



## Appeal Decision

Hearing (Virtual) held on 17 March 2021

Site visit made on 18 March 2021

**by JP Sargent BA(Hons) MA MRTPI**

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

**Decision date: 11 May 2021**

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**Appeal Ref: APP/W1850/W/20/3257229**

**Land to the north of Southbank, Withington, Hereford HR1 3SB**

- 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 Land Allocation Ltd against the decision of Herefordshire Council.
  - The application Ref 200207, dated 31 January 2020, was refused by notice dated 9 June 2020.
  - The development proposed is residential development for up to 46 dwellings including means of access with all other matters reserved.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. For clarity and for the purposes of this decision, I have referred to the roads running from the crossroads by Bank House to the north-west of the appeal site as follows: to the west, Withies Road West, to the east, Withies Road East, Lock Lane running to the north, and the C1130 to the south.
3. The proposal is for outline planning permission, with only access being considered at this stage, and layout, landscaping, scale and appearance reserved for consideration at a later date. It was agreed by the parties that the matter of access included the suitability of the vehicular access and bellmouth to the C1130 (but not the internal road layout), and the pedestrian access to the north onto Withies Road East. Moreover, it also included the works within the highway along Withies Road East and Withies Road West, and at their junction with Lock Lane. However, despite what was shown on the plans, the appellant said at the Hearing that no footpaths are to be provided on the C1130 or along Lock Lane northwards from the crossroads, and I have assessed the scheme accordingly.
4. I have considered any details in the submissions and the plans relating to matters of layout, landscaping, scale and appearance as being illustrative but informative. The appellant's case, and in particular its landscape evidence, has been based around the layout before me. This broadly shows open space on the higher land of the central eastern section of the site, with housing on the slopes to the north and south. It was therefore accepted that when assessing the case I should assume any future development would be generally along those lines. Moreover, whilst the size and form of houses could vary, especially given the land's sloping nature, for the consideration of this appeal the appellant confirmed it was reasonable to assume all would be 2 storeys high.

5. Finally, in the letters of representation concerning the appeal a local resident sought to make a costs application on behalf of the Council. Such an application should be made by the party that contends it has incurred unnecessary or wasted expense, and so I have not taken it further.

### **Main Issues**

6. The main issues in this case are
  - a) whether housing is acceptable in principle outside the settlement boundary;
  - b) its impact on the character and appearance of the area;
  - c) the scheme's effect on accessibility to services and highway safety;
  - d) if it would have a likely significant effect, whether alone or in combination with other plans and projects, on the River Wye Special Area of Conservation (the SAC) and
  - e) if any of the above issues would give rise to harm and mean the scheme would conflict with the development plan whether material considerations indicate permission should nonetheless be granted (the planning balance).

### **Reasons**

#### ***The principle of development***

7. The *Withington Group Parish Neighbourhood Development Plan* (the Neighbourhood Plan) identifies a settlement boundary around the village. Policy P2 states that the areas outside this boundary will be treated as Open Countryside to which Policy RA3 in the *Herefordshire Core Strategy* will apply. This Core Strategy policy only supports housing outside defined settlement boundaries in certain specific instances.
8. The proposed housing lies immediately adjacent to but outside of the settlement boundary. What is before me does not accord with any of the permitted circumstances for housing given in Core Strategy Policy RA3. Therefore, in principle housing is unacceptable here and contrary to Neighbourhood Plan Policy P2.

#### ***Character and appearance***

9. Along the western boundary of the field subject of this appeal, separated by a tall embankment on which there is a thick growth of trees and shrubs, runs the C1130 with the rear gardens of Withies Close beyond. To the south are the houses along Southbank, while open land and fields are to the north, across Withies Road East, and to the east.
10. The appeal site itself rises steeply from the C1130 to a highest point on the eastern side. This means it provides a certain containment to Withington as housing tends to be confined to the foot of the hill or on its lower slopes. Indeed, this containment is particularly clear as the C1130 establishes a distinct break between the field to one side and the settlement on the other (notwithstanding the presence of 2 or 3 houses to the east of that lane) while, to the south, the back fence line to the Southbank properties gives an abrupt

separation between that housing and the field. Moreover, the apparent agricultural nature of the site provides a historic context for the village by emphasising its rural origins, although I accept it is some way from the older parts of the settlement.

