-use and recycling of waste with particular emphasis on waste minimisation on development sites; and
- developments must demonstrate water efficiency measures to reduce demand on water resources.

Policy BY1 – *Development in Bromyard* sets out the strategic policies for development at the town, where it will accommodate a minimum of 500 new homes together with around 5 hectares of new employment land during the plan period. The majority of new development will be located in the north western areas of the town with a minimum of 250 new homes. Around 5ha of employment land will also be required to come forward through the Bromyard Development Plan. Further development will take place through the implementation of existing commitments, windfall development and sites allocated through the Bromyard Development Plan.

Within Bromyard, new development proposals will be encouraged where they:

- can accommodate small scale employment sites including live/work units within and around the town
- protect and enhance the vitality and viability of the town centre. Proposals for new retail, leisure or office development of over 200m² in gross floor space and located outside of the defined town centre will need to be supported by an impact assessment, to determine whether there could be any adverse impacts on the town centre
- provide for the sustainable conservation and enhancement of its green infrastructure and natural environmental resources such as water; there should be no adverse impact on water quality in the River Frome
- facilitate a genuine choice of modes of travel including public transport, cycling and walking as alternatives to the private car

- contribute to identified needs for new or improved community facilities as a result of new development
- take account of the ability of existing and proposed infrastructure including foul drainage, water supply and water resources, and the highway network to serve the development proposed without undue environmental impact
- contribute to the quality of Bromyard's local environment, including its landscape and historic character; and
- have demonstrated engagement and consultation with the community including the town/parish council.

Policy RA3 – *Herefordshire's countryside* specifies in rural locations outside of settlements either listed under RA2 or adopted Neighbourhood Plans, residential development will be limited to proposals which satisfy one or more of the seven exception criteria.

The site only has one, and its tentative compliance with criterion 4, which enables development which would result in the sustainable re-use of a redundant or disused building(s) where it complies with Policy RA5 and leads to an enhancement of its immediate setting.

Policy E2 – Redevelopment of existing employment land and buildings looks to safeguard important or valued employment land and buildings. Applications for the change of use of existing employment land and buildings not currently included in the *Employment Land Study 2012* are required to be assessed using the same methodology as if they were included. The viability of the development proposal must be confirmed through a comprehensive assessment and there must be evidence of appropriate and active marketing of at least 12 months for a change of use of a B Class employment use and it can be shown that this marketing has been unsuccessful.

The preamble to policy E2 states where other employment land and sites are no longer viable, sufficient justification and evidence will need to be submitted - for example structural surveys demonstrating that the building is not fit for continued employment use, and redevelopment of the site for employment use is not viable or feasible. Where possible, flexibility will be given to enable the business the opportunity to diversify to other ancillary and complementary uses to enable the business to continue. The economic role and function is as important as the provision of new houses as identified by both Core Strategy and NPPF policies.

This approach is supported and complemented by Policy RA6 – Rural Economy, which has a positive approach to diversifying and enhancing the rural economy and available economic activities.

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

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

Policy LD2 – *Biodiversity and geodiversity* states Development proposals should conserve, restore and enhance the biodiversity and geodiversity assets of Herefordshire, through the:

1. retention and protection of nature conservation sites and habitats, and important species in accordance with their status as follows :

- a) Development that is likely to harm sites and species of European Importance will not be permitted;
- b) Development that would be liable to harm Sites of Special Scientific Interest or nationally protected species will only be permitted if the conservation status of their habitat or important physical features can be protected by conditions or other material considerations are sufficient to outweigh nature conservation considerations;
- c) Development that would be liable to harm the nature conservation value of a site or species of local nature conservation interest will only be permitted if the importance of the development outweighs the local value of the site, habitat or physical feature that supports important species.
- d) Development that will potentially reduce the coherence and effectiveness of the ecological network of sites will only be permitted where adequate compensatory measures are brought forward.

