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## Appeal Decision

Site visit made on 4 February 2015

by **P N Jarratt BA DipTP MRTPI**

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

Decision date: 12 February 2015

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**Appeal Ref: APP/W1850/A/14/2218385**

**Quarry Field, Cotts Lane, Lugwardine, Herefordshire**

- 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 Mrs E Seymour against the decision of Herefordshire Council.
  - The application Ref P140531/O, dated 20 February 2014, was refused by notice dated 23 April 2014.
  - The development proposed is residential development comprising 20 open market homes and 10 affordable homes.
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### Preliminary matters

1. The application is in outline with all matters reserved for future determination with the exception of the means of access.
2. An executed s106 planning obligation has been submitted which secures the delivery of affordable housing on site and financial contributions towards community infrastructure (education, library, open space, recycling and transport).

### Decision

3. The appeal is allowed and planning permission is granted for a residential development comprising 20 open market homes and 10 affordable homes at Quarry Field, Cotts Lane, Lugwardine, Herefordshire in accordance with the terms of the application, Ref P140531/O, dated 20 February 2014, and Drawing No 1545.00A submitted with it, subject to the conditions listed in the Schedule of Conditions attached to this decision.

### Main Issues

4. The issues in this appeal are the effects of the proposed development on highway safety; on the setting of listed buildings and other heritage assets; on the character and appearance of the area, and; whether the proposal represents sustainable development to which the National Planning Policy Framework's (the Framework) presumption in favour should apply.

### Reasons

#### *Background*

5. The application site is a field laid down to pasture to the east of properties fronting the A438 Hereford to Ledbury road although the proposed developed area would be significantly less than the whole field. The site slopes and falls

away towards its southern boundary. Cotts Lane runs to the north of the site. To the west and the south, the site is bounded by the mature landscape of the unregistered historic parkland associated with the Grade II\* listed New Court country house. Grade II listed buildings include High House and the adjoining dwellings of Rose Cottage and Malt House, all of which are adjacent to the appeal site.

6. Vehicular and pedestrian access to the site would be from the A438 through the alteration of an existing access between Croft Cottage and Green Croft. Although the application is in outline, indicative proposals indicate that the development would be in the form of two culs de sac with provision for a footway/cycle way link onto Cotts Lane and a footway on the Cotts Lane frontage. It is also proposed to widen the existing substandard A458 footway to the north of the site to between 1.2m and 1.5m wide where possible for a distance of about 75m up to the north boundary of High House.
7. Planning permission was refused for a similar development in November 2013 for similar reasons as this appeal but with an additional refusal reason relating to ground contamination. The appeal scheme now incorporates the provision of cycle and footway access onto Cotts Lane, and a Heritage Impact Statement and a Contaminated Land Report were submitted with the application.
8. The statutory development plan is the Herefordshire Unitary Development Plan (UDP) which identifies Lugwardine as a main village. The site is outside but adjacent to the settlement boundary for Lugwardine as defined in the saved Policy H4. The Herefordshire Local Plan has been submitted for examination which is currently in progress and identifies Lugwardine as a main village.
9. The Parish Council will be preparing a Neighbourhood Development Plan but no timetable for the plan has been published.

#### *Highway Safety*

10. The Parish Council and local residents are concerned about road safety in the village arising from the speed and volume of traffic (particularly at peak times) using the A438 often travelling in excess of the speed limit. The A458 between Lugwardine and Bartestree has been designated as an area of concern through the West Merca Safer Roads Partnership.
11. The A438 in the vicinity of the proposed vehicular access rises uphill from the bridge over the River Lugg into the village and is subject to a 30mph speed limit. The appellant's Transport Statement indicates proposed visibility splays of 2.4x43m to the south west and 2.4x90m to the north east. The Council's Traffic Manager considers that the latter splay would not be achievable to the nearside edge of the road due to the line of sight between points at the visibility eye height of 1.05m being obstructed by the existing raised verge and footway fronting High House. Notwithstanding this, the Traffic Manager considers that the achievable visibility of 90m to the centre line means that satisfactory visibility and stopping distances would be available to ensure safe operation of the access. In reaching this conclusion account has been taken of the 85<sup>th</sup> percentile speed for westbound traffic being 37mph and 34.5mph for eastbound traffic at the location of the proposed vehicular access into the site.

