

DELEGATED DECISION REPORT

APPLICATION NUMBER

173817

Land at Springfield, Whitchurch, Ross on Wye, Herefordshire,

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

Neighbourhood Development Plan: Whitchurch and Ganarew designated a Neighbourhood Area in December 2013

Other Relevant Planning Documents: The Wye Valley Area of Outstanding Natural Beauty Management Plan

Relevant Site History: None

CONSULTATIONS

	Consulted	No Response	No objection	Qualified Comment	Object
Parish Council	√		√		
Transportation	√		√		
Ecologist	√		√		
Site Notice	√	√			
Other					
Natural England	√		√	√	

Welsh Water	√		√	√	
Local Member	√		√		

PLANNING OFFICER'S APPRAISAL:

Site description and proposal:

The site is located within countryside location outside of the main built form of any settlement identified under policy RA2, however forms garden curtilage of the dwelling Springfields, one of a number of dwellings fronting the C1251 and located around 150 metres West of Stoneyhill Industrial Estate. The site is within the Wye Valley AONB. Planning permission for six dwellings was granted opposite under 163303.

The proposal is the erection of a dwelling.

Representations:

Whitchurch and Ganarew Group Parish Council in principle have no objections to the application but have concerns regarding the access and they are also minded that the proposed property is outside of the Settlement Boundary being prepared in the Draft Neighbourhood Plan.

The Council's Area Engineer has no objection.

The Council's Ecologist notes the site falls within the 'All Planning Applications...' and 'Any discharge of water or liquid' Impact Risk Zone for the River Wye SAC/SSSI so the application needs to be assessed through Habitat Regulations. I note that the foul water is to be managed through connection to the mains sewer system and any additional surface water through on site soakaway. With these subject to implementation as part of approved plans I can see no unmitigated 'Likely Significant Effects' on the River Wye SAC/SSSI. The supplied ecological report is thorough and appropriate and I would suggest that the recommended ecological risk avoidance measures, working methods and biodiversity enhancements are subject to an implementation condition

Natural England has no objection if appropriate mitigation is secured, Natural England consider that without appropriate mitigation the application would have an adverse effect on the integrity of River Wye Special Area of Conservation and damage or destroy the interest features for which River Wye / Lugg Site of Special Scientific Interest has been notified.

Welsh Water has no objection however requests a condition if approval is recommended.

Local Member updated by email on 9/1/2018, delegated approval agreed.

Pre-application discussion:

Under 163734

Constraints:

Impact on the character and appearance of an AONB
Impact on the character and appearance of the open countryside
Protected species

Appraisal:

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

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

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

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

This position has been crystalised following a recent Supreme Court Decision and the implications of this position following the *Suffolk Coastal DC v Hopkins Homes & SSCLG* and *Richborough Estates v Cheshire East BC* [2017] UKSC 37 *On appeals from: [2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and [2015] EWHC 410 (Admin)*.

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

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

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

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

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

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

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

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

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

Summarised, the Supreme Court confirmed –

- Primacy of the development plan
- NPPF no more than "guidance"
- Narrow class of paragraph 49 deemed out-of-date policies
- Planning judgment is for the decision-taker
- If housing supply policies not up-to-date plan retains statutory force but focus shifts to other material considerations
- Policies can be out-of-date if requirements are not up-to-date or are not being met
- Futility of relying on sites that have no realistic prospects of delivery
- Weight to be judged against the needs for development
- Rigid enforcement of restrictive policies may prevent 5YS and the object of the NPPF for delivery

Whilst the site is not locationally sustainable when assessed against Core Strategy Policy RA2's criteria, it is recognised sustainability is more than a matter of location. This site is therefore assessed and considered on its 'brownfield' status, contribution to the character and appearance of the AONB along with material constraints and considerations. Part of this assessment includes the 'harm' from locating dwellings in this location having regard to wider sustainability aims and objectives and the requirement to reduce CO2 emissions.

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'*.

Paragraph 9 of the NPPF states pursuing sustainable development involves seeking positive improvements in the quality of the built, natural and historic environment, as well as in people's quality of life, Including (but not limited to) improving the conditions in which people live, work, travel and take leisure. The Ministerial forward to the NPPF states *our standards of design can be so much higher. We are a nation renowned worldwide for creative excellence, yet, at home, confidence in development itself has been eroded by the too frequent experience of mediocrity* and goes on to set out the Government's policies, aims and objectives in Section 7 Requiring Good Design, paragraphs 56-68.

It is clear from the NPPF that 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 58 states planning policies and decisions should aim to 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;
- establish a strong sense of place, using streetscapes and buildings to create attractive and comfortable places to live, work and visit;
- optimise the potential of the site to accommodate development, create and sustain an appropriate mix of uses (including incorporation of green and other public space as part of developments) and support local facilities and transport networks;
- respond to local character and history, and reflect the identity of local surroundings and materials, while not preventing or discouraging appropriate innovation;
- create safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion; and
- are visually attractive as a result of good architecture and appropriate landscaping.

Whilst LPA's are advised not to impose architectural styles, paragraph 60 states it is proper to seek to promote or reinforce local distinctiveness.

Paragraph 61 acknowledges that although visual appearance and the architecture of individual buildings are very important factors, securing high quality and inclusive design goes beyond aesthetic considerations. Therefore, planning policies and decisions should address the connections between people and places and the integration of new development into the natural, built and historic environment.

Paragraph 64 states 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.

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.