2. restoration and enhancement of existing biodiversity and geodiversity features on site and connectivity to wider ecological networks; and

3. creation of new biodiversity features and wildlife habitats

Core Strategy policy LD4 – *Historic environment and heritage assets* sets out as relevant to this appeal that Development proposals affecting heritage assets and the wider historic environment should:

- 1. 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*
- 2. 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*

Neighbourhood Development Plan

The Neighbourhood Development Plan for Bromyard is at the drafting stage. No weight is attributed to it.

National Planning Policy Framework

The NPPF has ‘sustainable development’ central to planning’s remit and objectives. The NPPF also seeks positive improvements in the quality of the built, natural and historic environment and in regards people’s quality of life. The National Planning Policy Framework has been considered in the assessment of this application. The following sections are considered particularly relevant:

- 2. Achieving sustainable development
- 5. Delivering a sufficient supply of homes
- 11. Making effective use of land
- 12. Achieving well-designed places
- 15. Conserving and enhancing the natural environment

- 16. Conserving and enhancing the historic environment

Paragraph 7 sets out and defines sustainable development and of the three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways, the social objective requires planning to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being.

Paragraph 11 of the Framework sets out the presumption in favour of sustainable development. For decision-taking this means where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless the application of policies of the NPPF that protect areas or assets of particular importance provides a clear reason for refusing the development proposed or 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.

The NPPF sets out how transportation, highways impact and non vehicular movement should be considered, assessed and supported in paragraphs 110 – 113, stating –

In assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that:

- a) appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;
- b) safe and suitable access to the site can be achieved for all users; and
- c) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.

Paragraph 112 then states applications for development should:

- a) give priority first to pedestrian and cycle movements, both within the scheme and with neighbouring areas; and second – so far as possible – to facilitating access to high quality public transport, with layouts that maximise the catchment area for bus or other public transport services, and appropriate facilities that encourage public transport use;
- b) address the needs of people with disabilities and reduced mobility in relation to all modes of transport;
- c) create places that are safe, secure and attractive – which minimise the scope for conflicts between pedestrians, cyclists and vehicles, avoid unnecessary street clutter, and respond to local character and design standards;
- d) allow for the efficient delivery of goods, and access by service and emergency vehicles; and

- e) be designed to enable charging of plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations.

Finally, paragraph 113 requires; All developments that will generate significant amounts of movement should be required to provide a travel plan, and the application should be supported by a transport statement or transport assessment so that the likely impacts of the proposal can be assessed.

NPPF Paragraph 127 states *The creation of high quality beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. 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 130 outlines Planning decisions should ensure that developments:

- will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;
- are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;
- are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);
- establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;
- optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and
- create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

Paragraph 131 emphasises *Trees make an important contribution to the character and quality of urban environments, and can also help mitigate and adapt to climate change.* Planning policies and decisions should ensure that new streets are tree-lined, that opportunities are taken to incorporate trees elsewhere in developments (such as parks and community orchards), that appropriate measures are in place to secure the long-term maintenance of newly-planted trees, and that existing trees are retained wherever possible. Applicants and local planning authorities should work with highways officers and tree officers to ensure that the right trees are planted in the right places

NPPF paragraph 185 states Planning Policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:

- a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life

Policies specific to protected landscapes (including AONBs) are detailed at paragraph 176 and states *Great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty. The scale and extent of development within these designated areas should be limited.*

The NPPF, at paragraph 180b) states that *'development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest'. Paragraph 182 confirms that 'The presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.'*

Assessment

Principle of Development and Sustainability

Habitats Regulation

In Herefordshire, the River Wye and its tributaries are recognised as being of international importance for their unique character and wildlife, requiring the highest level of protection, management, enhancement and, where appropriate, restoration.

Herefordshire Council as the 'competent authority' under the Habitats Regulations, (The Conservation of Habitats and Species Regulations 2017) is legally required to assess the potential impacts of projects and plans, on internationally important sites which include the River Wye SAC (Special Area of Conservation).

The River Lugg is a tributary of the River Wye and forms part of the designated site covering predominantly the north of the Herefordshire administrative area. The River Lugg is currently failing its conservation targets of phosphate levels as a result of water pollution from both 'point' source; in particular sewage outlets and 'diffuse' sources; agricultural run-off. In light of the Dutch Case developments which cannot demonstrate within a Habitat Regulation Assessment that they will not affect the integrity of the River Wye or have a likely significant effect' are unlikely to be Acceptable.

