
Appeal Decision

Inquiry Held on 8-10 October 2019

Site visit made on 10 October 2019

by Zoe Raygen Dip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 November 2019

Appeal Ref: APP/W1850/W/19/3225309
Dymock Road, Ledbury HR8 2HT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Ian & Kathleen Griffiths and Gladman Developments Ltd. against Herefordshire Council.
 - The application Ref 184032, is dated 31 October 2018.
 - The development proposed is the erection of up to 420 dwellings with public open space, land for community facilities, landscaping and sustainable drainage system (SuDS) with all matters reserved save for access.
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Decision

1. The appeal is dismissed, and planning permission is refused.

Preliminary matters

2. The application the subject of the appeal was submitted in outline form, with only access to be considered at this stage. Matters relating to appearance, landscaping, layout and scale were reserved for future consideration. However, the illustrative Development Framework Plan (DFP) broadly identifies structural landscaping, open/play space, land for community facilities, potential open water storage areas and primary vehicular routes.
3. The appeal is made against the Council's failure to determine the outline planning application. The Council has confirmed that, had it been in a position to determine the application, it would have refused planning permission for seven reasons. These relate to the size, scale and location of the proposed housing, its accessibility, the safety of the access, the effect on the character and appearance of the area and living conditions and the lack of a Section 106 agreement to secure affordable housing and financial contributions towards community infrastructure.
4. With agreement, after the Inquiry, a Unilateral Undertaking (UU) under S106 of the Town and Country Planning Act 1990 was submitted. This secures contributions towards education, health services, outdoor sports provision, transport infrastructure, a Transport Regulation Order (TRO) and monitoring by the Council. It also includes for the provision of 40% affordable housing, the provision and management of open space and a Sustainable Drainage Scheme (SuDs) and the mechanism for the transfer of the community facilities land. At

the Inquiry, the Council confirmed that the UU addressed its reason for refusal regarding the lack of a section 106 agreement.

5. The Council considers, in one of its putative reasons for refusal, that the proposal has not demonstrated that the site can accommodate the scale of development proposed without removal or harm or long term risk to a woodland, individual and groups of trees individually and cumulatively covered by Tree Preservation Orders, some of which are classified as ancient or veteran trees.
6. Following discussion between the Council and the appellant, plan reference 8028-L-07 B was submitted at the Inquiry. Dispute remains between the parties as to whether T11 and T12, both protected, could be classified as veteran trees. However, irrespective of their classification, the submitted plan shows a root protection area for both trees of 22 metres, which is the distance that would be required for a veteran tree. On this basis, the Council confirmed in closing that, subject to the imposition of an appropriate condition ensuring the agreed buffer zone around the trees be implemented, its concerns had been resolved. Therefore, it was not pursuing this reason for refusal. Having viewed the trees on site and the proposed buffer zones I see no reason to disagree with this approach.
7. Within the Statement of Common Ground (SOCG) regarding Housing Land Supply it is agreed that the Council is unable to demonstrate a five year housing land supply. While the appellant believes that the supply may be less than that claimed by the Council, it is also agreed that the shortfall in supply against the five year requirement is significant.
8. Just prior to the Inquiry the appellant submitted a plan 1394/39 showing a new cycle link between Oakland Drive and Biddulph Way which would prevent motor vehicle access. The Council objected to the submission of the plan as it had not been the subject of public consultation. Therefore, in its opinion residents may be prejudiced by its consideration as part of the proposals. I return to this matter below.
9. Construction of houses is underway to the north of the appeal site (referred to hereafter as the Barratt's site). In 2016 planning permission was granted on appeal for up to 321 dwellings and associated works¹.
10. During the course of the Inquiry, concern was raised by interested parties regarding the level of consultation carried out for the Inquiry. However, from the evidence before me, and my observations on site of site notices displayed near the appeal site, I am satisfied that the consultation has been carried out in an acceptable manner, and in accordance with relevant legislation.

Main Issues

11. In that context, the main issues are:

- the effect of the development proposed on the character and appearance of the area, including the landscape setting of the settlement and the setting of the Malvern Hills Area of Outstanding Natural Beauty (AONB);
- whether or not the appeal site is within an accessible location;

¹ APP/W1850/W/15/3009456 (the 2016 permission)

- whether or not the proposal would provide an appropriate site for development having regard to local and national planning policies that seek to manage the location of new development;
- the effect of the proposed access arrangements on highway safety; and
- whether or not the proposed access arrangement would provide appropriate living conditions for future residents of the adjacent housing development with particular regard to noise and disturbance and the effect on the intended function/purpose of the open space , including its enjoyment by future residents of that development.

Reasons

Character and appearance

12. The area within which the appeal site is located strongly reflects the characteristics of the Principal Timbered Farmlands Character Type (CT)² within which it is located. This CT has a rolling lowland landscape, a small scale landscape enclosure pattern with hedgerows and trees and an ancient wooded character portrayed by hedgerows and woodland. This gives an attractive rural character and appearance to the area.
13. The Inspector on the previous appeal stated that *"the Council's evidence, supported by the Sensitivity Analysis³, confirms that the landscape baseline of the area immediately south of Ledbury including the appeal site, is significantly degraded due to the loss of hedgerows and subsequent increase in field size, and the absence of hedgerow trees"*. However, the appeal site before me now is mostly bounded by mature hedgerow including trees. In addition, an historic boundary is maintained by a hedgerow across the site extending from Dymock Road. Furthermore, a relatively large area of marshy grassland is located adjacent to Dymock Road and three mature oak trees the subject of a TPO are located within the site. Therefore, while the intimate, small scale nature of the landscape on this appeal site has been eroded due to the removal of some internal hedgerows⁴, I cannot agree that it is significantly degraded. In my view its particular characteristics still make a positive contribution to the landscape character of the area. Furthermore, the Inspector noted that the Barratt's site was also subject to urban influences such as the by-pass, the roundabout junction, Martins Way estate, retail and industrial estate and Hazel Farm.
14. The site rises to the east and as a result it is apparent in views from along Dymock Road and further afield. Dymock Road is mostly bounded by hedgerow, giving it an enclosed rural character. Although a minor road, it still forms an approach into Ledbury where it is possible to see the relationship between the AONB and the adjacent lower lying land to the west, including the appeal site.
15. All in all therefore, the open undeveloped nature of the appeal site together with the attributes I have described, means that it contributes positively to the rural character and appearance of the area and the setting to Ledbury and the

² Herefordshire County Landscape Character Assessment

³ Herefordshire Council Urban Fringe Sensitivity Analysis 2010 (SA)

⁴ Mr Nye Proof of Evidence Appendix 3

AONB. I am therefore of the view that its particular characteristics and location means that it has a medium to high sensitivity as noted in the SA.

