

TEWKESBURY BOROUGH COUNCIL – DEVELOPMENT MANAGEMENT

Committee:	Planning
Date:	20 September 2022
Site Location:	Land Off Ash Lane Down Hatherley
Application No:	22/00774/PIP
Ward:	Severn Vale South
Parish:	Down Hatherley
Proposal:	Planning in principle for the erection of four dwellings.
Report by:	Anthony Foster
Appendices:	22221/01 - Existing & Proposed Location Plans 22221/02 – Site/Block Plan as Existing 22221/03 – Site/Block Plan as Proposed
Recommendation:	Permit

1.0 SITE DESCRIPTION AND PROPOSAL

- 1.1** This application relates to a parcel of land to the South of Down Hatherley Lane and to East of Ash Lane, which is in Down Hatherley (**see attached Site Location Plan**).
- 1.2** The site is generally level, covers approximately 0.44 hectares and is currently laid to grass. Access to the site is proposed from Down Hatherley Lane to the north. The site is bounded to the south and west by residential properties fronting onto Ash Lane, and to the north and east by residential dwellings fronting onto Down Hatherley Lane.
- 1.3** The scheme seeks to makes use of the existing access to The Bungalow, onto Down Hatherley Lane to the north.
- 1.4** 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 adjacent to north and eastern boundaries of the site. With a further two properties located along the southern boundary of the site.
- 1.5** The site is not subject to any formal landscape designation but is in an area of safeguarded land.
- 1.6** 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.

- 1.7 Within the immediate vicinity of the application site, there have been number of similar Planning in Principle applications considered by the LPA approved by this committee references 20/00233/PIP, 20/00710/PIP, and 21/00617/PIP.

2.0 RELEVANT PLANNING HISTORY

Application Number	Proposal	Decision	Decision Date
93/00876/FUL	Erection of four bungalows and construction of new accesses	PERMIT	14.12.1993
94/01036/FUL	Erection of four detached bungalows. Highway works including road widening and new accesses.	PERMIT	15.11.1994

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 Tewkesbury Borough Plan 2011-2031 (TBP) Adopted June 2022

- 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)

- 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

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

4.2 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.

4.3 County Archaeologist – 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 Seven representations objecting to the scheme 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.
- It is safeguarded land and is yet another attempt to abuse the principle of safeguarded land and continue turning the west of Down Hatherley into a housing estate.

- There are surface water issues in the area due to the large developments taking place in the neighbouring parish of Twigworth. It is only a case of when flooding will take place, not if.
- It is a total over development for the area and will increase even more strain on the local environment, roads, drainage, and of course flooding.
- The application relies much on arguments that it represents acceptable 'infill' development within a village environment. Ash Lane is not a 'village environment' but more a single-street hamlet, and as such the 'infill' clause does not apply.
- The Down Hatherley, Norton and Twigworth NDP has been adopted into local planning law. The NDP was formulated to reflect the views and wishes of local residents following lengthy consultation across the 3 parishes. Two of the aims of the NDP is to protect open green spaces and maintain the rural character of the settlements. This proposal does not accord with either of these aims. The parishes were encouraged to produce an NDP and were consistently re-assured by TBC the Plan would 'have teeth' in future planning decisions, it should not be seen to fail this test.
- There are no local school places within easy commute, the local surgery is stretched and the traffic potential with building of 1,000's already taking place in Innsworth, Parton Fields, Twigworth and Down Hatherley will make the area hazardous.
- A safe access cannot be made because it is currently a narrow track between 2 properties which cannot be widened and a safe view cannot be achieved.
- 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.

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), the Tewkesbury Borough Plan 2011-2031 (TBP) (2022) and a number of 'made' Neighbourhood Development Plans.

6.3 The relevant policies are set out in the appropriate sections of this report.

6.4 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 both the established rear building lines formed by the properties fronting onto Down Hatherley Lane and Ash Lane. However, the proposed layout of the scheme relates well to the layout of the adjoining properties and associated garden space.
- 7.5** In this respect the proposed dwellings would not extend beyond the established residential curtilage of the properties fronting onto Down Hatherley Lane or beyond the established line of the gardens of the properties along Ash Lane.
- 7.6** 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.
- 7.7** In terms of the recently adopted TBP the application site has not been allocated for housing and Down Hatherley is not featured within the settlement hierarchy. However, Policy RES4 of the 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.
- 7.8** For the reasons set out above, it is considered that the proposal would relate reasonably well to existing built form and would be proportionate to the size and function of the settlement.

Safeguarded Area

- 7.9** 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.

- 7.10** 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.
- 7.11** 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.
- 7.12** 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.
- 7.13** 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.
- 7.14** 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.
- 7.15** 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.
- 7.16** 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.

7.17 In this case, given the scale of the proposed development, the proximity and close relationship of the site to the existing properties in Ash Lane, and the intervening land to the east, it is difficult to see how the proposal would prejudice the purpose of the safeguarded area which extends over a significant area to the south and east. Thus, whilst there is conflict with Policy SD5 in that it is not considered infilling in a Green Belt context, material considerations on the ground indicate that the harm to the safeguarded area would be limited.

7.18 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.

Land use

7.19 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

7.20 The application seeks permission for 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

7.21 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 The Council is able to demonstrate a five-year supply of deliverable housing sites and policies of the development plan are considered up-to-date. In these circumstances, aside from approving development proposals that accord with the development plan without delay (unless material considerations indicate otherwise), the Council considers that the presumption in favour of sustainable development set out in paragraph 11 of the NPPF does not apply. Whilst the Council can demonstrate a five year supply of housing the proposal is not considered to be in conflict with JCS policy SD10 as set out above.
- 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. Although the quantum is small it would provide a boost to the supply of housing.
- 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.

Harm

- 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, 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.