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## Appeal Decision

Site visit made on 23 April 2018

by **D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC**

an Inspector appointed by the Secretary of State

Decision date: 4 July 2018

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### Appeal Ref: **APP/W1850/W/17/3180227**

### **Tump Lane, Hereford, Herefordshire HR2 8HW**

- 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 Ms Kat La Tzar of Larkrise Co-Housing and Herefordshire Housing Ltd against the decision of Herefordshire Council.
  - The application Ref 130945, dated 3 April 2013, was refused by notice dated 18 January 2017.
  - The development proposed was originally described as "*outline planning application for a residential development comprising up to 20 dwellings, including up to 10 affordable dwellings with associated new access (via Tump Lane) and car parking arrangements (for both existing and proposed dwellings), and a community facility (of up to 200m<sup>2</sup>)*".
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### Decision

1. The appeal is allowed and planning permission is granted for residential development comprising up to 20 dwellings, including up to 10 affordable dwellings with associated new access (via Tump Lane) and car parking arrangements (for both existing and proposed dwellings), and a community facility (of up to 200m<sup>2</sup>) at Tump Lane, Hereford, Herefordshire HR2 8HW in accordance with the terms of the application, Ref 130945, dated 3 April 2013 subject to the conditions in the attached schedule.

### Preliminary Matters

2. The appeal is in outline with all matters reserved except for access. I have dealt with the appeal on this basis, treating the submitted plans as indicative insofar as they relate to the appearance, scale and layout of the dwellings and community facility and landscaping. I have altered the description of development in the formal decision above to delete wording that is not a description of development.
3. The appellant has submitted drawing No (L) 07 with the appeal to illustrate how a proposed footway could be provided on Tump Lane in the direction of Wormelow. She has requested that this be taken into account in the determination of this appeal. A similar footway was considered within a previous appeal decision<sup>1</sup> for a site in Tump Lane. Moreover, the appellant has stated that the drawing forms part of a subsequent planning application for the development of the appeal site. All parties have had the chance to comment on this drawing and I do not consider that they would be prejudiced by my consideration of it. I have dealt with the appeal on this basis.

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<sup>1</sup> APP/W1850/A/14/2221854

4. The Council have referred to Policy H10 of the Hereford Unitary Development Plan within its statement of case. However, it has confirmed that this was an error as this policy has been replaced by Policies H1 and H3 of the Herefordshire Local Plan Core Strategy (CS).
5. The Council have stated that the Much Birch Neighbourhood Plan area was designated in 2013 but the Neighbourhood Development Plan has not been progressed. As such, given the early stage of its preparation I give it little weight.
6. The appellant originally submitted a draft Unilateral Obligation (UO) and both main parties were given the chance to comment on this document and whether it would be effective at delivering the affordable housing. The appellant has subsequently submitted a signed and completed UO and I will return to this matter below.

### **Main Issue**

7. The main issue in this case is whether the site would be a suitable location for up to 20 dwellings and a community facility having regard to the policies of the development plan in regard to the accessibility of services and facilities and highway safety and, if harm arises, whether this is outweighed by other material considerations.

### **Reasons**

8. The appeal site comprises fields, paddocks and stables. Access would be provided from the end of an existing road and through an existing garage court. The proposal would involve the construction of up to 20 dwellings, a community facility and up to 10 of the dwellings to be provided would be affordable homes. The community facility would consist of shared facilities such as a common room, kitchen and shared guest accommodation.
9. The proposal would also involve the demolition of five of the garages to the one side. New parking areas would be created adjacent to the garages. These parking areas would encroach onto an existing informal play area and the proposal would extend that play area into part of the appeal site. The dwellings would adjoin a group of dwellings that forms part of the settlement of Much Birch. The settlement of Wormelow is located to the south- west of the site.
10. Policies SS2, RA1 and RA2 of the Herefordshire Local Plan Core Strategy (CS) relate to the delivery of new homes in the County. CS Policies SS2 and RA1 state that a minimum of 5,300 dwellings will be delivered across identified rural settlements on the basis of 7 Housing Markets Areas. CS Policy RA2 would support sustainable housing growth in or adjacent to Much Birch subject to a number of criteria including that they result in the development of high quality, sustainable schemes. CS Policy SS4 requires that proposals should facilitate a genuine choice of travel modes.
11. CS Policy MT1 states that development proposals should include a number of requirements covering movement and transportation. These include demonstrating that the strategic and local highway network can absorb the traffic impacts of the development without adversely affecting the safe and efficient flow of traffic on the network and including access to services by means other private motorised transport. These policies are reflective of the National Planning Policy Framework (the Framework).

