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# Appeal Decision

Site visit made on 6 December 2022

**by K Stephens BSc (Hons) MTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 10 February 2023**

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**Appeal Ref: APP/W1850/W/20/3265116**

**Lemsford, Broad Oak, HR2 8DZ,**

- 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 Messrs Partridge against the decision of Herefordshire Council.
  - The application Ref 194052, dated 12 November 2019, was refused by notice dated 1 October 2020.
  - The development proposed is for the erection of one detached dwelling and two bungalows.
  - *This decision supersedes that issued on 21 May 2021. That decision on the appeal was quashed by order of the High Court.*
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## Decision

1. The appeal is dismissed.

## Procedural Matters

2. This is a redetermined appeal following a successful High Court Challenge by the Council whereby the previous appeal decision, dated 21 May 2021, has been quashed.
3. The previous Inspector was aware the Garway Neighbourhood Development Plan (the 'GNDP') was at an advanced stage of preparation having been through examination, but it had not been subject to referendum. The Inspector acknowledged that the then emerging GNDP and its Policies GAR1 and GAR4 were a material consideration to which he gave significant weight. In the planning balance the Inspector made his decision to allow the appeal on the basis the GNDP did not form part of the development plan.
4. However, due to an administrative error, the Inspector did not receive the Council's notification that the GNDP referendum had taken place on 6 May 2021 and that the GNDP had become part of the development plan before he issued his decision. The High Court judge found the Inspector's decision was flawed as it had not taken account of the factual position that the GNDP had become part of the development plan. As a result, the weight the Inspector could have given to the GNDP and hence the development plan as a whole could have been different, and the Inspector could have reached a different conclusion on the application. Consequently the decision was quashed.
5. My role now is to redetermine the case afresh in light of the material change in circumstances, but not to review the previous appeal decision.
6. The main parties have had the opportunity to present representations on the case following the quashing of the previous appeal decision and I have taken these submissions into account. I have also considered any relevant evidence

previously submitted unless it is expressly superseded by its originator during the redetermination process.

7. Outline planning permission is sought, with access and layout included. Plans relating to these matters form part of the application. Appearance, landscaping and scale are 'reserved matters' for subsequent approval by the Council and any plans relating to any reserved matters do not form part of the proposal before me. However, they help indicate how the site could be developed and what it would look like, but I shall treat them as illustrative.

## **Main Issues**

8. The main issues in this appeal are a) whether the appeal site would be a suitable location for housing with regard to local and national policies, and b) the effect of the proposed development on the character and appearance of the area.

## **Reasons**

### *Whether a suitable location for housing*

9. The appeal site comprises two parcels of land in open fields either side of the lane on the southern edge of the village of Broad Oak.
10. Policy SS2 (Delivering New Homes) of the Herefordshire Local Plan Core Strategy (the 'Core Strategy') sets out the Council's housing strategy and broad distribution of new dwellings. The majority of new housing will be focused on Hereford, the county town, followed by market towns and then rural settlements.
11. Core Strategy Policy RA1 (Rural housing distribution) sets out the indicative and minimum distribution of rural housing to the seven different Housing Market Areas of the county, recognising that different areas have differing housing needs. The housing targets will be used for the production of Neighbourhood Development Plans.
12. Core Strategy Policy RA2 (Housing in settlements outside Hereford and the market towns) allows a locally responsive approach to sustainable development in the rural areas. New housing will be supported 'in or adjacent' to the 'main' and 'other' settlements listed in figures 4.14 and 4.15 respectively. Broad Oak is listed in fig 4.15 as an 'other' settlement where 'proportionate housing is appropriate'. In addition to rural allocations, existing commitments and windfall development, housing development in rural areas is to be delivered through Neighbourhood Development Plans.
13. Policies SS2, RA1 and RA2 therefore help set out the spatial strategy for the delivery of housing and, in part, support the delivery of housing adjacent to identified settlements. As the previous Inspector found there is no conflict in this respect. However, Policies RA1 and RA2 make it clear that Neighbourhood Development Plans will be produced and be an important tool in delivering the spatial strategy where local evidence and environmental factors will determine the appropriate scale of development.
14. Since the previous appeal decision, the GNDP has now been made<sup>1</sup>. Its Policy GAR1 deals specifically with new housing development in Garway and Broad

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<sup>1</sup> The GNDP was 'made' on 7 June 2021.