11. Despite these points, and while I recognise that this field has an importance to those who live nearby, I have no particular reason to consider it to be within what can be defined as a 'valued landscape' under the terms of paragraph 170 of the *National Planning Policy Framework* (the Framework). However, I nonetheless accept it is part of the pleasant rural landscape in which Withington is set.
12. Having regard to the broad nature of the layout shown on the submitted drawings, the introduction of houses on the southern part of the site in roughly the manner and locations indicated would clearly be changing the land from a field to a more urban appearance. However, it need not be discordant or incongruous, either when seen close to, such as from the junction of Southbank and the C1130, or when looking from more distant points. This is because, although they would be further up the slope, the new dwellings would still be substantially concealed within the landform and the distinct break between the housing and the area beyond would remain, albeit slightly further into the field. As a result, when looking from the east or south the sense of containment provided by the hillslope would remain, and this part of the development would not constitute a striking expansion of the village and would be read in the context of the adjacent housing estates.
13. In this area the gradients would no doubt introduce a stepped built form and may require the introduction of retaining walls or similar, but I have no reason to consider that at the reserved matters stage those aspects could not be suitably designed.
14. Turning to the housing shown on the illustrative plan at the northern end of the site, at present when travelling westwards along Withies Road East there is little awareness of the village of Withington until relatively late due to the fall of the land and the planting along the lane. However, from a number of points on that lane I noted that the gables of Bank House and its outbuilding were clearly visible as an isolated property. It is therefore fair to assume that these new houses would also be clearly seen, and to my mind, given the number intended, the effect of this would be to bring the village over the brow of the hill into a rural landscape where it is not now readily apparent.
15. In coming to this view, I note the appellant's *Landscape and Visual Appraisal* (LVA) finds the development would have a minor beneficial effect at the residual stage when seen from the chosen viewpoint on this lane (VP06A). However, whilst I accept the houses may be concealed from that specific point, elsewhere on the lane the views I have highlighted would be apparent.
16. Moreover, again noting the prominence of Bank House, some of these new houses would be visible in longer views such as from near the village hall. While the distances mean they would not be pronounced, they would, nonetheless, undermine the containing effect of the hillside to some degree. For these reasons, siting houses on the northern portion of the site would cause harm to the character and appearance of the area, and I am not satisfied that this impact could be overcome or allayed by the eventual design and layout.

17. A condition could be imposed to prevent houses from being sited on this northern area. However, that would necessitate these houses being built elsewhere on the site and I cannot be certain that relocating them would not give rise to similar harms.
18. Turning to the access, the C1130 currently has a distinctive rural character as it passes the site. This is created by the tall hedging to either side, its narrow winding nature, and the lack of pavements, streetlights and so on that together give it an organic informality so typical of lanes in the countryside. Although modern housing on Withies Close is just to the west, it is well concealed by the intervening hedge, even in mid-March when I visited, so it does not appreciably erode the character of this lane.
19. The access would require the removal of an extensive length of the planting and embankment along the east side of the C1130 to form the vehicular access and its sight lines. Structural elements would also then be needed to hold back the embankments as the new road cut into the slope and ran up the hill into the site. The scale and nature of these changes would significantly undermine and harm the rural character and appearance of this section of the lane, by removing the apparently natural wooded embankment and replacing it with a heavily engineered feature. Planting may, in time, reduce such an adverse effect, but given the scale of the alterations I have no grounds to consider its impact would allay this concern sufficiently. Again, the appellant's LVA identifies a visual amenity effect of moderate adverse around the access during the residual phase. Whilst I share the broad direction of this finding, in my judgement I consider the level of harm would be greater for the reasons given.
20. Finally, like the C1130 Withies Road East has an informal rural character with its narrow carriageway winding through hedges as it runs towards the crossroads. Forming a pavement along its north side and introducing kerbing to the south would change this to a road of a more urban character. Moreover, this harmful impact could be further compounded if the works involved the removal of all or part of the hedging.
21. Accordingly, I conclude that the development of the field, the formation of the access and the creation of a pavement and kerbing along Withies Road East would each result in harm to the character and appearance of the area, in conflict with Policies SD1 and LD1 in the Core Strategy, which seek development that is positively influenced by the character of the landscape and maintains local distinctiveness.

### ***Sustainability and highway safety***

22. Withington offers a restricted range of services that includes a primary school, a village hall, a recreation area, a limited bus service to various nearby towns, a small post office selling little beyond postal services, a fish and chip shop, 2 places of worship and some employment units. Although there used to be a larger shop, that closed before the pandemic and I was given no indication as to when, if at all, it would reopen. Moreover, to walk or cycle from the village to services elsewhere involved going along roads that tended to be unlit and have no pavements.
23. In Core Strategy Policy RA2 Withington is identified as a settlement for sustainable housing growth. While the 18% growth target has now been exceeded, that is a minimum figure and does not prevent greater numbers.