12. The settlements of Much Birch and Wormelow contain a number of services and facilities including a primary school, medical centre, shop and post office that are within walking and cycling distance of the appeal site. There are also bus stops close to the junctions of the A49 and Tump Lane, to the north east of the site, and the A466 and Tump Lane, to the south west of the site.
13. Tump Lane is a road that is of restrictive width for sections of its length between the A49 and the A466. Furthermore, there are parts of the road that do not have a pavement on either side and it has no street lighting. A recent traffic regulation order (TRO) has reduced the speed limit on Tump Lane from 40 mph to 30 mph and has prohibited vehicles exceeding 7.5 tonnes maximum gross weight from travelling along it subject to certain exemptions.
14. The scheme indicates that a footway would be provided for the majority of the length of Tump Lane from the appeal site to the A49. The additional plan also indicates that a footway could be provided on Tump Lane in the direction of Wormelow. The footways would not be provided across existing driveways and within the 2 passing places. Both main parties are in agreement that these works would be within the public highway and could be implemented through the use of a planning condition.
15. I acknowledge that the footways would not be continuous from the appeal site to the A49 and A446 and that the street lighting situation would not alter. Nevertheless, they would provide pedestrians with a refuge from conflict with vehicular traffic for the majority of Tump Lane's length. This would result in a significant improvement on the existing situation. I also consider that the resultant reduction in the width of Tump Lane to a single carriageway in places would have the additional benefit of reducing the speed of that vehicular traffic.
16. As there are now services and facilities in both Wormelow and Much Birch the footpaths in both directions would be required to ensure that they are all more safely and easily accessible to pedestrians. The footways would be in close proximity to existing vegetation at various points. This vegetation could become overgrown and extend into the footway. However, I observed that in the main the existing vegetation appears to be well maintained therefore it is unlikely that it would become overgrown for extended periods of time in the future.
17. At the time of my site visit I noted that an appreciable number of pedestrians were using the lane and these included adults and children that appeared to be on their way home from school. There was also an amount of on street parking near to the junction of Tump Lane with the A49 which appeared to be parents picking up children at the end of the school day. However, I did not witness any evidence of unsafe parking or significant issues relating to the safe and efficient operation of the highway network. I acknowledge that this was only a snap-shot of parking levels but it is reasonable to consider that it is indicative of their levels at similar times on other days.
18. I acknowledge that there have been a number of vehicle accidents within the surrounding area including a number of fatalities on the A49. However, whilst there would be an increase in vehicle movements on Tump Lane as a result of the proposal there is little evidence before me to indicate that the increase would significantly alter the day-to-day variations in vehicle movements noted in the submitted traffic surveys. In addition, it has been brought to my

attention that a pedestrian crossing is to be installed on the A49 close to the junction with Tump Lane this year.

19. Moreover, it is likely that due to the increase in travel times along Tump Lane as a result of the introduction of lengths of single carriageway that the amount of vehicle movements along it could reduce. Furthermore, there would be a priority system incorporated into the highway works on Tump Lane that would give priority to the northbound traffic travelling towards the A49.
20. Even though Tump Lane contains undulations and bends the submitted evidence indicates that forward visibility from the passing places would exceed 60 metres. As such, I consider that there would be sufficient visibility between the passing places to ensure that vehicles could travel safely between them. I consider that subject to the design of the footpath it is unlikely that vehicles would mount it on a regular basis and therefore damage it. The Council's Transportation Manager considers that subject to detailed design amendments to the highway works and a further TRO that the scheme is acceptable in principle.
21. I observed a moderate level of on-street parking within the access road that leads to the garage court and a higher level of on street parking within the narrow no-through road that serves the adjacent part of the estate. I acknowledge that levels of parking in the evening when some residents return from work is likely to be higher. The demolition of the 5 garages and the access road utilising the garage court would reduce the number of parking spaces available to existing residents.
22. Nonetheless, a proposed parking area would appreciably improve the number of spaces available to existing residents and additional dwellings would be able to have direct access from their gardens to facilitate a driveway. The amount and location of the parking for each of the proposed dwellings would be controlled through the submission of details at the reserved matters stage. Consequently, I consider that the proposal would improve the current parking provision for the existing occupiers and that additional parked cars would not be parked on Tump Lane.
23. I noted that the existing access road that would also serve the development has a good level of visibility in both directions at its junction with the main part of Tump Lane and this would not be adversely affected by the proposal.
24. Concern has been raised in relation to delivery and servicing vehicles that require access to existing dwellings on Tump Lane. The proposed footway would not preclude access to existing properties. The carriageway is of restricted width in the vicinity of the property called The Slinget and vehicles making deliveries to this property would temporarily further reduce the width of the carriageway. The vehicles could park within the opening to the existing drive that would not be altered by the footpath or they may park on the footpath itself. Whilst this is not ideal it would only be for a temporary period whilst the delivery takes place. It would appear that these deliveries occur at the present time and pedestrians must either wait until the vehicle moves or walk round it. The proposal would not materially alter this situation.
25. The previous appeal decision, cited above, was for dwellings accessed from Tump Lane. Based on the limited information before me it would appear that there are some parallels with this appeal. However, since that appeal was