The assessment of development as being unacceptable within the AONB is explained within the NPPF as being a scenario whereby:

1. specific policies of the NPPF indicate otherwise; or
2. where harm associated with the development would outweigh its benefits when held against the NPPF as a whole – ‘the planning balance’.

The appropriate method of determination in the context of the above hinges on whether or not the scheme is considered ‘major development’ in the context of paragraph 116:

- If the development is found to meet the definition of major development then the cost-benefit analysis required by paragraph 116 becomes the test of acceptability; or
- If the scheme does not meet the definition of major development, the planning balance remains the relevant test of acceptability albeit with great weight afforded to retaining the landscape character and scenic beauty of the AONB required at paragraph 115.

Officers do not consider the provision of six dwellings represents major development in the context of the location, extant permission and lawful planning uses on the site and paragraph 116 of the NPPF. As such there is no direction to refuse and the planning balance therefore applies.

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 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* 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. Policy RA2 sets Housing proposals will be permitted in the identified settlements where the following criteria are met:

1. Their design and layout should reflect the size, role and function of each settlement and be located within or adjacent to the main built up area;
2. Their locations make best and full use of suitable brownfield sites wherever possible;
3. They result in the development of high quality, sustainable schemes which are appropriate to their context and make a positive contribution to the surrounding environment and its landscape setting; and
4. They result in the delivery of schemes that generate the size, type, tenure and range of housing that is required in particular settlements, reflecting local demand.

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.

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

The Wye Valley Area of Outstanding Natural Beauty Management Plan is a material consideration. Relevant policies include –

WV-D2 – Encourage and support high standards of design, materials, energy efficiency, drainage and landscaping in all developments, including Permitted Development, to ensure greater sustainability and that they complement and enhance the local landscape character and distinctiveness including scale and setting and minimise the impact on the natural environment.

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

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

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

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

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

Assessment

The proposal has some tension with policy RA2 or RA3 as it is not located within or adjacent to Whitchurch and does not satisfy any of the exception criteria of policy RA3, however in this case the site is a brownfield site and as such significant weight is attached to the betterment that would accrue. On the basis of the above and following assessment, the benefits of the proposal are considered to outweigh the policy tension.

The dwelling has a split level layout, working with the topography. The South and West elevations convey the appearance of a single storey unit. External rendered and timber clad elevations with natural slate roof are appropriate to the location and finishes of aluminium windows, timber doors and zinc rainwater goods provide a clean and modern aesthetic.

The dwelling has adequate amenity space and privacy and does not significantly impact upon adjoining land uses.

Landscaping enhancements through amongst other proposals, new appropriate planting and refurbishment of the land, combined with the above, enhance the site, location and wider character and appearance of the AONB. There are also biodiversity benefits and enhancements over the existing position.

The delivery of housing in Whitchurch and Symonds Yat is constrained by numerous significant planning constraints. This includes the whole area being within the Wye Valley

AONB, much land is within Flood Zone 2 and/ or 3, heritage constraints, highways constraints and noise from the A40. Whitchurch is identified in the Core Strategy as being a sustainable village which is appropriate for proportionate growth at 14%. This equates to 65 new houses, of which 10 have already been built, and planning permissions have been given for 12 others, leaving a minimum of 43 more to be approved and built by 2031.

The site assessed is a brownfield site and its development represents an enhancement to the character and appearance of the AONB. Furthermore the other constraints affecting the wider area and delivery of housing do not apply here. The site is therefore immediately developable and deliverable. Although not immediately adjacent to the main core of an RA2 settlement, the site does have a locational relationship with Whitchurch and Symonds Yat and is within close proximity to the services and facilities located there. These are within a reasonable distance of a range of local services, facilities and albeit limited, employment opportunities and is both on a bus route and readily located on the strategic highway network. There is a degree of sustainability about the location and proposal as assessed against the NPPF. The housing land supply position is also a consideration and strengthens the acceptability of the proposal. On this basis the benefits of the proposal outweighs the strict non compliance with Core Strategy policy RA2.

Summary

In terms of the overall planning balance contained within the NPPF the scheme has the economic benefits of providing employment during the construction phase, the social benefit of providing much needed houses and considerable environmental benefit in terms of enhancement of the AONB in terms of character and appearance.

The comments of the Parish Council are noted and with regards to the emerging NDP, given the progress and stage this is at, limited weight is given to the settlement boundary matter when assessed in both isolation and against all of the above.

I also note this replicates the approach and pro active position taken with regards to application permission reference 163303, opposite and 151030 within the same Ward.

As such on the basis of all of the above approval is recommended.

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

CONDITIONS & REASONS:

1. C01
2. C07 – plans and details
Received 9th October 2017
3. 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

- 4. CAH**
- 5. CAL**
- 6. CAZ**
- 7. CB2**

- 8. The ecological protection, mitigation and working methods scheme along with the proposed biodiversity enhancements as recommended in the Ecological Report by Janet Lomas dated March 2017 shall be implemented 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 (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, NERC 2006

- 9. C24 – External render, treatment of timber cladding**
- 10. C97**
- 11. CE6**

Informatives

- 1. Pro active Reason 1**
- 2. I11**
- 3. I09**
- 4. I05**
- 5. I47**
- 6. I35**

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

Signed:

Dated: 11/1/2018

TEAM LEADER'S COMMENTS:

DECISION:

PERMIT

☒

REFUSE

☐

Signed:



..... Dated: 11 January 2018.....