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## Appeal Decision

Inquiry held on 13-22 September 2016

Site visit made on 14 & 21 September 2016

**by Susan Heywood BSc(Hons) MCD MRTPI**

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

**Decision date: 17 November 2016**

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**Appeal Ref: APP/W1850/W/15/3140016**

**Madley Road, Clehonger, Herefordshire HR2 9TE<sup>1</sup>**

- 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 Gladman Developments Ltd against Herefordshire Council.
  - The application Ref P141964/O, is dated 30 June 2014.
  - The development proposed is a residential development of up to 90 dwellings with access, parking, public open space with play facilities and landscaping.
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### Decision

1. The appeal is allowed and planning permission is granted for a residential development of up to 90 dwellings with access, parking, public open space with play facilities and landscaping at Madley Road, Clehonger, Herefordshire HR2 9TE in accordance with the terms of the application, Ref P141964/O, dated 30 June 2014, subject to the conditions set out at Annex 1.

### Preliminary matters and Main Issues

2. The appeal relates to an outline application with access to be considered at this stage. All other matters are reserved for future consideration. The appeal is accompanied by an illustrative Development Framework Plan, a site access plan and a site location plan.
3. Following the appeal against non-determination of the application, the Council resolved that they would have refused the proposal due to its impact on the character and appearance of the area, its impact on the Clehonger Waste Water Treatment Works (WWTW) and due to the lack of a S106 Agreement for infrastructure improvements. The appellants and Council have subsequently agreed the terms of a S106 Agreement which has removed the Council's concerns on this matter, other than in relation to any works required to the WWTW which are not addressed by the S106. I address these matters further later in this decision.
4. Dŵr Cymru Welsh Water (DCWW) gave evidence to the inquiry in support of their objections to the scheme.
5. The **main issues** in this appeal are as follows:

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<sup>1</sup> The address on the application form refers to Madley Road but access is shown off Kingstone Road to the south.

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- i) the impact of the development on the Clehonger Waste Water Treatment Works and consequent impact on the Cage Brook Valley SSSI<sup>2</sup> and River Wye SAC<sup>3</sup>/SSSI;
- ii) the impact of the development on the character and appearance of the surrounding area;
- iii) the benefits of the development in terms of the provision of housing, including affordable housing, in light of an agreed shortage of available housing land in accordance with the National Planning Policy Framework (the Framework).

## **Reasons**

### **Policy Context**

6. Section 38(6) of The Planning and Compensation Act 2004 requires that, if regard is to be had to the development plan for the purposes of any determination to be made under the planning Acts, determination must be made in accordance with the development plan unless material considerations indicate otherwise. The Framework is a significant material consideration. Where the Council are unable to demonstrate a five year housing land supply, paragraph 49 of the Framework makes it clear that relevant policies for the supply of housing should not be considered up-to-date. The Council acknowledge that they cannot currently demonstrate a five year housing land supply although the extent of the shortfall is disputed, a matter I return to later.
7. The development plan includes the Herefordshire Local Plan Core Strategy 2011-2031 (adopted October 2015). The parties agree that policies SS2, SS3, RA1, RA2 and SD4 are policies for the supply of housing. Policies SS2, RA1 and RA2 are primarily aimed at regulating the amount and location of housing. Although the Council argue that the policies are not failing to deliver a supply of housing in Clehonger, paragraph 47 of the Framework requires authorities to provide five years' worth of housing against their housing requirements. The housing requirement as set out in policy SS2 is to deliver a minimum of 16,500 homes in Herefordshire over the plan period. The Council are required to demonstrate a five year supply against this figure, not the figures broken down into settlement level. Consequently, in the absence of a five year supply policies SS2, RA1 and RA2 should attract limited weight.
8. However, policy SS3 relates to the means of addressing a shortfall in the supply of housing. It takes effect when the Council's monitoring demonstrates that housing delivery is below the cumulative target set out in the housing trajectory. It would seem to defeat the object of that policy if I were to find that it has limited weight when the Council cannot demonstrate a five year supply. This policy therefore attracts significant weight.
9. Policy SD4 relates to waste water treatment and river water quality. The policy advocates the use of developer contributions or CIL<sup>4</sup> funds to upgrade WWTW. The appellants argue that this conflicts with the Framework and is contrary to

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<sup>2</sup> Site of Special Scientific Interest

<sup>3</sup> Special Area of Conservation

<sup>4</sup> Community Infrastructure Levy

the duties placed on sewerage undertakers by the Water Industry Act. I deal with these matters and the weight to be given to this policy below.

10. Other relevant policies are set out on a topic basis below.

**The impact on the WWTW / SSSI / SAC**

11. The WWTW lies within the catchment of Cage Brook which runs through part of Cage Brook Valley SSSI into the River Wye SAC/SSSI. Natural England have objected to the proposed development on the basis that DCWW are not satisfied that the development can be accommodated at the WWTW without causing breaches of their discharge consent.
12. A Nutrient Management Plan has been developed by the Environment Agency and Natural England and this formed part of the considerations for the level of growth predicted in the Core Strategy. The parties and Natural England agree that the ability of the Nutrient Management Plan to achieve the conservation objective for the River Wye SAC is predicated on development being accommodated within the terms of DCWW's discharge consents. If the development does not cause a breach of the discharge consent at Clehonger then it can be concluded that the proposal would not be likely to have a significant effect on the internationally important interest features of the SSSIs / SAC, alone or in combination with other plans and projects in accordance with the Habitats Regulations<sup>5</sup>. In that case an Appropriate Assessment would not be required for the development and planning permission may be granted. However, if significant effects cannot be ruled out an Appropriate Assessment would be required.
13. Both parties agree that in order to conclusively determine the impact of the development on the WWTW and establish whether any upgrading works are necessary, a flow and load survey is required to determine the incoming sewage characteristics. That can be compared to the capacity of the works and only then can the available 'headroom' be established. At that point it would be possible to determine whether the WWTW was able to accommodate sewage from the development with no risk to the discharge consent. No flow and load data is available in this case.
14. In the absence of flow and load data, DCWW use industry standard calculations. The appellants' evidence seeks to demonstrate that these standard calculations are onerous and the impact would, in all probability, be lower. Consequently they say the WWTW would be able to accommodate the proposed development with no risk to the discharge consent.
15. It is the case that the WWTW is currently operating well within its discharge consent. Furthermore, I note that the agreed average flow of 153 cubic metres per day (m<sup>3</sup>/d) is considerably lower than the average flow based on the standard figures of 342 m<sup>3</sup>/d. It seems likely therefore that the standard figures do overestimate the impact of the development on the WWTW and underestimate the available headroom.
16. Nonetheless, neither party could give any assurances that the other figures provided<sup>6</sup> are representative of the actual situation at the WWTW. The appellants' figures are based on the experience of their drainage witness from

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<sup>5</sup> The Conservation of Habitats and Species Regulations 2010

<sup>6</sup> From other sites in Herefordshire, three samples from Clehonger in 2008 and the appellants' data