determined the CS has been adopted, the TRO has been implemented and the highway works now include footway provision in both directions on Tump Lane. As such, I consider that the circumstances are not directly comparable to this scheme. In any case, I am required to determine the appeal on its individual merits.

26. Taking into account all of the above, I consider that there would be alternative means to access services and facilities in Much Birch, Wormelow and further afield other than by the private motor car. As such, the appeal site would be in a relatively accessible location adjacent to Much Birch. I consider that the proposal would not conflict with the criteria of CS Policy RA2 in this respect. The proposal would also comply with CS Policy SS4. The scheme when taken as a whole would improve the existing parking provision for nearby occupiers, would significantly improve pedestrian safety and is likely to further reduce vehicle speed within Tump Lane. As such, the safe and efficient flow of traffic on the highway network and highway safety would not be adversely affected. It follows that the proposal would comply with CS Policy MT1.

#### *Unilateral Obligation*

27. Paragraph 204 of the Framework and Regulation 122 of the Community Infrastructure Levy Regulations require that planning obligations should only be sought, and weight attached to their provisions, where they are: necessary to make the development acceptable in planning terms; directly related to the development; fairly and reasonably related in scale and kind to the development; and, since April 2015, must not be a pooled contribution where more than five such pooled contributions have already been collected.
28. The undertaking includes a provision whereby, should I determine that any obligation provided for therein is not a material planning consideration, can be given little or no weight, or does not comply with Community Infrastructure (CIL) Regulations 122 or 123, that obligation would not be enforceable and would cease to have effect.
29. The UO secures the payment of a contribution towards education provision at the nearby Much Birch Primary School. The Council has shown that three year groups are at or above the planned admissions numbers for the school. The provision of housing on the appeal site is highly likely to increase the demand for places at this school. The figure would be calculated by a formula set out in the Council's Planning Obligations Supplementary Planning Document (SPD), the final amount depending on the eventual number and type of dwellings that would be provided at reserved matters stage were the appeal to succeed. Contributions would be used to enhance and improve facilities at this school. There is no evidence before me to indicate that 5 pooled contributions have been made in respect of this matter. I am satisfied that the contribution would meet the relevant tests.
30. The UO provides for a contribution towards sustainable transport measures with the figure calculated by a formula set out in the SPD. There is no detail of what specific projects or infrastructure this would support or if it would be specifically related to the highway works in Tump Lane. The Council have also stated that they will not be requiring this contribution given its concerns in relation to the accessibility of the site and highway safety. As such, I consider that I do not have sufficient evidence before me to determine whether the

contribution meets the relevant tests and I have not taken it into account on this basis.

31. The UO provides for 0.18 hectares of land to be provided as public open space within the appeal site. There is no detail provided within the UO on how that would be managed or maintained. This can be controlled through a planning condition if the appeal is allowed. I am satisfied that the provision secured in this regard meets the relevant tests.
32. The UO provides for the provision of children's play equipment on the existing play area adjacent to the site. The specification for the play equipment would be agreed with the Council and the cost of it would be based on a final amount depending on the eventual number and type of dwellings that would be provided at reserved matters stage were the appeal to succeed. As the proposal has a direct impact on the play area and the facilities would be utilised by both the existing and future occupiers I am satisfied that this provision would satisfy the relevant tests.
33. The UO provides for a contribution to be made for the provision of waste and recycling bins for each dwelling. The Council has identified a need for waste and recycling facilities for each new dwelling. This contribution would be reasonably related in scale and kind to the needs generated by the proposed development and therefore the contribution would meet the relevant tests.
34. The delivery of affordable homes and the need for long term arrangements to secure their continued availability for affordable housing use is necessary to make the development acceptable in planning terms. The UO allows for the detail of the affordable housing to be defined in agreement with the Council before the development commences. The obligations in this respect in the UO are fairly and reasonably related to the achievement of those objectives. I am, therefore, satisfied that the obligations in relation to affordable housing included in the UO meet the necessary tests and that they can be afforded weight.
35. There is also a requirement for a contribution towards the Council's monitoring and management costs associated with the UO. However, all of the contributions sought are required to be paid prior to commencement of any development. There is no evidence before me which would indicate that the cost of monitoring and administering the UO would give rise to additional costs over and above the Council's existing resources. Having regard to the judgment of the High Court <sup>2</sup>, I do not consider that the payment of a contribution in this respect is needed to make the development acceptable in planning terms. As such, it would not meet the relevant tests.

