

Supplement to the agenda for

Planning and regulatory committee

Tuesday 18 December 2018

2.00 pm

**Council Chamber, The Shire Hall, St Peter's Square, Hereford,
HR1 2HX**

Schedule of Updates

Public Speakers

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PLANNING COMMITTEE

Date: 18 December 2018

Schedule of Committee Updates/Additional Representations

Afternoon

Note: The following schedule represents a summary of the additional representations received following the publication of the agenda and received up to midday on the day before the Committee meeting where they raise new and relevant material planning considerations.

SCHEDULE OF COMMITTEE UPDATES

181664 - APPLICATION FOR APPROVAL OF RESERVED MATTERS FOLLOWING OUTLINE PERMISSION 161771 (SITE FOR PROPOSED REPLACEMENT OF A FIRE DESTROYED DWELLING PLUS THE ERECTION OF 2 DWELLINGS (TOTAL 3 DWELLINGS)). AT THE TREES, ORCOP, HEREFORD,

For: Mr Williams per Mr Rodney Purse, 142 Tuffley Avenue, Gloucester, GL1 5NS

ADDITIONAL REPRESENTATIONS

Additional representations have been received from four neighbouring properties:

Mr Garratt:

Further to my objection of 12 September 2018, It is pleasing to note that the developer wishes to “bottom out the issue of drainage” and that further percolation tests have been undertaken. However, I cannot agree with his claim that these were carried out “after a period of heavy rain to give a realistic worst case scenario for infiltration” (email from Rodney Purse, 14 November 2018).

For the past 10 years I have maintained daily rainfall records for Whitehouse Farm, which lies within the Orcop Basin at a similar elevation to Orcop Hill. The spreadsheet showing daily rainfall for the year to date is submitted herewith.

I understand that the further tests under reference were carried out on 24th and 25th October. You will note that my records show there was no rain on any of the 8 days preceding the tests. In the month of September rainfall totalled 43mm and in October 59mm. Note that in November the total was 113mm, more than twice that in October. Furthermore, these autumn months followed an exceptionally hot and dry summer. Hence, the latest tests cannot be seen as a “worst case scenario”. Far from it, they were carried out, as were the earlier tests, under exceptionally dry conditions.

Turning now to the results of the October tests, these led to a 20% increase in the area of the proposed soakaways and a 44% increase in the area of the proposed drainage fields. Had further tests been conducted at the end of November, they would have indicated still lower infiltration rates and further substantial increases in soakaway and drainage field areas. This calls into question whether this site can really accommodate three dwellings of the kind proposed.

The developer claims to have undertaken the tests in accordance with BRE 365. The final paragraph of this guidance note reads as follows: “ Site investigations must be undertaken thoroughly and competently so that all aspects of soil properties, geotechnology and hydrogeology are adequately reviewed alongside the hydraulic design of the soakaways”. This has not happened in the case of “The Trees” and the latest percolation tests do not represent a valid basis for design. Until the well documented concerns about drainage under exceptionally wet conditions are properly addressed I respectfully submit that the development as currently proposed should not be allowed to proceed.

Ms Murphy:

We wish to draw your attention to residents' concerns and to advise that we have received guidance in respect of the Case Officer's report to the Committee, in particular Conditions 10 and 11.

- Condition 10 includes the phrase "unless otherwise approved in writing by the local planning authority". We have been advised that this phrase may be unlawful since it would amend a planning permission without going through the proper process, including consultation. There are statutory procedures for amending conditions which should be used (Section 73a of the Town and Country Planning Act 1990 to amend conditions and Section 96a for non-material amendments. The phrase either seeks to circumvent the statutory process or introduces ambiguity as to whether this refers to or is in addition to the statutory procedures. It is therefore both unnecessary and imprecise. We are advised that there is extensive case law on the subject.
- Condition 11 is fundamental to the proposal and it is not clear that the requirements can be met within the layout that is to be permitted – particularly the third item*. It appears that the sensible approach is to delay the decision on the application until the matters are resolved and there can be no real objection to doing so since development cannot start until the condition is complied with (other than the ground works). The risk is that if a condition cannot be complied with, it is unenforceable but the permission remains valid. In this case the applicant has had ample opportunity to submit the additional information and any delay is down to the applicant.

