

## Appeal Decision

Hearing held on 13 August 2024

Site visits made on 14 August 2024 and 19 September 2024

by J Burston BSc MA MRTPI

an Inspector appointed by the Secretary of State

**Decision date: 10<sup>th</sup> December 2024**

**Appeal Ref: APP/W1850/W/23/3334520**

**Land at Flaggoners Green, Bromyard, HR7 4QR**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
  - The appeal is made by Gladman Developments Limited against the decision of Herefordshire Council.
  - The application Ref is 190111.
  - The development proposed is 'Outline Planning Application for the erection of up to 120 dwellings with public open space, landscaping and sustainable drainage system (SuDS) and vehicular access point from the A44. All matters reserved except for means of access.'
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**This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 15 October 2024.**

### Decision

1. The appeal is allowed and outline planning permission is granted for the erection of up to 120 dwellings with public open space, landscaping and sustainable drainage system (SuDS) and vehicular access point from the A44, with all matters reserved except for means of access, on land at Flaggoners Green, Bromyard, HR7 4QR in accordance with the terms of the application, Ref 190111, and the plans submitted with it, subject to the conditions in the attached schedule.

### Preliminary Matters

2. The appeal seeks outline permission with all matters reserved except for access. In so far as the submitted plans and drawings show details of matters other than the access, I have treated those as being purely illustrative.
3. The Appellant submitted new evidence at the start of the appeal process, which related to, amongst other matters, amended access arrangements and footpath and cycleway provision. It was explained at the Hearing that the reason for these revisions was due to the promoters of another site, known as the 'Hardwick Bank scheme', amending its access proposals and these were only presented to the Council's Planning Committee in January 2024.

As the appeal site and Hardwick Band are located opposite each other on either side of the A44, the Highway Authority (Herefordshire County Council) expect any access arrangements for the appeal site to not prejudice the Hardwick Bank site being developed.

4. Interested parties will have had an opportunity to comment on the new evidence during the appeal procedure. I consider that accepting this new evidence will not cause prejudice to proceedings and it has been accepted on this basis. Furthermore, the appellant undertook additional consultation to inform local residents, interested parties and statutory consultees of the amendments, which included a leaflet distributed to 579 local homes and business. Whilst the Council stated that such new evidence would not have had the formality and rigour of a statutory planning consultation, local residents would be aware of the planning application and those with an interest in it, would, I am sure, have taken the time to read any correspondence relating to it. Moreover, they would have been aware of the appeal given the formal notification undertaken by the Council and how to access the appeal documentation. In coming to this view, I have had regard to the Wheatcroft principles (Bernard Wheatcroft Ltd v SSE [JPL 1982 P37] and consider it consistent with the Holborn judgment (Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)) that I was referred to at the Hearing.
5. A draft agreement made under Section 106 of the Town and Country Planning Act 1990 as amended, was presented at the Hearing. This Section 106 agreement dated 15 August 2024 has since been finalised and informs my conclusions.
6. On 30 July 2024 the Government published a consultation on proposed reforms to the National Planning Policy Framework (the Framework) and other changes to the planning system. However, the proposed changes to the Framework can only be given limited weight at this stage, given that no final document has been published. The main parties have been provided with an opportunity to comment on these documents and their responses have been taken into account, where received.
7. I note that planning application ref P142175/O was also the subject of an appeal (reference APP/W1850/W/15/3039164) (the previous appeal) which was dismissed on 19 May 2015. I have had regard to that appeal decision in determining this appeal.

## **Main Issues**

8. The submitted Statement of Common Ground highlights areas where the Council and Appellant are in dispute. The areas of dispute relate to footway and cycle provision and whether the site would offer a genuine choice of modes of travel.
9. In light of the above, the main issue is whether the appeal site is a suitable location for new residential development having regard to safety and accessibility for sustainable modes of transport, with particular reference to pedestrians and cyclists.

## Reasons

### *Background*

10. The appeal site relates to approximately 4.7 hectares of agricultural land, currently set to grass, situated on the western edge of Bromyard. The site is bounded on all sides by mature hedgerows, with the A44 along the northern site boundary. The site also lies within the hydrological catchment of the River Lugg, which forms part of the River Wye Special Area of Conservation (SAC).
11. Bromyard itself offers a wide range of services that includes a primary and secondary school, community facilities, health centre, leisure centre and numerous shops and eateries. Bus services also operate from Bromyard to the cities of Hereford and Worcester.
12. Policy SS2 of the Herefordshire Core Strategy, 2015 (HCS) confirms that the city of Hereford, along with the market towns (including Bromyard), are the main focus for new housing development. Policy BY1 of the HCS sets out that Bromyard will accommodate a minimum of 500 new homes with around 5 hectares of employment land during the Plan period, with a minimum of 250 homes located in the northwestern areas of the town. In this respect Policy BY2 provides an allocation of up to 250 homes at Hardwick Bank, adjacent to the A44 (opposite the appeal site) and at the time of the Hearing a planning application for this allocation had been approved subject to a S106 agreement being agreed.
13. I acknowledge that the Council is currently reviewing the HCS, to cover the period 2021 – 2041 and that the appeal site is identified as a potential area for housing growth. Given that the emerging Plan is at an early stage and has yet to be examined it attracts little weight, nevertheless, it is common ground that the site represents a western extension to the town and is well contained by existing field boundaries and by the A44 and Pencombe Lane. I was informed by the Council that it is, therefore, an appropriate location for residential development.
14. It has also been established, by both the previous appeal decision and the Council, that the site has capacity to accommodate the proposed quantum of development, without (subject to proposed mitigation) causing any material landscape harms.