#### *Other matters*

36. Local residents object to the proposal on a wider basis, including in respect of, loss of views, the proposed model of co-housing is unproven, lack of employment opportunities locally, the local schools and GP surgery being full, issues with drainage and the impact on wildlife and animal welfare. These did not form part of the Council's reasons for refusal and I am satisfied that these matters would not result in a level of harm which would justify dismissal of the appeal.

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<sup>2</sup> Oxfordshire CC v Secretary of State for Communities and Local Government [2015] EWHC 186 (Admin).



37. While I understand that my decision will be disappointing for some local residents, the information before me does not lead me to conclude that these other matters, either individually or cumulatively, would be an over-riding issue warranting dismissal of the appeal.
38. The Council has stated within its Statement of Case that the proposal will result in the loss of agricultural land. However, I have no evidence to indicate that the appeal site constitutes the best and most versatile agricultural land. Moreover, this issue was not raised in the Council's Officer Report or its reasons for refusal. As such, I give it little weight.

### *Conditions*

39. I have considered the conditions put forward by the Council and the statutory consultees against the requirements of the Planning Practice Guidance (PPG) and the Framework. In the interests of conciseness and enforceability the wording of some of the conditions has been amended.
40. Conditions relating to the definition and submission of reserved matters, commencement and approved plans have been imposed to comply with legislation and in the interests of certainty.
41. In the interests of visual amenity and biodiversity conditions are necessary to ensure the development is carried out in accordance with the initial ecology and protected species appraisal and setting out details to be included in the landscaping reserved matters. It is necessary for these details to include the management, maintenance and an implementation programme for the open space cited in the UO.
42. In order to protect the living conditions of existing residents during the construction period and in the interest of highway safety conditions in relation to the hours of construction and delivery and in relation to wheel washing apparatus are necessary.
43. In the interest of highway safety and in order to promote sustainable travel choices the highway works shown on the submitted plans will need to be secured, cycle parking details and a Travel Plan are necessary.
44. In order to avoid duplication I have amalgamated the conditions in relation to foul and surface water drainage works and I have taken into account the condition suggested by the land drainage manager. These details are required to avoid pollution and to prevent increased risk from flooding. I have not included the condition in relation to no development taking place within 3 metres of the public sewer as this is covered by separate legislation and the layout of the site is a reserved matter.
45. I have not imposed a condition in relation to the implementation of a landscaping scheme as this is part of the reserved matters and can be dealt with at that stage.
46. The Framework advises that conditions should restrict national permitted development rights only where there is clear justification to do so. The PPG advises that such conditions will rarely pass the test of necessity and should only be used in exceptional circumstances. The detailed scale, layout and appearance of the dwellings will be determined as part of the reserved matters and it has not been demonstrated that this condition is necessary.

47. The PPG advises that care should be taken when using conditions which prevent any development authorised by the planning permission from beginning until the condition has been complied with. In the case of the pre-commencement conditions, I consider that resolution of the matters specified to be so fundamental to the development that it would otherwise be necessary to refuse the application.

### **Overall Balance and Conclusion**

48. There is no dispute that the Council cannot demonstrate a 5 year supply of housing land. Paragraph 49 of the Framework states that housing applications should be considered in the context of the presumption in favour of sustainable development (paragraph 14) bearing in mind the objective (paragraph 47) to boost significantly the supply of housing.
49. The proposal would provide up to 20 new dwellings through a mix of market and affordable housing in an area where there is an acknowledged shortfall. There would be economic and social benefits associated with the construction and occupation of the dwellings.
50. The development would provide open space within it and would include an extension to the existing play area. Whilst intended as a necessary facility for future residents of the scheme, existing Tump Lane residents would, in theory, also be able to use the open space. However, the extension of the play facilities is required as mitigation for the development proposed. As such, I consider that these matters should attract no more than very limited weight, given that there is already an area of open space and a play area for existing residents on Tump Lane.
51. Whilst the proposed highway improvement works set out above are intended to encourage future residents to walk to access local services and facilities they would also benefit existing residents.
52. The proposal would accord with the development plan when read as a whole. Furthermore, there are not any adverse impacts of granting permission which would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. Nor are there any specific policies in the Framework that indicate development should be restricted. There are no material considerations that indicate that the proposal should be determined other than in accordance with the development plan.
53. For the above reasons, and taking account of all other matters raised, I conclude that the appeal should be allowed.