The elevated levels of phosphates within the SAC is currently preventing the approval of developments which could release any additional phosphates into the River Lugg. Only where development proposals are able to meet a number of criteria which provide certainty that the development will not increase the level of phosphate within the River can such developments be permitted at this time.

The proposal is to create an additional 20 residential dwellings on the site of a Petrol Station/Garage facility. The creation of dwellings will create additional foul water flows.

At this location foul water flows are managed by a mains sewer network connected to the Bromyard Wastewater Treatment Works. The Bromyard WwTW discharges outfall in to the River Lugg

SAC/SSSI catchment. The additional flows create pathways for additional phosphate discharges in to the Lugg SAC catchment.

No scientifically and legally demonstrated baseline for any existing 'phosphate allowance' and foul water flows created by the financially insecure usage levels of the existing facilities has been provided. No scientific or legally securable (for the life time of the development) alternative 'offsetting' or nutrient mitigation scheme has been supplied for consideration.

The HRA process is legally accepted to be based on precautionary principles and all evidence supplied in support of the HRA process must be clearly 'beyond scientific and legal doubt'

The development as proposed will create additional phosphate pathways in to the River Lugg SAC. On the basis the application does not demonstrate compliance with Core Strategy SD4 (SS1, SS6 and LD2 also apply); 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'); NPPF; Wildlife & Countryside Act (1981 amended) and NERC Act duty of care, REFUSAL must be recommended and this matter supersedes all others.

Other Principle of Development Considerations

The site is somewhat of an anomaly as whilst it adjoins a community facility and then the High School, through the associated sports pitches of Queen Elizabeth High School and agricultural land South, East and West, the site taken with the adjoining Hope Centre reads as being in the countryside and not part of what I conclude reasonably constitutes the main built form of the town. The annotated map below shows the site circled red and urban area of Bromyard, as considered under CS policy BY1 and H1, washed grey.



The garage is part of a small cluster of development which includes the Hope Family Centre and two bungalows. The site is considered visually and functionally separate from Bromyard town itself.

Panniers Lane offers the most direct route to the closest shopping facility, and is at face value an obvious route to town. It also has the main entrance to the secondary school. There is however little opportunity to improve the pedestrian links along Panniers Lane, which has a limited length of footpath at its extreme Northern end, and is unlit and, notwithstanding this, the site is approximately 1.4km from the town centre.

In my view these arrangements are not particularly conducive to encouraging people to walk to access shops and services and there would therefore be a strong likelihood of a significant reliance on the use of the car. A high level of reliance on the car and few opportunities to improve pedestrian links leads me to conclude that the site is not sustainably located for residential development and therefore contrary to the principles of the Core Strategy and NPPF which, in supporting the move to a low carbon future, promotes new development being located so as to reduce greenhouse gas emissions and therefore a pattern of development which, where reasonable to do so, facilitates the use of sustainable modes of transport.

As such the proposal represents unsustainable development in the countryside outside the main built form of Bromyard or any other sustainable location identified under CS policy RA2, contrary to CS policies SS1, SS6, BY1, H1, RA2 and RA3.

Highways

Further to the above comments regarding limited ability to access the site by sustainable modes of transport and technical comments of the Transportation Manager, the proposal is contrary to CS policies SS4 and MT1, Herefordshire Council's Highways Design Guide and the relevant objectives of the NPPF. Technical design standards have not been met or demonstrated. This ambiguity has an impact on parking, turning and pedestrian connectivity, which has a direct consequence regarding the safe flow of traffic on the A465, and wider highway safety.

Landscape

CS policies RA6 and the wider economic development policies are underpinned by Policy LD1 of the Core Strategy *Landscape and townscape*. Development proposals need to demonstrate that features such as scale and site selection have been positively influenced by the character of the landscape and townscape, and that regard has also been had to the protection and enhancement of the setting of settlements. Development proposals should also conserve and enhance the natural, historic and scenic beauty of important landscapes and features, including locally designated parks and gardens; and should incorporate new landscape schemes and their management to ensure development integrates appropriately into its surroundings.