24. Although I acknowledge the limited services on offer, given the allocation and mindful of what is provided and the (admittedly restricted) bus service, I nonetheless accept it can be considered as a sustainable location for housing growth of this scale.
25. In terms of reliance on means of transport other than the private motor vehicle, I was told that cycling is unlikely to have any material impact in this regard. In relation to walking, the deletion from the scheme of pavements onto and along the C1130 means the only proposed pedestrian access or exit to or from the site is on the northern boundary with Withies Road East. Using this would add an appreciable distance onto the route for those residents who wanted to use the bus stop by Southbank or go to the employment uses to the south, especially as the lack of pavements on the C1130 means they would have to walk further westwards along Withies Road West and then cut down through the Withies Close estate. As a result, walking to those facilities to the south is unlikely to be encouraged by the layout.
26. In terms of the other services in the village the northern access is probably in the most convenient point to leave the site. Given this, the route of the pavement to the services along Withies Road West (such as the post office, fish and chip shop, bus stop and village hall) would be acceptable. However, the pavements do not follow the shortest route to the school, which could well be one of the most popular walking destinations for residents, as no pedestrian segregation exists or is proposed along Lock Lane. Rather, to walk to the school one would have to go appreciably further, along a relatively lengthy route, using Vine Tree Close to the west.
27. Overall, I therefore consider that the pedestrian links between the appeal site and the services the village offers would not be strong, and so would be of only limited value in encouraging walking. As a result, there is likely to be an undue reliance on the private car for even relatively short journeys.
28. Turning to pedestrian safety, this not only concerns the development's residents as they walk to and from the site but also those from elsewhere in the village as the appellant anticipates that they would want to use the new open space area. There would be adequate visibility along Withies Road East between the footpath link on the site's northern boundary and the new pavement to be on the northern side of that lane. However, that pavement is shown to be only 1-1.2m in width, which to my mind is inadequate to accommodate an adult and small child safely, especially given the narrowness of the carriageway.
29. Moreover, on the submitted drawings the crossing point over Lock Lane is a little away from the junction and this would restrict inter-visibility between pedestrians crossing from the eastern side and any approaching traffic on Withies Road East that wanted to turn into Lock Lane. The appellant suggested moving that crossing point nearer to the junction. However, putting aside the fact that such a modification has not been shown on the plans, the restricted visibility and the width of the Lock Lane junction mean vehicles that were not apparent when pedestrians stepped off the pavement on one side could become so before they reached the pavement on the other side. This is especially so for those crossing from the eastern side with regard to vehicles travelling northwards along the C1130, and from those crossing from the west

in relation to traffic coming along Lock Lane. Again, this could put pedestrians at an unacceptable risk.

30. Although the appellant's traffic data stated that there would only be very low numbers of pedestrian movements along the new pavement on Withies Road East in the AM and PM peaks, I am aware that reflects historic patterns of movement. Clearly it is the intention to promote and encourage walking or public transport usage, both of which would rely on pedestrians using this section of pavement. As such, there must be an anticipation that use of this pavement would be greater, especially if it is hoped those from off the site would be using the open space. However, even if that did not materialise, I consider compromising the safety of just the few pedestrians predicted by the appellant would be unacceptable.
31. Concern was raised that, when going to the school to the north or to the bus stop and employment uses to the south, residents would walk along Lock Lane and the C1130 rather than use the appreciably longer pedestrian routes identified, and as both of those lanes lack pavements they would be putting themselves and other road users at risk. To my mind, although some would use the longer routes, given the increased distance those would add to each journey, the siting of the development and its relationship to the village, there is a reasonable prospect that some residents would opt to walk along Lock Lane or the C1130, with highway safety being compromised as a result.
32. These concerns about the safety of pedestrian routes could also further discourage people to walk to or from the site, thereby in turn resulting in increasing the reliance on private motorised transport.
33. It was said that the pavement on Withies Road East could not be achievable due to constraints in the width of the highway. It is not for me to establish the extent of highway land and that was not particularly apparent on my visit. This though could be addressed by a negatively worded condition preventing development on site until that section of pavement was delivered. Furthermore, whilst the access down to the C1130 would be steep, it would nonetheless be within acceptable gradients and there is no basis to consider the safety of those living to the west on Withies Close would be compromised.
34. Finally, the additional vehicular movements associated with this development are unlikely to be so great as to have a severe effect on the road network. However, the introduction of an unduly narrow footway on Withies Road East at a point where the carriageway width is limited and drivers would have to allow for the projecting wall at Bank House is likely to compromise the safety of vehicular traffic.
35. Accordingly I conclude that the development would result in an undue reliance on private motorised transport due to its poor links to the services in the village, and would compromise highway safety due to the inadequacy of the pedestrian routes, the limited pavement widths, the poor visibility at junctions and the kerbing to be introduced on Withies Road East. As a result, it would conflict with Policies SS4 and MT1 in the Core Strategy, which seek the safe operation of the highway network and access to a genuine choice of modes of travel. It would also conflict with the Framework.