- similar predominantly domestic catchments, but there is no background evidence provided to demonstrate that these figures are reliable comparisons.
17. I accept the point made by DCWW that it would not be acceptable to manage their assets on the basis of a probability or likelihood that a development will not have an unacceptable impact on their infrastructure. The consequences of acting in such a manner would be, at best, inconsistency in application of their standards and, at worst, harm to the environment or public health through breaches of their discharge consents. Thus I consider that it is reasonable of DCWW to use the industry standard specifications in the absence of flow and load data.
  18. In summary, these standard figures show that the WWTW is already exceeding its capacity and that the development would be likely to result in overloading of parts of the works<sup>7</sup>. This in turn would be likely to result in a risk of breaches of the discharge consent if no upgrading works are carried out.
  19. DCWW say that funding is currently not available for any upgrading works and they are consequently seeking a contribution through a S106 agreement from the appellants. On the basis of the standard figures, they have requested a number of items including a new biofilter, inlet screen, recirculation pump and desludge valves. The estimated cost of these works is just over £773,000. However, these works are based on a Feasibility Study carried out by DCWW as a result of assessing the evidence for this appeal. The original Developer Impact Assessment for the proposal indicated that works costing around £1.5 million would be required. The actual extent and cost of works required may change again once the outcome of the flow and load survey is known. Furthermore, DCWW accept that, depending on the type of pumping station used at the development site, not all of the items requested may be necessary. They were also unable to explain some inconsistencies in the items requested for this development and some for other developments in Clehonger. Neither were they able to fully justify other charges which make up the £773,000+.
  20. Consequently, the proposed sum requested by DCWW is not able to be fully justified and it would not be possible to do so until a flow and load survey is carried out. It would not therefore be possible to conclude that the level of contribution requested would be necessary, directly related to the development and fairly and reasonably related in scale and kind to the development. As such, it would not meet the tests for a S106 agreement set out in Regulation 122(2) of the CIL Regulations. However, I accept the Council's point that it would be possible to word a S106 agreement in order to comply with the Regulations<sup>8</sup>. Nevertheless, the appellants do not agree to such a contribution and as such there is no S106 agreement before me relating to this matter.
  21. Due to the lack of a flow and load survey, I do not have the evidence which demonstrates whether any works are necessary to the WWTW, nor the extent of such works if any are required. Furthermore, there is no agreement between the parties as to the sum of money required to carry out any work nor who should pay for it.

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<sup>7</sup> Tables 1a and 1b Dr Burgoyne's evidence

<sup>8</sup> Furthermore, I see no reason why DCWW could not be party to such an agreement, particularly if obligations were to be imposed on them.

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22. On that basis, it is not possible for me to ascertain that the proposal will not adversely affect the integrity of the SSSIs / SAC. In accordance with Circular 06/2005<sup>9</sup> in such circumstances permission should either be refused or granted subject to conditions or an obligation.
23. In the absence of a S106 agreement therefore, it is necessary for development of the appeal site to be delayed until a flow and load survey has been carried out and an assessment made of the impact of the proposed development on the WWTW. If any upgrading works are required it would then be necessary to ensure that the works are carried out before any of the dwellings proposed in this development are occupied.
24. The Council and DCWW are of the view that if I were to impose a Grampian condition to secure this, because of the absolute right to connect to the public sewerage system, the result would be that DCWW would have to allow connection upon the developer triggering the statutory 21 days' notice period. They say that this would mean that DCWW would have to fund any necessary works to prevent a breach of their discharge consent.
25. The appellants on the other hand say that such a condition would force the developer to fund the works as DCWW would be likely to do nothing in the absence of a developer contribution. The appellants also consider that such a condition would not be reasonable or necessary, firstly as there is no likelihood of the works being undertaken by DCWW and secondly, because they say that DCWW would have ample time for funding to be put in place before the dwellings are occupied. I will deal with these concerns in turn.

#### *Funding*

26. It is not disputed that developers have an absolute right to connect to the public sewer and that S94 of the Water Industry Act 1991 imposes a duty upon water undertakers to (a) "provide, improve and extend ... a system of public sewers.." and (b) "to make provision for the emptying of those sewers and such further provision...for effectually dealing, by means of sewage disposal works or otherwise, with the contents of those sewers".
27. The *Barratt Homes* judgement<sup>10</sup> turned upon the narrow issue of whether the property owner or sewerage undertaker should be entitled to decide the point of connection to a public sewer. Thus the issue decided upon in the Supreme Court (following the earlier Court of Appeal judgment) did not directly deal with the issues before me in this appeal. Nevertheless, Lord Phillips in the Supreme Court, in his paragraphs 41-43, recognises the difficulties which are similar to those before me:

"The real problem that is demonstrated by the facts of this case arises out of the "absolute right" conferred by section 106 of the 1991 Act on the owner or occupier of premises to connect those premises to a public sewer without any requirement to give more than 21 days notice. While this might create no problem in the case of an individual dwelling house, it is manifestly unsatisfactory in relation to a development that may, as in the present case, add 25% or more to the load on the public sewer. The public sewer may well not have surplus capacity capable of accommodating the increased load without the risk of flooding unless the undertaker has received sufficient advance notice of the increase and has been able to take the necessary measures to increase its capacity.

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<sup>9</sup> ODMF Circular 06/2005 Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System

<sup>10</sup> *Barratt Homes Ltd v Dwr Cymru Cyfyngedig (Welsh Water)* [2008] EWCA Civ 1552 and [2009] UKSC 13

This problem is accentuated by the fact that the budgets of sewerage undertakers and the charges that they are permitted to make have to be agreed by OFWAT and that this process takes place at five yearly intervals so that forward planning may have to be carried out five years in advance. .... In many cases there will be no alternative point of connection that will avoid overload on the public sewer. Welsh Water has presented this appeal as if the problem to be addressed relates to the point of connection whereas in truth the problem relates to the right of a developer, on no more than 21 days notice, to connect to a public sewer that lacks the relevant capacity.

The Court of Appeal suggested that the practical answer to this problem lies in the fact that the building of a development requires planning permission under the Town and Country Planning Act 1990. The planning authority can make planning permission conditional upon there being in place adequate sewerage facilities to cater for the requirements of the development without ecological damage. If the developer indicates that he intends to deal with the problem of sewerage by connecting to a public sewer, the planning authority can make planning permission conditional upon the sewerage authority first taking any steps necessary to ensure that the public sewer will be able to cope with the increased load. Such conditions are sometimes referred to as *Grampian* conditions after the decision of the House of Lords in *Grampian Regional Council v Secretary of State for Scotland* [1983] 1 WLR 1340. Thus the planning authority has the power, which the sewerage undertaker lacks, of preventing a developer from overloading a sewerage system before the undertaker has taken steps to upgrade the system to cope with the additional load.”