Core Strategy policy SD1 (Sustainable Design and Energy Efficiency) also seeks to secure high quality design and well planned development, that contributes positively to the character of the area and that development successfully integrates into the existing built, natural and historic environment.

Assessed purely as an architectural response to context, the physical form and design are of high merit and demonstrate a true landscape led approach has informed the proposed design. The Hereford Road elevations, shown below, illustrate how the proposal creates a 'gateway' development that has a positive impact on a prominent site. The form of the five town houses echoes that of an agricultural building, with strong verticals, pitched roofs and lack of excessive ornamentation and domestic features such as chimneys. The residential block adjoining The Hope Centre has a scale and mass reflective of the existing adjoining buildings and reads and relates to them. This

configuration increases the sense of arrival to the site and the gateway to Bromyard as one approaches the town houses from the Hereford direction.

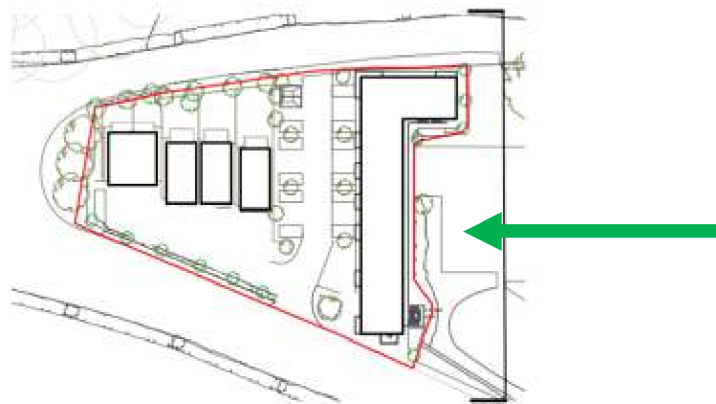


Design and Amenity

Notwithstanding the landscape assessment, CS policy SD1 requires that new buildings should be designed to maintain local distinctiveness through incorporating local architectural detailing and materials and respecting scale, height, proportions and massing of surrounding development, While making a positive contribution to the architectural diversity and character of the area including, where appropriate, through innovative design and safeguard residential amenity for existing and proposed residents.

Objection has been made regarding the potential impact on the privacy, amenity and security of the adjoining HOPE Centre. The HOPE Centre is valued and much used local resource and facility. It offers onsite Ofsted rated *Outstanding* Early Years provision, care and education for children, with the amenities and resources found outside of particular significance and considered as an extensive discreet and secluded outdoors facilities for attending children. Other services include an onsite café, groups and activities offering support those with needs in mental health, domestic abuse, finance and housing. Currently, children can enjoy the outdoor spaces without being observed externally. The concerns regarding privacy and security and inability to determine the actions or behaviour of potential residents that may affect our facilities and services is noted.

I have visited the Hope Centre and viewed the application site from numerous vantage points within it and its curtilage. The concerns raised are considered to be valid and as such amended plans have been submitted to attempt to address the matter. Drawing No. 253, Rev. D shown below is the amended proposed *North Site Elevation*, which faces the HOPE Centre, with layout plan below and green arrow noting the elevation viewed above it.



Amendments within the above include Obscured glazing to doors and windows facing the HOPE Centre, Solid end panel to balcony and a Blank facing gable end without windows. I note the obscured glazing on 4 of the facing units serve a bathroom. These features could be secured and maintained as such by condition and relevant permitted development rights removed to safeguard and ensure the elevation is thereafter as shown.

However, the access to the proposed units affords elevated views into what are some of the most private, valued areas of the adjoining HOPE Centre. The introduction of substantial boundary treatments would have a significant and overwhelming detrimental impact on the enjoyment of the children's garden and play areas over the existing situation, which is shown below.