### *Sustainable transport*

15. Having regard to the submitted evidence, two substantive areas of dispute between the parties arise in respect of (i) whether a safe and suitable means of pedestrian and cycle access for all users would be provided, that manages conflicts between pedestrians, cyclists and vehicles particularly on the A44 and Panniers Lane and (ii) whether walking and cycling would be an attractive mode of transport for future residents. I consider these matters in turn below.

Whether a safe and suitable means of pedestrian and cycle access for all users would be provided

16. HCS Policy MT1 seeks, amongst other matters to *"ensure that developments are designed and laid out to achieve safe entrance and exit, have appropriate operational and manoeuvring space, accommodate provision for all modes of transport, the needs of people with disabilities and provide safe access for the emergency services."*
17. The Framework makes it clear, at paragraph 115, that "development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe." Moreover, at Paragraph 116 the Framework states, amongst other matters, that *"Within this context, applications for development should: a) give priority first to pedestrian and cycle movements, both within the scheme and with neighbouring areas."*
18. From what I observed, the A44 is a busy 60mph through road, particularly at peak times, that is frequently used by HGVs. The current footpaths are extremely limited in width and overgrown by scrubby vegetation which makes them difficult to use. The carriageway width is also only sufficient to allow two vehicles to pass and a motorised vehicle would not be able to overtake a bicycle without going on the other side of the carriageway. I was also told at the Hearing that the wing mirrors of HGVs often overhang the footpath and there has been an incident where a wing mirror has hit a pedestrian.
19. Whilst I do not dispute the concerns which I saw and heard relating to the existing A44 and the wider highway network, the Appellant proposes a number of measures to improve the local highway network, which can be secured through planning conditions or by planning obligations. These include:
  - Amended vehicular access to introduce a three-arm traffic signal junction on the site, which will tie into the revised access strategy for the Hardwick Bank site to the north of the A44, to provide a four-arm traffic signal junction in this location to suitably serve both developments.
  - Introduction of right turn bays on A44 for right turn movements into both the appeal site and the Hardwick Bank site.
  - Widening of the A44 using land within the appeal site.
  - Introduction of a pedestrian island on the eastern side of the A44 with assisted crossing facilities.
  - Introduction of a new footway on the northern side of the A44 between the pedestrian crossing and Upper Hardwick Lane, ensuring a 2m footway can be achieved.
  - Widening of the existing footway between Upper Hardwick Bank and Winslow Road to 2m.

- Provision of pedestrian and cycle access on Panniers Lane and the introduction of a new footway on the western side Panniers Lane.
  - Introduction of a 30mph speed limit introduced on the A44.
20. The Highway Authority is responsible for the function and safety of the local road network. As the statutory authority it has a duty to consider matters of safety and whether development proposals would be acceptable without severe impacts. In this case, a Statement of Common Ground between the Highway Authority and the Appellant was submitted which concluded that, subject to the works outlined above, the appeal site can be safely accessed by foot, cycle and public transport.
  21. The proposed highway works have also been the subject of an independent Stage 1 Road Safety Audit (RSA), the recommendations of which were taken into account in the design process.
  22. I acknowledge that even with the proposed highway improvements there would still be some 'pinch points' on the highway network for both pedestrians and cyclists, which are identified in the FLOW consult document, dated 27 June 2024, prepared on behalf of Bromyard Town Council.
  23. I also note that cyclists travelling eastbound would have to merge back onto the A44, close to the junction with Upper Hardwick Lane. However, the traffic would be subject to a 30mph speed limit and there would be good forward visibility, enabling drivers to see cyclists merging from the left and manoeuvre accordingly. For cyclists travelling west along the A44 there would be a short section of cycle lane on the approach to the site access, nevertheless, the speed limit here would also be 30mph and traffic would likely be slowing down to take into account the junction arrangements. Whilst I accept that there may be more children using the A44 to access the nearby primary school, I would expect such children to be accompanied by an adult and would be more likely to use the proposed shared footpath/cycleway and cross the A44 at the proposed pedestrian crossing. Children accessing the secondary school would be more likely to leave the appeal site using the access on to Panniers Lane and would not therefore use the A44.
  24. As I observed the footway between the A44 junction with Upper Hardwick Lane and Winslow Road is narrow due to the existing highway verge and street furniture. Whilst the abutting residential property owners have historically maintained the verges along this stretch of road, the Appellant has provided title deeds which confirm Highway Authority ownership. The Appellant has therefore agreed with the Highway Authority to widen the footway to approximately 2m. This would be of sufficient width to enable two people (including those with prams or in a wheelchair) to safely pass each other.
  25. As already mentioned, a further pedestrian / cyclist only access would be provided through the south-east site boundary, close to the junction of Pencombe Lane with Panniers Lane, with a widened footway along the western side of Panniers Lane. A crossing point would also be provided for people to cross Panniers Lane to facilitate a safe route to the Secondary School and onward to the nearby convenience store and bus stop.