28. I note the appellant’s point that this judgement relates to sewerage whereas the case before me relates to sewage treatment. However, I consider the principles to be similar in this appeal. The Supreme Court judgement does not comment upon who should pay for the system to be upgraded. However, it confirms (at paragraph 57) that the planning system is the only way to achieve a deferral of the right to connect to the public sewer in order to give a sewerage undertaker an opportunity to undertake the works to accommodate the increased loading.
29. The appellants point out that the judgement set out a number of difficulties with this course of action:
- “Is it reasonable to expect the sewerage undertaker to upgrade a public sewerage system to accommodate linkage with a proposed development regardless of the expenditure that this will involve?
- How long is it reasonable to allow a sewerage undertaker to upgrade the public sewerage system?
- Is it reasonable to allow the sewerage undertaker to delay planned upgrading of a public sewer in the hope or expectation that this will put pressure on the developer himself to fund the upgrading?”
30. However, the judgement does not conclude on these points, save to say that the sewerage undertaker and OFWAT should be consulted as part of the planning process. Consequently the judgements suggest that, although it is the property owner who can stipulate *where* the connection is made, the planning system can intervene to dictate *when* it takes place. The *George Wimpey* judgement<sup>11</sup> reaches a similar conclusion.
31. I heard much about DCWW’s funding arrangements and whether or not they should fund the works. I note the appellant’s points that other water authorities do not seek contributions and that they consider DCWW have a contingency for unplanned works. However, I accept that it is for DCWW, regulated by OFWAT, to decide where to spend their funds. They have set processes, procedures and timescales in place and they are best placed to decide upon the factors to be taken into account in allocating their funding.

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<sup>11</sup> *George Wimpey & Co Ltd v SoS for the Environment and another* [1979] 1 EGLR 153

This accords with the comments of the judge in the *Marcic* judgement<sup>12</sup>, albeit that these comments related to the consideration of Mr Marcic's claim under the Human Rights Act: "The need to adopt some system of priorities for building more sewers is self-evident. So is the need for the system to be fair. A fair system of priorities necessarily involves balancing many intangible factors. Whether the system adopted by a sewerage undertaker is fair is a matter inherently more suited for decision by the industry regulator than by a court".

32. At paragraph 63 the judge said:

"...the exercise becomes very different when one is dealing with the capital expenditure of a statutory undertaking providing public utilities on a large scale. The matter is no longer confined to the parties to the action. If one customer is given a certain level of services, everyone in the same circumstances should receive the same level of services. So the effect of a decision about what it would be reasonable to expect a sewerage undertaker to do for the plaintiff is extrapolated across the country. This in turn raises questions of public interest. Capital expenditure on new sewers has to be financed; interest must be paid on borrowings and privatised undertakers must earn a reasonable return. This expenditure can be met only by charges paid by consumers. Is it in the public interest that they should have to pay more? And does expenditure on the particular improvements with which the plaintiff is concerned represent the best order of priorities? .... These are decisions which courts are not equipped to make in ordinary litigation. It is therefore not surprising that for more than a century the question of whether more or better sewers should be constructed has been entrusted by Parliament to administrators rather than judges".

33. Although the appellants point out that the judgement deals with different issues than are before me in this case, I agree with the Council that the principles are nevertheless applicable. Having regard to the above comments, it would be inappropriate of me to reach the conclusion in this decision that DCWW must alter their funding arrangements which, as I explain below are planned for until 2020, in order to fund any necessary improvements required as a result of this development.
34. I acknowledge that the imposition of a Grampian condition would not resolve the issue of which party should pay for the works. But, in accordance with the *Marcic* judgement, this is not a matter for me as it is the subject of a different statutory regime. However, neither would such a condition necessarily result in either party being forced to provide the funding by default, for reasons I set out below. Such a condition would however prevent development from commencing until any necessary works have been determined after a flow and load survey has been carried out. Who should pay for the flow and load survey would be a matter for the parties to come to an agreement about.
35. I heard that DCWW would not routinely carry out a flow and load survey at the planning application stage due to the cost and time involved. They would only undertake such a survey, at the expense of the developer, once planning permission is granted and on receipt of funding through a S106 agreement. At the planning application stage, as is their usual procedure, DCWW carried out a Developer Impact Assessment which was funded by the appellants. However, the works identified in the Developer Impact Assessment as being necessary were subsequently agreed by DCWW to be excessive. I therefore have some sympathy with the appellants' concerns that they are being asked to pay again for a further survey which may ultimately determine that the development would not have an adverse impact on the WWTW. Nevertheless, these are not matters for me to resolve in the context of a planning appeal. OFWAT is the regulator of any disputes with DCWW and there is no evidence submitted to indicate that they would decline to consider such a dispute.

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<sup>12</sup> *Marcic v Thames Water Utilities Ltd* [2003] UKHL 66, on appeal from: [2002] EWCA Civ 64

*The likelihood that any necessary works could be carried out within the time-limit imposed by the permission*

36. Part of the test for using a Grampian condition, as set out in Planning Practice Guidance, is that one should not be used where 'there are no prospects at all of the action in question being performed within the time-limit imposed by the permission'.
37. DCWW explained that they set out to OFWAT proposals for the funding needed to be able to carry out their statutory duties over a five year period (an Asset Management Plan (AMP)). OFWAT then sets the limit of charges which can be made to domestic and other customers during that period. Works required as a result of development proposed in adopted development plans is provided for in the AMP. However, the lead in times for production of the AMP are long, therefore development identified in the current Core Strategy for Herefordshire is not provided for in the current AMP period which runs until 2020. The next AMP would need to take account of development provided for within the now adopted Core Strategy. DCWW also confirmed<sup>13</sup> that if planning permission is granted for this development then any necessary works would go forward into the cost analysis and assessment for the next AMP period. The works may or may not be allocated funding at that stage.
38. Thus, any works required as a result of the development may be funded by DCWW in the next AMP period. But, it is also possible that a developer may agree to fund the works on the basis that this would allow the dwellings to be occupied sooner than would be the case if relying on funding from DCWW. I do not therefore consider that there is 'no prospect at all' of the works being carried out within the timescale for the planning permission. In this regard, it is appropriate to alter the 'standard' time limit for outline applications to ensure that the permission would remain extant for a full five year period<sup>14</sup> ie. until November 2021.
39. The Council points out that Lord Carnwath in the *Barratt* Court of Appeal judgement stated that "If off-site works are required, it (a planning authority) may impose a condition or require an agreement to ensure that they are carried out at the expense of the developer". Nonetheless, I do not interpret this to determine that a developer must be required to pay for the works. In accordance with the Planning Practice Guidance, a condition is to be preferred to a S106 agreement wherever possible and this comment supports my view that a condition may be imposed.
40. For these reasons I do not consider that the Grampian condition would force either party to fund the works by default.
41. There appears to be nothing in the Water Industry Act to preclude DCWW from receiving developer contributions to enable them to carry out their duties under S94 of that Act, whether this is through a S106 agreement or as a result of

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<sup>13</sup> Mr Robinson's response to my question

<sup>14</sup> The 'standard' condition would allow a period of 3 years for the submission of reserved matters and a further 2 years for implementation of the permission from the date of approval of the last of the reserved matters to be approved. As such, if all of the reserved matters were submitted and approved early, for example in the first year after permission is granted, the permission would only remain extant for a further 2 years ie. 3 years in total. If on the other hand, the last of the reserved matters was submitted at the end of the 3 year period, the permission would be extant for a further 2 years from approval of that reserved matter ie. 5 years in total or more depending on the date of approval of that reserved matter. The condition has therefore been altered in order to ensure that it remains extant for the full 5 year period in order to allow the permission to be taken into account in the next AMP.



works needed to comply with a planning condition. Furthermore, it is a well-established planning principle that developers can fund improvements to infrastructure in order to allow a development to go ahead subject to the requirements of the CIL Regulations or the tests for the imposition of planning conditions being met. In the absence of a S106 agreement, who should pay for any works is a matter for the parties. I note the letters and email exchanges with OFWAT. None of these alters my conclusions set out above.