12. An independent analysis of highway safety issues has been submitted on behalf of a local resident<sup>1</sup> in which a number of matters are raised. However, I am satisfied that visibility would be satisfactory to the north east as the height of the boundary wall to the north of the proposed access could be reduced in height to no more than 0.6m above ground level within land controlled by the appellant. As the visibility requirement applies over a rising gradient, the 90m distance would be visible from the junction viewpoint as the driver would be looking up the hill.
13. The footway widths along the A438 do not meet desirable standards and even if widened as suggested by the appellant, they would still fall short of the Council's local standards. The Traffic Manager has raised doubts about the desirability and deliverability of the suggested improvements in terms of the need for retaining walls and because the pedestrian guard rail may restrict visibility, although the appellant points out that there are proprietary visible rails that do not impact on visibility. Widening the path could lead to pedestrians walking closer to the edge of the footway which is elevated above the carriageway, and which, without guard rails would constitute a potential danger.
14. The appellant's proposed alternative pedestrian link onto and part way along Cotts Lane would avoid pedestrians using the substandard path on the main road but this would involve pedestrians walking along the lane for some distance without a footway.
15. I consider that the proposed vehicular access would achieve satisfactory visibility and stopping distances taking account of the geometry and gradient of the A438. The existing pedestrian route with its elevated footway is less than satisfactory at present and there would still be potential danger to pedestrians should the footway not be widened or being widened without the provision of a safety rail being installed. Improvements to this footway would have wider benefits for all pedestrians using the route. Furthermore this would not be the only route into the village. The proposed link via Cotts Lane would provide an alternative and attractive pedestrian connection and, although there would not be footways for part of its length, the narrowness of the lane should ensure that vehicular speeds remain at a level compatible with the safe joint pedestrian and vehicular use of the carriageway. I note also that the appellant has suggested pedestrian markings and signs if considered appropriate by the Council.
16. Accordingly, I conclude on this issue that, subject to appropriate highway conditions, the proposed development would not conflict with saved UDP Policy S2 relating to development requirements and to Policy DR3 relating to movement, nor would it be at odds with paragraph 32 of the Framework.

*The setting of heritage assets*

17. The appeal site lies some distance from the historic centre of Lugwardine which has conservation area designation but the A438 forms an historic entrance to the village alongside which front a number of listed buildings. The significance of the settings of the Grade II listed buildings at High House or the adjoining dwellings of Rose Cottage and Malt House is, in my view, primarily related to

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<sup>1</sup> Highway Objection Report, Sanderson Associates, June 2014

their relationship to the historic main road into the village and secondarily, but to a much lesser extent, to the field at the rear.

18. As the proposed vehicular access is separated from the listed buildings, their settings would not be adversely affected by it, particularly as there is an existing, albeit less formal access, on the same alignment. In reaching this view I have taken into account the visual effect that the reduction in height of the boundary wall north of the proposed access would have. However the settings of the listed buildings, particularly of High House, would be harmed through any insensitive change to the appearance of the stone retaining wall and the incorporation of a poorly designed guard rail. The appellant has indicated that the retaining wall could be rebuilt with a stone facing and an appropriate guard rail such as a wrought iron parkland style hooped railing. This would mitigate any adverse impacts and a detailed scheme could be the subject of an appropriate condition controlling the design.
19. The listed buildings are in reasonably sized gardens. At their the rear, the illustrative plan accompanying the application, indicates that whilst the character of the land would certainly change from that of an open field to a housing development, the separation distances and the substantial existing boundary hedgerow would ensure that their settings would not be significantly harmed.
20. The Grade II\* listed New Court country house is situated some distance from the appeal site although the historic parkland and the protected trees are adjacent to the open field of the appeal site. The illustrative layout plan (Drawing No 1545.01C) shows that the developed housing area would be set back and separated from the boundary of the historic parkland such that any impact on the setting of heritage assets would be very limited. Having said that, the site boundary would be an artificial creation that would not follow any obvious physical feature on the ground and would leave an unusually shaped part of a field. However I note that the illustrative landscape plan (Drawing No 1307A) proposes a hedge of mixed indigenous species which would give the newly created boundary a degree of permanence in due course.
21. I conclude that the effect of the proposed development on the settings of the heritage assets would be less than substantial in the context of paragraph 134 of the Framework and would be outweighed by the public benefit of affordable housing arising through the proposal. Accordingly, the proposed development would not be contrary to saved UDP Policy HBA4 regarding the setting of heritage assets.

#### *Character and appearance of the area*

22. A landscape and visual impact appraisal (LVIA) submitted with the application indicates that visual impacts of the development are unlikely to be significant. Saved UDP Policy LA3 seeks to protect the setting of settlements and I have had regard to this and representations on heritage and landscape matters including a technical review submitted by local residents<sup>2</sup>. Although the character and appearance of the site would change from pastoral to one of residential development together with the activity associated with it, such changes in views and character would not generate a degree of change that by themselves would be of such harm that the appeal should fail. Existing mature

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<sup>2</sup> Review and Commentary, Quarry Field, Lugwardine; RRA Architects

perimeter trees, the topography and existing buildings combine to provide an effective visual screen limiting the number of viewpoints into the site. The LVIA proposes additional landscaping to the site periphery and this will mitigate the visual impact of the proposed development.

