

Supplement to the agenda for

Planning and regulatory committee

Tuesday 10 November 2020

10.30 am

Online meeting

Schedule of Updates

Public Speakers

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PLANNING AND REGULATORY COMMITTEE

Date: 10 November 2020

Schedule of Committee Updates/Additional Representations

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

192765 - THE PROPOSED ERECTION OF SEVEN DWELLINGS WITH GARAGES AND ASSOCIATED DEVELOPMENT AT MONKS BURY COURT BARNS, MONKHIDE VILLAGE ROAD, MONKHIDE, HEREFORDSHIRE, HR8 2TU

For: L.T.F Properties Ltd. per Mr Graham Clark, Shiretown House, 41-43 Broad Street, Hereford, Herefordshire, HR4 9AR

ADDITIONAL REPRESENTATIONS

None

OFFICER COMMENTS

During the site visit, a query was raised regarding the agricultural land classification of the site. Officers can confirm this to be Grade 2 (Very Good).

NO CHANGE TO RECOMMENDATION

200500 - 1) CHANGE OF USE OF THE BARN FROM AGRICULTURAL TO OFFICE SPACE. WORKS UNDERTAKEN INCLUDE REPLACEMENT BEAMS AND GLAZING TO OPEN NORTH GABLE END OF BARN. 2) FORMALISE AN HISTORIC CHANGE OF USE FROM RIDING ARENA TO CAR PARK - WORKS INCLUDED TARMACKING THE ARENA. 3) ACCESS ROAD. (ALL WORKS RETROSPECTIVE) AT CRUMPLEBURY FARM, WHITBOURNE, WORCESTER, WR6 5SG

For: Mr Edward Evans, Dial House, Whitbourne, Worcester, WR6 5SG

ADDITIONAL REPRESENTATIONS

Following completion of the report and whilst in the process of being published, committee members were emailed by a third party on 31 October 2020 with an additional representation, submitted on behalf of local residents. This is appended as Appendix 1 to this Schedule of Updates and also published on the application webpage.

OFFICER COMMENTS

The representation raises no new material planning considerations, replicating the same considerations which have been covered off throughout the officer's report for this agenda item at Section 6, although members will note a photograph supplied by the third party taken

at night time to illustrate concerns. Officers feel the conditions suggested, in respect of boundary treatments and landscaping, address these matters.

As suggested during the site visit by the local member (Ward Cllr Shaw), officers recommend an additional condition to secure a timely departure of all vehicles from the car park following completion of events for the day. This is in the interests of residential amenity, particularly from an aural and visual perspective.

CHANGE TO RECOMMENDATION WITH ADDITIONAL CONDITION

10. The car park and access road hereby approved shall not be used for any activities, including the parking of vehicles or deliveries, between the hours of 00:30-08:00.

Reason: In the interests of residential amenity and in accordance with Policies SD1 of the Herefordshire Local Plan – Core Strategy; Policy LU9 of the Whitbourne Neighbourhood Development Plan and the National Planning Policy Framework.

194408 - PROPOSED REMOVAL OF CONDITION 4 AND VARIATION OF CONDITION 16 OF PLANNING PERMISSION P163902/F (DEMOLITION OF 5NO. EXISTING REDUNDANT AGRICULTURAL OUTBUILDINGS TO FACILITATE EXPANSION OF EXISTING RESTAURANT AND FOLLOWING EVENTS FACILITIES: FUNCTION SUITE, FINE DINING RESTAURANT AND LOUNGE, CONFERENCE SPACE AND 16NO. ACCOMMODATION SUITES) AT CRUMPLEBURY FARM, WHITBOURNE, WORCESTER, WR6 5SG

For: Mr Edward Evans per Mr Ben Greenaway, PO Box 937, Worcester, WR4 4GS

ADDITIONAL REPRESENTATIONS

Following completion of the report and whilst in the process of being published, committee members were emailed by a third party on 31 October 2020 with an additional representation, submitted on behalf of local residents. This is appended as Appendix 2 to this Schedule of Updates, and also published on the application webpage.

Members will have also received further correspondence directly from the applicant on 5 November 2020, which addresses the comments raised in Appendix 2. This is appended as Appendix 3. There is also a legal opinion which the applicant has provided on their own behalf, appended as Appendix 4. The applicant is happy for this to be published in the public domain.

OFFICER COMMENTS

The third party seeks clarification as to why only objecting consultees were reconsulted in September 2020. Whilst not a material consideration, to provide context, re-consultation was undertaken with technical/statutory consultees, who previously objected and could make additional representation following the additional information supplied by the applicant's agent in August 2020. This included Whitbourne Parish Council, the Local Highway Authority and new site notices for public awareness.

The third party also considers the proposed removal of condition 4, would mean unregulated use of the site. This is incorrect. Officers would advise that the Condition 25 of the recommendation, only allows use of the site within the parameters of the proposal description, not being unregulated.

All other matters raised by the third party are dealt within the officers' report throughout.

The comments raised by the applicant, is largely a rebuttal to the third party representation. The applicant has submitted a legal opinion which they have sought, to confirm in their view, that the application is lawful and within a parameters of a Section 73 application.

The applicant wishes to point that there are other similar venues in Herefordshire – including those who primarily host wedding events, whom rely on a sui generis use and not a D2 use.

Finally, officers would like to update members that legal have recently received a draft of the Section 278 technical agreement back from the developer's solicitors, in respect of passing places. Officers understand the agreement should be finalised shortly.

NO CHANGE TO RECOMMENDATION

201254 - THE ERECTION OF TWO DWELLINGS AND ASSOCIATED WORKS INCLUDING THE DEMOLITION OF THE PIGGERY BUILDING AT THE PIGGERIES, LLANGARRON, HEREFORDSHIRE

For: Mr & Mrs Farr per Mr Matt Tompkins, 10 Grenfell Road, Hereford, HR1 2QR

ADDITIONAL REPRESENTATIONS

Following completion of the report, Natural England have responded to their consultation on the completed Appropriate Assessment for the site with no objections.

Full Comments below:

Based on the plans submitted, Natural England considers that the proposed development will not have significant adverse impacts on designated sites and has no objection.

European site - River Wye SAC - No objection

Natural England notes that your authority, as competent authority under the provisions of the Habitats Regulations, has undertaken an Appropriate Assessment of the proposal, in accordance with Regulation 63 of the Regulations. Natural England is a statutory consultee on the Appropriate Assessment stage of the Habitats Regulations Assessment process. Your appropriate assessment concludes that your authority is able to ascertain that the proposal will not result in adverse effects on the integrity of any of the sites in question. Having considered the assessment, and the measures proposed to mitigate for all identified adverse effects that could potentially occur as a result of the proposal, Natural England advises that we concur with the assessment conclusions, providing that all mitigation measures are appropriately secured in any permission given.

River Wye SSSI – No objection

Based on the plans submitted, Natural England considers that the proposed development will not damage or destroy the interest features for which the site has been notified and has no objection.

OFFICER COMMENTS

This representation does not raise any new material considerations, but confirms that the proposed planning conditions suggested by the Local Authority Ecology Officer are acceptable.

CHANGE TO RECOMMENDATION

That planning permission should be granted, subject to the recommended conditions, and any other further conditions considered necessary by officers named in the scheme of delegation to officers.