16. I note that Map 4 within the Ledbury Neighbourhood Plan 2018-2013 made in 2018 (LNP) highlights an area to the east of the appeal site and the Barratt's site as being visually prominent. This does not mean to say though that other areas are not important to the setting of Ledbury. In this respect, I note that the majority of the proposed housing for Ledbury is directed to the north of the town to, amongst other reasons, protect the more environmentally sensitive areas elsewhere.
17. The proposed housing would extend a considerable distance into the countryside which would create a vast expanse of suburban development in the largely rural landscape to the detriment of the character and appearance of the area and the setting of Ledbury. While development on the Barratt's site would be largely contained within the main area of urban influence from Ledbury, that on the appeal site would extend much further into the open countryside both to the south and east, with very limited, if any, urban influence as context. While Hazel Farm is opposite the site to the west, it is set well back from the road and screened by vegetation. I acknowledge that the edge of the Barratt's site would be apparent from the appeal site, however I understand that the intention for this site is to have a vegetated buffer to the south boundary in order for it to be integrated into the landscape providing a robust green edge.
18. The proposal would also incorporate housing on the higher land to the east of the site which would be particularly visible from Dymock Road, creating an incongruous swathe of housing across the appeal site. This would be different to the Barratt's site where development is largely contained to the lower parts of the site and open space placed within the higher parts.
19. Furthermore, a substantial part of the hedgerow along Dymock Road would be removed to provide an emergency access to the development, whether providing the absolute or desirable minimum visibility splay. While a new hedgerow would be planted prior to its removal, which would be species rich, it would be set back in the site, eroding the sense of enclosure experienced along the road. Although it would be opposite Hazel Farm where the hedgerow is already set back, the location of the proposed hedgerow would increase and emphasise the lack of enclosure to this part of the road to the detriment of its character. Furthermore, it would introduce an incongruous urban feature which would allow views into the site of the housing, causing substantial harm to the rural character and appearance of the road.
20. The DFP makes no reference to the existing hedge across the site, or its retention. Indeed, the proof of evidence of Mr Nye for the appellant refers to its removal⁵. Mr Nye's evidence also includes an alternative DFP, which demonstrates how it could be retained, together with the introduction of other hedgerows depicting older field boundaries. However, I have been provided with no definitive plan which shows, using this scenario, how the required road network and number of houses could be accommodated and provide meaningful hedgerows in the site. Furthermore, it would still require the removal of some of the hedgerow to allow access.

⁵ Mr Nye Proof of Evidence Appendix C

21. At the Inquiry, the appellant confirmed that the area of marshy grassland, would be retained. I am satisfied based on plan 8028-L-07 B that this would be possible, together with the provision of meaningful community facilities.
22. The appellant proposes a belt of landscape planting along the eastern and part of the southern boundary, which it is considered would not only appropriately integrate the development but would link two areas of woodland copse. However, the character, as I saw it, is of small individual copses of woodland, set within the rural landscape, perhaps linked by hedgerows, with some trees within those hedgerows. Therefore, even though woodland planting is encouraged in this CT, a link through a wide belt of trees would create a mass of planting in a manner which is not typical of the CT. As a result, it would be incongruous within the landscape.
23. In terms of landscape character therefore, there would be a considerable change to the appearance of the site resulting in the direct loss of open countryside and its replacement by an incongruous suburban development with little built context in its mainly rural setting. In addition, it would result in the removal of a substantial amount of existing hedgerow. There would therefore be the erosion of landscape features typical of this area causing considerable harm to the rural character and appearance of the area and the setting of Ledbury.
24. I appreciate that the Council's initial consultation response indicated that in year 15 the impact on local landscape character would be moderate, but this is not the case presented at the Inquiry.
25. The Council's particular concern with regard to the setting of the AONB relates to views across the appeal site from the west. From Dymock Road, although the community facilities would be in the foreground when approaching Ledbury, the housing would be visible in the context of AONB, particularly that on the higher slopes of the appeal site. While the planting would provide some screening in the longer term, this would be less effective in the wintertime and would be limited along the majority of the southern boundary where the housing would be particularly prominent.
26. Users of Dymock Road would be drivers, and therefore have a lower level of sensitivity. Furthermore, Dymock Road is a minor road. However, it is still a route that is used to access Ledbury from the south, where I have found the sensitivity of the landscape to be medium to high given its relationship to the AONB, and the landscape features it contains
27. Viewpoints from Durnlow Common and Marcle Ridge on the Hereford Trail have been identified within the Malvern Hills AONB Views Project as being a Special View Corridor (Viewpoint 20) and an Exceptional View Corridor (Viewpoint 21). I saw that the relationship between Ledbury and the AONB, and the particular contribution to setting made by the juxtaposition of high and low ground, including the appeal site, could be readily appreciated from these viewpoints. The PPG⁶ states that land within the setting of an AONB often makes an important contribution to maintaining their natural beauty, and where poorly located or designed development can do significant harm. This is especially the case where long views from or to the designated landscape are identified as important as is the case here.