23. Concern has been expressed that as an outline application, the indicative layout could change and a changed layout could harm the setting of the village or the heritage assets. However, the layout, scale appearance and landscaping would be subject to later approval by the Council who would need to be satisfied that the reserved matters would be acceptable.
24. I agree with the Council's view that the proposed vehicular access would be constricted and would not provide the opportunity for any soft landscaping to assimilate the scheme into the village character and I also note that the footway would be very close to Green Croft. However I do not accept that this would create significant additional harm to the character and appearance of the village because a wide access already exists which currently makes a negative contribution to the street scene.
25. Accordingly, the proposed development would not be contrary to saved UDP Policy LA3 regarding the setting of the village.

#### *Sustainability of the Proposals*

26. The Council acknowledges that Lugwardine is a sustainable location for development. However, the Council considers that the adequacy of the proposed pedestrian links to the village amenities would encourage increased reliance on private cars for access to the primary school, recreation facilities and shops. In the absence of any evidence to support such a contention, I attach little weight to it.
27. The Council accepts that they cannot demonstrate a deliverable five year supply of housing land in the terms set out in the Framework. In the absence of such a supply, paragraph 49 of the Framework indicates that relevant policies for the supply of housing should not be considered up-to-date, which, in this appeal, relates to saved UDP Policy H4 which seeks to restrict residential development outside the designated development boundaries of settlements.
28. This means that the location of the appeal site adjacent to but outside Lugwardine's settlement boundary is not a reason to refuse planning permission for the scheme but that the scheme should be assessed in accordance with paragraph 14 of the Framework. This sets out that at the heart of the Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking. For decision-taking, this means that where the development plan is absent, silent or relevant policies are out-of-date, permission should be granted unless any adverse impacts of a development would significantly and demonstrably outweigh the benefits or where specific policies in the Framework indicates that development should be restricted.
29. The Parish Council and local residents have expressed concern over the possible cumulative impact that the proposed scheme would have when account is taken of other housing applications or appeals within the area, which, if all approved would represent a significant addition to the population of Bartestree and Lugwardine. However, acceptance of these appeal proposals

does not indicate that other schemes elsewhere would be acceptable as those would need to be considered on their merits.

#### *Other Matters*

30. Concerns have been raised over a number of matters including drainage and water supplies. However no technical objections have been raised by the statutory consultees and where appropriate conditions could be imposed to control foul and surface water run-off.
31. As the application is in outline, the layout would be a reserved matter. However the illustrative layout demonstrates that adequate separation distances could be achieved between existing and new dwellings. The provision of the access road would require adjustment to the boundaries of Croft Cottage and Green Croft and the proximity of the proposed footway and vehicular activity accessing the proposed housing would have some impact on the living conditions of the occupants of those houses. However the relationship of the houses and the road would not be unusual in a rural village setting and the extent of any harm arising would not be significant in the context of the development.

#### **Conditions**

32. The Council has suggested a number of conditions and I have considered the need for these in the context of the Framework and the Planning Practice Guidance at Part 21a regarding the use of conditions.
33. Conditions 1, 2 and 3 are the standard conditions relating to the commencement of development and the approval of reserved matters. Condition 4 is necessary to define the permission and Condition 5 is needed in the interests of pollution prevention.
34. Conditions 6-11 are required in the interests of highway and pedestrian safety for the general public and for the occupants of the proposed dwellings and to provide safe and convenient connectivity to the village services.
35. Conditions 12 and 13 are necessary to protect the integrity of the public sewerage system and Condition 14 is necessary to prevent an increased risk of flooding.
36. Conditions 15 and 16 are necessary to protect the visual amenities of the area and Condition 17 is needed to protect the living conditions of the occupants of nearby dwellings.
37. The Council has suggested a condition requiring the submission and approval of a desk study contamination report assessing risks and, depending on its findings, the carrying out of site investigations and the possible need for a remediation scheme. However such a condition is unnecessary as the appellant has submitted an Intrusive Ground Investigation Report (prepared by Environmental Ground Solutions, March 2014). This concluded that the site is uncontaminated.
38. Similarly, I find a condition requiring a qualified and experienced ecological clerk of works to carry out a walkover survey and to oversee any ecological mitigation work to be unnecessary. The submitted Ecology Assessment prepared by Ecology Services and dated May 2014 concluded that the site was

of low ecological interest and that the development of the site would not lead to any significant impact on any known protected species or ecological feature of value at national, county or local level.

