

## Appeal Decision

Hearing held on 21 April 2016

Site visit made on 21 April 2016

**by Jonathan Hockley BA(Hons) DipTP MRTPI**

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

**Decision date: 16 June 2016**

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**Appeal Ref: APP/W1850/W/15/3137770**

**Land adjacent Kings Acre Halt, Kings Acre Road, Hereford, Herefordshire HR4 7AY**

- 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 Wyevale Holdings Ltd against the decision of Herefordshire Council.
  - The application Ref 142985, dated 16 September 2014, was refused by notice dated 6 May 2015.
  - The development proposed is the erection of up to 75 dwellings (including up to 26 affordable dwellings). Construction of associated works.
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### Decision

1. The appeal is dismissed.

### Applications for costs

2. Applications for costs were made by Wyevale Holdings Ltd against Herefordshire Council, and by Herefordshire Council against Wyevale Holdings Ltd. These applications are the subject of separate Decisions.

### Preliminary Matters

3. The application was made in outline with all matters reserved except for access. I have dealt with the appeal in the same manner, and have thus treated all plans except where they relate to access as indicative only.
4. Since the refusal of the planning application the Herefordshire Local Plan Core Strategy 2011-2031, 2015 (the Core Strategy) has been adopted. Policies within this strategy have superseded policies from the Unitary Development Plan which were previously relevant to the scheme. Both parties have addressed such changes within their evidence.

### Main Issues

5. The main issues in this case are as follows:
    - The effect of the proposal on the proposed Hereford Relief Road.
    - The effect of the proposal on highway safety, with particular reference to the junction between the site, the public highway, and Wyevale Business Park.
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## Reasons

6. The appeal site lies to the north west of Hereford and consists of a nursery and field. The site is bordered on its northern and southern sides by the A480 and A438 (Kings Acre Road) respectively; to the west lies mainly open countryside and to the east a static caravan/park homes site. Residential development lies on the far side of Kings Acre Road, and to the north of the A480 is the Wyevale Business Park.
7. The proposal seeks to construct a residential development. Access would be gained via an existing road which accesses the Nursery on the north side of the site; this access is close to being opposite to the entrance to the business park. The indicative development plan shows a community orchard along the northern side of the site and a landscaping belt along the southern side.
8. It is common ground amongst the parties that Herefordshire cannot demonstrate a five year supply of housing sites. Consequently, in line with National Planning Policy Framework (the Framework) relevant policies for the supply of housing cannot be considered up to date. The Statement of Common Ground (SoCG) confirms that these include policies RA1 and RA2 of the Core Strategy, which concern rural housing distribution and housing outside Hereford and the market towns. The SoCG states that these policies can only be afforded limited weight.

### *Hereford Relief Road*

9. The Hereford Relief Road (HRR) is a strategic road which would encircle the western half of the City. The Core Strategy states that to achieve the strategy's housing target there is a need to ensure that appropriate and necessary infrastructure is co-ordinated with the development, and cites the example of the HRR in this context. The Core Strategy proposed site of western urban expansion for Hereford (Three Elms) states that the site will provide access to the HRR. Supporting text states that the residential element of the site will be to the east of the HRR, adjacent to existing development. The appellant notes that the developers of the site are of the view that the HRR will go through or adjacent to this site.
10. A study of options carried out in 2010 reviewed route options for the HRR. An area at the south eastern side of the appeal site lies within one of these options. The Council have concerns that allowing development on the site would limit the options for the relief road, and that to allow the application would be premature in advance of the route for the road being chosen. This is likely to be around 2017-2018 and detailed alignment of the road will be shown in the Hereford Area Plan.
11. Planning Practice Guidance states that arguments that an application is premature are unlikely to justify a refusal of planning permission other than where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, taking the policies in the Framework and any other material considerations into account. Such circumstances are likely, but not exclusively, to be limited to situations where both the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan or Neighbourhood

Planning; and the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.