⁶ Paragraph: 042 Reference ID: 8-042-20190721

28. I saw that even though the viewpoints are 7-8 km from the appeal site, both it and the Barratt's site are visible, although the latter appeared contained within the existing urban influence of Ledbury. However, the quantum of development on the appeal site, would extend the settlement to a significant degree to the south, creating a large suburban mass of built form that would replace the current open setting of the AONB to a considerably harmful degree. There is minimal space allocated for planting to the west of the appeal site and therefore, even in the long term and with a careful choice of a materials palette, the housing would be visible in the landscape from these important viewpoints.
29. The Malvern Hills AONB Management Plan states that if the quality of the setting declines then the appreciation and enjoyment of the AONB diminishes. I appreciate that views from the west are just one part of the wider setting of the AONB. However, given the particular contribution the appeal site and its surroundings make to its setting, then the proposed development would lead to material harm to that setting.
30. An interested person provided detailed evidence to the Inquiry regarding landscape impact, concluding that the appeal site could accommodate some development to the north of the existing hedge on site. However, this assumes the retention of the hedge and the reinstatement of substantial landscape features to the south of it. The proposal before me is different and proposes a significantly larger area of development.
31. A Public Right of Way (PROW) runs to the east of the appeal site. I saw that when walking along it, in a southerly direction from Leadon Way, housing on the Barratt's site is visible in the context of Ledbury. Such views are experienced up to a copse of woodland. Beyond that copse, views across to the west open up to the wider open countryside. At construction and completion, the proposed housing would be highly visible for a significant distance and would appear as an incongruous feature within the wider countryside, with very limited visible context in the form of existing built development.
32. Whilst I accept that in the longer term views of the housing may reduce due to planting becoming established, in my view it would not totally screen the development, particularly in the winter months. Therefore, I cannot agree that the harmful effects would be reduced to minor adverse as suggested by Mr Nye.
33. Views of the residents of Hazel Farm and Highbridge Farm would change due to the development. However, Hazel Farm is highly screened by vegetation and the views are only likely to be experienced when exiting the site. Furthermore, Highbridge Farm is sited with a main outlook to the east and west. Therefore, any harm caused in the long term would be minor.
34. Views from the footpath adjacent to Highbridge Farm would also change for a short extent. However, this would be in the context of being adjacent to an existing residential property. I am satisfied therefore, that any harm experienced would be minor.
35. Bringing all the above together, I am of the view that the proposal would be considerably harmful to the character and appearance of the area and the landscape setting of Ledbury and the AONB. It would therefore be contrary to

Policies SS6, LD1 and LD3 of the Herefordshire Local Plan Core Strategy 2011-2031 adopted 2015 (the CS), Policy BE2.1 of the LNP and paragraph 170 of the National Planning Policy Framework (the Framework). These require that development recognises the intrinsic character and beauty of the countryside, development proposals conserve and enhance those environmental assets that contribute to the County's distinctiveness, in particular its landscape and hedgerows. Development should also demonstrate that the character of the landscape has positively influenced the design, scale, nature and site selection, protection and enhancement of the setting of settlements and designated areas and conserve and enhance the natural, historic and scenic beauty of the AONB and respect the setting of the AONB.

Accessible location

36. The Inspector for the Barratt's site found that it provides a good context for journeys to be undertaken by foot and by cycle to access everyday services, facilities and amenities that would be required by future occupiers on a daily basis and that a range of destinations are accessible from the site by public transport, including amenity and employment locations.
37. The Inspector stated that the site lies within 1.6 km of the town centre, well within the 2 km walking distance usually considered as offering the greatest potential for replacing short car trips. The centroid of the appeal site before me would be about 275 m beyond the distance of the Barratt's appeal site, therefore still within 2 km of the town centre.
38. Nevertheless, the tables of distances submitted by both the appellant and the Council show that other than the High School, the rugby and football club, a public house and some employment use, key services and facilities are some distance from the appeal site. In particular the primary school, Aldi, Tesco, Co-op and health facilities would be some 1.6-2.5 km away. While I acknowledge that some residents within the appeal site would be closer, others at the southern extent of the site would be much further away. The Council states that the distances involved would necessitate a walk of between 21-29 minutes to the various facilities. However, this is based on a standard of 80 metres per minute. It does not take account of having to cross roads, including waiting at the proposed toucan crossing across Leadon Way, or the gradient I experienced on the routes. In my view, therefore, the time taken could be longer for some people.
39. These distances exceed the CIHT⁷ 'desirable' 400 m walking distance (200 m for town centres and 500 m for schools) and the 'acceptable' maximum walk distance of 800 m (400 m for town centres and 1 km for schools) with most also exceeding the recommended 'preferred' maximum walking distance of 1.2 km (800 m for town centres and 2 km for schools).
40. Whilst the Government's Manual for Streets (MfS) advises that walking offers the greatest potential to replace short car trips, particularly those under 2 km, it also sets out that walkable neighbourhoods are typically characterised by having a range of facilities within ten minutes walking distance of residential areas (up to about 800m). Furthermore, MfS encourages a reduction in the need to travel by car through the creation of mixed use neighbourhoods with interconnected street patterns where daily needs are in walking distance of

⁷ Providing for Journeys on Foot Chartered Institution of Highways and Transportation 2000 (PJF)

most residents which, based on the evidence before me, would not be achieved by the appeal proposal.

41. Although the guidelines for acceptable walking distances are just that, guidelines, it seems to me that opportunities to access services on foot are limited at this site. Based on the distances involved, I would not expect the majority of residents to walk to local services. This would be even more so in inclement weather, or during the winter months when the lengthy walk to facilities, particularly the primary school, health facilities and shops, and the walk back laden with shopping may not be appealing.
42. Planning for Walking IHT 2015 (PFW) states that people will walk up to 400 m to a bus stop and up to 800 m to a railway station. The nearest bus stop on Martins Way would be about 615 m away. Within the SOCG for Highways it is agreed that there would be new bus stops delivered through the S278 agreement. Plans 1394/32 and 1394 /33 show the potential location for these to the east of the roundabout access to the Barratt's site on Leadon Way. However, there would be little material difference in the distance that residents would need to walk to these than the existing bus stop on Martin's Way and they would still be beyond 400 m as shown on Figure 4 of Mr Jackson's evidence for the appellant.
43. While the contribution within the UU to the Ledbury Transport Study 2019 (LTS) projects includes provision for bus infrastructure improvements, there is no guarantee that there would be a bus stop any closer to the future residents. Indeed, in the Highways SOCG the list of improvements that could be delivered without any other contribution does not include any bus infrastructure.
44. The 132 bus service at the closest bus stop operates to Gloucester via six services per day. The 459 service to Ross-on Wye from the same bus stop only operates on a Thursday. The 417 and 476 services operate more regular services to Worcester and Hereford from bus stops on Biddulph Way. However, those bus stops would be about 880 m from the appeal site, over twice the walking distance highlighted in PFW. Furthermore, the Council's evidence⁸ shows that commuter driving times to the employment destinations would be significantly quicker than catching the bus.
45. Hence, although I accept that there may be some residents willing and able to use local bus services, particularly those to the north of the appeal site, I consider that it would be a low proportion of residents. It seems to me that the opportunity to substitute walking or buses in place of car use is limited on this site. Furthermore, the railway station is some 2.9 km from the appeal site, a distance unlikely to be attractive to most pedestrians.
46. The appellant submits that the national Travel Survey has identified that 80% of all trips of less and one mile (1.6 km) are on foot with the average walk trip being 16 minutes – the equivalent of 1.3 km. 69% undertook a walk of 2 miles (1.6 km) or more at least once a week. However, the majority of the facilities identified by both the appellant and the Council are sited beyond these distances.
47. The appellant has suggested a number of routes from the appeal site to the various services and facilities in Ledbury. The Council has highlighted concerns