26. I appreciate that people regularly use the pavement along Panniers Lane to walk from other parts of the town to the secondary school and to access the countryside beyond. The existing footpath on Panniers Lane varies in width, narrowing in some points to below the 2m specified in Manual for Streets (MfS) as the generally recognised minimum width.
27. The representations made in objection to the proposed development comment that Panniers Lane requires wider pavements given that it manages a high pedestrian flow and that students walking to school often do so in groups. The narrow pavement forces users to sometimes walk in the road.
28. Nevertheless, whilst there may be some additional pedestrian movements along Pencombe Lane there is no substantive evidence that the existing arrangements are harmful to pedestrian safety or would materially worsen with additional movements. Moreover, at peak times, such as school start and finish, the additional flows from the development would be unlikely to be using the footpath to the north of the school (the narrowest section), rather they would be using the new footway from Pencombe Lane.
29. In reaching these findings I have had regard to the previous appeal decision. The Inspector concluded in that case that there was not a reasonable prospect of delivering an acceptable pedestrian access and the lack of an identified safe and convenient pedestrian access to the appeal site from the A44 constituted a compelling reason for dismissing that appeal. Nevertheless, the Appellant has now confirmed land ownership to enable the delivery of a pedestrian and cycle access and route from the site along the A44 and the changes in junction layout have facilitated a safe crossing point of the A44, which differentiates it from the previous proposal the subject of the earlier appeal decision.

Whether walking and cycling would be an attractive mode of transport for future residents

30. Paragraph 109 of the Framework states that significant development should be focussed on locations that either are, or can be made, sustainable, by limiting the need to travel and offering a genuine choice of transport modes.
31. MfS guidance talks about walkable neighbourhoods, which are typically characterised by having a range of facilities within 10 minutes (up to about 800m) walking distance of residential areas which residents may access comfortably on foot. However, it also states that this is not an upper limit, noting a reference to the extinguished PPS13, which stated that walking offers the greatest potential to replace short car trips, particularly those under 2km. Given that MfS is a government document and carries forward guidance from PPS13, I find this to be the most appropriate guidance when applying a planning judgement. In this case all services and facilities would be within the 2km upper limit.
32. Following the implementation of the highway measures set out above, access from the site to all facilities either on foot or bicycle would be pleasant, on footways / cycleways of sufficient width with dropped kerbs such that access for all is possible. Therefore, walking and cycling to and from schools and town centre shops and leisure facilities would be a realistic option.

33. Having walked the route myself I acknowledge that the topography is undulating, particularly on the return journey from the town centre to the appeal site. Nonetheless, everyone has a different tendency to walk and cycle. Some people will walk and cycle across undulating terrain and further distances than 2km to access local services and facilities, whilst others will choose to drive to the end of the road to post a letter. What is significant in this appeal is that all services and facilities would be within 2km. Therefore, whilst it would be on the upper limits of walkable, the site's location would not deter walking or cycling entirely.
34. In reaching these findings I have had regard to the previous appeal decision. My findings here are broadly similar, insofar as the Inspector set out at paragraph 70 that *"the appeal site allows most of the existing facilities to be reached by walking, though some destinations would be at the limit of acceptability."*

#### Conclusions on this Main Issue

35. Drawing all this together, I consider that the location of the site, close to the town centre of Bromyard, would limit the need to travel because of the range of facilities that would be available to future residents of the appeal site within a relatively short distance. Residents would have a genuine choice of travel modes. The proposal would therefore accord with policies of the Framework which seek to promote sustainable transport. The appeal scheme would also improve access to sustainable forms of transport, by providing additional infrastructure such as footways and cycle paths linking the appeal site along the A44 towards the town. As a result, it would comply with Policy MT1 of the HCS, which seeks the safe operation of the highway network and access to a genuine choice of modes of travel.