Appendices

- **Appendix 1 – Letter from Ms. L Kershaw dated 31st October 2020 in relation to application P200500/F**
- **Appendix 2 – Letter from Ms. L Kershaw dated 31st October 2020 in relation to application P194408/F**
- **Appendix 3 – Letter from applicant dated 5th November 2020 in relation to application P194408/F**
- **Appendix 4 - Legal opinion submitted by applicant in relation to application P194408/F**
- **Appendix 5 – Consultation response from Natural England in relation to application P201254/O**

SUMMARY INFORMATION FOR PLANNING AND REGULATORY COMMITTEE MEMBERS: 10.11.20

Application P200500/F: Crumplebury WR6 5SG

Change of use from barn to office space

Creation of car park from riding arena

Creation of access road

All works commenced and/or completed without planning permission, applications are retrospective.

This summary provides an overview of objections to Application P200500/F and recommends refusal on the following grounds:

- All three elements have been developed without planning permission being sought at any point prior to being reported as unlawful development to HC Planning Enforcement
- Any development of the barn should have been preceded with the correct bat surveys and ecological impact studies.
- The glazed end of the barn is a substantive change from the previous brick, and will further increase the light pollution from this venue
- HC Highways have objected to the car park and access road
- The car park creates light and noise nuisance from early morning until late and all sounds are clearly audible across the valley. It bears no resemblance to the impact of the original small riding arena.
- The access road is on a gradient, headlights are intrusive and the cattle grids create a substantial noise nuisance
- Extra car parking for staff and delivery vehicles should have formed part of the original application and have been assessed correctly

1. BARN

No application was submitted before work commenced even though the Applicant was aware he should apply for a change of use and adhere to correct process.

As work started in the winter during bat hibernation season and without any ecological survey separate to the 2017 surveys on the rest of the venue, there is no way of knowing if bats were in residence and forced to break hibernation – a significant risk to their survival.

It is not acceptable that a building like the barn should have been tampered with in the winter without prior investigation into wildlife habitation.

HC Ecology commented: *'As a retrospective application on a site already known to support bat roosting (Bat survey report June 2017 - for Cow Green Kitchen Application 163902) the LPA can only hope that no breach of the Wildlife & Country Act occurred. The previous ecology report did not cover this additional development area...'*

The barn will have a glazed end (currently exposed) in between the timbers, adding another large expanse of glazed area to the extensive run of glass which is detrimental to dark skies and local nocturnal wildlife.

2. CAR PARK

The application form states that the application is for *'Permission for change of use from riding arena to car park. Whilst the area in the centre of the site has been used as a parking / storage area for a number of years, we would like to regularise to confirm that the area will be used as staff and estate office car parking.'*

Originally, the area was a 'Riding for the Disabled' arena with an occasional stored car or caravan. The riding sessions caused no nuisance to the neighbours, being of short duration and during day/working hours. The parked cars/caravan were stationary for long periods and there were no lights.

The car park is used in a radically different way and is very intrusive within this (previously) dark and silent area: the use of the area as a storage area in the past should not be viewed as a pre-existing use that merely needs 'regularising'.

Staff will always be the first people on a hospitality site to arrive and the last to leave, potentially in the early hours of the morning. Staff conversations can be clearly heard. Car headlights shine directly into properties opposite the car park and the noise of cars and delivery lorries over cattle grids is audible over a significant distance.

Deliveries are made to this area, often earlier than the legal start-point of 8 am. The area generally is busy throughout the day as deliveries and staff arrive and leave.

The original Crumplebury application included a number of parking spaces. This area was not mentioned in the application as a potential parking area at any time.

HC Highways have objected to the application: *'the applicant has submitted no evidence that additional car parking is required. The original planning application (ref: 163902) including adequate parking for staff and visitors therefore evidence is required to show a need for the additional car parking. Until such evidence is provided the LHA object to this element of the application due to the additional car parking potentially increasing traffic to and from the development.'*

3. ACCESS ROAD

The access road is only there to enable vehicles to reach the car park. The access road is on a gradient and so all headlights point directly across to houses opposite. To access the car park via this road involves crossing two cattle grids which are intrusive and noisy, particularly at night and in the early morning. HC Highways' objection, above, covers the access road as well as the car park.

4. DISREGARD FOR THE PLANNING PROCESS

This application P200500/F is the fourth retrospective planning application connected with the Crumplebury venue that has been brought about either through planning breaches, or not seeking planning permission in the first place. If issues had not been bundled together, as in P200500/F, the numbers of applications would have been greater.

Additionally, important highway safety conditions which should have been discharged before the venue opened have not been discharged (and cannot currently be discharged as stated in the decision on planning application P200858/XA2).

It appears that there has been an overall disregard for planning rules with regard to this venue throughout the application, construction and operation. Granting retrospective permission for this application (and others) just because the development exists or the actual use of the development

has happened, creates a very dangerous planning precedent in our county, particularly when the area around the venue was so unspoilt. No one should be above the law.

Document prepared by Elizabeth Kershaw on behalf of local objecting residents 31.10.20.

Photograph (below) of the impact of a single staff car in the context of an otherwise dark valley.



SUMMARY INFORMATION FOR PLANNING AND REGULATORY COMMITTEE MEMBERS: 10.11.20

Application P194408/F – Removal of Conditions 4 and variation of Condition 16 regarding planning permission granted to Crumplebury, WR6 5SG (original application P163902/F) on 3rd August 2017.

This summary provides an overview of objections to Application P194408/F and recommends refusal on the following grounds:

- The necessity for Condition 4 and Condition 16 has not diminished. Herefordshire Council Planning Officers imposed conditions in 2017 to protect residential amenity and public safety. These considerations should still be of primary concern to Planners.
- Herefordshire Council's Highways Department have objected twice to the application on the grounds of '*an unacceptable impact to highway safety.*'
- There has been a constant and serious disregard for planning conditions and/or the need for planning permission throughout the development process.
- The potential loss of business to local holiday lets and hospitality accommodation based on a USP of peace and tranquillity will outweigh any economic benefits to the area from weddings at the Crumplebury venue.
- The location is in an acoustically sensitive, dark skies environment on the edge of a natural amphitheatre in a beautiful, unspoilt area of Herefordshire. All sound travels up and across the valley.
- The building is not adequately sound-proofed, even though the Applicant had made assurances that there would be '*no noise*'.
- The original application of 2016/7 upon which planning permission was based does not reflect the current scale of operation at the site, or that weddings/parties were intended. The removal of Condition 4 will intensify use still further.
- The local Parish Council, who have extensive local knowledge of the area, have unanimously objected twice to the application with evidenced reasons based on planning law.
- The basis for this application is demonstrably invalid both factually and in terms of planning law.
- Light pollution and other issues endanger local wildlife.

This summary has been sent to all Planning Committee members. As both the original and current applications are discussed, they have been distinguished by dates: the original application P163902/F (2016/7) and the current application P194408/F (2020). Direct quotations from documents are in italics.

This application has a complex history and serious implications. To cover the issues, this document is necessarily comprehensive and lengthy. I would like to thank you on behalf of local objecting residents for taking the time to read and consider it.