12. The area of land that is shown as the relief road corridor covers a large area of land from the appeal site in the west to roughly Huntingdon Lane in the east. The land includes a new livestock market to the north but excludes the Wyevale Business Park. Policy HD3 of the Core Strategy states that the HRR will be designed and developed in such a way which avoids and mitigates adverse impacts of physical damage to loss of habitats, noise pollution and vibration, light and air pollution, flood risk and water quality, as well as residential amenity and business interests. Consideration of effect on heritage assets and the historic character of the wider landscape will also be required.
13. I can appreciate that from a view of the swathe of land shown as the relief road corridor it is clear that the central section of the corridor contains less built development, which would seem to indicate less disruption were a road to be built there. However, the criteria noted in Policy HD3 is broad and contains a number of detailed technical issues, not just residential amenity and business interests. Whereas a route closer to the appeal site may have more effect on such interests than one further to the east, I do not have detailed evidence on the alternate effects of such an eastern route, either residential, business or the other detailed criteria within Policy HD3. Moreover, this appeal is not the time to decide or limit such a route, when it is clear that a detailed examination of all aspects of routing, positive and negative, needs to be taken into account, and publically consulted upon.
14. I appreciate that the appeal site is only partially covered by the potential road corridor. However, the site is not far from the junctions of the A480 and the A438. It is reasonable to consider that the junction of these two routes may need to be altered or at the very least considered with the juxtaposition of the HRR within the broader corridor. The Local Transport Plan (LTP) is in draft form. This shows a broad arrow denoting the route of the HRR, aiming between the Three Elms site and the Wyevale garden centre, which lies to the east of the appeal site. However, this plan is very much a broad brush indicative diagram and I do not consider that this necessarily shows the Council's intentions for the route of the road; more it shows the strategic nature of the road and the key sites it is proposed to link.
15. The Inspector who carried out the inquiry into the Core Strategy concluded that the HRR may be delivered within the plan period, but noted that it was not in the local transport plan, that funding was not secured and it is not part of Highways England Investment Strategy for 2015-2020. She therefore stated that there was a high degree of uncertainty over whether the road was viable and what could be achieved within the plan period. However, I note that the draft LTP seeks to have concluded the route options, business case and planning application for the HRR in the first half of 2016-2021. The LTP aims for the Wye Crossing and Three Elms section of the road to be open between 2022-2031.
16. The proposal would limit the number of routes that could be chosen and considered for the HRR. This in turn could have a knock on effect upon the housing provision within the district. Given that such housing at Three Elms (1,000 homes) in particular would be served by the HRR and are fundamental to the delivery of housing within the Core Strategy I consider it likely that the

proposal, if allowed, would inevitably predetermine decisions about the scale, location and phasing of new development which would be served by the HRR. The potential effect on such a large number of houses would significantly and demonstrably outweigh the benefits of the proposal at the present time. I therefore conclude that the proposal would have an adverse effect on the proposed Hereford Relief Road. The proposal would be contrary to Policies SS4 of the Core Strategy which state that the Council will work to provide the HRR, and to Policy HD3.

17. The appellant suggests that were it to be considered necessary then a condition could be imposed to restrict the area of land shown to be within the options for the HRR to not be used for the proposed development. However, this area, whilst not half of the site, still covers a large part of the site. I am not convinced that such a condition would be workable or reasonable. The condition would have the effect of significantly reducing the size of the site and thus its capability to deliver housing. Should the HRR be built up to the line of the protected area then property on the site beyond the boundary could be affected negatively by noise and disturbance; should the HRR not be built on this line an area of land could effectively be landlocked by the scheme.

#### *Highway safety*

18. The existing access from the site to the A480 would be improved by the proposal, and there is no dispute amongst the parties that the access itself would be engineered adequately to cope with the traffic that the proposed houses would generate. The A480 in this location has a 60mph speed limit.
19. However, the Council have concerns over the visibility splays available at the business park entrance opposite, and possible conflicts over traffic leaving both exits at the same time. At my visit I noted the limitations upon the business park entrance. To the north west views are slightly impeded by the local topography; to the south east visibility is constricted by a slight bend in the road and vegetation.
20. Traffic surveys have been submitted by the appellant, showing that westbound traffic past the site is relatively stable for AM and PM peak hours of around 250 vehicles. In an eastbound direction, heading into Hereford, the PM peak of some 332 vehicles is more than the AM peak of around 245 vehicles<sup>1</sup>. The appellant considers that speeds past the access will be below 60mph due to a bend to the south, where the road angles towards its junction with the A438. Although the Transport Assessment addendum<sup>2</sup> (the addendum) states that the a 40mph speed limit will need to be relocated from its present location close to the A438/A480 junction past the site, at the Hearing the appellant did not consider this was strictly necessary to ensure highway safety. At my visit I noted that vehicles were moving quickly in both directions along the road. No speed surveys have been submitted.
21. The appellant notes that the business park and the proposed residential use of the appeal site have differing arrival and departure profiles. This seems reasonable to me; it is likely that most business park traffic will be arriving at the park in the morning and leaving in the evening, whilst the opposite is likely to be true of residential use. Use of PICADY assessments in the addendum