* 'A topographical drawing to indicate the use of a gravity fed foul water drainage system.'

Mr Murphy

Further to my objection of 28 August 2018 and the publication of the Case Officer's report to Committee, I have the following additional comments;

1. Phil Warren Report (undated)

The original percolation tests were carried out around about mid-August during a period of long dry weather. The Phil Warren percolation report states that 'three holes were excavated across the site to determine if there are any changes in the site conditions. All three had similar characteristics.

Comment:

- There is no indication where the three holes are located.
- There is no record of soil composition

The report goes on to state that 'one test was undertaken. The test hole was filled and emptied on three occasions, on the same day'.

Comment:

- The test accords to a lesser extent to the requirement of BS6297 for foul water drainage field. According to BS6297 at least 2 tests should be carried out on each proposed drainage field. Each test should involve four soakings with calculations extrapolated from just three soakings.
- The total number of tests for the three proposed foul water drainage fields should have been (2x3=6).

Surface Water {SuDS}

The report goes on to show calculations for crate sizes for the 5 proposed water soakaways, using the filtration rate obtained from the single test aforementioned.

Comment:

- Filtration rates for surface water soakaways should be obtained by using BRE (digest 365) method of percolation testing. Percolation tests for surface water drainage are far more labour intensive. Overall depth of excavation is typically 1.5m to 2.5m. Considerable volumes of water are required to carry out the tests (BRE365 advises the use of a water bowser) with between 300ltr and 1000ltr required for each soaking. There are 3 soakings required to ensure a viable test. The fillings (soakings) should be on the same or consecutive days. The tests should be undertaken where the drain will discharge to the soakaway. The number of tests required for this site would be five. The total number of soakings would be (5x3=15).
- Taking into consideration the foregoing the percolation tests carried out by the applicant's drainage consultant was wholly inadequate. Considering also the fact that the tests were carried out during a prolonged drought confirms that the Phil Warren report falls far short of the requirements of BS6297 and BRE (digest 365).

2. Ruth Blair (Balfour Beatty) report dated 05/09/18 @ 11.30 a.m.

RB states (inter alia) under the sub-heading 'Surface Water' that percolation testing has been undertaken in accordance with BS 6297.

Under the sub-heading 'Foul Water' RB makes no mention of percolation tests results

Comment:

- This statement is in error. As previously stated, there was only one test carried out which accorded to a lesser extent to the requirements of BS6297 for foul water soakaways. There were no percolation tests carried out for the sizing of geocellular crates. Such tests would have had to conform to BRE365 methodology for filtration value.
- It clearly states in the Phil Warrant report that one test was carried out. There is no indication that the test was carried out in the locality of any of the proposed foul water drainage fields. This is one of the basic requirements of BS6297.

In an email from RB to Emily Reed (ER) dated 05/09/18 @ 11.56 RB states 'I have been to site and spoken with the landowner and drainage engineer. I saw evidence of the tests being undertaken and am confident that the relevant guidance has been fulfilled.'

Comment

- The fact that RB admits to being on site (at some time) whilst percolation testing was on-going, makes her assertions that BS6297 was complied with rather concerning. She was, at that time, in a responsible position as a professional to give advice and guidance directly to the applicant to carry out the tests in accordance with the requirements of BS6297 and BRE (digest 365).

3. Further testing on site undertaken by Phil Warren (drainage consultant) at the request of the applicant

Phil Warren percolation test report (undated)

The only reference of a date is indicated in email to ER dated 14/11/18 advising that re-testing had taken place. No information as to when further testing was undertaken. Only indication '...after a period of heavy rain'.

Comment:

- There is no way of verifying such tests were carried out after a period of heavy rain as the applicant's agent attests. The report is undated (as was the first report) and there is no allusion to the date of tests in the email mentioned above.

- 5 trial pits were excavated with percolation tests carried out on 3 of them (refer DRG.No. 17.800.104 revision B – with pencilled in sketch of trial holes).
- The trial pit drawing clearly shows that only 2 of the trial pits are in or near the location of the proposed surface water soakaways. 2 other trial pits are located in the vicinity of the proposed foul water soakaways for plots 1 and 2, whilst the remaining trial pit is located in the s/w sector of the site where there is no proposed soakaway.
- The test holes seem to be of a capacity suitable for testing to BS6297 (foul water). The size of the test holes for all 3 tests were 0.3x0.3x0.5). BRE365 recommends the test hole should be 0.3 to 1m wide and 1m to 3m long with a depth of 1m to 1.5m (see under sub-heading: Soil Infiltration Rate).