1. HISTORY

In 2013 the Applicant set up a restaurant in an agricultural outbuilding on his family estate and obtained retrospective change of use Planning Permission.

In December 2016, the Applicant (application P163902/F) applied for permission to build a new facility to expand the restaurant operation. This application did not accurately reflect the current use of the venue, the prospective numbers of guests or the actual quality of the building.

- The development was **represented as a modest scaling up** of the existing restaurant operation as well as *'in exceptional circumstances'* 12 larger events per annum with 160 guests per event.
- The application stated that *'no noise would emanate from the site'* and the new facility would be *'unlikely to result in any increase in [...] light pollution'*.
- No attempt was made to seek D2 planning permission and there **was no reference to 'weddings' within the application at any point.**
- **There was no reference to 'weddings'** in the Applicant's presentation to the Parish Council.
- Local residents were largely supportive. The Parish Council supported the application.
- Highways initially objected but were given assurances by the Applicant (covered in section 3.1) and eventually gave conditional approval.

The Planning Permission granted on 3rd August 2017 included 22 conditions.

- **Condition 4** stated that: *'The premises shall be used for restaurant, guest accommodation and a conference centre and for no other purpose.'* [...] *Reason: The local planning authority wish to control the specific use of the land/premises, in the interest of local amenity and to comply with Policy SD1 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.'*
- **Condition 16** stated that: *'No amplified or other music shall be played in the premises outside the following times 12.00hrs to 23.00 hrs. Reason: In order to protect the amenity of occupiers of nearby properties and to comply with Policy SD1 of Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.'*

These conditions were imposed by Herefordshire Council (HC) after full investigation into all the implications of the venue's operation **as outlined by the Applicants in the relatively modest 2016/7 application.**

The conditions therefore reflect the content of that 2017 application and discussions. **Stricter conditions or even refusal would have been a possibility if wedding/party use and the true projected number of guests had been transparent.** The Applicant has stated that he discussed weddings anecdotally with Planning officers at the time. If so, the conditions imposed appear to reflect HC Planning's concern for the residential amenity of local people based on this discussion.

In 2018, building and marketing of the venue commenced. The heavy marketing of the complex from the start as a wedding and party venue (Hereford Times, social media, wedding directories etc) **has never reflected the terms of the original application or the existing planning permission. It is a drastic shift.** Over 40 weddings are booked in for 2021 already.

In November 2019, the venue opened, and the first wedding was held on 23rd November. Three Christmas parties were held in December. The extreme noise disturbance (and light pollution) caused numerous objections to be made to Environmental Health (covered in section 3.2.1). The music at the wedding also overran far beyond the legal cut-off time.

At this point, HC Planning Enforcement investigated these infringements of planning permission. The Applicant then applied in the current application P194408/F to have Condition 4 removed as the holding of weddings and music-centred parties was clearly against existing planning permission, and continuing to hold weddings would constitute a breach. He also applied to have the music cut-off time moved to midnight. **In short, to make unlawful activity lawful.**

The application was due to come before Committee in May 2020 but was withdrawn after the Planning Officer's recommendation was factually and legally challenged by residents after taking

Specialist Legal Counsel (letters available on the P194408/F application site under 'Correspondence'). Since then, the two previously objecting bodies were asked to reconsult (Highways and Whitbourne Parish Council) and have issued strengthened objections. Consultees who did not object were not asked to reconsult and Whitbourne Parish Council have flagged this in their second objection. **Residents are confused as to why only the objecting bodies were asked to reconsult.**

Throughout this period, weddings have still been heavily marketed, and bookings/deposits taken for 2021, 2022 and possibly beyond. Outside of Covid restrictions, weddings have also been held.

2. THE BASIS OF THIS APPLICATION AND IMPLICATIONS OF THE REMOVAL OF CONDITION 4

This application is for the removal of one condition and the variation of another. **It is important to remember throughout that the operational scale of this venue as revealed in practice is vastly greater to that implied in the original application.**

The Applicant argues that as the original application description refers to 'events facilities', the implication is that all 'events' are allowed by default. The residents' Specialist Legal Counsel has advised: *'It is an established principle of planning law that planning conditions take precedence over the description of development when interpreting a planning permission. Any suggestion of a conflict between the two (which in this case is not accepted in any event) does not mean the condition is unreasonable. The reasonableness of the condition must be assessed, inter alia, on the basis of it being imposed for planning reasons, and being directly related to the proposal.'*

The planning reasons for its imposition are clearly stated within the original representations, including the original planning officer's decision and delegated report, HC Highways' comments and others. **Throughout, in 2016/17, these officers were concerned with protecting residential amenity and public safety.**

Furthermore, the Applicant is arguing that weddings, parties and conferences are all 'events' and therefore interchangeable in character. This argument has been demolished many times in residents' objections. It has no merit whatsoever in 'real life' terms.

Apart from drastic differences in hours of operation etc., at conferences, people are in professional mode, and there is, in general, a 'corporate brake' on behaviour. Too much rowdiness, drunkenness, fights etc could impact on a career, and people will normally retire earlier and behave in a more controlled manner. At weddings and parties, there is no such brake, and the celebrations could go on all night (only the amplified music has an official cut-off time). Behaviour is more likely to be disinhibited and rural venues are even more vulnerable to this lack of boundaries as guests do not perceive there to be neighbours.

The Applicant has argued that only part of the venue facilities can be used if weddings are not allowed. **This is directly contradicted by all the Applicant's marketing** which shows all spaces being used for both weddings and conference events.

If Condition 4 is removed, the use of the venue, and the extent to which it is used, will be **entirely unregulated**, with no chance of other regulatory conditions to be applied. **The original application was never assessed as a D2 planning class wedding/party venue. All assessments were based on a more modest use.**

3. SUMMARY OF OBJECTIONS AND AREAS OF CONCERN

3.1 HIGHWAYS

In 2016, HC Highways refused the initial application P163902/F. They were concerned about intensification, sub-standard visibility at both ends of the access, a particularly dangerous junction with the 'Parish Road' and the A44, and the gate at the end of the Parish Road.

The Applicant then assured Highways that the gate would be removed, that the intensification was modest (1920 extra guests p.a. specified as a maximum), and that a hedge would be removed. **The Applicant did not then, and does not now, own the land on which the gate and hedge is situated. The landowner has not and will not give permission for either the gate (needed for stock farming operation) or the hedgerow to be removed.** On the basis of the Applicant's assurances, conditional approval was given by HC Highways to the original application in 2017.

In January 2020 HC Highways objected to the current application P194408/F on the grounds of intensification of traffic (the true **potential guest numbers** at the venue – **around 75,000 pa** based on advertised availability and capacity – now being known), sub-standard visibility and unsuitable single-track roads.

In September 2020, having been asked to reconsult, **Highways issued a longer, strengthened objection.** Specifically: removal of Condition 4 would allow for unconstrained use of the site and no ability to oppose conditions; that the gate is in situ and will not be removed; that the potential intensification of use is vastly greater than the original application specified.