Oak. It states that new housing will be supported within the settlement boundaries, subject to a number of criteria. Map 2 of the GNDP clearly shows the settlement boundary for Broad Oak. It is drawn tightly around existing development and includes 3 'commitment sites'. The appeal site is located outside the settlement boundary, although contiguous with it, apart from a small slither of land in the proposed garden of Plot 1 that appears to be within the settlement boundary, according to the appellant's overlay extract.

15. The supporting text to Policy GAR1 states everywhere outside the two settlements (Garway and Broad Oak) is considered countryside, where new housing proposals will have to demonstrate that they satisfy the exceptional circumstances set out in the National Planning Policy Framework (the Framework) paragraph 80<sup>2</sup> and Core Strategy Policy RA3 (Herefordshire's countryside).
16. Core Strategy Policy RA3 limits residential development in the countryside to that which meets one or more of the listed exceptions. The proposed development does not involve a dwelling for a rural worker; is not necessary for the growth of a rural enterprise; is not a replacement dwelling; does not involve reuse of a redundant or disused building; is not put forward as rural exception housing, or of being of exceptional quality and innovative design, or for gypsy and other travellers.
17. The two parcels of the appeal site are contiguous with existing housing and the settlement boundary of a village deemed suitable to accept new development within its boundary, and hence are well related to the village. Indeed the proposed dwellings would be similarly located to bus stops and Garway's primary school, a 10-minute cycle ride away and would not be solitary or 'isolated' in the context of Framework paragraph 80. However, given that the GNDP now places the appeal site outside of a development boundary, the development would be contrary to Core Strategy Policies RA2, RA3 and GNDP Policy GAR1 and the Council's settlement strategy as a whole.
18. As the Core Strategy was adopted in October 2015 its strategic policies are now more than 5 years old. In accordance with paragraph 74 of the Framework the Council has recalculated its local housing need using the government's 'standard method' in the national planning guidance. Since the previous appeal decision the Council can now demonstrate it has a 6.19 year supply of housing land. Furthermore, Garway Parish has exceeded its target number of housing, although this is recognised as not being a ceiling.
19. The appellant considers that the Council's now reduced housing requirement and the resulting recalculated housing land supply figure does not represent the housing requirement identified in the Core Strategy and upon which housing policies were predicated and settlement boundaries drawn. As a result, the appellant contends that this re-frames the interpretation of them, including Policy RA3 concerning development proposals beyond settlement boundaries. Whilst the appellant concurs with the Council that paragraph 11d) of the Framework is not engaged by reason of a shortfall in housing land supply, he contends it is engaged because strategic policies and Core Strategy Policy RA1 are based on an older and different housing requirement. As a result, the

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<sup>2</sup> GNDP Policy GAR1 refers to paragraph 79 of the Framework. However, paragraph 79 became paragraph 80 in the latest version of the Framework that was published in July 2021.

appellant concludes the Policy must be out-of-date, and in turn Core Strategy Policies RA3 and GAR1 are also out-of-date.

20. I am not persuaded by this argument. The affected policies set out a housing strategy that is in accordance with Framework paragraph 79, in that housing is to be directed to locations where it will enhance and maintain the vitality of rural communities and hence encourage sustainable patterns of development, and planning policies should identify opportunities for villages to grow. I accept that the housing requirement is not a maximum figure, however I consider the policies will still deliver the required housing in accordance with a spatial strategy that promotes sustainable development, particularly given that the housing requirement is no lower than that contained in the Core Strategy. Whilst the development plan deems Broad Oak to be a settlement suitable for appropriate development, the recently made GNDP has responded locally to housing need by requiring new dwellings to be located within the defined settlement boundary of Broad Oak and identifies opportunities for the village to grow, with commitment sites and any windfall sites that might come forward. I therefore find that paragraph 11d) of the Framework is not engaged and policies attract full weight.
21. The development plan and the more recent GNDP clearly set out locations where new housing is to be directed in the district and rural area. The appeal proposal would not accord with the development plan. Although the proposal is for a modest 3 dwellings, it would nonetheless undermine the Council's spatial strategy for the location of housing in the rural area, and could be too easily repeated in Broad Oak or elsewhere in the district. I have found that at the present time the Policies are up to date and I give conflict with them full weight. I am mindful in this regard, that the Framework recognises that the planning system should be genuinely plan led. To develop the appeal site as proposed would be at odds with, and would undermine public confidence in, the plan-led system.
22. In my view, therefore, the appeal site would not be an appropriate location for development having regard to local and national planning policies. Accordingly, the appeal proposal would not accord with Core Strategy Policies RA2 and RA3 and GNDP Policy GAR1. It would also be contrary to the Framework.

