

1. The Proposal

Full application details are available to view online at:

<http://publicaccess.tewkesbury.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=RMFBQMQD0PB00>

- 1.1 This application seeks permission in principle for a residential development of up to six dwellings

2. Site Description

- 2.1 This application relates to a parcel of land to the east of Ash Lane, which is in Down Hatherley (see attached Site Location Plan).
- 2.2 The site is generally level, covers approximately 0.33 hectares and is 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.
- 2.3 The site is not subject to any formal landscape designation but is in an area of safeguarded land as defined in the proposals maps to the JCS.
- 2.4 This application is for a Permission in Principle (PIP), as provided for in the Town and Country Planning (Permission in Principle) Order 2017 and follows a recent application for Permission in Principle for up to four dwellings (under application reference 21/00617/PIP) on part of the current application site and a previous full planning permission for two dwellings granted in April 2021 and under application reference 20/01023/FUL for the western part of the site.
- 2.5 Since the extant PIP for up to four dwellings was granted (referenced in the relevant planning history below), there have been several changes which support this current proposal for up to six dwellings on the site. The site area has been increased with additional land along the length of its Northern boundary, facilitating an increase in the amount of development that could be accommodated on the site. In addition, the immediate site context has changed with new housing developments to the North of the site (located to the rear of frontage housing on Ash Lane) being granted permission. The construction of two of these dwellings abutting the Northern boundary of the application site has been completed, so changing the relationship of the site with the existing built form of the area.

3. Relevant Planning History

Application Number	Proposal	Decision	Decision Date
78/00407/FUL	Use of land for the stationing of a mobile home. (Temporary)	REF	28.02.1978
78/00408/FUL	Extension to existing bungalow to provide an enlarged living room and erection of a granny annexe.	REF	28.02.1978
15/00720/FUL	Village infill development of two detached dwellings.	PER	06.11.2015

20/01023/FUL	Erection of two detached dwellings (Revised application to full permission granted under application reference: 15/00720/FUL)	PER	23.04.2021
21/00617/PIP	Permission in Principle for the erection of up to 4 dwellings.	PER	16.02.2022

4. Consultation Responses

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

4.1 Down Hatherley Parish Council – Objection.

- Overdevelopment
- No demonstrable local need for these additional houses
- Existing very serious drainage and sewerage infrastructure problems in the Ash Lane locality
- Green Belt

4.3 Severn Trent (final comment) – No objections subject to detailed drainage proposals to be submitted at technical approval stage and an informative to the applicant concerning future drainage proposals.

4.4 County Highways – No objection. The application site is located within easy walking distances to regular commutable bus services to Tewkesbury and Gloucester. It is also within the acceptable 5km cycling distances to several services and amenities.

4.5 Land Drainage Comments - Objection:

- Unclear if land has access to foul sewer or reliant on 3rd party permission.
- Ground conditions unsuitable for infiltration due to shallow strata and clay underneath. This causes water to move 'downstream' along strata affecting neighbouring properties and their ability to discharge also.
- Will not accept proposal to discharge surface water to foul sewer which is unmapped and in unknown condition

5. Third Party Comments/Observations

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

5.2 The application has been publicised by site notice for a period of 21 days.

5.3 Seven letters of objection have been received in summary concerned that the proposal will:

- Comprise an unacceptable level of development.
- Drainage issues
- Highway Impact unacceptable on private road'
- Detriment to character of Ash Lane as a country lane,
- No need for additional housing
- Green Belt location
- Piecemeal development

6. Relevant Planning Policies and Considerations

6.1 Statutory Duty

Planning law requires that applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise.

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

6.2 National guidance

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

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

- Policy SP1(The Need for Development)
- Policy SP2 (Distribution of New Development)
- Policy SD5 (Green Belt)
- Policy SD10 (Residential Development)
- Policy INF1 (Transport Network)
- Policy INF2 (Flood Risk Management)
- Policy A1 (Innsworth and Twigworth)

6.4 Tewkesbury Borough Local Plan to 2011-2031 (TBLP) – Adopted 8 June 2022

- Policy RES 3 (New Housing Outside Settlement Boundaries)
- Policy RES 4 (New Housing at other Rural settlements)
- Policy ENV2 (Flood Risk and Water Management)
- Policy SD5 (Green Belt)

6.5 Neighbourhood Plan

Down Hatherley, Norton and Twigworth Neighbourhood Development Plan – 2011-2031 - FP1 – (Demonstrating effectiveness of water holding techniques, their maintenance in perpetuity, and of sewerage capacity).

7. Policy Context

7.1 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.

7.2 The Development Plan currently comprises the Joint Core Strategy (JCS) (2017), policies of the adopted Tewkesbury Borough Local Plan to 2011-2031 (June 2022) (TBLP), and the made Down Hatherley, Norton and Twigworth Neighbourhood Development Plan – 2011-203.