HC Highways' view is that:

'The original application stated that the gate on Norton Lane at the junction with the A44 would be removed but the gate remains in-situ and it is not within the control of the applicant, therefore it will remain. This could further exacerbate the highway safety issue that potentially exists at this junction due to poor visibility to the north for vehicles exiting Norton Lane onto the A44 and both poor visibility and poor geometry for eastbound vehicles turning left into Norton Lane and vehicles turning right out of Norton Lane.'

'The unconstrained use of the site would increase the number of vehicles using the Norton Lane/A44 junction. This would give rise to an increase in the number of conflicts that may occur (e.g. a conflict could occur every time a vehicle turns out of Norton Lane onto the A44) which in turn increases the risk to highway safety that the junction poses.'

*'The LHA consider there to be **an unacceptable impact on highway safety** as a result of the potential intensification of use of the Norton Lane/A44 junction.'*

Policies RA6 of the Core Strategy, MT1 of the Core Strategy and Paragraph 109 of the NPPF are cited as underlining this decision.

Furthermore, in 2017, 3 important Highways conditions were applied to the original planning permission. One was pre-build (8) and one was pre-use (21). Only one of these conditions (20) has been discharged. The others were **refused** by HC Highways on application for discharge in April 2020.

Additionally, in the latest objection from HC Highways (September 2020) it was stated that, given the vast increase in numbers from the 2016/17 application to the current, the conditions applied then are not now adequate : *'The conditions applied to the original planning consent and the level of highway improvements required were commensurate with the level of trips generated by the uses applied for and detailed within the application. Additional use of the site would require **the level of highway improvements to be reassessed which this application does not allow for.***'

Local people avoid the Parish Lane/A44 junction and are aware of the dangers. Large numbers of wedding guests, possibly arriving in the dark, following Sat-Navs and/or each other are likely to try to turn left off the A44, resulting in becoming jammed in the hedge. Turning right off the A44 would result in queuing traffic on a fast A road with poor visibility. This is a popular route for motorcycles. If the gate were closed, the opportunity for conflicts would be even greater. The Applicant has advised people coming from the Bromyard direction on the A44 to turn in the Wheatsheaf public house car park, but this is private property (not owned by the Applicant) and currently for sale for development/reopening.

A fatality is highly likely to occur at this junction. If so, it is the opinion of the Residents' Counsel and legally-qualified residents that there could be serious legal repercussions for Herefordshire Council should the Highways' objection be overridden and this removal of Condition 4 approved.

3.2 NOISE

3.2.1 MUSIC

The venue held its first wedding on 23rd November 2019 and three Christmas parties (in December) and another wedding since (Saturday February 29th).

Until this point, residents had expected the venue to be sound-proofed, and had made no complaint about the long months of construction noise, thinking that the opening of the venue would improve matters.

However, the first four events generated **several noise complaints to Environmental Health** even though the weather was appalling with 38mph winds on one occasion. The fifth took place on the weekend of Storm Jorge with winds of over 50mph.

- Music could be heard indoors with windows closed.
- Music could be heard above a normal television volume and even when a resident was wearing headphones to block it out.
- Every lyric and band announcement was clearly audible and reported to EH as a 'playlist'.
- Children were woken up – or couldn't get to sleep. Adult residents could not sleep.

At that time of year residents were not in their gardens, had windows closed (often double-glazed). Despite the time of year and weather, the noise was intrusive to an alarming degree. **Residents have described it as 'devastating' and 'life-changing'.**

On still summer, this venue will affect even more residents, further afield.

The application of 2017 promised that: *'The proposed facilities buildings will benefit from modern sound proofing and insulation to ensure that **no noise** would emanate from the site.'* **This has proved to be the reverse of the actual situation.**

The building design is fatally flawed in terms of sound-proofing:

- Full length glazed windows, one double-storey
- Roofing cladding that only blocks 25 decibels*
- Wall cladding that only blocks 41 decibels*
- No air conditioning so that windows and doors will have to be opened
- Speakers direct sound down to a hard floor – the sound then bounces back
- The entire building is angled away from the Applicant’s own land and estate residences so that the ‘open’ glazed ends point towards the opposite side of the valley and local residents. The Applicant himself described this as a ‘giant speaker’.

(*information from the manufacturers – the roofing manufacturer believes it is not possible to soundproof one of their buildings as they are not designed for this purpose.)

As an attempt to improve noise leakage, the Applicant installed a removable curtain across the glazed end of the Great Hall, but **this will not address the problems of wall/ceiling/open window leakage**. Even inside, rain/wind is clearly audible. In the summer, doors/windows will be open, and the curtain potentially not drawn or even erected.

The venue sits in a natural amphitheatre. The nearest residence is some 200 metres: not the ‘vast distance’ as stated in the 2017 application. **All sound carries clearly across the valley** – even normal speech or a radio played at normal volume.

No professionally monitored noise tests were done prior to the opening of the venue or to this application. The Noise Impact Assessment ‘tests’ included in the documentation were performed informally by the Applicants in the first instance, and further tests in March 2020 did not comply with the testing requirements originally specified by the Environmental Health Officer, and were not conducted by a member of the Institute of Acoustics, as specified. However, the EHO chose to disregard her own requirements. In the view of the residents, the EHO has approached this application from a statutory nuisance perspective, rather than from the perspective of planning law/guidelines with its concentration on residential amenity and this response should be questioned.

The residents commissioned two noise assessment reports from a qualified member of the Institute of Acoustics. This report stated clearly that: ***“The issued noise impact assessment report cannot be considered a professional report, contains no information about the measurement equipment used, is lacking in technical detail, contains no measurement data of any kind, provides no objective assessment, and is not seen to be suitable to support a planning application of this nature.”***

“Based on the lightweight metal construction, it is deemed highly unlikely that loud events, such as a live band or professional disco, would be inaudible at the nearby receptors. It is deemed highly likely that these events would cause noise nuisance.”

The reports can be found in full on the Application site in the representations by Mr and Mrs J Hutchings (24th June 2020) and Mrs L Kershaw (24th March 2020).

3.2.2 NOISE OF GUESTS AND EXTERNAL CELEBRATIONS

Discussion with the Applicant around noise emissions has centred on the acoustic curtain, but the curtain will have no effect on external noise from guests, staff, traffic etc.

The 2016/7 application stated that: *'Crumplebury staff will ensure that all customers leave the site swiftly and quietly at the end of all events.'*

However, this has not proved to be the case. There has already been one loud, aggressive argument between departing party guests which intruded on the sleep and peace of a local resident.

When hot inside, guests have already been coming outside, propping doors open etc. It will be impossible for staff to police this. This has been the experience in the winter in cold, inclement weather – summer will cause even greater problems, and guests will congregate outside. There is no air-conditioning in the building.

Staff obviously stay after guests depart – there has been noise reported about staff conversations, noisy bottle bins etc. and there has been considerable traffic chaos with taxis/cars trying to arrive and depart at the same time on a single track road.

3.3 PLANNING BALANCE AND LOCAL ECONOMY

In 2016/7 the main argument for this development was that it would increase local jobs and bring tourist revenue into the area.

The Applicant's Agent stated in September 2020 that *'the business presently employs 22 staff from the local area'*. This is not broken down into roles or substantiated. Two residents have been informed separately by Crumplebury staff that the jobs total around 10 with occasional casual extras. The original application said that 18 staff would be required *'in exceptional circumstances.'* Both the previous and newly-appointed General Managers were recruited from other parts of the UK.