#### **Habitats Regulation Assessment (HRA)**

36. The appeal site is located within the River Lugg catchment which forms part of the River Wye SAC, which is recognised by the Conservation of Habitats and Species Regulations 2017 as an area of international importance for its flora and fauna. The River Wye SAC is currently considered to be failing its water quality targets due to phosphate levels. The Regulations require decision-makers (in this case myself) to undertake appropriate assessment where significant effects on a SAC are likely either alone or in combination with other proposals.
37. Accordingly, new development within any part of the catchment which will increase the amount or concentration of wastewater effluent or organic materials discharged directly or indirectly into the catchment's waterbodies has the potential to increase phosphate levels within those waterbodies. Natural England (NE) therefore recommend that any proposed new development that might otherwise result in increasing the amount of phosphate within the SAC either by direct or indirect discharges must be able to demonstrate phosphate neutrality.
38. The proposed development includes a mains foul sewerage connection for 120 new dwellings which will be treated at the Bromyard Wastewater Treatment Works (WwTW). The Bromyard WwTW sits within the River Lugg/River Wye SAC catchment in which NE's 'Nutrient Neutrality' applies.

Accordingly, the additional phosphate load generated by the proposed development has the potential to result in a likely significant effect on the River Wye SAC.

39. In this case the Appellant has applied for, and received, an allocation of phosphate credits from Herefordshire Council to provide mitigation. The phosphate credits being relied upon to mitigate this development are provided by the Council's second integrated wetland which is located on land adjacent to Tarrington WwTW. As stated in the Council's Habitat Regulation Assessment (HRA) the purpose of the wetland would be to provide enhanced treatment for removal of phosphorus from the final effluent of the Tarrington WwTW.
40. Given this background, I have undertaken an appropriate assessment in a reasonable and proportionate manner relative to the circumstances here.

#### Appropriate Assessment (AA)

41. The AA is necessary to comply with Regulation 63 (1) of the Conservation of Habitats and Species Regulations 2017. In undertaking the AA, I must be certain that the proposed development would not result in adverse effects to the integrity of the relevant European site.
42. As set out in both the Appellant's shadow HRA and the Council's HRA, the proposed development would create an annual phosphorus load of 14.82kg TP/year which must be managed against in order to avoid detriment to the River Lugg. That calculation is premised on water usage being limited to 110 litres per person per day and being processed by the Bromyard WwTW. Having no evidence to the contrary I have no reason not to accept these calculations as an accurate representation of the phosphorus load.
43. There are no on-site measures proposed to deal with the phosphate produced. Therefore, it is put forward that this additional phosphorus entering the ecosystem be addressed via the purchase of phosphate credits. Phosphate Credits in Herefordshire are being generated through the delivery, by Herefordshire Council, of a programme of integrated wetlands associated with existing WwTWs. The phosphate credits being relied upon to mitigate this development are provided by the Council's second integrated wetland which is located on land adjacent to Tarrington WwTW, which particularly serves the lower catchments of the Lugg. The aim of the Tarrington Integrated Wetland is to reduce the Total Phosphorus (TP) in the effluent leaving the Tarrington WwTW from an average of 5.10mg/L TP to less than 1mg/L TP. The Tarrington scheme is due to come on stream in 2026.
44. NE, the appropriate nature conservation body under Habitats Regulation 63(3), should be consulted as part of the allocation of phosphate credits to individual schemes. Via correspondence of 12 August 2024 NE agreed with the methodology for calculating phosphate loading and with the proposed nutrient neutrality mitigation measures. However, due to the timescales for constructing the Tarrington Wetland scheme, NE advised that a condition should be added to any consent to ensure that the proposed dwellings would not be occupied prior to 1 June 2026. Furthermore, NE noted that Welsh Water has requested that hydraulic modelling be undertaken to ensure that a

connection can be made to the WwTW. Both these matters can be secured by planning conditions if the development was found acceptable.

45. Given the mitigation measures set out above, I conclude that the development, when considered either alone or in-combination with other plans or projects, would not have any residual adverse impact upon fauna and flora of the River Lugg/Wye. The risk of adverse effect on the integrity of the SAC can be ruled out, applying the precautionary principle. In this respect, the proposed mitigation measures would minimise any residual adverse impacts and safeguard the favourable conservation status of the River Lugg SSSI/River Wye SAC.

### **Other Matters**

46. There is local concern that Bromyard has been subject to a large amount of development in a relatively short period and that it has been difficult to absorb such rapid growth into the existing community. Whilst I understand this concern there is no evidence before me to demonstrate that this would be the case. Also, there is no evidence that integration cannot satisfactorily be achieved. Whilst pressure on GP services is raised, this is a problem nationally and S106 contributions are to be provided.
47. I appreciate that there is local objection relating to primary and secondary school capacity to accommodate the children who would live within the appeal development. However, it is important to understand that the Council as Local Education Authority (LEA) has a statutory duty to provide sufficient school places for pupils in its area. As such, the LEA have required financial contributions towards the costs of enhanced educational infrastructure at Bromyard Early Years, St Peters Primary School, Queen Elizabeth High School, Special Education Needs and Bromyard Youth Services. The financial contribution is secured through a planning obligation, details of which are set out below.