The ability to look into these external areas and increased perception by users of the HOPE Centre, who can be classified as vulnerable, of being overlooked, creates harm to the integrity of the existing use and function of the Hope Centre to a significant detrimental degree.

I consider that the proposed development would result an unacceptable increase in actual and perceived loss of privacy and amenity at the HOPE Centre. Landscaping would not overcome the harm, because any planting or enclosures on the boundary high enough to screen first floor comings and goings in the proposed development would be likely to block light, amenity and enjoyment of the HOPE Centre garden and play areas. I conclude the proposal would prejudice the enjoyment and facilities of the HOPE Centre.

Heritage

Under Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, the local planning authority is required, when considering development which affects a listed building or its setting *"to have special regard for the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."*

It follows that the duties in section 66 do not allow a local planning authority to treat the desirability of preserving the setting of listed buildings merely as material considerations to which it can simply attach such weight as it sees fit. When an authority finds that a proposed development would harm the setting of a listed building, it must give that harm "considerable importance and weight".

The nearest listed building is the Grade II listed Birchyfield, a 18th century Stucco house, around 340 metres West of the site as shown below circled blue –



On the basis of the intervening distances, landscaping and buildings, the proposals will have no direct impact, however it can be considered the wider setting of the listed building is enhanced. Similarly, the setting of the Unregistered Park and Garden, Birchyfield, edged magenta above, would be enhanced by the proposals over the existing situation.

No listed buildings adjoin to the West and those heritage assets, including the town centre conservation area, within the existing built form of Bromyard have no inter visibility or relationship with the proposal.

As such the proposals are considered to result in no adverse harm or impact on designated and non designated heritage assets, are considered to result in an enhancement to the wider setting of identified assets and as such accord with policies SS6 and LD4 of the Herefordshire Core Strategy and heritage aims and objectives of the NPPF.

Loss of Employment Land

The proposal involves the loss of employment land. The Council has consistently, through the pre application discussions stated that the proposal is contrary to policy E2 of the Herefordshire Core Strategy unless adequate evidence of marketing of the site is evidenced. It is accepted that loss of employment floor space should be balanced against the opportunity the proposal affords to deliver better quality and more fit for purpose development given the location. That said, this is entirely dependent on satisfactory evidence the site has been marketed for continued, even albeit, alternative economic uses.

Policy E2 clearly states that "In all cases" that evidence to confirm unviability and active unsuccessful marketing must be submitted. The Inspector at Appeal reference 3232285 at Brampton Abbots, Herefordshire, stated with regards challenge to this, *'The loss of a ...employment site, without the necessary assessment, justification and marketing, would have significant economic harm and undermine the Council's economic strategy'*.

The Inspector concluded where no such viability assessment or marketing evidence has been submitted there would be an unjustified loss of employment land that would undermine the Council's economic strategy for the Borough, including for the rural area.

The Council accepts that the current buildings on the site are of poor quality, however considered the site benefits from a good location and access.

This site was not assessed within the 2012 Employment Land Study however it would appear to have limited value as a petrol station. It has been listed for over five years (which is greater than the 12 months criteria listed above) and has not found a buyer. However it is unclear if the asking price has been adjusted during this time. The price of stations nationally do appear to have a wide variance depending on its location and level of business. However the trend is for a decline of petrol stations, particularly independents. The number has fallen from 13,107 in 2000 to 8,400 stations in 2020¹, which is likely to continue with the switch to electric vehicles. It is also noted the town is served by another petrol station on the A44 bypass which has undergone a recent refurbishment.

In terms of employment Bromyard is as identified within the 2019 Bromyard Employment Land Study, a very small, localised market. Bromyard has only a limited pull for workers outside Herefordshire, with a localised nature of employment and limited communications and transport links. Manufacturing is the largest sector of the local economy. This comprises 1,005 people or 27.5% of the total employment within Bromyard, which is nearly double of the level within Herefordshire as a whole. Therefore there will be a need for sufficient land appropriate for B2 units in the next local plan, and also to be flexible to accommodate the change in demand of employment types.

