

Statement of Case

Appeal by Sarah Hanson MRTPI on behalf of
Border Oak Design & Construction Ltd
Planning Application ref P141994/F

LAND ADJACENT TO CHAPEL ORCHARD, HEREFORD ROAD, WEOBLEY,
HEREFORDSHIRE, HR4 8SW

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1.0 INTRODUCTION

- 1.1 This report provides the grounds of appeal and statement of case against the decision to refuse full planning permission for residential development on land adjacent to Chapel Orchard, Hereford Road, Weobley, Herefordshire, HR4 8SW.
- 1.2 The appellant, Border Oak Design and Construction (Border Oak), build bespoke homes for families/individuals who commission the company to undertake either a full build or partial build (i.e. Custom/Self-build). Border Oak is based in a village in North Herefordshire and operates across the UK employing some 200 + local employees and subcontractors.
- 1.3 The site has a chequered planning history which dates back to 2005 with the current applicant/appellant. The planning history is explained in the attached appendices.
(Appendix 1).

2.0 PROPOSAL

- 2.1 The application was submitted on behalf of Border Oak by Sarah Hanson Planning on 1st July 2014 and validated on 2nd July 2014. The consultation start date was 23rd July 2014 and the target date for determination 27th August 2014.
- 2.2 The proposed application was for full planning for: *Proposed erection of 4 nos. dwellings with associated access and parking*. The local planning authority reference number for the application is P141994/F.
- 2.3 The application was refused planning permission on 4th September 2014 under delegated powers. There were no third party objections to the scheme and support was received from the Parish Council (The PC subsequently sent a letter of support following the refusal - Appendix 2) and two local residents. The consultee comments are contained within the officer report which should be provided to the Inspector by Herefordshire Council.
- 2.4 The application was accompanied by full sets of plans showing floor plans and elevations; access arrangements and site layout; a topographical survey due to the raised nature of the

site and a design and access / supporting statement. The application proposed four detached modest sized cottages with a shared private drive, accessed from Hereford Road, a C class road. The plots would provide four individual self-build opportunities for local families.

3.0 REASON FOR REFUSAL

3.1 The reasons for refusal are as follows:

- 1 *It is considered that the proposed development fails to make efficient use of land and to be of too low a density for a site allocated for housing in policy H5 of the Herefordshire Unitary Development Plan. Consequently it does not adequately boost the supply of available housing land in accordance with the aims of the National Planning Policy Framework, particularly given the Council's current lack of a demonstrated 5 year land supply. The proposal is therefore considered to be contrary to Policies SI, H4 and H5 of the Herefordshire Unitary development Plan and the aims of the National Planning Policy Framework.*
2. *The application fails to provide provision for affordable housing on a site in excess of 0.2 of a hectare in area, and therefore considered contrary to Policies SI, DR5, and H10 of the Herefordshire Unitary Development Plan, the Council's Supplementary Planning Document on Planning Obligations and the aims of the National Planning Policy Framework.*
3. *It is considered that the proposal will have a detrimental impact on the setting of the nearby Scheduled Ancient Monument Weobley Castle and upon the character of the Conservation Area. It is therefore considered contrary to Policies S7 and HBA6 of the Herefordshire Unitary Development Plan and the aims of the National Planning Policy Framework in particular in relationship to conserving and enhancing the historic Environment.*

The single Informative notes:

1. *The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against planning policy and any other material considerations by identifying matters of concern with the proposal and determining the application within a timely manner, clearly setting out the reasons for refusal, allowing the Applicant the opportunity to consider the harm caused and whether or*

not it can be remedied by a revision to the proposal. The Local Planning Authority is willing to provide pre-application advice in respect of any future application for a revised development.

4.0 SITE

- 4.1 The appeal site is located within the village of Weobley which is situated 9 miles to the south west of Leominster and 11 miles to the northwest of Hereford. The black and white village has a population of less than 1500 and is one of the larger villages in the county. The village has a large conservation area and approximately 100 listed structures. It is an important tourist destination and is identified as one of the villages on the black and white trail.
- 4.2 Herefordshire has the 4th lowest overall population density in England at 84 people per square kilometre (or 0.84 per hectare; 218 per square mile), and the population is scattered across the 842 square miles of the county.
- 4.3 The site, which measures 0.33 hectares, sits within the settlement boundary and within the conservation area and is located to the rear of Oak View, its associated barn and Jasmine Cottage. The area is slightly raised from the road frontage and is relatively flat grassland with boundaries which consist of native and evergreen vegetation. There is no current use of this land, it is classed as garden land and is within the ownership of the occupier of Oak View.
- 4.4 To the south of the application site is an estate of utilitarian residential development. This modern housing estate, Chapel Orchard consists of two-storey dwellings constructed of red brick under shallow pitched tiled roofs and is urban in its context. Immediately adjacent to the southern boundary and the road frontage is the red brick Primitive Methodist Chapel, which dates from 1845 but is not listed.
- 4.5 There are residential areas to the northern and eastern boundaries; these are a mixture of old and more modern house types, with external facing materials being a mixture of brick, render, painted render, stone and timber boarding. To the west of the site, on the opposite side of the adjacent C1095 Hereford Road, is the site of Weobley Castle, a Scheduled Ancient Monument (SAM). This survives as large earthworks.

