

TEWKESBURY BOROUGH COUNCIL – DEVELOPMENT MANAGEMENT

Committee:	Planning
Date:	15 February 2022
Site Location:	Land at Ash Lane Down Hatherley
Application No:	21/00617/PIP
Ward:	Severn Vale South
Parish:	Down Hatherley
Proposal:	Permission in principle for the erection of up to four dwellings.
Report by:	Victoria Stone
Appendices:	Site Location Plan Indicative Layout Plan
Recommendation:	Permit

1.0 SITE DESCRIPTION AND PROPOSAL

- 1.1 This application relates to a parcel of land to the east of Ash Lane, which is in Down Hatherley (**see attached Site Location Plan**).
- 1.2 The site is generally level, covers approximately 0.33 hectares (excluding Ash Lane) and laid to grass. The site is bound by open fields to the east, Ash Lane to the west and residential dwellings to the northern and southern boundaries.
- 1.3 The site is not subject to any formal landscape designation but is in an area of safeguarded land.
- 1.4 This application is for a Permission in Principle (PIP), as provided for in the Town and Country Planning (Permission in Principle) Order 2017. The current application is the first stage of the process and seeks solely to establish whether the site is suitable in principle for the erection of up to four dwellings. The Government's guidance sets out that the scope of the first stage of permission in principle is limited to the location, land use and amount of development. The site layout, design, access, landscaping, drainage and any other relevant technical matters would be considered at the 'technical details' stage.
- 1.5 The application documents include an Indicative Layout Plan which demonstrates how the quantum of development could be delivered on the site. Based on the plan, two dwellings could be provided fronting Ash Lane and two dwellings could be located to the rear of the site. A new access road could be provided running along the northern boundary to serve the two properties to the rear of the site.

- 1.6** Planning permission was granted in April 2021 for the erection of two detached dwellings on the westernmost part of the site under reference 20/01023/FUL. Further, Members resolved that authority be delegated to the Development Manager to permit an application for two single storey dwellings, subject to resolving a couple of matters, on land immediately adjacent to the north of the eastern half of the site at Planning Committee in October 2021, planning reference 20/01179/FUL. This recent planning history is a material consideration when determining this application.
- 1.7** Since the application was first submitted, the proposal has been subject to revisions to address concerns raised by officers which include a reduction in the number of dwellings proposed from six to four. A new notification and consultation period has been carried out.

2.0 RELEVANT PLANNING HISTORY

3.0 RELEVANT POLICY

The following planning guidance and policies are relevant to the consideration of this application:

3.1 National guidance

National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG)

3.2 Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS) – Adopted 11 December 2017

- Policy SP1 (Need for New Development)
- Policy SP2 (Distribution of New Development)
- Policy SD4 (Design)
- Policy SD5 (Green Belt)
- Policy SD6 (Landscape)
- Policy SD9 (Biodiversity and Geodiversity)
- Policy SD10 (Residential Development)
- Policy SD14 (Health and Environmental Quality)
- Policy INF1 (Transport Network)

3.3 Main Modifications Tewkesbury Borough Plan 2011-2031 Pre-submission Version (October 2019) (MMTBP)

- Policy RES4 (New Housing at other Rural Settlements)
- Policy RES5 (New Housing Development)

3.4 Neighbourhood Plan

Down Hatherley, Norton and Twigworth Neighbourhood Development Plan – 2011-2031 (NDP)

Policies:

- E2 (Landscape Protection in Open Countryside)
- E3 (Landscape and New Developments)

3.5 Other relevant policies/legislation

- Human Rights Act 1998
- Article 8 (Right to Respect for Private and Family Life)
- The First Protocol - Article 1 (Protection of Property)

4.0 CONSULTATIONS

Full copies of all the consultation responses are available online at <https://publicaccess.tewkesbury.gov.uk/online-applications/>.