It is important to remember that **most, if not all, of the permanent jobs are not dependent on the removal of Condition 4**. The Applicant's restaurant requires permanent catering and waiting staff and the accommodation block requires housekeeping staff.

Any benefit from employment at Crumplebury will be far outweighed by the devastation the noise and disruption at Crumplebury will bring to other local businesses that are **wholly dependent on the USP of the area: beauty, tranquillity and dark skies**.

These businesses bring longer-term holiday-makers in for a week, or weekend, who are known to use other local hospitality businesses and shops, and who bring substantial income into the area. They include an award-winning glamping-pod business with solid 5* reviews, all based around the peaceful area and views: *'Redhill holidays [...] gives you peace, tranquillity, beauty ..'* (Tripadvisor review, August 2020). The National Trust advertises its neighbouring Old Linceter property as: *'delightfully secluded and peaceful, with only the bleat and baa of the sheep and singing of the birds breaking the silence.'*

There have already been verbal comments from guests at holiday lets about the noise of the weddings and parties at the end of 2019. It is the residents' argument that the potential loss of custom to these businesses by bad reviews based on the noise and light emanating from the Crumplebury development will be a far greater loss to the local economy than any benefit brought by Crumplebury weddings should Condition 4 be lifted.

The wedding guests are 'self-contained', eat the Applicant's food (much of which is sourced from the Applicant's estate) and leave. There is little benefit to the wider local economy.

If Condition 4 is not removed, the Applicant can still run the restaurant and accommodation block unimpeded, but noisy weddings and parties will be prevented from destroying other valuable

businesses. The Applicant argues that weddings are needed for essential revenue to enable his operation to thrive. **If this is the case, then wedding use should have been transparently applied for in the first place.** Due diligence in market research would have revealed this at the outset. **This is a matter of commercial competence, not planning.**

It should be stressed that local residents and WPC have always supported the restaurant and accommodation block.

The Applicant has cited Covid 19 as a reason for planning to be granted. Obviously, Covid has had a devastating effect on hospitality businesses – including those also adversely affected by the Crumplebury development – but Covid is a temporary situation. Any decision to remove Condition 4 will mean **permanent** significant loss of amenity to local residents, and dangers to public travelling on the highways.

3.4 SIGNIFICANT OBJECTIONS

3.4.1 WHITBOURNE PARISH COUNCIL (WPC)

In **March 2020, WPC unanimously objected to this application** following a meeting attended by over 30 members of the public. Fully aware of the impact of the unconstrained operation of this venue on *‘what is a beautiful and tranquil valley and where noise travels large distances’* their concerns centred around noise, light pollution, the dangerous Highways situation and knowledge of numerous breaches of planning permission and conditions.

On **7th October 2020**, having been asked by Planning to reconsult, WPC held another public meeting and **made additional, strengthened comments to the original objection by unanimous vote.**

This focused on: the inadequacy of noise testing and of the Applicant’s noise report; environmental nuisance from both amplified music in an inadequate building and external noise from guests and increased light pollution; Highways safety; Conservation (the venue is near a Grade 2* property); the *‘specious’* argument of conferences and weddings being one and the same; local economy (the USP of this area is its peace and tranquillity and other tourist businesses will be harmed).

The full objection is available to view near the top of ‘Representations’ on the P194408/F application site.

3.4.2 RESIDENTS

32 separate residents have put their name to objections. This is a scattered community, and the amount of names represents the strength of local feeling and knowledge. The representations on the P194408/F application site cover individual concerns and although numerous, are in general evidenced and reasoned.

3.4.3 CPRE

The Campaign for the Protection of Rural England officer visited the area to view/listen to the impact of noise etc. from the perspective of local properties: *‘The Applicant is operating this venue as a wedding party and dance hall without the appropriate planning consents and the **resultant light and sound pollution is already severely impacting the residential homes and wildlife in the extreme.** Policy SD1 of the Core Strategy is explicit in that it requires to safeguard residential amenity for existing residents.’*

3.4.4 NATIONAL TRUST

The National Trust own land bordering the Applicant’s estate and have seven long-term tenanted properties and holiday lets which are likely to be affected by the removal of this condition. They

therefore commented from both a landlord perspective, and more general perspective. Citing the Planning Practice Guidance (paragraph 006): *'The National Trust considers that **this area meets the criteria which Planning Practice Guidance suggests as being relevant in considering whether it is justified to protect an area for its tranquillity**: "For an area to justify being protected for its tranquillity, it is likely to be relatively undisturbed by noise from human sources that undermine the intrinsic character of the area. It may, for example, provide a sense of peace and quiet or a positive soundscape where natural sounds such as birdsong or flowing water are more prominent than background noise, e.g. from transport."* (Paragraph: 008 Reference ID: 30-008-20190722)'

3.5 BREACHES OF PLANNING AND NON-DISCHARGE OF CONDITIONS TO DATE

This is a significant concern to residents and is an important consideration for Councillors. **Since the beginning of the development, planning boundaries have been continually pushed or ignored.** Based on this experience, residents fear that any removal of planning conditions will create a completely unregulated development and will set a very dangerous precedent for other developers to imitate. Residents do not feel that a 'do it anyway and try to get retrospective after a backlash' approach is acceptable in any way when all other local people abide by the rules.

- The restaurant was set up in 2013 with no attempt to gain planning permission before opening.
- Planning permission was not granted for weddings and parties, but these events have already been held, are still being held and have been marketed from the start of the build.
- Planning permission was granted for amplified music to be played until 23:00. The wedding of 23rd November played music until 24:00 (breach of Condition 16)
- Planning permission was granted for one car park but two have been built (the latter is the subject of retrospective application P200500/F)
- Planning permission was not sought or granted for an access road to the second car park, but one has been built (retrospective application P200500/F)
- Planning permission was not sought or granted for work on a timber-framed barn, but work has already started (retrospective P200500/F)
- Planning permission was granted for one biomass boiler but two were installed. The second has now been granted PP retrospectively.
- Delivery and service vehicles regularly access the site before 8:00 am (breach of Condition 15)
- A historic hedgerow has been removed to build a ha-ha without permission.
- Two essential Highway conditions have never been discharged. One was pre-build, the other pre-use. The venue was constructed and has been operating regardless of this consequent disregard of Highway safety.

In the view of the residents' legal Counsel, the non-discharge of the Highway conditions deems the build not to have been commenced, and therefore **the original planning permission has potentially expired as three years have passed.** This representation can be seen on the P194408/F application site, submitted by Mr C Garvie on 6th October. We understand that this legal point has been under consideration by HC legal department.

3.6 LIGHT POLLUTION AND ECOLOGY

In 2017, the HC ecology report specified that, for approval: *'No external lighting should illuminate any of the enhancements or boundary features beyond any existing illumination levels and all lighting on the development should support the Dark Skies initiative.'*

The 2017 application's Planning Support Document stated: *'Low level lighting will be LED.'*

The reality is that there is **an extremely high level of illumination at this venue**, not only when it is in operation, but some lights are left on continually – and some shine into residents’ bedrooms. Apart from external lighting, the two huge glass gable ends are intrusive when the indoor lights are on. The development has **destroyed the dark sky environment of the valley** and the **extensive local bat population will now be disturbed** in their foraging grounds. There is also a large owl population and two unusual moths on Badley Wood Common, which adjoins the Crumplebury site.