5.0 CURRENT PLANNING POLICY

- 5.1 The current Development Plan consists of the Herefordshire Unitary Development Plan 1996 - 2011 (UDP).
- 5.2 The UDP was adopted in March 2007 and remains the 'development plan' for the purpose of determining this planning application. The current plan is considered out of date and is in the process of being replaced by the Core Strategy. Para 215 of the National Planning Policy Framework (the Framework) states that 12 months from the date of publication of the Framework, only due weight rather than full weight, should be given to out-of-date local plan policies.
- 5.3 The land which is the subject of this appeal was allocated as a site identified for residential development under UDP Policy H5 Main Villages: Housing Land Allocations, ([Appendix 3](#)) which states:

In order to ensure that the housing requirements set out in policy S3 are met, the following sites are identified for development for housing up to 2011. The development of these sites will be expected to provide a mix and range of housing types to meet the variety of housing requirements of the County. An indicative affordable housing target has been set out for each of the sites which will form the basis for meeting wider identified housing needs.

- 5.4 The site as allocated under Policy H5, measured 0.4ha (approximately 20% larger than the appeal site which measures 0.33ha) and was considered capable of an estimated dwelling capacity of around 12 units incorporating an element of affordable housing which, at an indicative target rate of 35%, equalled 4 units. The reduction in the size of the site is due to a change in ownership following the death of the original owner. The UDP allocated parcel in its entirety is no longer available for development and the site is now considerably smaller.
- 5.5 The preamble to Policy H5 at paragraph 5.4.38 states:

Residential development in main villages may come forward on either allocated sites or on windfall sites, the scope for which has been identified through the housing urban capacity study. A full range of housing will be permitted in main villages, including general market and affordable low cost market or social housing. In many instances the proposals advanced through this policy will be relatively small. However, the development of both allocated and windfall sites again allow the opportunity to provide an element of affordable housing as part

of meeting the wider County need. Affordable housing will be sought on both allocated and windfall sites above the thresholds specified in policy H9. Indicative targets have been established for the allocated sites, having regard to the Housing Need Study. Site suitability and local circumstances will also be taken into account in considering individual schemes.

6.0 NATIONAL PLANNING POLICY FRAMEWORK

- 6.1 Up to date advice in relation to housing development is given in the Framework published in 2012 combined with the Planning Practice Guide published on 6th March 2014 which makes it clear that all settlements should be considered, and can play a role in delivering sustainable development in rural areas.
- 6.2 Para 47 of the NPPF requires local authorities to identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements with an additional buffer of 5% to ensure choice and competition in the market for land.
- 6.3 Para 49 states that housing applications should be considered in the context of the presumption in favour of sustainable development. 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.
- 6.4 The existing development plan (UDP) is out of date and consequently the Framework suggests that where the existence of a five year land supply cannot be demonstrated, there is presumption in favour of granting planning permission for new housing unless the development can be shown to cause demonstrable harm to other factors that outweigh the need for new housing.
- 6.5 Para 215 of the Framework seriously calls into question the relevance of other policies of the UDP and para 55 provides clarification as to its intention; that is to promote sustainable development which enhances or maintains the vitality of rural communities.
- 6.6 Para 14 of the Framework emphasises a presumption in favour of sustainable development, that is at the heart of the Framework 'which should be seen as a golden thread running through both plan making and decision making.' A presumption in favour of sustainable development should be applied and, unless any adverse impacts of doing so would *significantly and demonstrably* outweigh the benefits, development should not be restricted.

7.0 CURRENT POSITION – 5 YEAR HOUSING LAND SUPPLY

- 7.2 The Council accepts that it cannot demonstrate a five year supply of housing land as confirmed in the most recent figures published in the Annual Monitoring Report 2013 and the Five Year Housing Land Supply (2013 – 18) Interim Position Statement dated 22nd May 2014¹. Consequently the housing policies within the UDP are considered out of date.