⁸ Mr Troakes Proof of Evidence Table JNT-4

regarding the quality of these pedestrian routes. From my observations I found the quality of the routes to be less than ideal, with some incorporating narrow footways and located on busy routes with a lack of lighting. I am mindful though that they are existing routes already in use and therefore offer the most practicable alternatives. Furthermore, I was advised that the Inspector for the Barratt's site had walked these routes and her decision letter did not offer any criticism of them. In any case I have found the majority of residents are unlikely to walk the lengthy distances involved irrespective of the quality of the route.

48. The appellant also identifies a number of cycle routes to facilities. Some use the existing Town Trail which, while not the most direct route, would have the benefit of being off-road. In addition, a contribution is offered in the UU towards identified projects within the LTP. The contribution is based on the particular mix of housing that would be in any reserved matters application. Therefore, at this point the exact amount of contribution is not fixed. The appellant submits it would be in the region of £900,428 based on the likely housing mix. This would have the potential to address most surfacing issues and widening the Town Trail footbridge.
49. In its CIL compliance statement the Council query this amount, based on its use of the open market house requirements for Ledbury in the Local Housing Market Assessment 2013 which, it states, would only lead to a contribution of £659,593. Irrespective of the exact amount, the wording of the UU is such that it would be for the Council to allocate the money to suitable projects some of which could include improvements to the Town Trail. This would be complemented by the provision of advanced cycle stoplines within any S278 agreement.
50. However, in order to reach the Town Trail cyclists would need to use the main carriageway on a number of roads. This would be different to the Viaduct site⁹, where, Mr Troakes for the Council and interested parties explained that, links to the Town Trail would be more direct than at the appeal site and designed with pedestrians and cyclists in mind. The letter from Bloor Homes¹⁰ confirms that there would be the creation of new foot and cycle paths with associated pedestrian controlled crossings on Hereford Road to link the site to the Ledbury Town Trail and Riverside Walk and enhancements to public footpath ZB18 to include surfacing, widening and lighting to create a safe foot and cycle path link from Hereford Road to the Town Trail, Ledbury Primary School, recreation ground and the town centre.
51. Other indicative cycle routes identified by the appellant would make use of existing roads including two locations on New Street and Bye Street which are identified by Herefordshire Council in their walking and Cycling Map for Ledbury as having hazardous junctions/crossings. Nevertheless, I accept that the distances involved may result in some residents using cycling to access services, including the railway station. However, the reliance on at least part of the routes with no segregated cycle way may deter less experienced cyclists.
52. I appreciate that the Inspector for the Barratt's site found that to be in an accessible location. However, it is not clear from the decision letter if she had the detailed evidence in front of her regarding the PJF and PFW guidelines that

⁹ 171532

¹⁰ Inquiry Document 16

is before me. In any case, this appeal site is further from the services and facilities than the Barratt's site, and in some cases in the far south eastern corner of the site by a significant distance. As there would be only one point of access from this appeal site onto the Barratt's site, future residents, from the south east corner, would have to walk a significant distance before even reaching the Barratt's site.

53. The appellant has also provided me with a comparison of the distance between the appeal site and services and facilities and that between the proposed Ledbury Viaduct site and those services. It is apparent that with the exception of the primary school, all the distances are above the guidelines within the PJF and PFW. However, it would be closer to the primary school, food shops and the High Street, railway station than the appeal site and a similar distance to the health centre.
54. The implementation of a Travel Plan, which could be secured by a condition, may raise awareness and encourage the use of other means of travel than the car. It may also influence some residents to use these alternative modes of travel. However, given the limitations I have described, I am not persuaded that it would have a significant impact on changing travel modes.
55. Bringing all of the above together Policy SS4 of the CS states that 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. Furthermore, paragraph 103 of the Framework states that significant development should be focused on locations which are or can be made sustainable.
56. My attention has not been drawn to any definitions of high journey numbers or significant development. However, it seems to me that 425 houses would be a significant development capable of generating high journey patterns. Irrespective of whether I take plan ref 1394/39 into account, the appeal site is likely to be accessible by experienced cyclists. However, this would not in itself provide a genuine choice of transport modes as required by Policy SS4 and the Framework, with very limited convenient routes available to access facilities by foot and public transport. Therefore, there would also be conflict with Policy MT1 of the CS and Policy SD1.1 of the Ledbury Neighbourhood Development Plan which seek to include access to services by means other than private motorised transport and promote a reduction in dependency on the private car and encourage environmentally sustainable travel habits.

Policy location

57. The CS does not allocate land directly, nor does it, or the LNP incorporate settlement boundaries. Instead, the CS proposes broad strategic directions for growth in sustainable locations. It was the intention that subsequent plans would allocate large medium and small sites to meet the identified development requirements for the county.
58. Policy SS2 of the Core Strategy confirms that there is a minimum requirement for 16,500 homes over the plan period distributed between Hereford, other urban areas including Ledbury and rural settlements. Policy SS3 seeks to ensure that a sufficient supply of housing land is maintained to ensure the

delivery of the housing requirement in Policy SS2. It also sets out a range of measures that the Council would pursue if the number of new dwelling completions is below the cumulative target figure over a 12-month monitoring period.