In 2017 the HC Ecologist was concerned about the impact of foul-water run-off from the waste system and vehicle movements. These concerns were then based on an anticipated 12 larger events a year, not the far larger amount now evident. This foul water seeps down to the watercourses and will end up in the Teme.

3.7 ASSESSMENT OF P194408/F UNDER THE PRINCIPLES OF THE NPPF 2019.

Residents are seeing (and hearing) their environment devastated for no other reason than the economic gain of a commercial company (Crumplebury Ltd). This is a radical change, and as such, should be subject to the ‘Agent of Change’ principle as laid down in the National Planning Policy Framework of 2019. This principle states in paragraph 180:

Planning policies and decisions should also ensure that new development is appropriate for its location taking into account [...] the potential sensitivity of the site or the wider area.

The Crumplebury Development has adhered to none of the NPPF principles. As this 2020 application P194408/F comes after the new framework, **these new rules should apply before any planning variation is granted.**

4. VARIATION OF CONDITION 16

The comments above in respect of noise and light pollution show that any extension of the music cut-off time will increase the destruction of residential amenity. Apart from the noise of the music itself, after the music stops, guests begin to depart, and all the external noises increase. Thus, any increase in cut-off time will impact on external noise nuisance. This venue, unlike some rural venues, has an aural impact on local residents due to proximity, topography and inadequate building.

IN CONCLUSION

If this application is supported Councillors will be endorsing:

- **Ratification of a use for which planning permission was not transparently sought in 2017.** If D2 planning class weddings and parties were intended, **this should have been clear at the time and not only revealed by subsequent marketing material.**
- **An application refused by Highways on the grounds of danger to the travelling public.**
- **A commercial operation that has already breached existing planning several times and has shown to disrespect and disregard the planning process.**
- **An inadequately sound-proofed venue**, built and launched without professional noise testing, and where operations to date have resulted in enormous distress for residents and many complaints to Environmental Health and Planning Enforcement.
- The despoliation of a lovely part of Herefordshire by a venue which is responsible for **immense light pollution** and damage to the previous dark skies environment, as well as damaging local nocturnal wildlife habitat.
- A venue that is **actively damaging other businesses in the area.**
- A venue that is **actively damaging the peace and well-being of local residents.**
- **A development that runs counter to the National Planning Policy Framework 2019** and should be examined in the light of these new rules.

Document prepared by Elizabeth Kershaw on behalf of local objecting residents.
30th October 2020

Photographs follow.

SITE VISIT

The scattered dwellings on the slopes of the hill opposite Crumplebury, and within Badley Wood Common are vulnerable to the acoustics and topography of the area, but the extent of these households and their vulnerability is not immediately obvious from the perspective from the site itself – or in daytime conditions.

Residents would be grateful if Councillors could view the site from the perspective of the households suffering the nuisance – or could please take this into consideration, along with the conditions of darkness and silence which would be the ‘normal’ night environment.

Photograph showing the large glazed windows that now dominate the valley.



Photograph showing the venue, lit up, in the context of a previously completely dark valley.



Photographs (below) showing clear marketing as a wedding venue after planning permission excluding weddings had been granted. The initial build publicity (in 2018) and current Instagram page badged as 'wedding venue'.

NEWS

2nd November 2018

New wedding venue under construction

By Rebecca Miles | [@rebeccamiles_HT](#)



Joe and Keeley Evans with builder Graham Smith

Facebook, Twitter, WhatsApp, 5 comments

A NEW £2.5million wedding venue is being built in the east of the county.

Husband and wife duo Joe and Keeley Evans own the Green Cow Kitchens restaurant in Whitbourne and are behind the development to build a new luxury events venue.

The venue called Crumplebury will be complete by October next year.

Be a bonus builder

Discover your inner

AJBell Youinvest

17:59



crumplebury



173 Posts

1,893 Followers

955 Following

Crumplebury

Wedding Venue

- State of the art venue
- Farm-to-table restaurant
- 11 ensuite bedrooms
- Set in the Herefordshire countryside
- weddings | events | meetings

linkin.bio/crumplebury

Crumplebury Farm, Whitbourne, Worcester, Worcestershire

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Our Spaces



Weddings



Events



Corporate



To: Members of the Planning Committee, Herefordshire Council

From: The applicant, Joe Evans, Whitbourne Estate

Re: Comments in reaction to the “Summary Information” document lodged on behalf of the residents objecting to Application P194408/F – Removal of Conditions 4 and variation of Condition 16 regarding planning permission granted to Crumplebury.

Throughout the planning process, the applicant has sought to follow due process, engage positively and proactively with planning officers and address local concerns sensitively and directly.

While compelling and well argued, the opposing submission is rife with inaccuracies, falsehoods and misinterpretation and therefore the applicant feels that it is vital that members are furnished with the facts in order that they can make a balanced judgement.

It appears that those opposing this application are relying in part on matters of planning law. Therefore attached with this memo (and covered in Part 5), is the Legal Opinion to reassure members that the application as proposed is lawful.

1. Inaccurate statements cited as fact
2. Sound and Light
3. Highways
4. The intention of the use of Crumplebury
5. Materiality of use in law
6. Economic impact
7. The magnitude of the swell of objection
8. The character of the applicant
9. Implications of refusal

1. Inaccurate statements cited as fact

Whilst there are a large number of tenuous assertions cited as fact in the document, the following points in particular must be corrected, as taking them as read could pervert due process.

- a) In numerous sections, the report states that the operational scale of the venue is “vastly” greater than implied by the original application. This is simply not true; the applicant has built Crumplebury as per the submitted plans.
- b) On page 6, a number of assertions are made about the building design and the sound performance of the construction materials. This is not based on fact but supposition and guesswork from a desktop study.
- c) The acoustic curtain has in fact been professionally tested and approved by an independent, certified acoustician and to imply otherwise is false.
- d) To state that doors and windows in the Grand Hall will be open in summer is false. The applicant has installed a state of the art air handling system which will be less effective if the fire doors are propped open.
- e) It is false to assert that the rejection of this application will not decimate the business.
- f) The many references which allege that the applicant has shown himself to be cavalier with respect to planning process are palpably wrong and offensive.
- g) To allege that foul water seeps into the watercourse is false. A new bio digester plant has been installed and signed off by the EA in line with the maximum occupancy of the site.

2. Sound and light

The amenity angle in terms of sound and light is the single biggest issue underpinning the passion behind the objections to this application. It was noise emanating from Crumplebury that was the trigger that caused local upset and the mobilisation of a group of objectors. In response to this, and in acknowledgement of the legitimate concerns, the applicant immediately initiated a proactive programme to reduce noise leaking from the Grand Hall. Within 8 weeks of the first event that featured live music at Crumplebury, a professional acoustic curtain was commissioned, installed and independently tested by a qualified acoustician to ensure that the noise levels were brought within acceptable parameters.

The many references to sound “nuisance” cited in the objectors missive are regrettable but were reported before ameliorative measures could be taken. It is important that members note that a wedding with a live band and dancing was hosted on 29th February 2020 and no objections were raised; the curtain was in position and doing its job effectively.