### ***The effect on the SAC***

36. The need to protect and safeguard Special Areas of Conservation means development proposals are considered in the light of the *Conservation of Habitats and Species Regulations 2017* (the Regulations), with the aim of maintaining or restoring, at favourable conservation status, the natural habitats and species. The Regulations require the decision-maker, before granting consent for a plan or project, to carry out an appropriate assessment in circumstances where the plan or project is likely to have a significant effect on a European site, alone or in-combination with other plans or projects. If the appropriate assessment shows that the integrity of a European site would be affected then consent for the plan or project can only be granted if there are no alternative solutions, the plan or project must be carried out for imperative reasons of overriding public interest and compensatory measures will be provided.
37. The SAC covers an extensive part of the River Wye and its tributaries. Its conservation objectives relate to the maintenance or restoration of the wide range of species and their natural habitats for which the SAC has been designated, to ensure the site's integrity is maintained. One concern is that the nutrient regime of the SAC, and in particular its phosphate levels, should be protected, as this can affect the range of species and the habitats that can survive in these rivers. As a result, targets for phosphate levels have been set, and whilst the bulk of the River Wye is not exceeding these, they are being exceeded on the River Lugg, meaning it is now in an unfavourable condition.
38. The *River Wye SAC Nutrient Management Plan* states that nationally the main source of phosphates in rivers is thought to be sewage effluent. From the appeal site, foul drainage would go into a foul sewer, which would then join a combined sewer and be taken to the Waste Water Treatment Works at Eign. Although this discharges then into the River Wye, it is downstream of Hereford where the river is not exceeding its phosphate levels. As such, that discharge would not have a likely significant effect on the SAC.
39. However, between the appeal site and Eign the combined sewer passes through New Court Pumping Station. Here, in storm events, there is a combined sewer overflow into the River Lugg, with its already elevated phosphate levels. Although combined sewer overflows only occur on a limited number of occasions, they have nonetheless happened increasingly often in recent years. Moreover, as this further development would increase the discharge into the combined sewer the likelihood of such overflows taking place and their duration would also increase, albeit slightly. I accept that in such storm events the foul sewage from this site would be a small proportion of the total, and I appreciate that the overall amount of foul sewage would be diluted. However, I am not satisfied that discounting the impact of this proposal on the basis that its effect would be *de minimis* is in line with the Regulations, as taking that approach over a number of schemes would give rise to cumulative harm. As a result, the development would result in an increase in foul sewage in a river that is in an unfavourable condition as it fails to meet its phosphate levels, and so, when taken in combination with other possible plans and projects, is likely to have a significant effect on the integrity of the SAC.
40. Having found the integrity of the SAC would be harmed, I am aware of no effective mitigation that has been proposed, no alternative solutions offered and no imperative reasons as to why the development should be carried out. Although

there is an agreed shortfall in open market and affordable housing, that is a district-wide situation and does not mean housing needs to be built here.

41. I therefore conclude that, when considered in combination with other plans and projects, the development would adversely affect the integrity of the SAC, and in the absence of mitigation I cannot conclude the proposal would not have a likely significant effect on the integrity of the SAC. It would therefore be in conflict with the Regulations and the Framework, and also with Policy LD2 in the Core Strategy that states development that would harm sites of European importance will not be permitted.