#### *Character and appearance*

23. The site is adjacent to existing dwellings and lies approximately 180m from the central crossroads in the village. A detached dwelling (Plot 1) would be erected on the western side of the lane adjacent to a row of four recently built dwellings (one of the commitment sites) and a new access would be formed off the lane. Two detached bungalows (Plots 2 and 3) with conjoined garages would be erected adjacent to the existing bungalow 'Lemsford' on the eastern side of the lane. Access to these bungalows would be via a new single access point off the lane, approximately opposite the access to Plot 1, leading to a shared driveway and garage block.
24. Both appeal parcels of land are in open fields on the edge of Broad Oak, which form part of a gently undulating pattern of fields and hedgerows. Broad Oak and the appeal site occupy an elevated position as land slopes gradually away from the lane to the west. Broad Oak is mainly clustered around the crossroads, with roads radiating out but with limited development along them.

25. The eastern parcel (for Plots 2 and 3) forms part of a field that extends along the lane to the track that leads to Caldicott Farm. On the western parcel the field extends as far as the field hedgerow boundary, approximately opposite the track to Caldicott Farm. Beyond this, fields and countryside extend either side of the lane.
26. The proposed housing would sit adjacent to existing dwellings and front the lane, as indeed existing development does. Hence it would be seen as part of the linear built form on approaching and leaving the village and would not appear visually at odds with the recent pattern of new housing along the lane.
27. The roadside hedges and trees would be largely retained to create the front boundaries, apart from the gaps that would be created to form the accesses. Indicative hedgerow planting is shown around all the site boundaries. The remaining existing roadside trees would also help filter views.
28. The illustrative tree protection and planting also shows triangles of tree and hedgerow planting adjacent to the ends of Plots 1 and 2. However, I have not been presented with any plans that show the red application site boundary amended and extended to include these planting areas. Consequently, from the evidence before me, these triangular planting area do not form part of the appeal before me and so cannot be conditioned or controlled. Nor can they be considered as a means to provide additional softening and landscape buffers to the edge of the village. As a result the proposed development would not be as screened as suggested.
29. The newly built adjacent row of 4 dwellings has already extended the built form of the village in a linear fashion along the skyline. Whilst one more dwelling on the western side and 2 bungalows on the eastern parcel could be argued to be a negligible addition, the proposal would nonetheless extend the linear form of the village further along the lane. It would also represent an arbitrary encroachment into the surrounding countryside with no physical features or boundaries being followed, apart from the roadside hedgerow. The proposal would therefore create a pattern of development at odds with its principally clustered form, as shown by the recently drawn GNDP settlement boundary, and erode the current form of the village.
30. Whilst the nearby agricultural buildings have consent to be converted into residential dwellings, these are set back from the lane and would not be read in the same context or alignment as the proposed dwellings. Furthermore, the dwellings would be created within the confines of the existing agricultural buildings and hence they would not be new free-standing dwellings with domesticated plots.
31. Overall, the proposal would cause harm to the character and appearance of the area. Accordingly, the proposed development would be contrary to Core Strategy Policies SS6 and LD1 and GNDP Policy GAR4. Collectively these policies seek to ensure the design, scale and form of the development takes into account the local landscape character and setting.

### **Other Matters**

32. The site falls within the catchment of the River Wye, which forms part of the River Wye Special Area of Conservation (SAC), a European designated site afforded protection. The River Wye is also a Site of Special Scientific Interest

(SSSI) at a national level. The river currently suffers from pollution as phosphate levels exceed conservation objectives. Major sources of phosphate is treated waste water from foul drainage systems. For new development proposals, there needs to be certainty that they will not adversely affect the SAC and add to phosphate levels.