4.1 Down Hatherley Parish Council – Oppose the amended proposals for the following reasons:

- Overdevelopment of the last remaining green space on Ash Lane.
- Each application should be judged individually, and no account should be taken of any claimed precedent.
- The lack of a five year housing land supply should not act to the detriment of Down Hatherley in general and Ash Lane in particular.
- No demonstrable local need for these additional houses.
- Safeguarded Land development cannot be approved without the specific support of a JCS Review; this is not in place so the application should be rejected.
- Development would not meet the criteria for ‘very special circumstances’ for new build development.
- Development would not be infill in the Green Belt, Ash Lane is not a ‘village environment’ but more a single-street hamlet – therefore would be inappropriate development in the Green Belt.
- The proposal extends the development zone way beyond the linear street scene into a area forming a vital part of the open space which is paramount to promote the semi-rural nature of the local environment.
- Unnecessarily filling in green spaces does not accord with the NDP.
- Proposal does not accord with two of the aims of the NDP to protect the Green Belt and to main open spaces to enhance the rural character of the settlement.
- Development is totally out-of-step with the views and wishes of local residents.
- Comments on the previous application at the site remain valid and increased in magnitude
- Unacceptable attempt to manipulate the planning system by the developers.
- There are existing very serious drainage and sewerage infrastructure problems in the Ash Lane locality – solutions to resolve the problems have still to be addressed.

- 4.2 County Highway Authority** – Development would not warrant a position of refusal.
- 4.3 Severn Trent Water** – No objection subject to inclusion of conditions.
- 4.4 Flood Risk and Management Officer** – No objection to the principle of the development.
- 4.5 Environmental Health Officer (Noise/Nuisance)** – No objection.

5.0 PUBLICITY AND REPRESENTATIONS

Full copies of all the representation responses are available online at <https://publicaccess.tewkesbury.gov.uk/online-applications/>.

- 5.1** Both the original application and the revised application have been publicised through the posting of a site notice for a period of 14 days.
- 5.2** Thirteen representations objecting and one general comment were received to the original proposal and a further five representations objecting to the revised proposal have been received. The comments are summarised below:
- Infrastructure for the area cannot cope with the level of overdevelopment as evidenced by recent flooding – area is unsuitable for any further development as it will adversely impact neighbouring properties both in terms of flooding and the stresses on the poor sewage system.
 - Existing drainage and sewerage infrastructure not fit for purpose – significant investment and repair is required to support the current demands on the system, let alone those needed to support the significant number of new dwellings either agreed or proposed.
 - Need to consider the drainage and sewerage issues now.
 - Issue in terms of flooding and sewerage is exacerbated by the piecemeal approach to planning and development along Ash Lane where construction merely ‘plugs in’ to the existing framework rather than constructing their own infrastructure to deal with drainage and sewerage on the properties.
 - Site is designated safeguarded land – any attempt to develop would be a clear breach of the NPPF.
 - Proposal does not require the developer to enhance the infrastructure.
 - Layout at odds with the character of the lane.
 - Development is not infill.
 - Development would destroy the semi-rural nature of Ash Lane.
 - There is no legal access for these properties onto Ash Lane.
 - Recent permission on land to the west at The Bungalow is for two semi-detached bungalows whilst this proposal is for four houses, which cannot be deemed to be similar and therefore comparable from the perspective of using it as a precedent.
 - Concerns raised over pedestrian/cycle safety – Ash Lane does not have lighting.
 - Development would result in disturbance during construction.
 - Development must be an enhancement for biodiversity.
 - Development would cause damage to the road (Ash Lane).
 - Impact on the habitat left for wildlife in the rural location.
 - Development would conflict with the NDP.
 - The correct documentation has not been submitted.
 - Highway safety would be compromised – single track, vehicles would have to reverse onto Ash Lane.

- Increase traffic generation along Ash Lane.
- Overdevelopment of the site – leaves no area for drainage, wildlife and trees shrubs or green areas.
- Overdevelopment of Ash Lane.
- Harm to residential amenity.
- Severn Trent requirements need to be adhered to – distance from pumping station and either way of the pressurised pipes.

6.0 POLICY CONTEXT

- 6.1** Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. Section 70 (2) of the Town and Country Planning Act 1990 provides that the Local Planning Authority shall have regard to the provisions of the Development Plan, so far as material to the application, and to any other material considerations.
- 6.2** The Development Plan currently comprises the Joint Core Strategy (JCS) (2017), saved policies of the Tewkesbury Borough Local Plan to 2011 (March 2006) (TBLP), and a number of 'made' Neighbourhood Development Plans.
- 6.3** In terms of the Tewkesbury Borough Plan 2011-2031, it has now reached an advanced stage. The Pre-Submission TBP was submitted for examination in May 2020. Examination in Public (EiP) took place over five weeks during February and March 2021. The examining Inspector's post hearings Main Modifications letter was received on 16th June 2021. In this letter the Inspector provided his current view as to what modifications are required to make the Plan 'sound'. A schedule of Main Modifications to the Pre-submission TBP were approved at the meeting of the Council on 20th October 2021 and is now published for consultation as the Main Modifications Tewkesbury Borough Plan (MMTBP). Those policies in the MMTBP which were not listed as requiring main modifications may now attract more weight in the consideration of applications, with those policies which are subject to main modifications attracting less weight depending on the extent of the changes required. The TBP remains an emerging plan and the weight that may be attributed to individual policies (including as with modifications as published for consultation) will still be subject to the extent to which there are unresolved objections (the less significant the unresolved objections, the greater the weight that may be given) and the degree of consistency with the NPPF (the closer the policies to those in the NPPF the greater the weight that may be given).
- 6.4** The relevant policies are set out in the appropriate sections of this report.
- 6.5** Other material policy considerations include national planning guidance contained within the National Planning Policy Framework 2021 and its associated Planning Practice Guidance (PPG), the National Design Guide (NDG) and National Model Design Code.