59. I appreciate that these policies together with Policy LB1 set out the spatial strategy for the Council. However, in my view the proposal would accord with the requirements of policies SS2 and SS3 through the provision of housing, in accordance with the minimum requirements of these policies within Ledbury, a settlement considered to be a reasonably accessible location.
60. Policy LB1 states that Ledbury will accommodate a minimum of 800 houses during the plan period. The majority of the new housing will be focussed to the north of the town on the Viaduct site in accordance with Policy LB2 which would be expected to bring forward a mixed use development of around 625 dwellings. Further development will take place through the implementation of existing commitments, in fill development, and sites allocated through a Neighbourhood Development Plan.
61. The LNP does not allocate any sites. The appeal site is not an existing commitment, nor does it constitute in fill development. In my view therefore the proposal is contrary to the requirements of Policy LB1, on this alone. However, in addition should the appeal be allowed, the 425 units in conjunction with those already approved on the Barratt's site would lead to about 740 dwellings to the south of Ledbury, contrary to the spatial strategy for the majority of dwellings to be located to the north of the town.
62. While new housing is not exclusively to be provided to the north of the settlement, there is good reason for the majority of the dwellings to be located there. Paragraph 4.5.7 of the CS explains that the policy approach for movement in Ledbury is based on reducing the need to travel by private car. This will be achieved by locating new development within walking and cycling distance of existing and new facilities (including the railway station) and improving and extending sustainable transport routes. Furthermore, paragraph 4.5.3 states that the strategy to deliver new homes mainly in a single location is not only economically viable but also limits development mainly to land of medium-low landscape sensitivity, as identified in the SA, and of lesser environmental merit, with regard to agricultural and biodiversity value. I have already found that the proposal would not be in an accessible location and would be harmful to the character and appearance of the area. It seems to me therefore that the strategy to locate the majority of the housing to the north of Ledbury is based on realistic principles, and the proposal would be contrary to that requirement contained in Policy LB1.
63. If the appeal were allowed then, together with other commitments and extant planning permissions there would be in the region of 1600 dwellings which could be delivered. This figure is well in excess of the proposed number of houses included within Policy LB1 for Ledbury. The CS suggests a minimum figure for each of the other urban areas, presumably taking account of the specific opportunities and constraints within each settlement. However, the figure is a minimum one. I have seen no substantive evidence to suggest that existing services and facilities would be unable to cope with the additional amount of housing, subject to the contributions to particular infrastructure as set out in the UU. Therefore, while the number of dwellings which could be

delivered is high, given the figure in the plan is a minimum in both Policies LB1 and SS2, I am not persuaded that just for this reason the proposal would be in fundamental conflict with those policies.

64. It is agreed by the Council and appellant, that, as the Council is unable to demonstrate a five year housing land supply then, in accordance with footnote 7 of the Framework the most important Policies for the determination of the appeal are out of date and this would include Policies SS2, SS3 and LB1. These policies go to the heart of this main issue and therefore I see no reason to disagree. It is though still open to the decision maker to apply weight to the policies based on the available evidence. In relevant case law¹¹ it is suggested that *"where the development plan upon which the calculation of the five year requirement for a district is based contains a policy distributing development to different areas of the district, the decision-maker may consider such factors as to whether a failure to provide a five year supply in the district is in fact attributable to problems with delivering sites in a discrete part of the district, whether reliance upon the development proposed to address the shortfall would breach the objectives of the distribution policy which continue to be soundly justified and whether the shortfall would be addressed within an appropriate timescale by other means which would not breach the distribution policy"*
65. The planning application for the Viaduct site, although having been the subject of a lengthy delay, is due to be considered at the November Planning and Regulatory Committee. Evidence from Bloor Homes¹² suggests that, subject to approval being forthcoming at that meeting, it anticipates the first new homes being delivered during the 2020/21 monitoring period, having already commenced work on phase 1 of the scheme for submission for reserved matters consent.
66. While there is no guarantee that the application will be approved, indeed there are outstanding objections to the access arrangements, I was advised at the Inquiry by the Case Officer that there would be a positive recommendation reported to the Committee. Even if the ambitious timescale for implementation can be met by Bloor Homes, it is agreed that the site would not deliver 625 dwellings within the plan period. However, using the appellant's figure of a likely 113 dwelling shortfall, the evidence supplied by the Council¹³ suggests that, with other sites, it would still deliver a minimum of 800 dwellings within the plan period. This was confirmed by the Examiner into the LNP who said that *"it is evident that Ledbury is more than capable of meeting strategic policy requirements in respect of housing and housing land, without allocating any sites for residential development"*.
67. In addition, the environmental and accessibility reasoning behind the location of the majority of the development to the north within Policy LB1 is sound and in accordance with Paragraphs 102 and 103 of the Framework. While I appreciate case law¹⁴ suggests that there is no blanket protection of the countryside for its own sake, it seems to me that the approach to choosing the least environmentally sensitive part of the surrounding countryside accords with requirements of paragraph 171 of the Framework.

¹¹ *Edward Ware Homes Ltd v SSCLG & Bath and North Somerset Council* [2016] EWHC 103 (Admin)

¹² Inquiry Document 16

¹³ Inquiry Document 18

¹⁴ *Borough of Telford and Wreakin v SSCLG* [2016] EWHC 3073 (Admin)