### **Conditions**

48. A list of planning conditions was drawn up by the main parties and these were discussed at the Hearing. My consideration has taken account of paragraph 56 of the Framework and advice in the Planning Practice Guidance (PPG). In particular, I have had regard to the Government's intention that planning conditions should be kept to a minimum and that pre-commencement conditions should be avoided unless there is clear justification. Subject to some minor changes in the interests of clarity and consistency, the conditions I have imposed are, in substance, the same as those that were discussed at the Hearing. Some conditions require matters to be approved before development commences. These are necessary to manage impacts that would arise during construction and/or to resolve details that would need to be settled at an early stage.
49. This is an outline application with all matters save for access reserved. The standard requirements regarding the submission of reserved matters have been imposed. There is a requirement that the development should accord with the submitted drawings in the interests of precision and proper planning. A phasing plan is required to ensure that essential infrastructure is developed at the appropriate stages of the development. Although

landscaping is a reserved matter a condition is required to ensure the submission of a scaled landscaping plan to safeguard and enhance the character and appearance of the area. Alongside this a condition is necessary to secure planting and the replacement of any plants that die, are removed or severely damaged, in the interests of amenity and biodiversity. Furthermore, open space management details shall be submitted to ensure that the visual amenity of the area is maintained post construction.

50. A condition is required for details relating to the number, size and type of the tenure for both open market and affordable housing in order to define the parameters of the consent and to ensure that the development is consistent with the effects that have been assessed. Relating to the reserved matter of layout, a detailed scheme for the comprehensive and integrated drainage of the site showing how foul water, surface water and land drainage will be managed is required to ensure effective drainage facilities can be provided.
51. A condition is required to secure the submission of a Construction Environment Management Plan to be approved, in the interests of biodiversity and sustainable development. Details relating to construction traffic is required in the interest of highway safety. A condition to secure the submission of a Resource Audit is required in the interests of waste management and sustainable development.
52. The Appellant considered that a condition relating to the submission of a hydraulic modelling assessment was not necessary as this was subject to other legislation. I acknowledge that Under s.106 of the Water Industry Act 1991 there is an 'absolute right' for a developer (in the capacity of the owner or occupier of premises) to connect to a public sewer and the sewerage undertaker has no right to object or to refuse on the basis of lack of capacity of the sewer. Nevertheless, given the harm that would be caused to the SAC without appropriate sewage connection and the mitigation considered in the AA, a planning condition would be necessary in this case to mitigate the impact of additional wastewater generated by the proposal.
53. Highway improvements have been proposed on the highway network as referred to earlier in my decision. These works are necessary for reasons of highway safety for pedestrians and cyclists, to improve the highway network to encourage sustainable transport modes and to mitigate the impact of additional traffic generated by the proposed development. Full details of a scheme for the provision of covered and secure cycle parking facilities within the curtilage of each dwelling shall be submitted as well as a condition to secure a Travel Plan in the interests of sustainable transport.
54. A condition is required to secure Biodiversity Net Gain through the submission of a plan. This is to ensure that Biodiversity Net Gain is secured and habitats enhanced having regard to The Conservation of Habitats and Species Regulations 2017, as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019.
55. A condition to secure the provision of electric vehicle charging points is not necessary due to the provisions in the Building Regulations. Whilst the Council suggest that this condition goes further than the regulations I have little substantive evidence to support this approach to consider it acceptable. Similarly, a condition to restrict connection to the sewage system is not

necessary as such connections require permission from the appropriate sewerage undertaker.

56. A condition to limit the brightness, tilt and timing of external lighting is necessary in the interests of biodiversity and amenity given the position of the site on the edge of the settlement.
57. A scheme demonstrating measures for the efficient use of water as per the optional technical standards contained within Policy SD3 of the HCS is necessary in the interests of sustainable development.