7.0 ANALYSIS

- 7.1** The Government's guidance sets out that the scope of the first stage of permission in principle is limited to the location, land use and amount of development. Each of these are discussed below.

Location

- 7.2** The application site has not been allocated for housing in the JCS and therefore the criterion of Policy SD10 of the JCS applies. This policy advises that housing on sites which are not allocated for housing in district and neighbourhood plans will be permitted if it meets certain limited exceptions.
- 7.3** Of relevance is Criterion 4 (ii). This criterion states that development will only be permitted where it is infilling within the existing built-up areas of the City of Gloucester, the Principal Urban Area of Cheltenham or Tewkesbury Borough's towns and villages except where otherwise restricted by policies within district plans. For the purposes of criterion 4(ii), the supporting text defines 'infill development' as "the development of an under-developed plot well related to existing built development."
- 7.4** The site extends beyond the established building line of the properties which front onto Ash Lane. However, given the location of the site any dwelling would relate reasonably well to existing properties, which includes the associated garden space, along Ash Lane and Down Hatherley Lane (The Bungalow). In this respect the proposed dwellings would not extend beyond land associated with the property known as The Bungalow along Down Hatherley Lane or beyond the established line of the gardens of the properties along Ash Lane. As such, it is considered that the development would be seen within the context of existing built form and would not appear divorced from the settlement. The proposal is therefore considered to represent infilling in the context of SD10.
- 7.5** In terms of the Main Modifications Tewkesbury Borough Plan 2011-2031 ("the MMTBP") the application site has not been allocated for housing and Down Hatherley is not featured within the settlement hierarchy. However, Policy RES4 of the emerging TBP sets out that to support the vitality of rural communities and the continued availability of services and facilities in the rural areas, very small-scale residential development will be acceptable in principle within and adjacent to the built-up area of other rural settlements, subject to the development complying with a number of criteria. For the reasons set out above, it is considered that the proposal would relate reasonably well to existing building and would be proportionate to the size and function of the settlement.

Safeguarded Area

- 7.6** The application site was removed from the designated Green Belt as part of the boundary review during the adoption of the JCS and now forms part of the wider 'safeguarded land'. The new boundaries identified on the Green Belt map have taken into account longer-term need by identifying safeguarded land which may be required beyond the JCS plan period to ensure that the Green Belt does not need an early review. Criterion 7 (iv) of Policy SD5 of the JCS sets out that safeguarded areas are not allocated for development at the present time and planning permission for the permanent development of safeguarded land (except for uses that would not be deemed inappropriate within the Green Belt) will only be granted if a future review of the JCS deems the release of the land necessary and appropriate and proposes the development.