68. It is acknowledged that the Council is unable to demonstrate a five year housing land supply and in that situation Policy SS3 requires some action in terms of a partial review of the Local Plan – Core Strategy, or the preparation of new Development Plan Documents, or the preparation of an interim position statement and utilising evidence from the Strategic Housing Land Availability Assessment to identify additional housing land.
69. Although Councillor Harvey suggested that a review of the Core Strategy is underway, there is little evidence before me to suggest that this has commenced in a meaningful way. There have been no Development Plan Documents prepared. An interim position statement was issued by the Council in 2016 following its inability to demonstrate a five year housing land supply within some six months of the adoption of the CS. However, since that time the housing supply figure has fallen from 4.4 years in April 2017 to 4.05 years in July 2019 resulting in a shortfall of 1729 dwellings.
70. The Council has recently published its Housing Delivery Test Action Plan 2019 (HDTAP) which sets out four key actions which include a Core Strategy Review, action in respect of the speed of determination of planning applications, close work with Homes England and not seeking tariff based contributions on dwellings of 10 or less. Published only 3 months ago it is perhaps too early in the process to ascertain whether such actions would adequately address the housing shortfall.
71. However, this needs to be seen in the context of issues raised by the appellant regarding the delivery of significant sites in Hereford. Appendix 1 of the HDTAP states that two sites are dependent on the delivery of the bypass. Councillor Harvey suggested that a decision to put the delivery of the bypass on hold had not been made definitively as the decision had been called in and is still under consideration. Whatever the case, such action causes delay, and Appendix 5 of the CS states that a Compulsory Purchase Order would need to be confirmed by 2016/17 which has not been secured. In which case it goes on to state that the timetable will need to be reviewed to consider alternative delivery arrangements. The appellant details two further sites where planning permission has not been secured as well as the Ledbury Viaduct site¹⁵.
72. Bringing all the above together, I accept that the Policies are out of date, and the Council is unable to demonstrate a five year housing land supply which applies across the district as a whole. However, Policy LB1 does not place a cap on development, its spatial distribution of housing across the settlement is in accordance with the Framework, and on the face of it, it appears capable of delivering in excess of the required minimum number of dwellings within the plan period taking account of social and environmental factors. While I accept that the Council is in the early stages of addressing its housing shortfall, it seems to me that the continued operation of Policy LB1 would not restrict further development coming forward in an appropriate location. Indeed, it identifies that a number of sites which have future potential for development have been identified in the Strategic Housing Land Availability Assessment (SHLAA) and the Council referred me to seven sites to the west of Ledbury which it considers have the capacity to deliver an extra 950 dwellings. While the SHLAA is seven years old, I have seen nothing to suggest that the sites

¹⁵ Bromyard planning application & Leominster southern expansion

may not still be relevant. The Policy therefore still attracts considerable weight.

73. The proposal would meet the requirements of Policy HO2.1 of the LNP through the provision of affordable housing and market housing. However, in my view this relates to proposals meeting a mix of housing types and tenures to create balanced communities which are design matters.
74. For the reasons above, I conclude that the proposal would not provide an appropriate site for development having regard to local and national planning policies that seek to manage the location of new development and therefore it would be in conflict with Policy LB1 of the CS.
75. The Inspector for the Barratt's site was satisfied that the development proposed would not result in material conflict with the vision and spatial strategy for the District when the development plan is considered as a whole. However, the granting of that planning permission has changed the situation since that time and this proposal must be seen in that context when assessed against the relevant Policies. Furthermore, the Barratt's site was identified within both the 2011 SHLAA and the 2012 second review as a greenfield site that is suitable for development, achievable and available. That is different to the appeal site before me now.

Highway safety

76. The appeal site would be accessed at a single point from the Barratt's site with a road of 5.5 m width with 2 m footways on either side. This would be different to the access into the Barratt's site which is a 6.1 m wide carriageway from the roundabout on Leadon Way, with a 3 m shared footway/cycleway on the eastern side, and a 2 m footway on the western side. There is also a dedicated 3 m shared footway/cycleway to the east of the roundabout, which links to a dedicated 3 m shared footway/cycleway within the approved Barratt's site layout.
77. The Council prepared a Road Safety Audit (RSA) of the proposed junction. The Design Manual for Roads and Bridges Standard GG 119 states that the design organisation (Ashley Helme Associates for the appellant) should prepare the RSA brief for submission to the Overseeing organisation (WSP for the Council) for stage 1, 2 and 3 RSAs. While in this instance the design organisation had no input into the RSA, it has had the opportunity to subsequently comment on it as part of the appeal process.
78. The RSA highlighted a number of concerns regarding the operation of the junction. In particular, due to the restricted road width, refuse vehicles and a 12 m coach turning left out of the minor road and right onto the minor road would need to use opposing lanes to make turning movements and may come into conflict with other road users including cyclists.
79. The appellant refers to guidance¹⁶ which is primarily aimed at the trunk road network. It states that allowance should be made for the swept turning paths of the worst case design vehicle which is expected to use the priority junction, unless the design vehicle is expected to form only a very small percentage of the total number of vehicles that will use the junction and any swept path

¹⁶ Design Manual for Roads and Bridges CD123: Geometric design of at-grade priority and signal-controlled junctions

conflicts as a result of the design vehicle encroaching into other lanes will not occur on bends. In this instance the encroachment is unlikely to occur at bends.

80. Refuse vehicles, by their very nature, are unlikely to form a large part of the traffic using the junction. Larger coaches may use the junction in association with the proposed community facilities to the south. Even if the football clubs do take up the community facilities, I have seen no substantive evidence to demonstrate that large coaches would constitute a large percentage of the traffic using the junction. Therefore, I am not persuaded that there would be a high number of larger vehicles using the junction on a regular basis. Furthermore, the appellant estimates that the appeal site would generate only 58 two way cycle trips between 0700 and 1900. This together with the low number of trips by larger vehicles, and the likelihood that they would be undertaking the manoeuvres at a slow speed, given the limitations of the highway, means that the potential for conflict between road users would be limited.
81. The access road would be used by all road users and is not ideal compared to the segregation achieved on the approved layout for the Barratt's site. However, shared links could be incorporated into the layout of the appeal site when considered, by the Council, at reserved matters stage. Therefore, the use of the access road by all users would only be for a short distance and based on the evidence before me would not be materially harmful to those users.
82. The RSA also considers that parked vehicles could obstruct visibility eastwards from the minor road at the junction. The UU includes a contribution towards the making of a TRO to allow for double yellow lines at the junction to enable waiting restrictions. Furthermore, each property has the required off street parking requirements. I appreciate that this does not always mean that parking would not occur on the road. However, together with the proposed TRO this should adequately address any issue of restricted visibility.
83. Finally, the RSA highlights that the retention of the turning head on the access road to plots 94-97 could lead to pedestrians from the appeal site coming into conflict with vehicles using these accesses, where visibility may be restricted by adjacent property fences or walls. However, I am satisfied that the implementation of suitable crossing points could be achieved by the imposition of a condition. Furthermore, I have already found that it is unlikely that pedestrians would use the route on a regular basis.
84. Paragraph 102 of the Framework states that transport issues should be considered from the earliest stages of development proposals, so that patterns of movement, streets, parking and other transport considerations are integral to the design of schemes and contribute to making high quality places. I understand that the Council considers this has not happened on this scheme, as opposed to the ongoing discussions on the Ledbury Viaduct site and the Barratt's site which resulted in a separate cycle and pedestrian access onto Leadon Way from the vehicle access from the roundabout. This has resulted in the scheme before me that would be accessed at one point by all road users. The Council suggested at the round table discussion that in isolation each aspect identified in the RSA would probably be acceptable, but together they would operate to cause material harm to highway safety.

