

**Supplement to the agenda for**

# **Planning and regulatory committee**

**Wednesday 23 January 2019**

**2.00 pm**

**Council Chamber, The Shire Hall, St Peter's Square, Hereford,  
HR1 2HX**

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## Appeal Decision

Hearing held on 28 September 2016

Site visit made on 28 September 2016

**by JP Roberts BSc(Hons), LLB(Hons), MRTPI**

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

**Decision date: 17 November 2016**

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**Appeal Ref: APP/W1850/W/16/3149481**

**Land south of the B4221 and north of Lovers Walk, Gorsley, Herefordshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr J Hickton against the decision of Herefordshire Council.
  - The application Ref 153661, dated 14 December 2015, was refused by notice dated 4 February 2016.
  - The development proposed is a residential development of 26 homes of which 10 will be affordable.
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### Decision

1. The appeal is dismissed.

### Procedural matters

2. The application is made in outline with all matters other access being reserved for subsequent approval. An illustrative plan was submitted showing all but one dwelling served from a main access, with a further dwelling served by its own access.
3. A planning agreement under Section 106 of the Town and Country Planning Act 1990 was submitted at the Hearing. The agreement makes provision for affordable housing and the payment of financial contributions towards education, transport, recreation and recycling facilities. I shall refer to this in more detail below.
4. The appellant submitted an amended access plan with the appeal, which includes the provision of a footway along the site frontage and up to a nearby bus-stop, visibility splays for the secondary access, the relocation of a proposed "Puffin" crossing and varied radii to the main access. I consider that the plan would not materially change the nature of the development proposed, and that no-one would be prejudiced because they might have been denied an opportunity to comment. No-one had any objection to my considering the plan, and therefore I have taken it into account in my decision.

### Main Issues

5. The Council confirmed at the Hearing that the legal agreement overcame the reason for refusal relating to affordable housing, and that the amended access plan overcame the parts of the highways reason for refusal concerning visibility and the location of the "Puffin" crossing. Accordingly the main issues are:

- i) the effect of the proposal on the character and appearance of the surrounding area;
- ii) the effect of the proposal on highway safety;
- iii) the effect of the proposal on flood risk and the health of nearby residents, and
- iv) whether the proposal would be a sustainable form of development having regard to national and development plan policies in respect of the delivery of new housing in the light of the Council's inability to demonstrate a 5 year supply of deliverable housing land.

## **Reasons**

### *Character and appearance*

6. The Council has made it clear that the site is suitable for some form of residential development. Herefordshire Core Strategy (CS) Policy RA1 seeks a minimum 14% housing growth within the Ross-on-Wye Housing Market Area (HMA) in which the appeal site falls. Gorsley is one of the settlements identified in CS Policy RA2 where housing growth will be supported in or adjacent to those settlements. A criterion of Policy RA2 requires that the design and layout of proposals should reflect the size, role and function of each settlement and be located within or adjacent to the main built up area.
7. The site is within or adjacent the built-up area of the settlement. I was told that housing delivery in Gorsley is well on its way to meeting the target growth rate of 14%. Regardless of that, the target figure is a minimum, and having regard to the aim of the National Planning Policy Framework (the Framework) to boost significantly the supply of housing, I consider that the proposal would accord with the broad objectives of national and local policy.
8. Gorsley has a mixed character. The B4221 runs through the village in a roughly east-west direction, but most of the built development lies on the south side of the road, in irregular groups and clusters along a network of lanes. Even so, the road has many of the village facilities along it, including the post office, a public house, a school and bus stops, and in my opinion, it plays an important role in defining the character of the village.
9. The Council has referred me to its Landscape Character Assessment, which was adopted as Supplementary Planning Guidance (SPG) in 2004. One of the typologies is that of "forest smallholdings and dwellings" which is described as intimate, densely settled landscape characterised by strings of wayside cottages and associated smallholdings which nestle within a complex matrix of pastoral fields and narrow lanes.
10. I consider that the B4221 retains the sporadic grouping of wayside dwellings that is characteristic of this typology. Development is sparse along the road, with no large groups of houses. To the south, there is the dense network of lanes which contain individual dwellings, and a considerable amount of infill, some comprising individual plots, with others forming small groups of houses or bungalows. There are no large estates or other large groupings of houses visible from the B4221, and the indicative layout, with plots much smaller than is typical in the area, would appear starkly at odds with the prevailing distinctive character that I have identified.