- 7.7** Given the above policy provision, it is necessary to first establish whether the development would not be deemed inappropriate within the Green Belt. Policy SD5 of the JCS sets out that, to ensure the Green Belt continues to serve its key functions, it will be protected from harmful development. Within its boundaries, development will be restricted to those limited types of development which are deemed appropriate by the NPPF, unless it can be demonstrated that very special circumstances exist to outweigh the harm automatically caused to the Green Belt by virtue of the development being inappropriate and any other harm actually caused.
- 7.8** The NPPF provides that, as with previous Green Belt policy, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 148 of the NPPF provides that when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
- 7.9** Paragraph 149 of the NPPF sets out that the construction of new buildings in the Green Belt is inappropriate other than for a number of exceptions. One such exception (e) listed is limited infilling in villages.
- 7.10** The NPPF does not provide a definition of either what constitutes a "village" or "limited infilling". Likewise, Policy SD5 of the JCS similarly does not provide a definition in this context therefore a degree of judgement is necessary. In terms of whether Down Hatherley is a village, previous decisions in the immediate vicinity of the site have established that the settlement is considered to constitute a village in this context. In terms of 'limited infilling' whilst it is considered that the proposal would represent infilling in the context of Policy SD10, it does not necessarily follow that it represents infilling in a Green Belt context. Recent case law has established that it is necessary to consider whether, as a matter of fact on the ground, a site appears to be within a village and whether or not a site lies outside a village boundary as designated in a development plan should not be determinative of the point.
- 7.11** In this instance, whilst the proposal would be reasonably well related to existing built development the application site is currently predominantly open to the east and north. Given the existing situation on the ground there is no real sense of enclosure on the easternmost part of the site. It is clear that new dwellings on the front of the site would fill in an existing gap and therefore would constitute infill in a village. However, this proposal seeks permission for up to four dwellings and due to the relatively narrow width of the site it is reasonable to conclude that up to four dwellings and associated parking infrastructure could not be accommodated in the front of the site. Given the site area, it is inevitable that the proposal would include the requirement to site dwelling(s) on the eastern part of the site, as shown on the Indicative Layout Plan. As this proposal is for up to four dwellings on the application site, officers consider that until such a time the new dwellings to the north of the site are constructed, the proposal would not represent infilling in a Green Belt context.
- 7.12** Given the above, as the application site has not been released for development to date and the proposal would be deemed inappropriate within the Green Belt context the development would be contrary to criterion 7iv of Policy SD5 of the JCS.

- 7.13** However, it is worth considering whether the release of this parcel of land would prejudice the proper development of the safeguarded area when the land is eventually released. Criterion 7 (v) of Policy SD5 of the JCS sets out should any land be released in the safeguarded areas, development proposals would be assessed against the following criteria:

Development must be well-integrated and planned as part of any urban extension of strategic scale, directly and substantially physically linked to the urban area of Cheltenham or Gloucester.

Development must be well-related to public transport and other existing and planned infrastructure and where it makes a positive contribution to the setting of Cheltenham or Gloucester.

Development must not lead to a piecemeal, isolated or inefficient use of land in this area.

In this case, given the scale of the proposed development, the proximity of the site to the existing properties in Ash Lane, the fact the land immediately to the north of the site would benefit soon from planning permission for two dwellings to the north of the site (not currently constructed) and the intervening land to the east, which is in multiple ownership, it is difficult to see how the proposal would prejudice the purpose of the safeguarded area.

- 7.14** In response to the Parish Council's concerns that the proposal would be contrary to the Down Hatherley, Norton and Twigworth Neighbourhood Development Plan 2011-2031 (NDP), there are no direct policies that relate to the provision of new housing in the Down Hatherley Parish. The NDP explains that no new housing growth is planned in Down Hatherley Parish and therefore no settlement boundaries are defined. It goes on to state that given the poor sustainability and the Green Belt designation over the majority of the Parish, it is not necessary for the NDP to replicate the national and Development Plan policies that preclude new housing development in the area. Consequently, there is not considered to be any direct policy conflict with the NDP at the first stage of the permission in principle.

Five Year Housing Land Supply

- 7.15** The latest Tewkesbury Borough Five Year Housing Land Supply Statement, published in November 2021, sets out that the Council can demonstrate a 4.35 year supply of deliverable housing sites. However, it has recently become apparent that this statement had in error included three housing schemes within the Twigworth Strategic Allocation as part of Tewkesbury's supply. In fact, the supply from the Twigworth SA contribute to Gloucester City's needs and therefore must be deducted from Tewkesbury's deliverable supply. This is not an error that had been in previous five year housing land supply statements. This has the effect of reducing the (April 2021 base) five year housing land supply to a 3.83 years supply.

- 7.16** On the basis therefore that the Council cannot at this time demonstrate a five year supply of deliverable housing land, the Council's policies for the provision of housing should not be considered up-to-date in accordance with footnote 7 of the NPPF and in accordance with Paragraph 11 of the NPPF the presumption in favour of sustainable development (the 'tilted balance') applies. Paragraph 11 of the NPPF states that where policies which are most important for determining the application are out of date, permission should be granted unless: d)i. the application of policies in the Framework that protect assets of particular importance provides a clear reason for refusing the development; or ii). any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. This will be assessed in the Conclusions section below.

Land use

- 7.17** The guidance sets out that housing led development is an accepted land use for a permission in principle application. Whilst matters of detail remain a consideration for the Technical Matters stage it is noted that no objections have been raised in respect of the principle of development by the Local Highway Authority, Severn Trent Water, the Council's Flood Risk and Management Officer and Environmental Health Officer.