4. Email from Agent to ER dated 14/11/18

The Applicant's agent stated that the developer wished to carry out further testing and 'after a period of heavy rain in order to achieve a realistic worst-case scenario for infiltration'.

Comment:

- The fact that the applicant felt it necessary to carry out further tests albeit after a purported period of prolonged wet weather and without a further instruction to do so by the Case Officer, would be an admission by the applicant that the original tests were not tenable. This would be a repudiation of Ruth Blair's report dated 05/09/18.

5. Ruth Blair (Balfour Beatty) report dated 30/11/18

Comment:

- RB makes no comment on the fact that this report builds on the previous report dated 05/09/18.
- There is no comment on the validity of the percolation tests even though it is self-evident that the tests do not accord with the requirements of BRE365 or BS6297.
- RB has totally ignored the requirements of Natural England's Consultee report dated 31/05/18 with regard to the proximity of foul water drainage fields to a hydrological source (ref. email to ER dated 05/09/18 @ 11.56).
- All of the proposed foul water drainage fields are within 50m of the active spring located in the grounds of Bramble Cottage, adjacent to the eastern boundary of the site. The proposed foul drainage field to Plot 2 is within 50m of a well and spring located in the Copywell.
- Natural England state in their re-consultation report dated 28/08/18 'the advice provided in our previous response applies equally to this amendment although we made no objection to the original proposal'. Clearly RB has not taken into account the requirements laid out by Natural England on proximity of foul water soakaway fields to hydrological sources.

Conclusion

It is self-evident on reading both of the Phil Warren reports that the full requirements of percolation testing, as prescribed by both BS6297 (foul water) and BRE (digest) 365 (surface water), have not been fully adhered to.

The proposed development will be very close to two hydrological sources when completed. On Drawing No. 17/800.100 (revised site layout) the ground level data shows the development site sloping east towards Bramble Cottage and south towards the Wilkes Row cottages and the Copywell. In the grounds of Bramble Cottage there is an active spring. This spring becomes a temporary water course during prolonged wet weather and floods out from the grounds of Bramble Cottage and onto the public footpath (OC18). This flow of excess spring water spills into the Copywell from a culvert that runs under Copywell Cottage and adjacent road.

The Copywell, to the south of the proposed site, is a deep gully that acts as a natural catchment for excess groundwater flowing off Orcop Hill. There is a well situated in the bottom of the gully that is still available for public use.

Because of the proximity of the proposed development to both of these hydrological sources and, given that all the drainage fields are upslope of both, it is imperative that the testing for adequate filtration, especially for foul water drainage fields, is rigorous and strictly in accordance with BS6297 and BRE (digest) 365.

The Copywell also takes treated effluent from a shared PTP from four semi-detached cottages that were built in the early 90s. There have been problems of sewage smells in the area of the Copywell for some years and there has been on-going investigations by the Environment Agency as to the cause. At the moment of writing there has been no resolution of this problem. The residents of Wilkes Row and the proprietors of the Fountain Inn have had their amenity adversely affected by the continuing problem of sewage smells in the Copywell. It goes without saying this problem must not be made worse by effluent run-off mixing with the spring exceedance flows from Bramble Cottage and the inevitable contamination of the water catchment in the Copywell.

The Local Authority through their Planning Department have a civic duty to ensure that filtration testing is carried out in strict accordance with all the requirements of the accepted methodologies. I have already commented on the failure of Planning's drainage engineer to properly monitor the percolations tests. That the same drainage engineer can ignore the fact that these tests were carried out during a period of one of the worst droughts in 40 years shows a lack of professional rigour. I would also add that Ruth Blair, the drainage engineer, made a reference to hydrological sources in her email to the Case Officer, dated 5/9/18 @ 11.56 where she stated that Natural England may need to be consulted if there are known hydrological sources within 50m of the foul water drainage fields. All proposed foul water drainage fields are within 50m of the spring in Bramble Cottage. The foul water drainage field for Plot 2 is within 50m of the Copywell.