8.0 THE DRAFT CORE STRATEGY 2011 – 2031

- 8.1 The emerging Local Plan – Draft Core Strategy 2011-2031 has been through the final stage of consultation and is due for Examination in Public during February 2105. The Core Strategy is a material consideration although the advice from the LPA's Policy Department is that the Core Strategy policies will not be given significant weight until they have been tested at examination and found to be sound. However it should be noted that sites for housing are no longer allocated in the Core Strategy rather an approach to channelling proportionate housing into the market towns and main villages. The plan states at para 4.8.19 "Within these villages carefully considered development which is proportionate to the size of the community and its needs will be permitted only where residential proposals are locally appropriate to ensure villages retain their separate, distinctive and varied characters".

9.0 APPELLANT'S CASE AGAINST THE REFUSAL

- 9.1 The reason for refusal 2 comprised the failure to provide for provision of affordable housing on the site. Recent Ministerial advice and a subsequent confirmation from the LPA now makes this reason no longer relevant for this proposal, although it should be noted that negotiations culminated in an agreement for an off-site commuted sum. The sum required by the LPA was £658,400 in lieu of two plots which would have made the proposal completely unviable ([Appendix 4](#)). The Council's affordable housing target is 35% whereas this figure is based on 50%, the reason for which the appellant is unsure.

9.2 Refusal reasons

1. It is considered that the proposed development fails to make efficient use of land and to be of too low a density for a site allocated for housing in policy H5 of the Herefordshire Unitary Development Plan. Consequently it does not adequately boost the supply of available housing land in accordance with the aims of the National Planning Policy

¹ 2.09 and 2.61 years of supply in Herefordshire as at April 2013.

Framework, particularly given the Council's current lack of a demonstrated 5 year land supply. The proposal is therefore considered to be contrary to Policies SI, H4 and H5 of the Herefordshire Unitary development Plan and the aims of the National Planning Policy Framework.

3. It is considered that the proposal will have a detrimental impact on the setting of the nearby Scheduled Ancient Monument Weobley Castle and upon the character of the Conservation Area. It is therefore considered contrary to Policies S7 and HBA6 of the Herefordshire Unitary Development Plan and the aims of the National Planning Policy Framework in particular in relationship to conserving and enhancing the historic Environment.

- 9.3 Prior to the submission of the most recent planning application P141994/F, advice was provided by the Strategic Planning Team Leader, Herefordshire Council with regard to the land allocation under Policy H5. In an email dated 20th March 2014, he confirmed “*In my view there is nothing particularly important regarding the target of 12 houses estimated for the site in the UDP. Much will depend on the quality of the proposal, how efficiently the development utilises the site and its impact upon what is a sensitive site within an important conservation area.*” (Appendix 5)
- 9.4 With this in mind the proposal, which was on a reduced part of the site, (due to the section to the front now being within separate ownership, and the access arrangements), was submitted for a reduced development of four dwellings to take account of the setting and the local characteristic of the village in general and the proposed access from the Hereford Road rather than the estate road to the south. The reduction in numbers also reflects the type of build that was being proposed – the site was being put forward as land for self-build opportunities rather than a speculative build.
- 9.5 It was considered the indicative level of 12 units as specified within the out of date Policy H5 was more akin to the adjacent development at Chapel Orchard which takes on the form of suburban residential of a modern era which is in stark contrast to the rural distinctive pattern of the north Herefordshire villages. The emphasis of the development proposed by the 2014 application was on traditional cottages to reflect the beautiful black and white village in which they were to be sited and to reflect the wishes of the local residents by referring to the local vernacular, accessing the site from the Hereford Road rather than through the estate, and replicating the more traditional built form of the historic village.