11. Some of the Council's criticisms were of the particular layout shown on the illustrative plan, and could be addressed in a reserved matters application. The appellant argued that an alternative, less dense layout could be devised to address these concerns. However, to my mind, the constraints on the site in terms of the need to provide an internal access road and to carry out replacement roadside hedge planting, as well as providing acoustic fencing to mitigate the effect of road noise would be likely to concentrate dwellings in a dense group, which would be inimical to the more scattered and lower density pattern of development which is characteristic of the area.
12. I was told at the Hearing that the detailed drainage solution might result in a greater land area being required for pumping stations or ponds than is indicated on the illustrative plan. This may have an impact on the eventual layout, and it reinforces my concerns in relation to the adverse impact of the proposal on the character and appearance of the area referred to above.
13. The Council accepts that the loss of the roadside belt of trees and hedgerow and its replacement with a set-back line of planting is an inevitable consequence of providing an access with adequate visibility, it would take many years for the replacement planting to fulfil the role played by the existing planting in providing a semi-rural feel to the approach to the village. Although partly mitigated by the proposal to provide replacement planting, the loss would nevertheless contribute to the overall harm that I have found.
14. I therefore conclude on this issue that the proposal would result in significant harm to the character and appearance of the surrounding area and would conflict with CS Policies SS6 and LD1, which respectively deal with environmental quality and local distinctiveness and landscape and townscape.

*Highway safety*

15. The proposal would provide a footway along the site frontage, and to the west of the site it would continue for a further 50m or so to reach a bus-stop. The Framework says that developments should be located and designed where practical to give priority to pedestrian and cycle movements, and have access to high quality public transport facilities, and to create safe and secure layouts which minimise conflicts between traffic and cyclists or pedestrians. Thus, the provision of a footpath to link to the nearby bus-stop is consistent with this policy.
16. Manual for Streets (MfS) says that the minimum unobstructed width for pedestrians on lightly trafficked streets should generally be 2m. The footway proposed would be 2m for much of its length, but beyond the appeal site, from what I observed on my site visit, the highway verge would accommodate a footway width which would be likely to be as low as 1.15-1.2m.
17. Clearly the use of the word "generally" suggests that lower widths may be acceptable in certain circumstances, and MfS shows that a width of 1.2m would allow an adult and child to pass side by side. However, the advice also says that additional width should be considered between the footway and a heavily used carriageway. In this case, the B4221 is heavily used, especially during peak hours. The carriageway width is about 6.4m which provides little clearance between larger passing vehicles and the footway edge. Although there is a 40 mph speed limit in force, the surveyed 85<sup>th</sup> percentile figure is 49mph, and during the morning peak, there were several instances of vehicles

using the westbound carriageway exceeding 56 mph. In my view, a footpath width below the 2m minimum standard advocated in MfS would not provide a safe route for pedestrians in these circumstances. The potential danger would be likely to dissuade people from using the footway, particularly the parents of children, who may be more readily distracted and for whom a momentary lack of concentration leading to their stepping out into the carriageway could be fatal.

18. Whilst I appreciate that the existing footpath on the opposite side of the B4221 is also narrow, I consider that the need to ensure that the bus-stop can be safely and conveniently accessed on foot is an important objective. For the most part, this can be met, but the section of the footpath below 2m width would pose a danger to safety, and may preclude its use. I consider that this would result in significant harm, and would fail to meet the core objective of the Framework to make the fullest possible use of public transport, walking and cycling.
19. The Council also wishes to see a footpath to serve the bus stop some 230m to the east of the appeal site access. Although both bus stops are served by the same services, the Council considers that those occupiers who would live closer to the easterly bus-stop, which are likely to include a significant proportion of the houses, would be more likely to use it rather than the one to the west. I agree that this is a likely preference, not only because it would be nearer, but access to it would avoid the slight incline on the route to the western stop.
20. In the absence of a footway along the southern side of the B4221, occupiers would need to cross the main road to access the existing footway on the north side of the B4221 and then cross again to reach the bus stop. I agree that it would be preferable to have ready and safe access to the bus stop most likely to be used by occupiers.
21. Had the proposed westerly footway been acceptable, I would have found that the failure to provide a suitable footway to the easterly bus stop would result only in modest harm, but as it is, the failure to provide suitable access to either bus-stop causes significant harm to highway safety, and conflicts with CS Policies MT1 and SS4, both of which deal with highway safety and the promotion of travel other by car.