There will be development on this site. However, the development must have a minimal impact on the water environment of Orcop Hill. The best way to achieve this is to allow a development of low occupancy dwellings, preferably two bungalows after carrying out the prescribed percolation tests. This would have an additional advantage of complying with the built form especially when considering the nearby bungalows of Homelands and Orchard Lea.

Mr Holdsworth:

This applicant has shown a total and recurring disregard for the requirements of any and all regulations relating to drainage matters in this application as follows:

There has been no Site Test Assessment Hole, we therefore do not know where the groundwater level lies in a worst case scenario, thus we do not have confirmation that the foul water 'drainage fields' are possible. It may be the case that 'drainage mounds' are required or even that no form of infiltration for foul drainage is possible.

1. Percolation tests have not been done strictly in accordance with the requirements (Building Regulations/ BRE Digest 365/ BS6297) therefore any resultant calculations are, at best, fiction.
2. As we do not have robust results from the percolation tests any claims as to the sizing of soakaways and drainage fields is open to question.
3. The layout of drainage, both foul and surface, as shown in the application continues to flout all requirements as regards separation distances from other elements on site.

4. The latest iteration of the proposal shows soakaways partly or entirely beneath roadways – this is specifically banned in the regulations yet has been accepted by Balfour Beatty with only the requirement that ownership be established – how is a 26 ton RCV to approach the Bin Collection point if the adjacent soakway is on private land?.
5. Given the above points it is entirely possible that a maximum of 2 properties can be accommodated on this site. Should this be the case then it is possible that bungalows (as desired by local residents and the Parish Council) would be entirely appropriate for this site.

To resolve these points we need (and by ‘we’ I mean both the Local Residents and the Council) all of the above to be resolved before any consent to proceed is granted. Please note that if Planning approve something that goes against Building Regulations then Building Control cannot seek to rectify it with a Section 36 prosecution, ie they are presented with a ‘fait accompli’.

As things stand you appear to be prepared to give approval with relatively minor conditions for something that could be considered unlawful (in that it does not demonstrate conformance with requirements).

In addition, Natural England in their comments of 31/5/18, stated “Package Treatment Plants and Septic Tanks will discharge phosphate and we are therefore concerned about the risk to the protected site in receiving this. We therefore propose that the package treatment plant /septic tank sand soakaway should be sited 50m or more from any hydrological source”. It is my understanding that there is a well in the garden of Lark House (shown as The Russets in the drawing in your report), there is also the ‘Copywell’ itself, and there is a spring in the grounds of Bramble Cottage. All three of these are within 50m of some part of the proposed infiltration systems.

To repeat the gist of some of my earlier comments on amenity, as seen from Ivy Cottage, I will still have a solid wall of brickwork and roof tiles some 11m from my boundary which will totally destroy any perception of being in a rural environment as perceived from the major recreational space (the patio) in my garden and my lounge and kitchen windows.

I trust you will give my comments full and proper consideration before any final decision is made to allow this application to proceed further.

Natural England:

Following consultation on the Council’s Habitat Regulations Assessment, Natural England have confirmed NO OBJECTION.

OFFICER COMMENTS

Corrections to report:

Paragraph 4.6 should read that the latest comments from the Council’s Land Drainage Consultant were received 30 November, not 3 December.

Condition 10 – the words ‘unless otherwise agreed in writing with the local planning authority’ should be removed.

Further comments have been provided by the Council’s Land Drainage Consultant in light of the additional representations received.

In summary, she has confirmed that the trial pit was viewed on site, once the tests had been undertaken but not as they were carried out. In her view it has been proven that the soils

have sufficient infiltration capabilities for the features proposed and a soil composition is not required. The level of detail is appropriate for this size of site and it is appropriate to use the equation in Part H of the Building Regulations to convert the Vp value to an infiltration rate.

There is also sufficient space between drainage fields.

There are no concerns in relation to a lack of information and a viable drainage strategy is possible here.

Re-testing was not requested by the Consultant as this was not necessary as it had already been established that this site has sufficient infiltration. As such, the recommendation in this regard is not amended.