The survey response within the Employment Land Study suggests overall a static market with businesses in Bromyard looking neither to relocate, but also neither to expand. The current core strategy recommends a 5ha allocation of employment land, however the employment land study recommends of 2ha of employment land to meet projected demand.

As such it is considered there has been adequate marketing and the proposal results in the acceptable loss of employment land. The proposal complies with Herefordshire Core Strategy policies SS1, SS5, E2 and RA6 and the relevant aims and objectives of the NPPF.

Section 106 Agreement / Planning Obligations and Viability

The application made as a full application is independent from and not subject to the conditions attached to outline planning permission reference 143116 and Reserved Matters approval 182628. Furthermore it is not bound by the legal agreement associated with 143116. The proposals are a new chapter in the planning history of the site and require mitigation in its own right.

Planning obligations are payable for mitigation of the development on the matters relating, but not limited to education, health care and sports and recreation. The application for 20 residential units would require the provision of affordable housing at a rate of 40% of the total number of units, i.e. 8 units.

The application is made with a viability assessment claiming the proposals cannot deliver policy compliant affordable housing and financial contributions. The application is not accompanied by a completed Section 106 agreement which is necessary to secure the affordable housing provided in perpetuity, or deliver the required provisions that make the development acceptable on the basis the development would be unviable if such contributions were made.

The District Valuer has been commissioned to offer an independent review and assessment of viability. It is their considered and independent opinion that:

Further to the above and noting there is an evidenced need for affordable home ownership within Bromyard Housing Market Area, the proposal also fails to comply with CS policies H1 and H3 as it does not deliver a suitable mix and range of housing.

In the absence of a Draft s106 agreement and conclusions regarding viability, the proposal is therefore contrary to Policies H1, IDI, MT1 OS1 and OS2 of the Herefordshire Local Plan Core Strategy and the Council's Supplementary Planning Document on Planning Obligations.

Summary

In accordance with the statutory requirement determination must be made in accordance with the Development Plan, unless material considerations indicate otherwise. The NPPF affirms at paragraph 12 that the presumption in favour of sustainable development does not change the statutory status of the Development Plan as the starting point for decision making.

For the purposes of this application the Development Plan comprises the CS. Locationally the site lies outside the main built form of Bromyard as defined under CS policy BY1 or any other settlement identified under CS policy RA2. As such the proposal represents development in the countryside. Further to this there is significant conflict with both CS policies in respect of the lack of affordable housing and financial contributions, lack of an appropriate mix of housing, highway safety issues and adverse impact on water quality. Taking all these considerations together it is opined that the proposal fails to accord with the Development Plan when taken as a whole. As a result, on the basis of the Development Plan alone, permission should be refused.

Next, in accordance with the statutory requirement, it is necessary to turn to the material considerations, to ascertain if these indicate that a decision should be made other than in accordance with the Development Plan (as set out in Section 38 (6) of the Planning and Compulsory Purchase Act 2004 – see paragraph 6.1).

The first key material consideration is the NPPF. Paragraph 11c) states that when applying the presumption in favour of sustainable development, for decision-taking, this means 'approving development proposals that accord with an up to date development plan without delay'. Given the conclusion above that the proposal does not accord with the Development Plan, this direction does not apply in this case. Next it is necessary to consider paragraph 11 d), which states:

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date⁷, granting permission unless:

i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed⁶; 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.'

(Footnotes:

6: The policies referred to are those in this Framework (rather than those in development plans) relating to: habitats sites (and those sites listed in paragraph 176) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 63); and areas at risk of flooding or coastal change

7: This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 73); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years. Transitional arrangements for the Housing Delivery Test are set out in Annex 1.)

With regards paragraph d) the Council can demonstrate a 5 year housing land supply (current published position is a 6.9 year supply – April 2021) and the Housing Delivery Test does not indicate a delivery of housing substantially below (less than 75% of) the housing requirement over the previous three years. The CS review was not completed within the requisite time, so in that regard can be considered to be out of date. Nevertheless, the policies within the Development Plan promote housing growth and overall can be considered to align with the NPPF, such that they can be given full weight.