#### *Drainage*

22. The Council accepted at the Hearing that a technical solution to both foul and surface water drainage could be achieved, subject to sufficient detail being provided to demonstrate the infiltration rates across the whole site and at depth, and there being adequate capacity in any attenuation system to accommodate extreme conditions and pump failures. In the light of this acceptance, I consider that the aim of national guidance and CS Policies SD3 and SD4 to provide appropriate flood storage compensation measures can be met.
23. I understand concerns about the prospect of an increased risk of flooding of nearby land, which the Framework recognises as an important issue. However, in the light of the evidence I am satisfied that there is adequate potential within the site to ensure that both surface and foul drainage can be adequately addressed. Such a scheme might require smaller houses or a different layout from that indicated in the application plans, but I consider that details of such a

scheme are not essential to be provided at outline stage, and thus the failure to provide a fully-worked up scheme is not a sufficient justification to withhold permission.

*Balance*

24. It is common ground that the Council cannot demonstrate a 5 year supply of deliverable housing land (plus an appropriate buffer). In such circumstances, the Framework provides that relevant policies for the supply of housing should not be considered up-to-date. Paragraph 14 of the Framework sets out the presumption in favour of sustainable development which, for decision-making means, where relevant policies are out of date, granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or where specific policies in the Framework indicate that development should be restricted.
25. There are no relevant Framework policies which indicate that development should be restricted. Having regard to the component dimensions of sustainable development there would be social benefits in providing 26 additional housing units in a county where there is an acknowledged shortfall and by adding to the local community. Having said that, the Council points out that the shortfall has been substantially lessened in the last year, and that the trajectory is one of improving supply. Moreover, housing delivery in Gorsley is well on its way to meeting its 14% growth target, and only nine more dwellings are required during the plan period to do so. Whilst there is a considerable need for affordable housing in the county, again Gorsley has performed well, and only 2 houses are required to meet the target within the plan period. Thus the social benefits of providing new and affordable houses are moderate.
26. Economic advantages would also arise from the construction and occupation of the dwellings. The provision of a footpath which could be used by local residents as well as the occupiers of the proposed dwellings would also provide some benefit, but its narrow width would not make it safe, and this reduces the weight I afford such a benefit.
27. Set against these considerations is the harm that I have found that would result to the character and appearance of the village. As a result the environmental role of sustainable development would not be fulfilled. These adverse impacts would significantly and demonstrably outweigh the benefits identified. When assessed in the round the proposal would not be a sustainable form of development. I find that there would be a conflict with the development plan as a whole and that this conflict is not outweighed by other considerations including those of the Framework.

**Obligation**

28. The obligation offered by the appellant would make provision for affordable housing and contributions towards education, transport, recreation and recycling facilities. On the basis of the evidence before me I consider that the obligation provisions would be necessary and would otherwise meet the tests set out in the Framework. However, they would not overcome the harm that I have found, and do not justify granting permission.

**Conclusion**

29. For the reasons given the proposal is unacceptable and the appeal should fail.

*JP Roberts*

INSPECTOR

**APPEARANCES**

FOR THE APPELLANT:

Gareth Sibley	RCA Regeneration
Sian Griffiths	RCA Regeneration
David Neale	David Tucker Associates
Paul Tinley	THDA Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Roland Close	Herefordshire Council
Elizabeth Duberley	Herefordshire Council
Jill Tookey-Williams	Herefordshire Council
Arfon Edwards	Herefordshire Council
Hayley Crane	Herefordshire Council

INTERESTED PERSONS:

Maxwell Gough	Linton Parish Council
Graham Price	Gorsley and Kilcot Parish Council
Gordon Martin	Local resident
Dr Peter Stamper	Local resident
Mo Phillips	Local resident
Don Mackenzie	Local resident

DOCUMENTS

- 1 Section 106 agreement submitted by the Council
- 2 Statement of CIL compliance submitted by the Council
- 3 Safety Audit addendum submitted by the Appellant
- 4 Enlarged and annotated extract of plan 16251-06A submitted by the Appellant
- 5 Plan showing land in Highway Authority ownership submitted by the Appellant