*DCWW will have time to provide any necessary upgrading works*

42. The appellants say that DCWW have known about the planned increase in the number of dwellings in Clehonger for some time and that there would be a further 18-24 months before any dwellings are completed and occupied. They point out that the S106 for the Seven Stars site (also within Clehonger) demonstrates that upgrading works could be completed within a short period of time.
43. However, as set out above, the reason that DCWW say that they cannot currently fund any necessary works is because the lead in period for the development of the current AMP has been such that the level of development proposed in the current Core Strategy has not been included. Therefore the timescales for any funding to be allocated by DCWW would be beyond 2020, ie. the end of the current AMP period, which would also be in excess of 18-24 months from the date of this decision.
44. The appellants refer to the Weedon Bec appeal decision<sup>15</sup>. The Inspector in that case concluded that a condition requiring foul sewage infrastructure works to prevent overloading of a sewer was not necessary because the water authority would have had sufficient time to take the necessary measures before any dwellings were built and occupied. Nevertheless, in the first instance I understand that the appeal decision has been quashed, albeit not on a matter relating to the foul sewage condition. Consequently, the decision now attracts no weight. Furthermore, there is nothing to suggest that the Inspector in that case was made aware of any matters which would restrict the ability of the water authority to undertake the works within the timescales referred to. That is quite unlike the case before me. Consequently, even if the decision had not been quashed, the Inspector's conclusion in that case would not have been determinative having regard to the evidence before me.

*Other issues raised in relation to the WWTW*

45. Before concluding on this issue, it is necessary to consider the information put to me regarding the current state of the WWTW. The appellants point out that the WWTW is already in need of maintenance and upgrading works. Nevertheless, it was accepted that none of the issues referred to are currently resulting in breaches of the discharge consent. The tests for a planning condition, as set out in the Framework, include that it should be necessary and relevant to the development to be permitted. It would be up to the parties to agree, following a flow and load survey, the extent of the works required based on the impact of this development. In relation to the requested S106 contribution, DCWW accept that the developer should not have to pay for pre-existing issues if the WWTW is coping with the non-conformances<sup>16</sup>. The

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<sup>15</sup> APP/Y2810/A/14/2228921

<sup>16</sup> Dr Burgoyne's Proof of Evidence paragraph 4.4

current state of the WWTW does not therefore alter my conclusions on this matter.

*Conclusion on WWTW / SSSI / SAC issue*

46. Bringing together the above factors, having regard to the evidence before me I am unable to conclude whether any works to the WWTW are necessary nor the extent of such works if any are required. Based on the industry standard calculations the evidence demonstrates that the WWTW would be likely to be overloaded as a result of this development. No other reliable information is before me. On that basis, it is not possible for me to conclude that the proposal would not adversely affect the integrity of the SSSIs / SAC. As no S106 agreement is before me relating to this matter, the imposition of a condition would be the appropriate mechanism to secure any necessary works. Compliance with an appropriate condition would ensure that any necessary works are carried out before occupation of the dwellings. This in turn would ensure that the development would not result in breaches of the discharge consent at the WWTW and would not therefore result in harm to the SSSIs / SAC. A condition is therefore necessary in order to overcome the planning harm in this case.
47. Policy SD4 of the Core Strategy seeks to ensure that development does not undermine the achievement of water quality targets for rivers, in particular through the treatment of wastewater. It requires proposals to fully mitigate the adverse effects of wastewater discharges into rivers caused by the development. This may involve phasing or delaying development until further capacity is available. The imposition of a Grampian condition would be in accordance with this aim.
48. Although the parties agree that policy SD4 is a policy for the supply of housing, its primary aim is to protect the water environment. Consequently, I do not consider that these aims should be put aside simply because the Council cannot demonstrate a sufficient housing land supply. I therefore give significant weight to this policy, even though it is not considered to be up-to-date having regard to paragraph 49 of the Framework.
49. The policy also refers to the possibility of using developer contributions towards improvements to WWTW to accommodate the development. Having regard to my conclusions relating to the contribution requested and my intention to impose a Grampian condition, this matter is not directly relevant to my decision. Nevertheless, the matter was raised by the appellants and I therefore address it. I have set out above the reasons why I do not consider the requirement for contributions to be in conflict with the Water Industry Act. Neither do I consider that such a policy would conflict with the Framework which, at paragraph 203, sets out that unacceptable development can be made acceptable through the use of planning conditions or obligations. The Planning Practice Guidance also confirms that developers may be asked to provide contributions for infrastructure and states that policies for seeking obligations should be set out in a Local Plan.

**Character and appearance**

50. The appeal site lies on greenfield land to the north west of Clehonger. The site comprises five fields which sit between the B4352, Madley Road and the B4349, Kingstone Road. Access would be taken off Kingstone Road. The

Development Framework Plan shows that two of the five fields, one of which is an existing orchard, would remain as open space.

51. The appeal site lies within the Principal Settled Farmlands character area as defined in the Herefordshire Council Landscape Character Assessment 2009. The parties agree that the site is relatively well contained within its boundaries. Consequently, the impact of the development would be localised and it would not have a significant impact on the character or appearance of the wider landscape character area.
52. Nevertheless, the proposal would result in the loss of three agricultural fields, currently used for pasture land, to residential development. The majority of the existing hedgerows forming existing field boundaries would be retained but gaps would be formed within them to provide for access roads. The proposal would also involve the relocation or replanting of a section of the existing hedgerow fronting Kingstone Road. The character of the existing orchard and the remaining open space would be altered by the proximity to the residential development and the public access to these areas. Having regard to these factors, I consider that the development would have an adverse impact on the character of the site and its immediate surroundings. The parties dispute the magnitude of this impact.
53. In terms of visual impact, the site is well screened from Madley Road to the north. The existing field to the north of the appeal site and the orchard would be retained as open space / landscape features. These areas would act to provide a transition between the proposed development and the wooded valley of Cage Brook to the north and west.
54. To the east, a public by-way exists between Madley Road and Kingstone Road which provides access to a small number of dwellings. The proposed development would be visible between and above the boundary hedge along the eastern site boundary, more so in the winter months. The impact would primarily be felt by those driving or walking along the lane as well as the occupiers of the dwellings on the eastern side of the by-way. Views gained from the by-way would be less rural and more suburban than at present. However, additional planting along this boundary could supplement the existing hedgerow, further limiting views of the development. Moreover, the new dwellings would be seen in the context of the existing built development to the eastern side of the by-way and they would not therefore appear out of context.
55. The development would be visible from Kingstone Road. Users of the road and occupiers of the dwellings opposite would be most affected by the visual change. However, the development would be seen in the context of the existing dwellings on the south side of the road and to the east of the by-way. Whilst the proposal would result in the loss of pleasant open fields, the dwellings would not appear out of context with their surroundings. Furthermore, the Development Framework Plan shows that the existing hedgerow running north – south from Kingstone Road would be retained and an area of open space would run along a large part of the frontage of the site. This would help to ensure that dwellings are set back from Kingstone Road in a similar way to those on the south side of the road. They would not therefore be unduly obtrusive nor overly dominant in their surroundings.
56. The proposal would require the setting back of the line of the existing hedgerow along the northern boundary of Kingstone Road behind the visibility