### **The planning obligation**

58. The 2010 Community Infrastructure Levy Regulations (CIL) and paragraph 57 of the Framework provide the legal and policy tests for obligations. These tests require that planning obligations should only be sought where they are: a) necessary to make the development acceptable in planning terms; b) directly related to the development; and c) fairly and reasonably related in scale and kind to the development. This is also confirmed in the Planning Practice Guidance on planning obligations (PPG).
59. The matter of justifying contributions rests with the Council and is a matter I would have to satisfy myself of, irrespective of whether or not the Appellant advanced a case against various clauses/contributions during the course of the appeal.
60. The Council have provided evidence in a CIL compliance statement to show that the obligations include measures to mitigate the impacts of development and meet the costs of associated infrastructure.
61. There is a dispute between the Council and the Appellant relating to whether the enforcement of the obligations in the s106 agreement should be the subject of an Enforcement Exemption clause. The Appellant asserts that the clause would operate to ensure that individual purchasers or tenants of the residential units and their mortgagees would not be bound by the obligations in the Section 106 agreement.
62. Section 106 of the Town and Country Planning Act 1990 provides that a planning obligation under a S106 Agreement runs with the land and therefore means that it can be enforceable against and bind successors in title. Whilst I acknowledge the Appellant's concerns it is possible for these to be overcome by, for example, ensuring that obligations are paid or by providing an indemnity in the sales agreement from the developer in relation to the future performance of any undischarged planning obligations.
63. Furthermore, I am concerned that if the exemption clause suggested was executed the obligation would carry little weight and the Council would have no redress in the circumstances where the developer defaults. Therefore, the enforcement of the obligations set out in Schedules 1-6 of the Section 106 Agreement should not be subject to clause 1.6 of the agreement.
64. The Council requested monitoring fees, based on their own calculations for their particular responsibilities in each obligation within the agreement as

outlined in their respective obligations' guidance. The PPG allows for monitoring costs if proportionate and reasonable. The obligations would have to be checked by the Council staff throughout the progress of the development and payments would need to be requested, received, and actioned. The Council has a responsibility for overseeing the obligations and the funding. I therefore find that, from the evidence before me, the monitoring fees are necessary and reasonably related to the proposal.

65. The Affordable Housing obligation would ensure that 40% of the residential units are affordable, with a tenure split of 60% as Social Rented Housing and 40% as Shared Ownership. The contributions for primary care and health care and waste and recycling are all justified as directly related and proportionate in scope and necessary to making the proposal acceptable in planning terms.
66. Given the location of the development within the catchment of the River Lugg, which forms part of the River Wye Special Area of Conservation (SAC) the Appellant is required to ensure that any detriment to the SAC is avoided. In this case the Appellant has chosen to purchase phosphate credits from the Council, based on the calculated phosphorus load. as directly related and proportionate in scope and necessary to making the proposal acceptable in planning terms.
67. The Section 106 Agreement would secure on-site public open space, including a play area. These facilities and features would ensure the development provides adequate recreation and an attractive environment. They would therefore be directly related, proportionate in scope and necessary to making the development acceptable in planning terms.
68. As the proposal would have a direct impact on the demand for school places, mitigation is required. The contributions sought in respect of Primary, Early Years, Secondary, SEN Education and youth services are directly linked to the development, reasonably related in scale to it and necessary to making it acceptable in planning terms.
69. Contributions relating to public transport infrastructure and services and highways works, all stem from the development. These are all warranted to ensure that the development mitigates the impact on the surrounding highways network and to ensure that future occupiers have a choice of means of travel. I am satisfied that all of these contributions are fair, reasonable and necessary to mitigate the impacts of the development.
70. Contributions towards football, cricket, rugby, tennis, shooting, archery and a skate park are justified as being necessary, directly related, and fairly and reasonably related in scale and kind to the proposal.
71. The above obligations are intended to mitigate the needs and impact of the future occupants of up to 120 additional houses, to avoid placing undue pressure on the existing community facilities. The requirements were based on calculating the resulting new residents and the likely need for the particular facilities.
72. For the reasons given above and taking account of all of the information provided to the Hearing, I am satisfied that the planning obligations in the

Section 106 agreement are necessary to make the development acceptable in planning terms, directly related to the development and are fairly and reasonably related in scale and kind to the appeal development. They meet the statutory requirements of Regulation 122 in the CIL Regulations and the policy requirements of paragraph 57 in the Framework. I am therefore able to take them into account in my decision.

### **Conclusion**

73. For the reasons given above, and taking into account all matters raised, the appeal is allowed, subject to the conditions set out in the annex to this decision.

*J Burston*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

Mr. Christian Hawley (No.5 Chambers)

Mr. Simon Helme, BEng(Hons), MSc, MCIHT (Director, Ashley Helme Associates)

Mrs Helen Ball BA (Hons) MA. MRTPI (Planning Director, Gladman Developments Limited)

### **FOR THE LOCAL PLANNING AUTHORITY:**

Mr Ollie Jones. Principal Planning Officer, Herefordshire Council

Ms Katy Jones, Highways Officer, Herefordshire Council

Ms Yvonne Coleman, Planning Obligations Manager, Herefordshire Council

Mr John Lloyd, Flow Consulting (also acting on behalf Bromyard Town Council)

### **INTERESTED PARTIES:**

Cllr Roger Page (Vice Chairman of Bromyard & Winslow Town Council)