Objectors instructed their own consultants to opine on the noise and light impact of Crumplebury as a desktop exercise. This report should not be given any credence as the consultants in question did not visit the site (an open invitation was extended) nor did they inspect the actual build quality and construction composition.

The many other references to dark skies, bats, owls and moths are irrelevant to this application as Crumplebury already has planning permission and within the existing conditions is able to use the venue at night and turn the lights on. Moreover, the installation of the acoustic curtain improves light emission from the site beyond the original permitted design.

3. Highways

The applicant acknowledges that the A44 access at Norton Gated Road is suboptimal. However, the removal of Condition 4 will not give rise to any greater risk. Conferences are likely to represent the most intense impact on the junction. When Crumplebury hosts 200 delegates at a day time business conference (which is what opposers would assert is reasonable), there may be as many as 400 car

movements at peak traffic times. Conversely private events, including weddings, will result in fewer vehicular movements at less busy times of the day. Private party guests typically arrive in groups and sometimes all together in a single bus.

Crumplebury has been built and to now object to the appropriateness of the highways access is illogical. There is nothing within the existing permission that limits traffic movements via this junction and to argue otherwise is misleading and false.

The applicant would be eager to be a stakeholder in a group of councillors and neighbours to address general road safety concerns for existing and future users of the road (residents, Green Cow customers, Longlands Care Farm students, as well as Crumplebury visitors).

4. The intention of the use of Crumplebury

Given the content of the opposition report, members could be forgiven for thinking that Crumplebury is retrospectively applying to become a wedding venue. This is not true. The applicant simply wishes to be able to utilise the property as per the site description.

If members were minded to agree with objectors that “conferences” should be defined as gatherings with people in “professional mode”, then Crumplebury would be forced to abandon plans for a plethora of exciting and varied events:

- Local and National art exhibitions
- Classical music recitals
- Screening of independent movies
- Car launches
- Film productions
- TED talks
- Wine tasting classes
- Mindfulness and yoga retreats

Much is made in the objectors report of advertising, marketing and social media presence, which supposedly positions Crumplebury as a wedding venue. It is true that Crumplebury was due to host a total of 45 weddings in the 24 months from Jan 2020 to Dec 2021 (most of these were sold off plan and have had to be rescheduled due to covid), and 6 weddings are booked for 2022. Weddings were the only type of event to sell off plan, as couples wanted to be ‘amongst the first’ to use the space. Since opening, the applicant’s calendar of events has significantly diversified. Most corporate events have shorter lead times and are sold using private channels, venue scouts and agents. The true range of events that were booked in during 2020 (pre covid) has no relation to the public marketing profile and this material should not be regarded as evidence of anything.

The applicant had understood the “conference centre” element of Condition 4 to be inclusive of a wide range of events in line with the site description. It was a surprise to be issued a notice of planning breach. In hindsight, this view has proven naïve given the toxicity of this application.

5. Materiality of use in law

Mrs Kershaw cites that “the original application was never assessed as a D2 planning class wedding/party venue.” **Most similar venues in Herefordshire – including those that predominantly host wedding celebrations – do not have D2 permission** and rely on sui generis use. To name but a few: Dewsall Court, Bredenbury Court Barns and Lemore Manor. Compelling Crumplebury to be reassessed with respect to planning class could have a devastating economic impact on these venues as a result of new legal precedent.

The applicant has sought Legal Opinion, the report of which accompanies this memo. Timothy Jones, LLB FCI Arb is on the RICS / NPIERS Panel for Neighbourhood Planning Examiners and sits as an examiner of Neighbourhood Plans and Neighbourhood Development Orders. He is a member of the Planning and Environment Bar Association and the Administrative Law Bar Association. He is a member of the Bars of England and Wales, Ireland and Northern Ireland. Mr Jones' report is clear in its conclusion:

“If there is no difference material to land-use planning between a conference and a wedding reception (and I do not consider that there is), a condition preventing wedding receptions would not be necessary, or relevant to planning. It would therefore fail two of the six tests. The same applies to other events.”

6. Economic Impact

It is disappointing that the opposition report casts Crumplebury as a negative force in terms of its impact on the local economy.

The restaurant is ward winning, and for events requiring more than the 11 bedrooms on site, guests book into alternative accommodation offerings around the local area.

The applicant celebrates and promotes all owner run, self-catering and glamping businesses in the area and is confident that the £3m facility will deliver long term economic benefits through the tax system, rates, employment and its wide range of suppliers and partners.

As well as supporting farmers based on the estate, Crumplebury already has supplier relationships with Chase Distillery, Wye Valley Brewery, Worcester Produce, Lightwood Cheese, Knightwick Butcher, Toads Mill, Celtic Marches and many more.

The local plans and NPPF RA6 strive for; a rural economy that supports and strengthens local food and drink production, offers commercial facilities, and promotes sustainable tourism. The policy also supports the retention and diversification of agricultural businesses. Crumplebury in a nutshell.

Whilst covid has had a devastating effect on the business this year, Crumplebury still has 14 members of staff on payroll. The applicant has plans to increase to 24 FTE when normal conditions resume.

7. The magnitude of the swell of objection

The report submitted implies that huge numbers of objectors share the views posited. Members will note that most of the written objections were lodged on the planning website before ameliorative measures were put in place. In fact, there are a number of strong supporters of Crumplebury who live in a closer proximity to the site than the principle objectors. Given the toxicity of the discourse it is unsurprising that few of these supporters have chosen to make themselves known. The applicant will rely on members being aware that contentious planning issues always receive disproportionately negative representation.

The PC has twice strongly opposed this application, but members should note that the applicant has submitted a complaint with respect to their submission on the basis that it is unbalanced and cites speculation and supposition as fact. The applicant is grateful that these matters have largely been addressed by the Planning Officers report.

8. The character of the applicant

The report suggests that the applicant has scant regard for planning process and the local community. In fact, the applicant lives a field away from Crumplebury and cares deeply that it is a force for good in the local area.

Councillors should be made aware that a full team of professional architects, planning consultants, M&E advisors, structural engineers and professional building contractors have been employed to deliver this complex and ambitious project. Whilst the applicant admits that along the way some technical errors have been made (for example installing two smaller biomass boilers rather than one large one, which was not permitted under the condition but has now been approved), this is not unusual in such a large project. The applicant has built what HC gave planning permission for and has proactively and positively worked with planning officers to regularise all outstanding issues.

9. Implications of refusal

On numerous occasions throughout the paper, the opposition implies that the ability for Crumplebury to survive as a business is not conditional on being able to operate as a multifaceted events venue. Mrs Kershaw states “most if not all permanent jobs are not dependent on the removal of condition 4”. Members should be aware that as well as being an employer, Crumplebury has significant obligations to its lender.

- 1) Hospitality businesses are notoriously low margin enterprises and to curtail the applicant’s ability to operate within the site description will be catastrophic.

Given that the planning officer report and the Legal Opinion recommends that this application be approved, the applicant is confident that any refusal at committee would be overturned by an inspector at appeal. However, the interim damage from a PR angle (The Hereford Times has already run an article suggesting that Crumplebury can’t host weddings which resulted in business being lost) and ongoing community angst could cripple the business as it also attempts to weather the economic devastation brought about by covid-19.