splay for the proposed access road. This would be achieved by either translocating the existing hedgerow or by planting a new 'instant hedgerow'. I agree with the Council that the removal of the existing hedgerow would cause a significant localised adverse impact in the short term. Even once the translocated or instant hedge has had time to develop, the creation of the new access, pedestrian crossing and relocation of the hedgeline behind the visibility splay would alter the character of this boundary, lending it a more engineered and suburban character. Nevertheless, the Council's landscape officer confirmed that both of the suggested methods of replacing the hedgerow can be successful and I note the evidence which demonstrates that translocated hedgerows can re-establish relatively quickly. Conditions can be imposed to ensure that any replacement planting contains suitable native species and to ensure maintenance of the hedge in order to retain its rural character. In the context of the existing dwellings, boundary hedges and fences opposite the site the proposal would not appear out of context and the short term harm would be significantly reduced over time.

57. The impact of the development would be most noticeable to walkers on the footpath running alongside the western site boundary. The hedgerows along the western boundary are less substantial than elsewhere allowing views into the site. Currently the view is of open fields, mature hedgerows and individual trees. Very little can be seen of the existing built development within the village. Consequently, the development would cause a significant change in the character and appearance of the site and its immediate surroundings to the west. Nevertheless, careful design and layout of the dwellings and supplementary landscaping could ensure a suitable edge to the built development could be achieved. The reserved matters applications would include such details. In time, the boundary would come to be viewed much like other boundaries to the village where built development abuts open countryside.
58. The Council argue that Kingstone Road provides a natural boundary to the village. However, I am not satisfied that the evidence demonstrates that this boundary is so important, either in landscape terms or in terms of the setting of the existing settlement, to make it necessary to confine development to the south of that road. I note that development has recently been granted for the Harpacre site<sup>17</sup>. Whilst I accept the Council's arguments that Harpacre is closer to the village than the appeal site, development of that site would nevertheless serve to consolidate development north of Kingstone Road.
59. Neither do I consider that there is a need for the site to provide a landscape buffer between Cage Brook Valley SSSI and the village. The fields to be developed as a result of this proposal are not visible from the valley due to the woodland, hedgerows and topography and as such, these fields do not currently provide a visual buffer. Furthermore, those areas to the north of the site which are visible from the southern edges of Cage Brook Valley would remain as open space and an orchard. Subject to satisfactory siting of the dwellings and retention of the hedgerows between Madley Road and the open space and between the open space and the housing development, the proposed dwellings would have very limited visual impact on the SSSI even during the hours of darkness. Furthermore, the impact from pets is likely to be minimal, given the intervening open space, and there is no evidence that an increase in

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<sup>17</sup> On the corner of Kingstone Road and Madley Road

usage of the valley would be harmful to biodiversity. The appellants' Ecological Appraisal indicates that the development would be expected to create a slight increase in visitor numbers but the report states that this is not considered to have a significant adverse effect on the nature conservation status of the SSSI. In its initial consultation response<sup>18</sup> Natural England raised no objection to the proximity of the site to the SSSI, welcoming the green buffer to the north of the site and the retention and management of the traditional orchard, which is a Priority habitat.

60. The Council considered that the proposal would not harm the setting of the heritage assets of Cage Brook House Listed Building and Unregistered Park and Garden and I concur.
61. Whilst the development would cause localised adverse impacts on both the character and appearance of the area, this would apply to many similar situations where open land is to be developed on the edge of a built up area. The proposal would retain the majority of the hedgerows within and surrounding the site, important trees would be retained and supplementary planting provided where appropriate. The orchard would be enhanced and managed as a community orchard and there would be biodiversity improvements within the land retained as open space. These would all be positive aspects of the proposal.
62. The site undoubtedly contributes to the landscape character of the area, but the evidence does not demonstrate that the land has such visual or landscape quality in its own right so as to make its loss unacceptable on this ground. I am satisfied that the proposal would not conflict with policy SS6 of the Core Strategy which requires development proposals to conserve and enhance environmental assets that contribute towards the county's distinctiveness. Neither would it conflict with policies LD1, relating to landscape and townscape; RA2, in so far as that policy relates to design, layout, character and setting; nor LD2, relating to biodiversity. The land does not have a particular landscape value in terms of the Framework paragraph 109. Consequently, the proposal would not conflict to any great extent with that aspect of the Framework which seeks to recognise the intrinsic character and beauty of the countryside.
63. For the above reasons, I conclude that the proposal would not cause unacceptable harm to the character or appearance of the surrounding area.

### **Housing land**

64. In accordance with Core Strategy policies RA1 and RA2, Clehonger has been identified as having scope for a minimum of 18% growth. Although the development would result in that 18% figure being exceeded (together with other recently granted planning permissions), the figure is expressed as a minimum. The development of the appeal site is not in conflict with the Core Strategy either in terms of the overall amount of development envisaged within the plan period or its location and the Council do not seek to argue otherwise. Although a Neighbourhood Plan is due to be prepared, it has not yet got to the stage where it can be given any weight in this appeal.
65. The parties agree that the Council cannot demonstrate a five year housing land supply. The Statement of Common Ground identifies the supply to be "*at least*

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<sup>18</sup> Dated 28 July 2014, prior to submitting an objection on the grounds of the impact on the WWTW

4.28 years and potentially 4.49 years". On this basis, the shortfall is stated to be between 639 and 910 dwellings. Two sites are disputed, the first at Leadon Way, Ledbury and the second at Hardwick Bank, Bromyard. The appellants have an interest in the Ledbury site and they state that only 180 dwellings are likely to come forward within the five year period rather than the entire 321 units. The Council accept this figure and therefore acknowledge the supply to be a maximum of 4.39 years.