Starting with paragraph 11 d) i: that permission should be granted unless the policies in the NPPF that protect areas or assets of particular importance provide a clear reason for refusal, it is noted that habitats sites (including those sites listed in paragraph 176) and designated heritage assets are included. These are therefore qualifying protected areas/assets, namely the SAC. As such paragraph d)i is applicable and next it is necessary to apply those policies in the NPPF that protect these areas/assets to establish if they do indeed provide a clear reason for refusal. In doing so, only the policies that protect the areas/assets listed in footnote 6 can be taken into account and not any other NPPF policies or Development Plan policies.

Firstly, with regards the impact on the SAC, for the reasons set out earlier it is concluded that the proposal would have an adverse effect. This provides a clear reason for refusal, under paragraph 180 of the NPPF, and as stipulated in paragraph 182 the presumption in favour of sustainable development does not apply because the proposed development is likely to have a significant effect on this habitats site. As a consequence, as directed by paragraph 11d) i, permission should not be granted on this ground alone. With regards the protection of such areas, caselaw (Monkhill [2019]) has established that because the application of a legal code for the protection of a particular area or asset determines the outcome of a planning application there is no justification for the application of limb 11d) ii. In practice this means that the decision taking assessment stops at this point, with a clear reason to refuse permission and no requirement to weigh other matters in the balance, weighted or otherwise.

Conclusion

In accordance with s.38 (6) of the 2004 Act, the application must be determined in accordance with the development plan, unless material considerations indicate otherwise

Policy SS1 of the CS reflects the presumption in favour of sustainable development in national policy and provides that planning applications that accord with the policies in the Core Strategy will be approved unless material considerations indicate otherwise. The NPPF is a significant material consideration.

The Council has an up to date supply of housing land, at 6.9 years, and as such there is no 'planning balance' exercise to be had with regards housing delivery weighted against other Plan conflicts.

As detailed above there is clear conflict with the development plan and there are no material planning reasons to justify a departure from those policies and as such REFUSAL of the application is recommended.

RECOMMENDATION: PERMIT REFUSE


REASONS FOR REFUSAL:

1. The development as proposed will create additional phosphate pathways in to the River Lugg SAC. As such the proposal does not demonstrate compliance with Herefordshire Core Strategy policies SD4, SS1, SS6 and LD2; 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'); relevant aims and objectives of the National Planning Policy Framework; Wildlife & Countryside Act (1981 amended) and NERC Act duty of care.
2. The proposal represents unjustified unsustainable residential development in the countryside outside of any settlement or settlement boundary defined in the Local Plan or Neighbourhood Development Plan and as such is contrary to Herefordshire Core Strategy policies SS1, BY1, H1, RA2, RA3 and RA6 and the relevant aims and objectives of the National Planning Policy Framework.
3. The proposal provides an inadequate mix of housing and as such does not contribute to meeting evidenced local housing need contrary to Herefordshire Core Strategy policies SS2, H1 and H3.
4. The proposal has failed to adequately assess and demonstrate the impact of the development on the highway network is both safe and capable of mitigation, fails to demonstrate or accommodate alternative modes of transport to and from the site, particularly movements by pedestrian and cyclists and as such is contrary to Herefordshire SS1, SS4, BY1 and MT1 and the relevant aims and objectives of the National Planning Policy Framework.
5. In the absence of a Draft s106 agreement and conclusions regarding viability, the proposal is contrary to Policies H1, IDI, MT1 OS1 and OS2 of the Herefordshire Local Plan Core Strategy and the Council's Supplementary Planning Document on Planning Obligations.
6. The proposal will have an unacceptable adverse impact on the actual and perceived amenity and privacy of adjoining land uses, which it is noted include that relating to vulnerable groups, and the continued enjoyment of those uses, contrary to Herefordshire Core Strategy policies SD1 and paragraph 127, 130 and 185 of the National Planning Policy Framework.

Informatives**1. Refused with way forward**

Signed:  Dated: 17 December 2021

TEAM LEADER'S COMMENTS:**DECISION:**PERMIT REFUSE

Signed:  Dated: 17th December 2021.....

Is any redaction required before publication?