85. However, based on the evidence before me I am satisfied that, taking into account the probable low volume of larger vehicles, pedestrians and cyclists, the likelihood of parking occurring on the road and the low speed of traffic, as recommended by MfS when considering carriageway widths, that safe and suitable access to the site can be achieved for all users. Consequently, there would be no material harm to highway safety and no conflict with Policies SS4 and MT1 of the CS. These require that developments are designed and laid out to achieve safe entrance and exit and that the efficient and safe operation of the network are not detrimentally impacted.

Living conditions

86. The proposed development would result in the access road to the appeal site being located close to a number of plots on the Barratt's site. As originally planned the road would only serve a small number of houses. This would change under the appeal proposal to an additional 425 dwellings.
87. The Council relies on an appeal decision¹⁷ in this respect. However, my reading of this decision is that the proposed access for 50 dwellings was to be located between existing houses which were occupied. In this instance the houses are yet to be built and occupied. Consequently, this is different to the circumstances outlined in the appeal decision, and it is likely that anyone buying the houses would be aware of the proposal for the appeal site.
88. In any case the appellant's supporting statement on noise confirms that there would only be about a 3dB difference in noise levels caused by the proposal, experienced at the facades of the properties adjacent to the access. This is a very minor increase which is unlikely to cause material harm. Furthermore, the noise level in gardens would be maintained between 50-55 dB LAeq which would be in accordance with the guidelines in BS 8233: 2014 Guidance on Noise Insulation and Noise Reduction for Buildings. I appreciate that the Council's case relates to an increase in noise and disturbance not only from cars but also from cyclists and pedestrians in close proximity to the houses. However, I have found that such movements are unlikely to be high. Therefore, for the reasons above I am satisfied that the proposal would not be materially harmful in this regard.
89. The Council also raises concerns regarding the punctuation of the access road through what would be open space on the edge of the Barratt's site. One of its design intentions was to provide a recreational route around the houses. The route would though remain, albeit users would need to traverse the access road. I have no reason to believe that a suitable design response could not be achieved at the detailed layout stage to ensure that an appropriate crossing could be incorporated at this point. The route would therefore, still be available with only a very short interruption at the proposed access road, which would not be materially harmful to its enjoyment by the future residents.
90. For the reasons above, I conclude that the proposal would provide appropriate living conditions for future residents of the adjacent housing development with particular regard to noise and disturbance and the effect on the intended function/purpose of the open space, including its enjoyment by future residents of that development. There would therefore be no conflict with Policy SD1 of the CS and paragraphs 127 and 180 of the Framework. These seek to

¹⁷ APP/W1850/A/14/2228744

safeguard residential amenity for proposed residents, ensure developments will function well and add to the overall quality of the area and avoid noise giving rise to significant adverse impacts on health and quality of life.

Other matters

91. Hazel Farmhouse and The Granary, both Grade II listed buildings are located to the west of the appeal site set well back from Dymock Road behind substantial vegetation. From the evidence before me, their significance is largely derived from their historic form and particular architectural features.
92. It is likely that the buildings once had an association with the agricultural land on the opposite side of the road, but this has now been significantly eroded by the residential conversion of the Granary and other agricultural buildings at Hazel Farm to residential use. Furthermore, Hazel Farm is no longer in use as a farmhouse. This coupled with the significant set back of the buildings behind vegetation means that the land opposite, including the appeal site, makes a very minor contribution to the significance of the listed buildings.
93. The proposal would change the agricultural character of the land to residential. However, the buildings association with agricultural land in other directions to the appeal site would not change and, given the very minor contribution of the land to the east, I am satisfied that the special interest and significance of the listed buildings, and their setting would be preserved.

Planning Balance and conclusion

94. I have found that the proposal would be contrary to Policy LB1 of the CS regarding the locational strategy of development within Ledbury. Furthermore, the proposed housing would not be in an accessible location and would be harmful to the character and appearance of the area contrary to Policies SS4, SS6, LD1, LD3 and MT1 of the CS and Policies SD1.1 and BE2.1 of the LNP.
95. It is agreed that these most important policies for the determination of the appeal are out of date. However, Policies which deal with character and appearance matters are broadly in conformity with the requirements of paragraphs 127, 170 and 171 of the Framework. In my view their application seeks to recognise the intrinsic character and beauty of the countryside while conserving and enhancing those environmental assets that contribute to the County's distinctiveness, especially those landscapes with specific environmental designations while protecting the character and appearance of the area.
96. Policies regarding accessibility are in conformity with paragraphs 102 and 103 of the Framework which promote sustainable transport. The requirements of the environmental and accessibility policies should apply to any scheme and would not, in my view, frustrate housing delivery but would ensure the proper integration of development contributing to local distinctiveness and that schemes are genuinely accessible to all by means other than the car. Therefore, I give conflict with these policies full weight.
97. As the Council is unable to demonstrate a five year housing land supply, and therefore policies are out of date, then paragraph 11 d ii of the Framework, the so called tilted balance is engaged. This requirement is also embedded within Policy SS1 of the CS. I have carefully considered the communities strongly held belief that paragraph 14 of the Framework is engaged as they believe that