66. The Hardwick Bank site is one of the Council's strategic sites. The Council's *Five year housing land supply Position Statement*, as at 4<sup>th</sup> April 2016, indicates that 130 dwellings are included within the five year supply. The dispute relates to whether a 3-arm or 4-arm roundabout is required to access the site. If a 4-arm roundabout is required it would need to incorporate land within the appellants' ownership to the south of the Hardwick Bank site. The appellants pointed to potential difficulties in the sight-lines and diameter of a 3-arm roundabout. Nevertheless, I note that the Council's Engineering Manager has recently confirmed that it would be possible for a junction to be formed allowing access to the strategic site without incorporating the appellants' land to the south. Whilst I understand that discussions have been taking place in relation to a 4-arm roundabout, the Engineering Manager confirms that a 3-arm roundabout would provide suitable access to the allocated site. Consequently, I am not satisfied that the evidence demonstrates that the strategic site is unlikely to provide the indicated number of dwellings within the five year supply. Accordingly, for the purposes of this appeal, I have taken the supply to be in the region of 4.39 years.
67. The Council have recently adopted an *Interim position statement upon housing delivery*, September 2016, in accordance with Core Strategy policy SS3. The document states that it "*positively encourages developers to come forward with proposals for suitable and sustainable housing developments to meet the county's needs*". I note the appellants' criticisms in relation to this document but consider that it is likely to encourage landowners to bring forward sites, either those identified in the SHLAA<sup>19</sup>, in emerging Neighbourhood Development Plans, or windfall sites which are not currently in the five year land supply. Consequently, the *Interim position statement* would be likely to go some way towards helping to ease the current housing land supply shortfall.
68. Nevertheless, the proposal would have the benefit of providing a significant boost to housing supply, including a policy compliant level of affordable housing. In light of the lack of a five year housing land supply and the likely level of shortfall, these benefits attract significant weight in this appeal notwithstanding my conclusions on the disputed sites and *Interim position statement*.

### **Other matters**

69. Traffic and highway safety concerns have been raised by interested parties although the Council's putative reasons for refusal did not include these matters. The proposal would include the provision of a footpath from the site access on the northern side of Kingstone Road to a proposed pedestrian crossing. The footpath would continue on the south side of the road from the crossing onto Croft Road. The Council's Committee Report confirms that the highway engineer is satisfied that adequate sight-lines would be provided at

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<sup>19</sup> Strategic Housing Land Availability Assessment

- the site access having regard to the measured speed of vehicles on Kingstone Road.
70. Whilst I recognise that the road does not currently have a footpath and that the road is acknowledged (in the Committee Report) to be a "heavily trafficked road". The same can be said of many roads within rural areas. The provision of a footpath along at least some part of the road and the pedestrian crossing would be of localised benefit. Reference has been made to accidents occurring along this road, one of which, tragically has resulted in a fatality. However, I note that these incidents were drawn to the Council's attention at the application stage. The development would increase the amount of traffic travelling along Kingstone Road. The Council's highway engineer nevertheless concluded that there "*there is no quantifiable evidence to suggest that the highway network is not capable of safely accommodating the traffic generated*". The Framework states that development should only be refused on transport grounds where the residual cumulative impact is severe. Despite local concerns, there is no evidence before me that would lead me to disagree with the Council's conclusion.
71. Whilst the impact of the proposal on the farming community has been raised, this was primarily related to the traffic implications set out above. There is no evidence that nearby agricultural businesses would be adversely affected by this proposal.
72. Clehonger is within the rural area of Hereford. I note concerns regarding the level of employment opportunities, frequency of bus services and availability of shops and other services within the village. Given its location within a rural area the level of services within the village is inevitably less than in a more urban area. Nevertheless, it is a settlement identified in the Core Strategy to be a main focus of proportionate housing development. In accordance with RA2, sustainable housing growth will be supported in order to maintain and strengthen locally sustainable communities. Policy RA2 points out that housing development "*has the ability to bolster existing service provision, improve facilities and infrastructure and meet the needs of the communities concerned*". There is no reason why the proposal would not have such an effect. Impacts on the local primary school are to be addressed through the S106 agreement and the evidence would suggest that there is capacity at the local doctors' surgery to accommodate the proposed development. I do not consider that the proposed development would be so remote from the existing village services so as to create a separate community. The distances involved are not significant and the provision of the pedestrian crossing would assist residents in crossing Kingstone Road.
73. Article 3(1) of the United Nations Convention on the Rights of the Child requires that the best interests of children shall be a primary consideration in my decision. It has been held in *Jane Stevens v SOS for Communities and Local Government*<sup>20</sup> that the best interests of the child are likely to align with those of the primary carer. In this case, a letter was submitted to the inquiry by a child living close to the appeal site raising concerns in relation to traffic and safety when walking along Kingstone Road. The child's mother also gave evidence to the inquiry relating to these and other matters, all of which have been addressed above. The judgement makes clear that whilst no

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<sup>20</sup> [2013] EWHC 792 (Admin)

consideration should be regarded as inherently more important than the best interests of any child, that does not make such interests determinative.

Paragraph 65 of the judgement makes clear that “Upon investigation of those circumstances (of the case) and assessment of all material factors.....other factors may upon examination “earn or exceed” the best interests of the child in terms of weight”.

74. When considering the best interests of the child, the ability to walk along Kingstone Road is not of significant weight in this appeal. As noted above, it is a busy road and it has no footpaths; as such it is not a safe route for pedestrian use, particularly by a child. The difficulties she and her family currently experience in relation to this road are a consequence of the location of their family home. The proposed development would increase the number of vehicles travelling along the road, thus it would exacerbate an existing difficulty for the child and her family. However, I have set out above that the evidence in this case confirms that the proposal would be able to safely accommodate the traffic generated. Consequently, this factor adds only a moderate amount of weight against the appeal.

#### *Planning obligation*

75. As I set out earlier, a S106 agreement has been submitted. This makes provision for financial contributions towards education, transport infrastructure and the requirement for on-site public open space / play provision. I am satisfied that these contributions are justified by the Council’s Planning Obligations Supplementary Planning Document, relevant Core Strategy policies and the agreed statement of CIL compliance. They are necessary, directly related to the development, and fairly and reasonably related in scale and kind to the development. Consequently these obligations meet the three tests for planning obligations set out in Regulation 122(2) of the CIL Regulations 2010 and the Framework. I have therefore taken them into account in this decision.

#### **Overall balance**

76. The proposal would have the social and economic benefits of addressing the current under-supply of housing land. This includes the support to the local economy, increasing the mix of housing in the area and the provision of affordable housing. I have found that the proposal would not cause unacceptable harm to the character or appearance of the area and, subject to the imposition of a Grampian condition relating to the WWTW, it would not result in harm to the SSSIs / SAC. The proposal would therefore comply with other relevant policies including LD1 and SD4. It would not cause harm to highway safety nor would any of the other matters raised cause any adverse impacts. Whilst I have taken account of the increased traffic generation and its impact on the ability of a local resident’s child to walk along the road, this factor attracts only moderate weight against the proposal in the balance of considerations in this case. The proposal would not conflict with policies SS2, RA1 or RA2 which relate to the amount and distribution of housing. I have therefore found no conflict with the development plan. Paragraph 14 of the Framework states that proposals which accord with an up-to-date development plan should be approved without delay.
77. It is the case that I have given policies SS2, RA1 and RA2 limited weight as they are not up-to-date having regard to the inability of the Council to demonstrate a five year housing land supply. In these circumstances, the Framework states that permission should be granted unless the adverse



impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, or where specific policies in the Framework indicate development should be restricted. In this case, subject to the imposition of a Grampian condition, specific policies in the Framework do not indicate that development should be restricted.