*D. Boffin*

INSPECTOR

- Attached schedule -



## **SCHEDULE OF 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.
- 4) Unless modified by any of the other conditions within this decision the development hereby permitted shall be carried out in accordance with the following approved plans: (L-) 100; (L-) 04 D; (L-) 05 E; (L) 07; (L-) 11 B; (L-) 11 D-01 B; (L-) 11 D-02 B; (L-) 11 D-03 B; (L-) 11 D-04 B; (A-)01; (A-)02.
- 5) The landscaping details submitted in accordance with condition 1 above shall include, but are not confined to, the following:
  - i) A plan(s) 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.
  - ii) plans at a scale of 1:200 or 1:500 showing the layout of proposed tree, hedge and shrub planting and grass areas;
  - iii) 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;
  - iv) Existing and proposed finished levels and contours;
  - v) the position, design and materials of all site enclosure and boundary treatments between and around dwellings, around the boundaries of the site as a whole and around areas of open space;
  - vi) car parking layout and other vehicular and pedestrian access;
  - vii) hard surfacing materials;
  - viii) a timetable for implementation;
  - ix) a scheme for the ongoing management and maintenance of all landscaped areas, other than private domestic gardens, and the open space covered by the planning obligation, including long term design objectives, management responsibilities and maintenance schedules.
- 6) No building hereby permitted shall be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. The

drainage works shall be implemented and thereafter managed and maintained in accordance with the approved details and timetable. Where a sustainable drainage scheme is to be provided, the submitted details shall:

- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
  - ii) include a timetable for its implementation; and,
  - iii) provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 7) None of the dwellings hereby permitted shall be occupied until works for the disposal of sewage shall have been provided on the site to serve the development hereby permitted, in accordance with details that have first been submitted to and approved in writing by the local planning authority.
  - 8) The development hereby permitted shall be carried out in strictly in accordance with the recommendations set out in the initial ecology and protected species appraisal dated 7th February 2013 unless otherwise agreed in writing by the local planning authority. Prior to commencement of the development, a habitat protection, enhancement and management scheme should be submitted to and be approved in writing by the local planning authority. The scheme shall include provision for long-term management of the nature conservation features and the appointment of an appropriately qualified and experienced ecological clerk of works to oversee the approved scheme and shall be implemented as approved.
  - 9) During the construction phase, of the development hereby permitted, demolition, construction works and deliveries taken or despatched from the site shall take place only between 07:00 and 18:00 on Mondays to Fridays and 08:00 and 13:00 on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.
  - 10) No dwelling shall be occupied unless and until the highway works shown on Drawing Nos (L-) 04 D; (L-) 05 E; (L) 07; (L-) 11 B; (L-) 11 D-01 B; (L-) 11 D-02 B; (L-) 11 D-03 B; (L-) 11 D-04 B; (A-)01; (A-)02 have been constructed, surfaced and drained in accordance with details that shall previously have been submitted to and approved in writing by the local planning authority.
  - 11) No development hereby permitted shall commence until wheel cleaning apparatus has been provided in accordance with details that shall previously have been submitted to and approved in writing by the local planning authority. The apparatus shall be operated and maintained in accordance with the approved details for the whole of the construction period of the development hereby permitted.
  - 12) Within 8 weeks of the first occupation of the development hereby permitted a scheme for the provision of covered and secure cycle parking on site, including a timetable for implementation, shall be submitted to

and approved in writing by the local planning authority. The cycle parking shall be installed and made available for use in accordance with the approved details.

- 13) No dwelling shall be occupied until a Travel Plan which contains measures to promote alternative sustainable means of transport for occupiers of the development hereby permitted has been submitted to and approved in writing by the local planning authority. The Travel Plan shall be implemented, in accordance with the approved details, on the first occupation of the development. A detailed written record shall be kept of the measures undertaken to promote sustainable transport initiatives and an annual review of the Travel Plan shall be undertaken. All relevant documentation shall be made available for inspection by the local planning authority upon reasonable request.