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

- 7.4 Other material policy considerations include Town and Country Planning (Permission in Principle) Order 2017, 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.

8. Evaluation

Principle of development

- 8.1 Planning guidance states that decisions for planning in principle must be made in accordance with relevant policies in the development plan unless there are material considerations, such as those in the National Planning Policy Framework and national guidance, which indicate otherwise.
- 8.2 It should be noted however that only matters of location, amount of development and use are within the scope of consideration for a permission in principle application and the determination of this proposal.
- 8.3 The main issues in the consideration of this application are as follows:
- Location and Principle of Development
 - Land Use and Amount
 - Other Matters

Location and Principle of development

- 8.4 The NPPF at Chapter 5 seeks to deliver a sufficient supply of homes. Paragraphs 78-80 deal with rural housing. Under Paragraph 74 of the NPPF Local Planning Authorities are required to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies.
- 8.5 Policy SP1 (The Need for New Development) of the JCS states that provision will be made for 35,175 new homes, within existing urban areas through District Plans, existing commitments, urban extensions, and strategic allocations. Policy SP2 (Distribution of New Development) amongst other requirements, states that dwellings will be provided through existing commitments, development at Tewkesbury town, in line with its role as a market town, smaller scale development meeting local needs at Rural Service Centres and Service Villages, however the site lies outside such defined areas but is in proximity to JCS Strategic Allocation A1 – Innsworth & Twigworth.
- 8.6 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. That review is currently underway.

- 8.7** Given the above policy provision, it is necessary to first establish whether the development would not be deemed inappropriate within a Green Belt. Policy SD5 of the JCS sets out that, to ensure a 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 caused.
- 8.8** 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. Paragraph 149 of the NPPF sets out that the construction of new buildings in the Green Belt is inappropriate other than for several exceptions. One such exception (e) listed is limited infilling in villages.
- 8.9** 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, though without a village development boundary, but does not exclude the village from any new housing development as Paragraph 38 of the made Neighbourhood Plan makes clear.
- 8.10** 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 sites in 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. Accordingly, there are no housing specific policies for the Parish and instead it relies on the national and Development Plan policies. Consequently, there is not considered to be any direct policy conflict with the NDP at this first stage of the permission in principle.
- 8.11** 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 a site lies outside a village boundary as designated in a development plan should not be determinative of the point. In this case there is no designated village development boundary.
- 8.12** The planning history of the site as set out above shows the application site has been previously considered as infilling and has resulted in being considered acceptable for residential development in principle and this remains the same with this current application.
- 8.13** Having regard to the planning history of the site and the nature of the proposal as essentially 'infilling' in an already built-up frontage to the unadopted Ash Lane the principle of a residential development at this site is considered acceptable in terms of Development Policy in particular Policy SD10 of the JCS Criteria 4ii.

- 8.14** In terms of the Tewkesbury Borough Plan 2011-2031 (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. 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.
- 8.15** It is noted that the applicant has also made a case that the Council does not have a five-year land supply which also predicates in favour of the proposal. While the Council do not consider this the case and all relevant JCS housing policy remains valid, it is nevertheless considered that the proposal complies with relevant policies in respect of the location of development.

Land use

- 8.16** Planning 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 fundamental objections have been raised in respect of the principle of development by the Local Highway Authority or Severn Trent Water in respect of the proposed land use and subject to further consideration at the technical details stage.

Amount

- 8.17** Illustrative drawings have been received and it is considered that up to six dwellings could physically be accommodated on the site, however it would be for the applicant to demonstrate at the technical details stage that any quantum dwellings (up to 6 dwellings) could be accommodated on the site in accordance with the relevant planning policy requirements and the constraints of the site.

Other Matters

Drainage and flood risk

- 8.18** Officers have discussed the drainage and foul sewer arrangements extensively with Severn Trent Water (STW) where the issue relates to ground conditions in the area. STW has been consulted specifically on this application, and their final opinion has been sought where common issues relate to three undetermined 'PIP' applications in the Down Hatherley area, including this application and:

22/01367/PIP Field North off Brook Lane, Ash Lane, Down Hatherley, Gloucester
22/01318/PIP Land at, Greenacre And Mount View, Ash Lane, Down Hatherley

8.19 STW reported on 29 March 2023 as follows:

'...we do have concerns within the area, and due to this we are carrying out a modelling exercise to determine the effects this development (and others) will have on our existing assets, pump stations and treatment works.

We anticipate the works will be carried out in due course (although I do not have an exact date for this) and would anticipate to provide further comment to the Local Planning Authority mid to late April 2023. Until this time we are unable to provide any further comment'

8.20 STW further reported on 12 May 2023:

'... we have now received and assessed the modelling report, which shows a high risk of flooding. Due to this, we are unable to accept any new flows until upgrades have been delivered.