78. The benefits in this case, which derive from the increase in housing supply and provision of affordable housing, attract significant weight in its favour. A moderate amount of weight against the appeal is given to the rights of the child as addressed above, but otherwise I have found that the development would not cause unacceptable adverse impacts. The moderate adverse impact would not be sufficient to significantly and demonstrably outweigh the benefits in this case. The proposal would therefore constitute sustainable development and it would not therefore conflict with policy SS1, which sets out the presumption in favour of sustainable development.

### **Conditions**

79. The standard time limits for outline applications have been altered to ensure that permission is granted for a 5 year period from the date of this decision. As set out above, this will ensure that the time frame for the permission would allow DCWW to consider whether to include funding for any necessary upgrading works in its next AMP.
80. The parties' views on a draft Grampian condition relating to the WWTW have been taken into account (condition 18 in Annex 1). The Council suggested that it should be worded to prevent connection being made until the agreed scheme has been implemented. This would not be reasonable as the developer has a right to give DCWW 21 days' notice of intention to connect to the sewer. The condition would however prevent occupation of the dwellings (and thus the discharge of any significant sewage into the sewerage system) before any agreed works were carried out.
81. For reasons set out above, it is not appropriate for the condition to be worded to specify that any works should be carried out at the developer's expense. The appellants suggested that parts (i) and (ii) of condition 18 are not necessary. However, the evidence demonstrates that these steps are necessary in order to establish the impact of the development on the WWTW. I therefore consider them to be both necessary and reasonable and have included them in the condition.
82. The appellants have raised concern that the Grampian condition should not be drafted to prevent development until certain actions have taken place. Given the importance of ensuring that there is no harm to the SSSIs / SAC it is appropriate in this instance to ensure that any necessary scheme is agreed prior to development commencing. Once this has been agreed, the condition would allow completion of the dwellings, but not occupation, until any necessary works are completed.
83. I have taken on board the concerns of the appellants that the draft condition appeared to suggest that the developer should prepare a scheme for the upgrading of the WWTW. Whereas, in practice it would be likely to be DCWW who would prepare any such scheme. The wording of condition 18 is such that a scheme is to be agreed with the local planning authority, although this would

not preclude them from liaising with DCWW and it is highly likely that they would do so. That does also not prohibit DCWW from preparing a scheme and the developer submitting it to the planning authority in order to discharge the condition. In practice however, it will require co-operation between the developer and DCWW.

84. In addition to the above, the following conditions are also necessary. A condition is required to specify adherence to the submitted plans in order to provide certainty regarding the development permitted. This includes a condition specifying adherence to some of the principles set out in the Development Framework Plan as the appellants' evidence draws heavily on this general framework particularly in terms of landscape and visual impact. The parameters set out on that plan have also led to my conclusions regarding the landscape and visual impact of the proposal. Whilst the parties indicated that the S106 agreement deals with the matter of the provision of the open space and orchard, the S106 does not include a similar plan. A condition is required restricting the number of dwellings to a maximum of 90 in order to clarify the scope of the permission.
85. A condition is required to ensure that 35% of the dwellings are provided as affordable housing in accordance with Core Strategy policy H1. In the interests of highway safety, conditions are required to ensure details of the access, roads and their drainage, pedestrian footways, visibility splays and the pedestrian crossing are approved, implemented and retained. In order to protect the living conditions of nearby occupiers, in the interests of highway safety and to achieve sustainable construction methods, a construction method statement is required. This is to include details of construction access, wheel cleaning, construction parking, hours of construction and deliveries, dust and noise control, waste management and an employee travel plan. In order to encourage sustainable transport choices, conditions are required to secure cycle parking and a travel plan for future occupiers. In order to ensure that the development has due regard to the natural environment conditions are required in order to secure habitat enhancement, to secure the translocation or replanting of the boundary hedgerow and to ensure retention and protection of trees and hedges. For the latter condition, much of the detailed wording has been replaced with a requirement to develop a scheme in accordance with BS5837:2012<sup>21</sup>. A condition requiring the retained trees and hedges to be identified on a plan has been included in order to ensure the parties' suggested conditions relating to tree protection are enforceable. A condition is imposed regarding archaeology in order to ensure any items of interest are recorded.
86. Conditions are required to ensure the satisfactory provision of surface and foul water schemes in order to protect the water environment. The foul water condition has been worded to take into account the Grampian condition for the WWTW. It is not necessary to specify a pumping station, balancing chambers and chopper pumps as the scheme to be submitted would necessarily take into account any scheme for the upgrading of the WWTW. Such items could be included in the foul water scheme if necessary.
87. I have altered the wording and amalgamated some of the suggested conditions where necessary to reduce repetition, ensure that they are enforceable and to include implementation and retention clauses.

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<sup>21</sup> Trees in relation to design, demolition and construction.

**Conclusion**

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

*Susan Heywood*

INSPECTOR

Richborough Estates

## **ANNEX 1 – CONDITIONS**

- 1) Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved or not later than 5 years from the date of this decision, whichever is the later.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan 2014/015/001, Site Access Plan C14193-003-Rev H.
- 5) The development hereby permitted shall take place in accordance with the principles set out in the Development Framework plan no. 6137-L-02-M in so far as that plan indicates the developable areas, community orchard, play area, nature conservation area and public open space.
- 6) The development hereby permitted shall be for no more than 90 dwellings.
- 7) No development shall take place until a scheme for the provision of affordable housing as part of the development shall have been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2: Glossary of National Planning Policy Framework or any future guidance that replaces it. The scheme shall include:
  - i) the numbers, type, tenure and location on the site of the affordable housing provision to be made which shall consist of not less than 35% of housing units;
  - ii) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
  - iii) the arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing if no Registered Social Landlord involved;
  - iv) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
  - v) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

The affordable housing shall be retained in accordance with the approved scheme.

- 8) No development shall commence until full details of construction for the access, pedestrian footways and pedestrian crossing shown on plan C14193-003-Rev H have been submitted to and approved in writing by the local planning authority. The details as approved shall be constructed and the pedestrian infrastructure available for use prior to the first occupation of any of the dwellings hereby approved.
  - 9) Prior to the first occupation of any of the dwellings hereby approved visibility splays shall be provided from a point 0.6 metres above ground level at the centre of the access to the application site and 2.4 metres back from the nearside edge of the adjoining carriageway (measured perpendicularly) for a distance of 120 metres in each direction along the nearside edge of the adjoining carriageway. Nothing shall be planted, erected and/or allowed to grow on the triangular area of land so formed which would obstruct the visibility described above.
  - 10) Development shall not begin in relation to the provision of road and highway drainage infrastructure until the engineering details and specification of the proposed roads and highway drains have been submitted to and approved in writing by the local planning authority. No dwelling may be occupied until the requisite road and highway drainage serving it has been completed in accordance with the approved scheme.
  - 11) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
    - i) means of access for construction traffic and site operatives;
    - ii) the parking of vehicles of site operatives and visitors;
    - iii) a noise management plan;
    - iv) wheel washing facilities;
    - v) measures to control the emission of dust and dirt during construction;
    - vi) a scheme for recycling/disposing of waste resulting from demolition and construction works;
    - vii) delivery, demolition and construction working hours;
    - viii) a travel plan for employees.The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
  - 12) Prior to the first occupation of any of the dwellings hereby approved a scheme for the provision of covered and secure cycle parking within the curtilage of each dwelling shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details. The cycle parking shall be installed and made available for use prior to occupation of the dwelling to which it relates and shall be retained for the purpose of cycle parking in perpetuity.
  - 13) Prior to the first occupation of any of the dwellings hereby approved a Travel Plan which contains measures to promote alternative sustainable means of transport for residents and visitors with respect to the development hereby permitted shall be submitted to and be approved in writing by the local planning authority. The Travel Plan shall be implemented, in accordance with the approved details, on the first
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occupation of the first dwelling. 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 by the appointed Travel Plan co-ordinator. All relevant documentation shall be made available for inspection by the local planning authority upon reasonable request.