- the LNP contains allocations to meet its identified housing requirement in accordance with paragraph 14b of the Framework.
98. However, it is the CS through the application of Policy LB1 that apportions a minimum of 800 dwellings to Ledbury and Policy LB2 directs 625 dwellings to the Viaduct site. The LNP lends its support to these Policies but does not allocate land for development. Instead, it includes Policies which guide how the quantum of housing should be developed to provide balanced communities at an appropriate density. I am not persuaded therefore that Paragraph 14 is engaged in this instance.
99. The appellant's Socio-economic Sustainability Statement outlines significant economic benefits of the scheme which are not disputed by the Council. While such benefits could flow from any housing developments, these are tangible benefits that would be generated by this development and therefore should be given significant weight. While I appreciate each case should be treated on its own merits, I note that this is a similar approach to the Inspector in appeal decision APP/C3240/W/15/3025042.
100. There would be additional benefits from further council tax income and a new homes bonus. However, no schemes upon which the money would be spent have been identified. In accordance with advice in the PPG¹⁸ it would not be appropriate to make a decision based on the potential for the proposal to raise money for the Council in the absence of evidence to demonstrate how that money would be used to make this particular development acceptable in planning terms.
101. The proposal would deliver 425 houses which would make a significant contribution to the housing shortfall. The GL Hearn SHMA identified a net affordable need within the District for 3457 households in the period 2012-2017. Specifically, for Ledbury, there is a requirement for 290 dwellings within the same period. If this were to be extrapolated to reflect the plan period, it would equate to a requirement of about 1,100 affordable homes in Ledbury.
102. The appellants undisputed figures show that in the period 2011/12 – 2017/18 only 860 affordable dwellings were delivered across Herefordshire. The provision of 40% of the houses as affordable dwellings would in the words of an Inspector¹⁹ "provide houses for real people in real need" and would be a significant benefit of the scheme.
103. However, I have found that, even with the benefit of the enhancements that may potentially be secured by the appellant's contribution to the LTS and within a S278 agreement, the appeal site is not in an accessible location and, as a result, I do not consider that this development would offer social benefits by being situated in a location with good access to services and facilities. It would also be contrary to the environmental role of planning in moving to a low carbon economy. I therefore give this considerable weight in my decision.
104. There would be provision of on-site public open space and play space in excess of policy requirements which would be available for the future and existing residents of Ledbury. However, given the existing open space and play area on Martins Way and within the Barratt's site, together with the

¹⁸ ID 21b-011-20140612

¹⁹ APP/H1840/A/13/2199085 & APP/H1840/A/13/2199426

significant distance to the indicative location of the open space and play areas for the majority of the residents of Ledbury this attracts very limited weight.

105. The UU allows for the transfer of 4.88ha of land for community facilities that have been identified to meet the needs of existing sports clubs in Ledbury helping to support the community's health and well-being. However, while the transfer of the land would give security of tenure and the ability for the sports clubs to plan and invest, it would not give certainty to the provision of community facilities on this land. Funds would then need to be generated by the community group to provide the pitches and facilities to enable their use. Furthermore, the provisions of the UU allow that if an offer of the land is not accepted within six months then the appellants would instead need to pay a contribution towards outdoor sports to the Council to be used for the costs of the improvement of existing and the provision of new off-site sports facilities.
106. While therefore this is a benefit of the scheme, given that it would not definitely result in the provision of community facilities on this land I give that benefit moderate weight.
107. There would be improved surface water management and biodiversity enhancement. Furthermore, the environment within which the three protected trees on the site are located would be improved. Nonetheless, even with these benefits I have found that the proposal would be harmful to the character and appearance of the area, including the landscape setting of the settlement and the setting of the Malvern Hills AONB through its large scale encroachment into the open countryside and loss of features characteristic of the local area, which would be contrary to the environmental role of planning to which I give substantial weight.
108. All in all, I consider that the totality of the harm that would be a consequence of the adverse impacts I have identified would significantly and demonstrably outweigh the benefits referred to above when assessed against the policies in the Framework when taken as a whole.
109. Therefore, all material considerations, including the Framework, are not sufficient to outweigh the identified conflict with the development plan. For this reason, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Zoe Raygen

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY

Mr A Parkinson of Counsel

Instructed by Ms A Gerzon
Solicitor Herefordshire County
Council

He called:

Ms E Duberley

Herefordshire Council, Principal
Natural Environment Officer

Mr J Troake

Associate Director at WSP UK
Ltd

Mr O Kaye

Tree Officer, Herefordshire
Council

Mr C Brace

Principal Planning Officer
Herefordshire Council

Ms Y Coleman

Herefordshire Council

FOR THE APPELLANT

Mr J Barrett of Counsel

Instructed by Mr S Carvell,
Planning Manager, Gladman
Developments Ltd.

He called

Mr K Nye

Director, FPCR Environment
and Design Ltd.

Mr B Jackson

Director, Ashley Helme
Associates Ltd

Ms H Kirk

Associate Director, FPCR
Environment and Design Ltd

Mr S Carvell

Planning Manager, Gladman
Developments Ltd.

INTERESTED PERSONS

Councillor H I'Anson

Ledbury South Ward Councillor

Councillor Harvey

Ledbury North Ward Councillor,
Ledbury Town Council

Councillor Bannister

Ledbury Town Council

Mr P Kinnaird

Local Resident

Mr A Tector

Local Resident

Ms C Tinkler	Local Resident
Mr A Dawson	Wye Valley NHS Trust
Mr T Karakashian	Local Resident
Ms B Johnson	Local Resident
Ms C Mullins	Local Resident

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Highways Round Table Discussion documents submitted by the appellant
- 2 Figure JNT/014 submitted by the Council
- 3 Table of Accessibility issues submitted by the Council
- 4 Extract from Highways Development Design Guide submitted by the Council
- 5 Statement of Common Ground for Highways matters October 2019
- 6 Opening on behalf of the appellants
- 7 Opening comments on behalf of Herefordshire Council
- 8 Statement by Councillor J Bannister
- 9 Landscape and Visual Matters Statement by Ms C Tinker
- 10 Council's Letter of Notification on Inquiry dated 21 June 2019
- 11 Statement by Mr Kinnaird
- 12 Statement by Councillor I'Anson
- 13 Plan 8028-L-07B
- 14 Letter from Malvern Hills AONB Unit dated 27 September 2019 submitted by the Council
- 15 Statement of Compliance with CIL Regulations submitted by the Council
- 16 Letter from Bloor Homes dated 8 October 2019 submitted by the Council
- 17 Poets Path submitted by Councillor I'Anson
- 18 Spreadsheet of housing site sin Ledbury submitted by the Council
- 19 Appendix 5 of the Core Strategy submitted by the Council
- 20 Schedule of Suggested conditions
- 21 Site Visit Itinerary
- 22 Schedule of suggested conditions to replace document 20 including highway conditions
- 23 Planning Obligations Supplementary Planning Document 2008 submitted by the Council
- 24 Statement by Councillor Harvey

25 Closing Comments on behalf of Herefordshire Council

26 Closing on behalf of the appellants

DOCUMENTS SUBMITTED AFTER THE INQUIRY

A Unilateral Undertaking

B Agreed list of conditions

C Email from the Council regarding condition No 20