### **Other Matters**

42. The Grade II listed Withington Court is to the north-east of the site. The significance of this and its special architectural and historic interest lie partly in it being a sizeable dwelling of some status set in large spacious and agriculturally productive grounds. To the north along Lock Lane is the Withington Conservation Area. Its character and appearance is defined to a degree by it being a cluster of historic buildings gathered around a junction, and its significance arises, to some extent, from the way it displays the historic origins of the settlement. To my mind both of these designated heritage assets are sufficiently far from the appeal site to mean the development would not fail to preserve their settings and so would not harm their significance.
43. I understand that Bank House is a non-designated heritage asset, and was told it used to be an isolated inn. However, from the north and west it does not now appear isolated but rather sits on the very edge of the village and is clearly residential in character. Mindful that the layout and design of the new development would be subject to detailed consideration at reserved matters stage I consider the significance of this non-designated heritage asset would not be harmed by the scheme.
44. Again, the reserved matters applications would allow the living conditions of neighbouring residents to be addressed satisfactorily. I also see no reason why the location or gradient of the access should result in light pollution for those living on Withies Close who back on to the C1130. Furthermore, while I note that flooding resulted soon after the development to the south was completed, I have no grounds to consider that, with suitable conditions in place, flooding could not be addressed in this instance.
45. Finally, I have insufficient evidence to dismiss the appeal on the basis of its impact on wildlife around the site, the sense of community in the village, or its over-straining of services.

### **The Planning Balance**

46. I have found conflict with development plan policies in relation to each of the issues above. Section 38(6) of the *Planning and Compulsory Purchase Act 2004* says development must be in accordance with the development plan unless material considerations indicate otherwise.
47. The appellant has contended the development plan policies that are most important for determining the application are out of date on the basis of there being an agreed shortfall in housing land supply, there being a need for a review of the Core Strategy and there being an inconsistency between Policy RA3 in the Core Strategy (and cited in Policy P2 of the Neighbourhood Plan)



and the Framework. As a result, it has relied on paragraph 11d) of the Framework that states planning permission should be granted unless certain circumstances apply (often referred to as the tilted balance).

48. One of those circumstances though when the titled balance does not apply is where the application of policies in the Framework that protect assets of particular importance provide a clear reason for refusing the development proposed. Such an example of those policies is the habitat sites that include Special Areas of Conservation. Given my findings in relation to the SAC, I consider that even if the policies in the development plan are out-of-date for any or all of the reasons given, the tilted balance in favour of granting planning permission found in paragraph 11d) does not apply.
49. I accept that the scheme would, nonetheless, lead to up to 46 more houses in an area of housing shortfall. Moreover 35% of these would be affordable where again such a need exists, and these could be appropriately secured through the submitted legal undertaking. Economic benefits would also flow from the scheme during the construction phase and due to the increased spending of occupiers, though there is no specific evidence to show this would bring more shops or other services to the village. I am aware too that wider benefits such as the New Homes Bonus would follow, but it has not been shown that this would be to the of benefit to Withington. Similarly, the open space may be used by other villagers but again a need for this beyond the development has not been highlighted. While the houses would be of a high-quality design and to Buildings Regulations standards, that is what would be expected, while the education contributions are requirements arising from the development. However, even if taken together I consider the weight I can afford these benefits does not outweigh the harm to the SAC and the other harms identified above.

### **Conclusion**

50. Accordingly, for the reasons given I conclude the appeal should be dismissed.

*JP Sargent*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Dr M Brammah	Associate Ecologist
Mr T Ferraby	Landscape Architect
Mr M Freeman	Drainage Engineer
Mr M Mortonson	Planning Consultant
Mr S Moss	Associate Director Transportation AECOM
Ms W Wright	Principal Landscape Architect

### FOR THE LOCAL PLANNING AUTHORITY:

Ms C Atkins	Principal Planning Officer with the Council
Ms Y Coleman	Planning Obligations Manager with the Council
Ms K Jones	Area Engineer (Highways) with the Council
Mr N Koch	Senior Landscape Officer with the Council

### INTERESTED PARTIES:

Ms H Bushell	On behalf of Mrs Morgan, local resident
Ms G Chadd	Local resident

## **DOCUMENTS SUBMITTED AFTER THE HEARING**

### ON BEHALF OF THE APPELLANT

APP1 Signed copy of the appellant's Unilateral Undertaking dated 31 March

### ON BEHALF OF THE LOCAL PLANNING AUTHORITY

LPA1 *Planning Obligations Supplementary Planning Document* dated April 2008

LPA2 *Withington Group Parish Neighbourhood Development Plan 2017-2031: Independent Examiner's Report* dated July 2019

LPA3 Email to the Planning Inspectorate dated 22 March concerning Dwr Cymru Welsh Water's interest in the field subject of the appeal

LPA4 Email to the Planning Inspectorate dated 7 April concerning the appellant's signed and dated Unilateral Undertaking

### ON BEHALF OF NATURAL ENGLAND

NE1 Email to the Planning Inspectorate dated 14 April concerning its position in relation to the proposal's effect on the SAC