Professor Mark Whitehorn

Cllr Gill Churchill

Cllr Clare Davis

### **HEARING DOCUMENTS**

1. Appellant's Appearance List
2. Plans for approval:
  - D7050.001C Location Plan
  - 1470/45 Rev C Traffic Signal Arrangement
3. Opening Statement on behalf of the Appellant
4. Condition on SHRA
5. Appellant Opening
6. Appellant's Highways Technical Note 6
7. Appellant's Highways Technical Note 7

8. Adopted Highways Plans
9. Title Plans
10. Planning Obligation Summary
11. Proposed Site Visit Walking Route
12. Road Safety Audit Briefing Note

**Schedule of Conditions attached to Appeal Reference:  
APP/W1850/W/23/3334520**

- 1 Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.
- 2 The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of the approval of the last reserved matters to be approved, whichever is the later.
- 3 Approval of the details of the layout, scale, appearance and landscaping (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority in writing before any development is commenced.
- 4 The development shall be carried out strictly in accordance with the approved plans as far as it relates to access:
  - Location Plan
  - Access Plan (1470/45/C)

except where otherwise stipulated by conditions attached to this permission.

- 5 No development shall commence until a plan has been submitted to and approved in writing by the Local Planning Authority identifying the phasing, if any, for the development and shall specify the following;
  - Residential phases
  - Timing of delivery of on-site highway works (including but not limited to on-site roads, footways, cycleways)
  - Timing of delivery of offsite highways improvements
  - Timing of delivery of public open space
  - Delivery of drainage infrastructure

The development, including the completion and delivery of infrastructure shall be constructed in accordance with the agreed phasing plan.

- 6 The reserved matters application, relating to Landscaping, submitted pursuant to Condition 1 shall be accompanied by a scaled landscape plan that shall include, but may not be limited to the following;

- Trees and hedgerow to be retained, setting out measures for their protection during construction, in accordance with BS5837: 2012.
  - Trees and hedgerow to be removed.
  - All proposed planting, accompanied by a written specification setting out; species, size, quantity, density with cultivation details.
  - All proposed hardstanding and boundary treatment.
- 7 Proposals for the number, size and type of the tenure for both open market and affordable housing shall be submitted to the Local Planning Authority for approval either prior to, or as part of any reserved matter application(s) relating to 'layout' submitted pursuant to Condition 1.

This scheme shall comprise a schedule outlining the number of 1, 2, 3 and 4 + bed dwellings (open market and affordable) with the overall mix being in general accordance with the Council's Local Housing Market Assessment (or any successor document adopted by the Local Planning Authority).

- 8 Any reserved matters application(s), relating to the reserved matter of 'layout' submitted pursuant to Condition 1, shall be accompanied by a detailed scheme for the comprehensive and integrated drainage of the site showing how foul water, surface water and land drainage will be managed. The submission shall include, but may not be limited to the following; -
- Detailed drawings that demonstrate the inclusion of SuDS, location and size of key drainage features, pumping stations and outfall structures;
  - Updated calculations of greenfield runoff rates using FEH methods;
  - Calculations to demonstrate that the proposed surface water drainage system has been designed to prevent the surcharging of any below ground drainage network elements in all events up to an Including the 1 in 2 annual probability storm event, noting that 2013 FEH rainfall data is expected;
  - Calculations to demonstrate that the proposed surface water management system will prevent any flooding of the site in all events up to an including the 1 in 30 annual probability storm event noting that 2013 FEH rainfall data is expected;
  - Updated calculations of proposed attenuation basin sizing, noting that 2013 FEH rainfall data is expected;

- Assessment of potential failure of above-ground attenuation features, including assessment of residual risks to downstream receptors, and proposed mitigation and management measures (if applicable);
  - Confirmation of the proposed methods of treating surface water runoff to ensure no risk of pollution is introduced to groundwater or watercourses both locally and downstream of the site, especially from proposed parking and vehicular areas
  - Description and drawing demonstrating the management of surface water runoff during events that may temporarily exceed the capacity of the drainage system;
  - Confirmation of agreement in principle of proposed adoption and maintenance arrangements for the surface water and foul water drainage system;
  - Demonstration that appropriate access is available to maintain drainage features, including pumping stations;
  - Operational and maintenance manual for all proposed drainage features that are to be adopted and maintained by a third party management company.
- 9 Development (in each phase) shall not begin, including site clearance or demolition or equipment and materials moved on to site, until details of:
- where tree protection shall be erected and works within root protection areas is required;
  - a fully detailed Construction Environmental Management Plan (CEMP) and named 'responsible person', including:
    - i. Hours of working
    - ii. Tree protection (and arboricultural report)
    - iii. Dust management and mitigation measures
    - iv. Storage of materials
    - v. detailed ecological risk avoidance measures based on current site conditions and all protected species known to be locally present (all ecological surveys and site assessments should be under two years old from date of CEMP).