- 9.6 The advice from the Strategic Planning Team Leader highlighted the importance of any proposal having regard to its location, opposite a Scheduled Ancient Monument (SAM) and within the Conservation Area. This site is in a sensitive position as it forms a barrier between the historic environment and the modern developments which have evolved during the latter part of the 20th century and are not particularly complementary to their setting. The site had been allocated with an estimated capacity of 12 dwellings in the UDP and it is considered this allocation was due, perhaps, to its size rather than its setting. This policy is now considered out of date and the estimated capacity should no longer form part of a reason to refuse an application, which proposes fewer dwellings and is more appropriate to character of the surrounding area.
- 9.7 With regard to the efficient use of land, the setting of this site is considered the main guiding principle for a proposed development. It is accepted that land should be efficiently used and it is considered that this proposal undertakes that requirement alongside the importance of its setting. The site is on the edge of the historic core of the village and provides the boundary between the larger curtilages of the traditional properties and the closer knit, higher densities of the additions which have taken place more recently. The plan attached to this statement demonstrates plot sizes within the vicinity of the appeal site. ([Appendix 6](#))
- 9.8 The proposal has taken its lead from its surroundings and is more akin with the characteristic historic rural development towards the village centre. The appellant considered it inappropriate and undesirable to follow the regimented suburban layout of the large estates to the side and rear of the proposed site and wished to offer a more sympathetic and informal layout to bridge the area between the looser historic forms and the incongruous estates. The proposal aims to steer away from and not replicate the mistakes of the more modern development within the vicinity.
- 9.9 The proposal represents a development that is both sympathetic and respectful of the organic pattern of the existing traditional neighbouring development and the overall character of the village. The proposed dwellings represent house sizes which are considerably smaller than many nearby dwellings; the external floor area of the dwellings proposed range from 132m² to 171m² as detailed in the design and access statement, and the gardens are also evocative of the nearby homes in both size and form, and in many cases are significantly smaller; plot 1 is just over the 350m² bench mark the emerging Core Strategy recommends for the plot size of affordable housing for local needs in rural areas (Policy RA2 villages).

- 9.10 The NPPF asks for densities to 'reflect local circumstances' (47) and for LPA to 'address the needs of all types of housing, including affordable housing and the needs.....of people wishing to build their own home'. Self-build/custom build is acknowledged by Government initiatives and expanding policy legislation to be an affordable solution which meets the needs of a group of people whose requirements should be supported through local planning policy and decisions.
- 9.11 The LPA has not 'objectively assessed housing needs' as the NPPF recommends, and cannot show it has met these needs, including 'homes for families and those people wishing to build their own homes' outlined in the NPPF. These 4 self-build plots would meet needs not facilitated elsewhere.
- 9.12 In a final point concerning the "inefficient use of land" part of the refusal, it is apparent that the LPA does not use this reasoning elsewhere in the county for applications in similar rural locations. The proposed density of the appeal site, including the access and shared driveways, is 12.1 dwellings per hectare (which equates to an area of 0.08 hectares per dwelling). Many proposals for development within the rural areas have been granted consent for residential development with similar densities. One recent example is for a site measuring 0.27 hectares in the centre of a very similar main village where consent was granted for 5 dwellings. It should be noted there were no constraints such as a nearby Scheduled Ancient Monument and the site was outside the conservation area.
- 9.13 The officer's report concluded that this development which proposed 5 dwellings "*makes efficient use of land within the village built up area, to which it is considered each property will have sufficient amenity space. The dwellings are of a scale and design that are acceptable in appearance, using external construction materials that will complement and enhance the surrounding area and with conditions attached to any approval notice issued will further ensure a high quality build, which is a requirement of the NPPF*". (The application details are available on the Council's website under application P141157/F.)
- 9.14 The refusal also listed as a reason, *the detrimental impact on the setting of the nearby Scheduled Ancient Monument Weobley Castle and upon the character of the Conservation Area*. The appellant raises concerns over this reason in light of the actual consultee comments from the Historic Building Officer ([Appendix 7](#)). Due to these concerns, the appellant engaged the services of Conservation Consultant, Mr Colin Richards MBE, BA Hons, Dip Arch Cons for an independent opinion. Mr Richards' findings were as follows and his response is attached. ([Appendix 8](#))

“The gap site in question is elevated above the road on the southern margin of the village characterised by low density development of individual houses set randomly on large plots. However adjacent to the site and beyond the chapel a modern estate of utilitarian housing is perhaps incongruous to the historic character of the village and introduces a significant discordant element in the area and particularly views from the castle. The proposed residential development of the site provides opportunity to “repair” this ragged edge through a picturesque arrangement of simple vernacular designed houses using a palette of materials established in the village which would effectively screen unsympathetic items and enhance the setting of the castle and its environs. The 19th century chapel is a strong element in the street scene and therefore positioning of any new housing should respect this feature.”