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<sup>1</sup> Transport Assessment, October 2014, MBC Ltd. Paragraph 3.2.5

<sup>2</sup> Addendum to the Transport Assessment, November 2015, MBC Ltd

notes that in the morning peak there could be some conflict with traffic departing the appeal site and traffic accessing the business park, and vice versa in the evening peak. The assessments indicate that at both peaks the proposed junction would work well within capacity with minimal queuing and delays.

22. However, the Council's concerns relate to the potential for accidents caused by potential conflict between the two opposite junctions, as opposed to junction capacity. The movements which have the most potential to create conflict would I consider be between vehicles turning right out of the two sites at the same time. Such movements would have to be undertaken appreciating any vehicles opposite, whilst also considering vehicles travelling at speed both east and westbound.
23. The assessments indicate that such conflicts are most likely to take place in the PM peak when most traffic is leaving the business park at the end of a working day, and some traffic would still be leaving the appeal site towards Hereford. Whilst I note the results of the PICADY assessment this appears to be primarily concerned with capacity. Due to the nature of the movements, and when combined with vehicles travelling at relatively high speeds along the A480 (i.e. above 40mph) and the substandard nature of the visibility from the business park junction – particularly towards the south – I share the Council's concerns and consider that the proposal has the potential to adversely affect highway safety. It is easy to envisage a vehicle turning right out of the business park, inching forward to gain a clear view of traffic from the left accelerating away from the bend in the road, whilst also trying to remain aware of the intentions of traffic leaving the proposal site, and also being mindful of traffic from the right which may be decelerating in anticipation of the bend. I consider that such a situation has the potential to endanger highway safety.
24. I therefore conclude that the proposal would have an adverse effect on highway safety, with particular reference to the junction between the site, the public highway, and Wyevale Business Park. The proposal would be contrary to Policy MT1 of the Core Strategy, which states that development proposals should demonstrate that the local highway network can absorb the traffic impacts of the development without adversely affecting the safe flow of traffic on the network.

#### *Other matters*

25. At the Hearing a unilateral undertaking was submitted by the appellant concerning affordable housing, education, recycling and sustainable transport contributions and public open space provision. Although there was some discussion at the Hearing over some of the clauses within the undertaking, the agreement was submitted in good faith and could be altered relatively quickly. As such I place weight in favour of the provisions within the Undertaking, particularly those relating to affordable housing.

#### **Conclusions**

26. The proposal would provide housing in an area which has an acknowledged undersupply of housing land. Such housing, both open market and affordable, would provide social and economic benefits and environmental affects of the proposal have been shown to be limited. However, I consider that such benefits would be significantly outweighed by the adverse impacts of the

proposal on the Hereford Relief Road, and on matters of highway safety. At the present time the proposal would have the potential to impact adversely upon the HRR, potentially affecting delivery of housing within the Core Strategy, thereby significantly overriding any positive effects of the housing proposal.

27. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*Jon Hockley*

INSPECTOR

Richborough Estates

## **APPEARANCES**

### **FOR THE APPELLANT:**

|                    |                     |
|--------------------|---------------------|
| Heather Williamson | Appellant           |
| Les Pettitt        | Appellant           |
| Paul Smith         | Paul Smith Planning |
| Mark Baker         | MBC Limited         |

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

|                 |                       |
|-----------------|-----------------------|
| Edward Thomas   | Herefordshire Council |
| Bruce Evans     | Herefordshire Council |
| Cllr R Matthews | Herefordshire Council |

### **INTERESTED PARTIES**

|                      |                         |
|----------------------|-------------------------|
| Elizabeth Morawiecka | Local resident          |
| Anthony Powers       | Breinton Parish Council |
| Margaret Cooley      | Local resident          |
| Michael Cooley       | Local resident          |
| Paul Broome          | Hereford Times          |
| Margaret Borner      | Local resident          |

### **DOCUMENTS SUBMITTED AT THE HEARING**

1. Unilateral Undertaking given by Wyevale Holdings Limited, dated 22 March 2016.
2. Excerpts from the Hereford Local Transport Plan.
3. Herefordshire Council Statement of Compliance with 'CIL Regulations', 15 March 2016.