### **Planning Obligations**

39. The executed s106 planning obligation would secure the delivery of affordable housing on the site and provide financial contributions towards community infrastructure including education facilities, library facilities in Hereford, open space and public footpaths, recycling facilities and sustainable transport facilities.
40. The level of contributions is based on prescribed amounts per unit of accommodation and on the Council's Planning Obligations supplementary planning guidance. I consider that these contributions satisfy Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 and are necessary, directly relevant and fairly and reasonably related in scale and kind to the development in question.

### **Conclusion**

41. As I have not found any adverse impacts of the proposed development that would significantly and demonstrably outweigh the benefits, I conclude that the proposal represents sustainable development in the context of the Framework for which planning permission should be granted. For the reasons given above and having had regard to all relevant matters including an appeal decision at Three Penny Bit Cottage<sup>3</sup>, I conclude that the appeal should be allowed.

*P N Jarratt*

Inspector

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<sup>3</sup> APP/W1850/A/14/2213079

## Schedule of Conditions

- 1 Application for approval of the reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission.
- 2 The development hereby permitted shall be begun either before the expiration of five years from the date of this permission, or before the expiration of two years from the date of the approval of the last reserved matters to be approved, whichever is the later.
- 3 Approval of the details of the layout, scale, appearance and landscaping (hereinafter called "the reserved matters") shall be obtained from the local planning authority in writing before any development is commenced.
- 4 The development hereby permitted is for the construction of 30 dwellings.
- 5 Before the development commences, a Construction Environmental Management Plan shall be submitted for approval in writing by the local planning authority and shall include timing of the works, details of storage of materials and measures to minimise the extent of dust, odour, noise and vibration arising from the demolition and construction process. The Plan shall identify potential impacts on the River Wye (River Lugg) Special Area of Conservation and be implemented as approved.
- 6 Before any other works hereby approved are commenced, 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 90 metres to the centreline of the carriageway in a north-easterly direction and 90 metres to the nearside edge of the carriageway in a south-westerly direction. Nothing shall be planted, erected and/or allowed to grow on the triangular area of land so formed which would obstruct the visibility describe above.
- 7 Development shall not begin 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. None of the dwellings hereby approved shall be occupied until the approved scheme has been constructed.
- 8 Development shall not begin until details of off-site footway improvement works adjacent the A438 have been submitted to and approved in writing by the local planning authority. None of the dwellings hereby approved shall be occupied until the approved scheme has been constructed.
- 9 None of the dwellings shall be occupied until the roadworks necessary to provide access from the nearest publicly maintained highway have been completed in accordance with details submitted to and approved in writing by the local planning authority.



- 10 Development shall not begin until wheel cleaning apparatus has been provided in accordance with details to be submitted to and approved in writing by the local planning authority, and which shall be operated and maintained during construction of the development hereby approved.
- 11 Development shall not begin until parking for site operatives and visitors has been provided within the application site in accordance with details to be submitted to and approved by the local planning authority and such provision shall be retained and kept available during construction of the development.
- 12 Foul water and surface water discharges shall be drained separately from the site.
- 13 No surface water or land drainage run-off shall be allowed to connect, either directly or indirectly, to the public sewerage system.
- 14 Development shall not begin until a scheme for the provision of surface water drainage works has been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented before the first occupation of the development hereby approved.
- 15 Development shall not begin until a landscape scheme has been submitted to and approved in writing by the Local Planning Authority.

The submitted scheme shall include for soft landscaping:

- a) Plans showing details of all existing trees and hedges on the application site. The plan should include, for each tree/hedge, the accurate position, species and canopy spread, together with an indication of which are to be retained and which are to be removed;
- b) Plans at a scale of 1:200 or 1:500 showing the layout of proposed tree, hedge and shrub planting and grass areas;
- c) A written specification clearly describing the species, sizes, densities and planting numbers and giving details of cultivation and other operations associated with plant and grass establishment;

and include for hard landscaping:

- a) Existing and proposed finished levels or contours;
- b) The position, design and materials of all site enclosure (e.g. fences, walls);
- c) Car parking layout and other vehicular and pedestrian areas;
- d) Hard surfacing materials.

- 16 The landscaping scheme approved under condition 15 shall be carried out concurrently with the development hereby permitted and shall be completed no later than the first planting season following the completion of the development. The landscaping shall be maintained for a period of 5 years. During this time, any trees, shrubs or other plants which are removed, die or are seriously retarded shall be replaced during the next planting season with others of similar sizes and species unless the Local Planning Authority gives written consent to any variation. If any plants fail more than once they shall

continue to be replaced on an annual basis until the end of the 5-year maintenance period.

- 17 During the construction phase no machinery shall be operated, no process shall be carried out and no deliveries taken at or despatched from the site outside the following times: Monday-Friday 7.00 am-6.00pm, Saturday 8.00 am-1.00 pm nor at any time on Sundays, Bank or Public Holidays.

Richborough Estates