It needs to be reiterated that since the approval of drainage details is not a condition of the outline permission or a reserved matter in this instance, officers have sought to address local concerns in a collaborative way through engagement with the applicant. The level of information provided has satisfied the council's Land Drainage Consultant and a condition controlling compliance with the submitted details represents the full extent of reasonable planning control in this case.

CHANGE TO RECOMMENDATION

The recommendation should be amended as follows:

That planning permission be granted subject to the recommended conditions set out in the officer's report and condition 10 amended to read as follows:

Notwithstanding the additional details required by condition 11 below, the drainage arrangements shall include the use of individual private treatment plants for foul water with drainage fields and surface water using storm water soakaways.

Reason: In order to ensure that satisfactory drainage arrangements are provided and to comply with Policies SD3 and SD4 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

181848 - PROPOSED DEVELOPMENT OF THREE DWELLINGS WITH GARAGES AND NEW ACCESS AT LAND EAST OF CASTLE POOL COTTAGE, LITTLE BIRCH, HEREFORD,

For: Mr Hull per Mr Russell Pryce, Unit 5, Westwood Industrial Estate, Ewyas Harold, Hereford, Herefordshire HR2 0EL

ADDITIONAL REPRESENTATIONS

Following consultation on the Council's Habitat Regulations Assessment, Natural England have confirmed NO OBJECTION.

CHANGE TO RECOMMENDATION

The recommendation can now be amended as follows:

That planning permission be granted subject to the recommended conditions set out in the officer's report.

182950 - CONSTRUCTION OF AN EXTERNAL 3G ARTIFICIAL TURF PITCH (ATP) WITH FENCING AND A STORAGE CONTAINER AT TED POWELL BUILDING, THE COUNTY GROUND, HEREFORD, HEREFORDSHIRE, HR4 9NA

For: Mr Chance per Mr Nick McLaren, 1a Perth House, Corbygate Business Park, Corby, NN17 5JG

OFFICER COMMENTS

Corrections to report:

Site Description and Proposal – Para 1.2.

Reference is made to the existing floodlighting being both replaced (3rd sentence) and also retained (5th sentence). To confirm the existing floodlighting is to be retained.

Appraisal - Paragraph 6.8

Reference to Westfields FC, should be replaced with Hereford Lads Club. Note: Sport England and the Open Space Planning Officer also incorrectly refer to Westfields FC operating from the site, instead of Hereford Lads Club.

NO CHANGE TO RECOMMENDATION

PLANNING AND REGULATORY COMMITTEE -

18 December 2018

PUBLIC SPEAKERS

Afternoon

APPLICATIONS RECEIVED

Ref No.	Applicant	Proposal and Site	Application No.	Page No.
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Afternoon Session

5	Mr Williams	Application for approval of reserved matters following outline planning permission 161771 (site for proposed replacement of a fire destroyed dwelling plus the erection of 2 dwellings (total 3 dwellings) at The Trees, Orcop, Hereford	181664	11
	PARISH COUNCIL	MRS M BOWEN (On behalf of Orcop Parish Council)		
	OBJECTOR	MR M SHAW (local resident)		
	SUPPORTER	DR C DOWN (Applicant's agent)		
6	Mr Hull	Proposed development of three dwellings with garages and new access at Land east of Castle Pool Cottage, Little Birch, Hereford	181848	29
	PARISH COUNCIL	MRS S GLOVER (Clerk – Little Birch Parish Council)		
	OBJECTOR	MRS K DILLON (local resident)		
	SUPPORTER	MR R PRYCE (applicant's agent)		
7	Pegasus Junior Football Club	Construction of an external 3G artificial turf pitch (ATP) with fencing, floodlighting, a storage container at Sports Ground & Club Room, Old School Lane, Hereford, Herefordshire, HR1 1EX	182893	43
	PARISH COUNCIL	MR S KERRY (Hereford City Council)		
	SUPPORTER	MR M WILLIAMS (Applicant)		

8	Mr Chance	Construction of an external 3G artificial turn pitch (ATP) with fencing and a storage container at Ted Powell Building, The County Ground, Hereford, Herefordshire, HR4 9NA	182950	67
PARISH COUNCIL SUPPORTER		MR S KERRY (Hereford City Council) MR S WILLMOT (Chairman - Herefordshire Football Association)		