- 9.15 The above opinion was shared with the LPA during a site meeting post refusal. At that meeting it was agreed between the Council's Historic Building Officer and Mr Richards that there would be no detrimental impact upon the SAM or the Conservation Area and that the proposal was appropriate to its setting and was likely to improve the view from the SAM and road towards the development on Chapel Orchard. The on-site meeting confirmed the requirement for the site to provide 12 dwellings was no longer pertinent and its setting was key to a successful proposal. Further notes from the meeting are contained within the email correspondence at attached. (Appendix 9)
- 9.16 Since receipt of the refusal and the site meeting in October, the appellant has tried to reach agreement with the LPA and to establish what is envisaged as an acceptable scheme in the light of the agreement about there being no impact upon the historic environment and the agreement concerning the out of date local plan allocation.
- 9.17 The email correspondence attached demonstrates the post refusal negotiations that have been undertaken to endeavour to reach a compromise and a way forward for this site. (Appendix 10) It is clearly demonstrated through the correspondence that the appellant was not going to achieve clear guidance to enable the submission of a further application which may be deemed acceptable. Further email correspondence with the Team Leader concluded similarly. (Appendix 11)
- 9.18 The appellant has shown a huge commitment to delivering this site over a long period of time and throughout this time, the process of negotiation has been incredibly difficult, frustrating and unnecessarily complex/expensive.

10.0 CONCLUSION

- 10.1 The reasons for refusing the application on conservation grounds have been deemed unreasonable through the post refusal discussions with the LPA and the matter of affordable housing contributions is no longer relevant with regard to this particular proposal.
- 10.2 The remaining issue which stands in the way of this site being developed is that of perceived inefficient use of land. This proposal should not be judged using obsolete, flawed and out of date strategic allocation criteria, within a local plan of housing delivery policies that are also obsolete and out of date in a village that has exceeded its proportional growth targets of 14% over the period 2011-2031 and its social housing obligations.
- 10.3 The current plan is considered out of date and accordingly the proposal should be judged against criteria contained within the National Planning Policy Framework.
- 10.4 The dwellings proposed would provide self-build opportunities, designed to be exceptionally sustainable and to allow for an element of live work and to adapt to changing circumstance. These houses are super insulated, with minimal energy demands, low embodied energy and with low carbon emissions or production; built from natural, local materials such as lime render and mortars, green oak, handmade clay tiles and bricks, weather board and local stone. The construction detail provides homes that are virtually airtight with minimal thermal bridging, eliminated heat loss and superlative thermal retention. The appellant's award winning waste minimisation policy diverts and recycles more than 90% of construction waste from landfill. The house packages are made locally reducing transport miles and would be built using local labour, craftsmen and suppliers. It is intended the homes would have underfloor heating and air source heat pumps, with rainwater harvesting and passive house construction principles.
- 10.5 The landscaping of the site would ensure that increased opportunities for biodiversity enhancement, ecology improvement and green corridors/connectivity are created - as well as a positive visual impact upon the Conservation Area and the ambience of the SAM. The shared landscaping includes native traditional hedges, indigenous tree planting, wide grass verges and local dry stone walling - all of which bring species protection, habitat creation and connectivity improvements.
- 10.6 The land for these self-build opportunities within the development boundary of this main village is available, achievable and deliverable and in accordance with the requirements

within the Ministerial Foreword of the NPPF "...development that is sustainable should go ahead, without delay...".

- 10.7 In economic terms, Border Oak is committed to delivering these dwellings immediately providing homes to meet the local deficit, delivering New Homes Bonus, Council Tax, local spend of the new occupants etc. The construction phase will provide employment opportunities for a very local company, generating revenue and jobs for the county. By designing family homes for self-build opportunities, it is anticipated that new young people will be encouraged to the village and to Herefordshire to support the services and facilities.
- 10.8 There are no adverse impacts that might significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF as a whole. The proposed development is of a scale and siting which is sympathetic to the village. The proposal will assist this rural community in maintaining and promoting its sustainability by helping to sustain services and provide a wider range of housing.
- 10.9 The development meets the aims and objectives of the NPPF in seeking to promote healthy and sustainable rural communities and adopts a positive approach towards promoting a strong rural economy. The proposal is policy compliant, sustainable (socially, economically and environmentally), represents good design, is sensitive and responsive to the local area and can be delivered quickly as a modest, but entirely appropriate, contribution to housing delivery. The proposal accords with the aims and objectives of the NPPF which is considered to be the relevant guidance given Herefordshire Council's out of date development plan and inability to deliver a 5 year housing land supply.
- 10.10 Border Oak has always responded to and accommodated the myriad of issues and demands placed against this site, which is allocated for development, yet sterilised by out of date policy and impossible expectations. It is hoped that it has been demonstrated that the appellant has shown an unusual commitment to finding a positive and acceptable solution, over many years and at significant cost, for this site. The current proposal has taken both the general essence and individual specifics of the NPPF to produce a scheme that is exemplary, sympathetic, responsive and immediately deliverable.