33. When determining the application the Council, as the competent authority, undertook an Appropriate Assessment (an AA) under the Habitats Regulations and consulted Natural England (NE). The Council's AA found the proposal would not result in an adverse effect on the integrity of the River Wye as a SAC or SSSI. NE concurred with the Council's AA conclusions, providing all mitigation measures were secured should permission be given.
34. In determining this appeal it falls to me, as the competent authority, to undertake the HRA Appropriate Assessment. However, as I am dismissing the appeal for other reasons, I do not need to consider or pursue this matter further.
35. The appellant also draws my attention to a number of applications granted for various conversions of nearby existing modern agricultural buildings in his control into dwellings, including previous residential conversions at Caldicott Farm, Meadow Barn and Orchard Barn. This is to demonstrate that dwellings have been allowed outside the settlement boundary and are a fallback position. I do not have full details or circumstances of all of them, however I can comment on the principle.
36. Across the field from proposed Plots 2 and 3, and outside the settlement boundary of Broad Oak, planning permission has been granted to convert a nearby modern agricultural building into 3 dwellings together with reconfiguration of the slurry lagoon. That as may be, but residential conversion of existing buildings is a different concept to the erection of new-build dwellings. Indeed Core Strategy Policy RA3 regards the conversion of existing buildings as an exceptional form of residential development in the countryside. Hence, these residential conversions are not directly comparable to the appeal proposal and do not set a precedent for new-build housing on the edge of Broad Oak.
37. In addition, there is a Class Q<sup>3</sup> prior approval application that has been granted to convert another nearby modern farm building outside Broad Oak settlement boundary into two dwellings. Apparently the previous Inspector was not made aware of this. However, prior approval applications are not planning applications and hence are not subject to the same rigours and planning policies as a planning application, and which the national Planning Practice Guidance describes as a 'light touch'.
38. I understand the appellant is winding down his agricultural operations. If these other schemes were implemented they would see the formation of 5 dwellings in close proximity to the appeal site, which the appellant considers akin to a 'small residential estate' in the countryside beyond the settlement boundary.
39. However, for significant weight to be afforded to a fallback position there needs not only to be a reasonable prospect of it being carried out in the event that planning permission for the appeal scheme was refused, but the alternative

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<sup>3</sup> of Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

scheme would also need to be equally, or more harmful, than the scheme for which permission is sought. These conversions are peculiar to their location because they involve converting agricultural buildings that already exist. The dwellings that would be created would be within the confines of existing buildings and would not involve the erection of new buildings on open fields outside Broad Oak's settlement boundary. Hence the totality of the conversion schemes for 5 dwellings would be less harmful than the appeal proposal for 3 new-build dwellings on open fields and consequently do not represent a significant fallback. Nor do the various proposed residential conversion schemes set a precedent to allow harmful development.

### **Planning Balance and Conclusion**

40. The Council can demonstrate it has more than a 5 year supply of deliverable housing land. I have explained that the Council's strategic housing policies are not out-of-date and that paragraph 11d) of the Framework is not engaged. I am therefore directed under planning law<sup>4</sup> to determine planning applications in accordance with the development plan unless other material circumstances indicate otherwise.
41. The development plan as a whole accords with the Framework in promoting sustainable patterns of development in locations that help the vitality of rural communities. The proposal would be contrary to the Council's housing strategy and to allow 3 new-build dwellings in the rural area outside a newly defined settlement boundary, although contiguous with it, would undermine that strategy and the approach set out in the Framework. I have also found there would be harm to the character and appearance of the area. These are serious planning objections that count against the proposal to which I give significant weight.
42. There would be some modest economic and social benefits arising from the construction of 3 dwellings and its longer term contribution to the local area. I have recognised the sustainability credentials of the appeal site's location adjacent to a settlement deemed suitable for new housing development. The provision of bungalows and a dwelling would help provide a range of housing stock. However, these benefits would be modest due to the small-scale nature of the proposal and therefore can only be afforded moderate weight. The extant consents for the conversion of nearby agricultural buildings into dwellings do not set a precedent, nor do they represent a fallback, and therefore I give them minimal weight.
43. The benefits, alone and in combination, do not amount to material considerations sufficient to outweigh the conflict with the development plan.
44. For the reasons set out above, I conclude the appeal should be dismissed.

*K Stephens*  
INSPECTOR

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<sup>4</sup> Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.