- 14) Prior to commencement of development, a full working method statement detailing proposals for habitat enhancement integrated with the landscaping proposals should be submitted to and approved in writing by the local planning authority. The working method statement shall follow the recommendations set out in Section 4 of the FPCR Ecological Appraisal dated June 2014 and shall be implemented as approved in accordance with a timetable to be agreed in writing with the local planning authority.
- 15) Details of landscaping required in accordance with condition 1 shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development.
- 16) In this condition "retained tree / hedgerow" means an existing tree / hedgerow which is to be retained in accordance with the approved plans and particulars. No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees / hedgerows (the tree / hedgerow protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5, 6.1 and 6.2 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees / hedgerow shall be carried out as approved.
- 17) No development shall be commenced on site or site huts, machinery or materials brought onto the site, before a scheme for translocation and augmentation or replanting of the hedgerow forming the boundary with the B4349 has been submitted to and approved in writing by the local planning authority. The scheme shall also prescribe a scheme of hedgerow maintenance. Should replanting be necessary, the submitted scheme shall prescribe that at least five species of native woody shrubs shall be planted within the hedge and it shall include details of the species, sizes and density of planting. All hedge planting shall be carried out in accordance with those details and conducted during the first planting season following removal of the existing hedgerow. The scheme shall be implemented as approved.
- 18) No development shall take place until:
  - i) a survey to establish the current flow and load received at Clehonger waste water treatment works has been undertaken; and
  - ii) an assessment of the impact of the development hereby approved on the waste water treatment works having regard to the results of the flow and load survey has been undertaken and agreed with the local planning authority; and

iii) if necessary, a scheme of upgrading for the Clehonger waste water treatment works has been agreed with the local planning authority in order to allow it to accommodate the foul discharges from the development hereby approved without increasing the risk of breaches to the discharge consent for the Clehonger waste water treatment works.

No dwellings shall be occupied until the agreed scheme has been completed.

- 19) No development shall commence until the developer has prepared a scheme for the collection and discharge of surface water and land drainage which has first been submitted to and approved in writing by the local planning authority. The scheme shall demonstrate the separation of foul and surface water discharges such that no surface water is allowed to connect (either directly or indirectly) to the public sewerage system. The scheme shall be carried out as approved prior to first occupation of any of the dwellings hereby approved.
- 20) No development shall commence until a scheme for the foul pumping station to be installed on the site has been submitted to and approved in writing by the local planning authority. The pumping station shall be installed in accordance with the approved details and made operational prior to the occupation of the first dwelling.
- 21) The developer shall afford access at all reasonable times to any archaeologist nominated by the local planning authority, and shall allow that person to observe the excavations and record items of interest and finds. A minimum of 5 days' written notice of the commencement date of any works shall be given to the County Archaeology Service.

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Andrew Byass	of Counsel
He called	Elisabeth Duberley BA (Hons) Dip LA Herefordshire Council
	Edward Thomas BSc (Hons) Land Management MSc City and Regional Planning Herefordshire Council
	Sonny Robinson BSc (Hons) City and Regional Planning Welsh Water
	Andrea Burgoyne BScHE PhD(ChE) MChemE MCIWEM C.WEM Welsh Water

### FOR THE APPELLANT:

Martin Carter	of Counsel
He called	Timothy Jackson BA (Hons) Dip LA CMLI Director, FPCR Environment and Design Ltd
	Laurie Lane BSc (Hons) MRTPI Planning Manager, Gladman Developments Ltd
	William Lilly BSc (Hons) BLBB Consulting Ltd

### INTERESTED PERSONS:

Carole Protherough	Clehonger Parish Council
Bernadette Costello-Bates	Local resident

### DOCUMENTS

- 1 Council's opening statement
- 2 Council's list of appearances
- 3 Appellant's opening statement
- 4 Appellant's list of appearances
- 5 Statement and photographs submitted by Carole Protherough,  
Clehonger Parish Council
- 6 Statement submitted by Bernadette Costello-Bates
- 7 Letter submitted by Miss Olivia Bates, local resident
- 8 Council's Interim Position Statement upon Housing Delivery,



- September 2016
- 9 Plan showing siting and layout of development at 'Harpacre', submitted by Council
  - 10 Email exchange relating to Hardwick Bank, Bromyard, submitted by Council
  - 11 Plan of 4-arm roundabout at Bromyard site, submitted by appellant
  - 12 Plan of 3-arm roundabout at Bromyard site and series of location plans showing Bromyard development sites, submitted by Council
  - 13 Location plan of Ledbury development site, submitted by Council
  - 14 Plan of Cage Brook House Listed Building and Unregistered Park & Garden, submitted by Council
  - 15 Updated Statement of Facts from Natural England, submitted by Council
  - 16 Natural England consultation response dated 25 June 2015, submitted by Council
  - 17 Natural England's response to Inspector's Pre-Inquiry Note 2
  - 18 Joint position statement between appellant and Council in respect of Natural England's response to Inspector's Pre-Inquiry Note 2
  - 19 Process diagram for WWTW, submitted by appellant
  - 20 Specification sheet for Filtramic Autoscreener, submitted by appellant
  - 21 E-mail exchange with Ofwat dated 3-19 August 2016, submitted by appellant
  - 22 Severn Trent Water Company response to Brimfield and Little Hereford submission draft Neighbourhood Development Plan, submitted by appellant
  - 23 Aerial photograph of WWTW, submitted by Council
  - 24 Joint position statement on WWTW process issues
  - 25 Updated tables 1a & 1b to Andrea Burgoyne's rebuttal proof of evidence
  - 26 Revised Appendix L to Andrea Burgoyne's proof of evidence
  - 27 Supplementary table for Appendix L to Andrea Burgoyne's proof of evidence
  - 28 Statement of CIL compliance for submitted S106 agreement, submitted by Council
  - 29 Completed S106 agreement, submitted by appellant
  - 30 List of conditions, submitted by Council
  - 31 Council's closing submissions
  - 32 Appellant's closing submissions
  - 33 Council's response to draft condition 18
  - 34 Appellant's response to draft condition 18

Richborough Estates