The approved CEMP shall be implemented in full for the duration of all construction works at the site unless otherwise approved in writing by the Local Planning Authority.

10 Development (in each phase) shall not begin until details and location of the following have been submitted to and approved in writing by the Local Planning Authority, and which shall be operated and maintained during construction of the development hereby approved:

- A method for ensuring mud is not deposited onto the Public Highway
- Construction traffic access location and specification
- Parking for site operatives
- Construction Traffic Management Plan - Travel plan for operatives.
- Siting of site compound / site offices (including stack heights) and storage areas

The development shall be carried out in accordance with the approved details for the duration of the construction of the development.

11 Development (in each phase) shall not begin until a Resource Audit to identify the approach to materials has been undertaken. The Resource Audit shall include the following;

- The amount and type of construction aggregates required and their likely source;
- the steps to be taken to minimise the use of raw materials (including hazardous materials) in the construction phase, through sustainable design and the use of recycled or reprocessed materials;
- The steps to be taken to reduce, reuse and recycle waste (including hazardous wastes) that is produced through the construction phase;
- The type and volume of waste that the development will generate (both through the construction and operational phases);
- End of life considerations for the materials used in the development; and
- Embodied carbon and lifecycle carbon costs for the materials used in the development.

Construction works shall thereafter be carried out in full accordance with the details of the approved Resource Audit unless agreed in writing by the Local Planning Authority.

12 No development shall take place until a point of connection on the public sewerage system has been identified by a hydraulic modelling assessment, which shall be first submitted to and

approved in writing by the Local Planning Authority. Thereafter the connection shall be made in accordance with the recommended connection option following the implementation of any necessary reinforcement works to the sewerage system, as may be identified by the hydraulic modelling assessment.

- 13 Development shall not begin in relation to the following specified highways works until the details have been submitted to and approved in writing by the Local Planning Authority following (or concurrently with) the completion of the technical approval process by the local highway authority. The works shall include those illustrated in drawing reference 1470/45/C.

The development shall not be occupied until the scheme has been constructed in accordance with the approved details.

- 14 Prior to any new development above damp proof course levels, a detailed and holistic site-wide location plan for proposed biodiversity net gain enhancement features should be submitted to and approved in writing by the Local Planning Authority. The plan should include the provision of 'fixed' habitat features including a range of bird nesting boxes, bat boxes (or similar roosting features), Hedgehog homes and hedgehog highways through all impermeable boundary features and consideration for pollinating insects and invertebrates. The approved scheme shall be implemented in full and hereafter maintained as approved unless otherwise agreed in writing by the Local Planning Authority.
- 15 Prior to the first occupation of the development hereby approved, a Travel Plan which contains measures to promote alternative sustainable means of transport for residents with respect to the development hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall be implemented, in accordance with the approved details, on the first occupation of the development. A detailed written record shall be kept of the measures undertaken to promote sustainable transport initiatives and a review of the Travel Plan shall be undertaken annually. All relevant documentation shall be made available for inspection by the Local Planning Authority upon reasonable request.
- 16 Prior to the first occupation of any dwelling within any phase of residential development hereby permitted a scheme demonstrating measures for the efficient use of water as per the optional technical standards contained within Policy SD3 shall be submitted to and approved in writing by the Local Planning Authority and implemented as approved.

- 17 Prior to the first occupation of the development hereby permitted full details of a scheme for the provision of covered and secure cycle parking facilities within the curtilage of each dwelling shall be submitted to and approved in writing by the Local Planning Authority I. The covered and secure cycle parking facilities shall be carried out in strict accordance with the approved details and available for use prior to the first occupation of each dwelling to which it relates. Thereafter these facilities shall be retained for their permitted use.
- 18 No surface water and/or land drainage shall be allowed to connect directly or indirectly with the public sewerage network.
- 19 No external lighting shall be provided other than the maximum of one external LED down-lighter above or beside each external door (and below eaves height) with a Corrected Colour Temperature not exceeding 2700K and brightness under 500 lumens. Every such light shall be directed downwards with a 0 degree tilt angle and 0% upward light ratio and shall be controlled by means of a PIR sensor with a maximum over-run time of 1 minute. The Lighting shall be maintained thereafter in accordance with these details.
- 20 No dwelling shall be occupied until the following landscape / open space management details for all areas outside of the curtilage of the dwellinghouses are submitted;
  - a map or plan indicating the management responsibility of each respective area of the proposed development.
  - a schedule of implementation and maintenance of non-private landscaped areas / open space

Delivery and maintenance shall be carried out in accordance with these approved details.

21. All planting, seeding or turf laying in the approved landscaping scheme for each respective phase shall be carried out in the first planting season following the occupation of the building or the completion of the development on that respective phase, whichever is the sooner.

Any trees or plants which die, are removed or become severely damaged or diseased within 5 years of planting will be replaced in accordance with the approved plans.

**END**