I would please request a Grampian Condition is applied on this development to state that no dwelling is to connect to the public sewer (for foul sewage only) until upgrades have been carried out by STW. No Surface water is to be discharged into the public sewerage system, and alternative arrangements will need to be investigated'.

8.21 Officers share the concerns of STW about the ability of new dwellings to dispose of foul water and the availability of a suitable connection at this location and note Policy FP1 in respect of surface water storage.

8.22 The suggestion from STW was that a Grampian Condition could be imposed (such as that suggested above), which would prevent development taking place until upgrades to the sewerage system had taken place are noted. However, Officers have concluded that such a condition cannot lawfully be applied to the decision notice for a 'PIP' application as PIP proposals cannot be conditioned. For that reason, STW have reviewed their position and reported on 6 June 2023 as set out in the consultation responses reported above as follows:

'If this application progresses, we would request the submission of drainage proposals are provided for our comment at the earliest opportunity. It is important to note that we would not permit a surface water discharge into the public combined sewer or the public foul sewer, and recommend the applicant seeks alternative arrangements.

8.23 STW's latest position means that foul and surface water is no longer a locational issue which can reasonably be used to preclude 'planning permission in principle' being granted. The matters raised by Severn Trent can however be clearly recorded as an informative attached to the decision.

8.24 The Council's Land Drainage Officer has expressed significant concerns about the site's ability to dispose of surface and foul water, even though located in Flood Zone 1 (the lowest risk). However such detailed considerations remain a matter for consideration at the technical details stage where such matters would be assessed fully.

8.25 While it is noted that there are concerns in respect of surface water drainage and possible associated flood risk, it should be noted that such matters (amongst others) are not a detail for consideration at this time and fall within the scope of any subsequent Technical Details Consent (TDC) application. In the event a TDC application is submitted, the LPA would have the ability to refuse planning permission if a satisfactory solution to drainage and other matters could not be secured.

- 8.26** It should also be noted that the site will not benefit from planning permission until (and if) the TDC application has been granted. Further controls could be imposed at the TDC stage by way of conditions. Other technical matters to be addressed at the planning application stage would include (though are not limited to) design, highway safety, amenity and ecology and appropriate assessments and mitigation will be required at that stage.

9. Conclusion

- 9.1** Within the scope of the permission in principle stage, there is no objection to development for residential purposes in terms of location, amount of development and land use.
- 9.2** The drainage matters raised by Severn Trent Water and the Drainage Engineer would be matters for consideration and would need to be addressed at TDC stage. In the meantime, an informative relating to these matters can be attached to a permission to inform any future TDC application.
- 9.3** The proposal complies with the NPPF, and relevant Development Plan policy as set out in this report and the Neighbourhood Plan. It is therefore recommended that Permission in Principle be granted.

10. Recommendation

- 10.1** The proposal accords with relevant policies of the development plan in so far as material to the consideration of this application as outlined above, and it is therefore recommended the application be permitted. No conditions are recommended in accordance with the determination requirements of Planning in Principle proposals however it is recommended that the following informatives are included.

11. Informatives

- 1** 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 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.
- 2** Should this application progress to technical approval, Severn Trent request the submission of drainage proposals are provided for their comment at the earliest opportunity. It is important to note that ST would not permit a surface water discharge into the public combined sewer or the public foul sewer, and recommend the applicant seeks alternative arrangements. Severn Trent Water advise that there is a public 1800mm combined sewer, and a public pressurised foul sewer located within this site. Public sewers have statutory protection and may not be built close to, directly over or be diverted without consent. You are advised to contact Severn Trent Water to discuss the proposals. Severn Trent will seek to assist in obtaining a solution which protects both the public sewer and the building. Please note, when submitting a Building Regulations application, the building control officer is required to check the sewer maps supplied by Severn Trent and advise them of any proposals located over or within 3 meters of a public sewer. Under the provisions of Building Regulations 2000 Part H4, Severn Trent can direct the building control officer to refuse building regulations approval.

Please note that there is no guarantee that you will be able to build over or close to any Severn Trent sewers, and where diversion is required, there is no guarantee that you will be able to undertake those works on a self-lay basis. Every approach to build near to or divert Severn Trent assets has to be assessed on its own merit and the decision of what is or isn't permissible is taken based on the risk to the asset and the wider catchment it serves. It is vital therefore that you contact us at the earliest opportunity to discuss the implications of our assets crossing your site. Failure to do so could significantly affect the costs and timescales of your project if it transpires diversionary works need to be carried out by Severn Trent.

There is also a pumping station close to the site and any new development must not restrict Severn Trent's access to the Sewage Pumping Station (SPS). Severn Trent will require free access to the SPS at all times in order to complete any programmed routine maintenance tasks and also for any emergency reactive visits in case of failure. Please note that due to the close proximity of the proposed new development the occupant may experience noise and/or smell pollution. In order to minimise disruption to any future occupant(s), we would advise that all habitable buildings are constructed a minimum of 15metres from the curtilage of the SPS compound.