Amount

- 7.18** The application initially sought permission in principle for up to six dwellings. This has subsequently been revised down to up to four dwellings. Whilst up to four dwellings could physically be accommodated on the site, it would be for the applicant to demonstrate at the technical details stage that up to four dwellings could be accommodated on the site in accordance with the relevant planning policy requirements.

Other Matters

- 7.19** Whilst concerns have been raised by the Parish Council and local residents with regards to a number of considerations, it should be noted that these matters do not fall within the scope of this application and would be considered at the technical details stage. Any issues which may arise must be overcome through that part of the process and before development could proceed.

8.0 CONCLUSION AND RECOMMENDATION

- 8.1** Section 38(6) of the Town and Country Planning Act 1990 provides that, if regard is to be had to the development plan, the determination must be made in accordance with the development plan unless other material circumstances indicate otherwise. Section 70(2) of the Act provides that the Local Planning Authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations.
- 8.2** On the basis the Council cannot at this time demonstrate a five year supply of deliverable housing land, the Council's policies for the supply of housing are out of date. In accordance with paragraph 11 of the NPPF, the presumption in favour of sustainable development indicates that permission should be granted unless policies for protecting areas of assets of particular importance in the NPPF provide a clear reason for refusing the development proposed, or any adverse impacts of permitting the development would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF as a whole.

- 8.3 As the application site is not within the designated Green Belt there are no clear reasons for refusal arising from NPPF policies for the protection of areas or assets of particular importance in this case and therefore, it is clear that the decision-making process for the determination of this application is to assess whether the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits.

Benefits

- 8.4 The development would contribute towards the supply of housing to help meet the objectively assessed need for housing in the Borough, albeit limited given the scale of the proposed development. However, given the fact that the Council cannot currently demonstrate a deliverable supply of housing this weighs in favour of the application.
- 8.5 In terms of economic benefits, as with any new residential development, the construction of new dwellings brings benefits during the construction phase and following construction through additional spending power in the local economy as a result of the increased population. Again, this would be a modest benefit.

Harms

- 8.6 The application site is located within a safeguarded area and therefore as the land has not been released for future development and because the development would be deemed inappropriate within the Green Belt the proposal would conflict with Policy SD5 of the JCS. However, the site is no longer within a Green Belt and therefore the application of policies in the NPPF that protect areas or assets of particular importance do not provide a clear reason for refusing the development proposed.

Overall conclusion

- 8.7 The harm by virtue of the conflict with Policy SD5 of the JCS is not underestimated. However, when taking account of all the material considerations, which includes the surrounding recent site history detailed in paragraph 1.6 of the report, the Council's five year housing land position, that there are no policies in the NPPF that protect areas or assets of particular importance to provide a clear reason for refusing the development proposed and as the presumption in favour of sustainable development applies, it is considered that the harm arising from the conflict with Policy SD5 would not significantly and demonstrably outweigh the benefits in the overall planning balance when considering whether the location of the site is suitable for housing. Therefore, it is recommended that the permission in principle should be **PERMITTED**.

CONDITIONS:

Nil

INFORMATIVES:

1. The technical details application for the approval of matters must be made prior to commencement of development and no later than the expiration of three years from the date on this decision notice, after this period this permission in principle shall lapse.

2. In accordance with the requirements of the NPPF the Local Planning Authority has sought to determine the application in a positive and proactive manner by offering pre-application advice, publishing guidance to assist the applicant, and publishing the to the Council's website relevant information received during the consideration of the application thus enabling the applicant to be kept informed as to how the case was proceeding.

3. CIL: IMPORTANT INFORMATION

Tewkesbury Borough Council is a charging authority for the Community Infrastructure Levy (CIL). It is your responsibility to ensure that the requirements of the CIL Regulations are met. The Council will make every effort to ensure that a Liability Notice providing details of the potential charge is dispatched as soon as possible after planning permission or consent is granted. If you do not receive a Liability Notice please contact the Council. If you have been granted a Permission in Principle you will be required to submit the CIL Planning Application Additional Information Requirement form along with your Technical Details application.

IMPORTANT - All CIL requirements, including assuming liability to pay the charge, claiming any exemption or relief and notifying the Council of your intention to commence development, must be met before any works begin on site - including any demolition. Further information regarding CIL can be found on our website at <https://www.tewkesbury.gov.uk/planning> or you can contact us at cil@tewkesbury.gov.uk.