- 2) The objectors report states that the effect of approving this planning application would be “devastating” and “life changing” whereas the applicant would be able to operate as a restaurant and *professional mode* conference centre. Now that the noise concerns have been addressed, any negative impact of Crumplebury on neighbours has been determined by EHO as reasonable. Licensing powers exist to address any potential future nuisance claims and the applicant has already shown that he is positive and willing to work with the community and authorities to be a responsible neighbour.

Conversely the consequence of being required to cancel the events described in this report would immediately see the business fail. Crumplebury is an ambitious and risky project to diversify a traditional agricultural estate. The applicant’s financier was eager to support this vision, but has taken significant security to make it happen. Therefore, whilst not a planning policy consideration, the implication of Crumplebury failing will have a devastating impact not only on the applicant’s business and their employees, creating mass redundancies, but also on the long standing tenants and workers on the estate as the estate could be repossessed.

All this considered, the applicant is sensitive to the fact that they have a moral and neighbourly obligation to continually ensure that Crumplebury doesn’t cause unreasonable nuisance to residents on an ongoing basis. They remain committed to make Crumplebury a force for good in the local area.

- 2020 -

IN THE MATTER OF CRUMPLEBURY,
WHITBOURNE HALL, BROMYARD,
HEREFORDSHIRE

OPINION

Timothy Jones

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OPINION

1. This opinion relates to Crumplebury Farm, Whitbourne, WR6 5SG. On 3rd August 2017 Herefordshire Council (“HC”) granted planning permission for:

“Demolition of 5no. existing redundant agricultural outbuildings to facilitate expansion of existing restaurant and following events facilities: Function Suite, Fine Dining Restaurant and Lounge, Conference Space and 16no. Accommodation Suites.”

2. This was subject to 22 conditions and included 9 informatives. Condition 4 states:

“The premises shall be used for restaurant, guest accommodation and a conference centre and for no other purpose (including any other purpose in Classes A3, C1 and D1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.

Reason: The local planning authority wish to control the specific use of the land/premises, in the interest of local amenity and to comply with Policy SD1 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.”

3. The development has been lawfully completed and opened at the beginning of this year. The operator has always intended to host weddings and other events that would not be described as conferences. This was made clear during the application in discussion with HC, so the applicants were surprised by the condition. Events other than conferences have been held and HC received complaints from local residents.

4. In an attempt to regularise matters my instructing professional made an application under section 73 of the 1990 Act that sought to remove condition 4. The

reasons for this were explained in his supporting statement. (It also sought the removal of condition 16, but that is not a matter upon which I have been asked to advise.)

5. The application was due to be heard at committee last month and was recommended for approval by officers. The day before the meeting it was removed from the agenda. HC said that, due to matters raised by objectors, they considered there was a realistic possibility of a judicial review. It did not detail any possible basis for a judicial review, simply referring to the level of public interest.

6. The Planning Officer then requested extensive further information, stating:

“... the Council requires further information to be submitted detailing all intended uses, activities and frequencies for this site in terms of the level of use. This will include the numbers of events of wedding ceremonies; conferences; restaurant events; vehicle movements and frequency of each proposed use/element for this site and its intentions.”

7. He also said that they were considering whether or not there would need to be a new full planning application instead of a section 73 application.

Scope

8. I am asked to advise:

- (1) Whether there any basis for HC insisting that a full planning application is required rather than the section 73 application;
- (2) Whether the holding of events, other than conferences, results in a material change of use of the building;
- (3) Whether condition 4 meet the 6 tests; and
- (4) Whether there is an opportunity to take legal proceedings against HC should it continue to assert that the development, that has been expressly granted

planning permission as an events facility, may not hold events other than conferences.

Policy

9. NNPF paragraph 55 sets out six tests in its first sentence: *“Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.”* These tests are repeated in the PPG.

Advice

10. The Town and Country Planning Act 1990 confers power to amend or remove conditions. It may not be used to achieve a variation to the description of development,¹ but that is not sought here. Rather the application seeks to be able to use the grant without the limitation of the condition, not to go beyond the grant. This is a straightforward application to remove a condition and I can see no basis for requiring a full planning application. If the application succeeds it would not produce a result that was inconsistent with the grant.

11. Whether different events would result in material change of use is a matter of planning judgment, but that planning judgment must be justifiable. That means that in order to say that a change would be material there would have to be a significant difference between a conference on the one hand and the proposed event. Conferences often last all day and are followed by a substantial conference dinner at which there can be music and dancing. A wedding reception typically lasts several hours and involve a substantial meal, music and dancing. If HC were to determine that there were, for example a material difference in land-use planning terms between a conference and a

¹ Finney v Welsh Ministers [2019] EWCA Civ 1868.

wedding reception (and I can see none) they would have to justify this. I can see no justification and HC has not given one.

12. If there is no difference material to land-use planning between a conference and a wedding reception (and I do not consider that there is), a condition preventing wedding receptions would not be necessary, or relevant to planning. It would therefore fail two of the six tests. The same applies to other events.

13. Section 78 gives a right of appeal against the refusal or conditional grant of planning permission, including planning permission applied for under s.73. Court challenges are seldom appropriate where a planning appeal is possible.

14. There are two realistic options:

- (1) Wait for the council to determine the matter and, unless good reasons appear, appeal any refusal.
- (2) Appeal for non-determination.

15. The more cautious approach is often to wait for the council's reasoning, but there may be strong business reasons for appealing non-determination that, especially in a case where there is no apparent reason for the LPA's position make that the preferable option.

TIMOTHY JONES



No. 5 Chambers,
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Tel. 0845 210 5555
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15th July 2020.

Date: 06 November 2020
Our ref: 331665
Your ref: 201254



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Dear Mrs Webster

Planning consultation: HRA & Appropriate Assessment - The erection of two dwellings and associated works including the demolition of the piggery building
Location: The Piggeries, Llangarron, Herefordshire

Thank you for your consultation on the above dated and received by Natural England on 22 October 2020.

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

SUMMARY OF NATURAL ENGLAND'S ADVICE

NO OBJECTION

Based on the plans submitted, Natural England considers that the proposed development will not have significant adverse impacts on designated sites and has no objection.

Notwithstanding the above, your authority should be aware of a recent Ruling made by the Court of Justice of the European Union (the CJEU) on the interpretation of the Habitats Directive in the case of Coöperatie Mobilisation (AKA the Dutch Case) ([Joined Cases C-293/17 and C-294/17](#)).

The Coöperatie Mobilisation case relates to strategic approaches to dealing with nitrogen. It considers the approach to take when new plans/projects may adversely affect the ecological situation where a European site is already in 'unfavourable' conservation status, and it considers the acceptability of mitigating measures whose benefits are not certain at the time of that assessment.

Competent authorities undertaking HRA should be mindful of this case and should seek their own legal advice on the implications of these recent ruling for their decisions.

Natural England's advice on other natural environment issues is set out below.

Internationally and nationally designated sites

The application site is within the catchment of the River Wye which is part of the [River Wye Special Area of Conservation \(SAC\)](#) which is a European designated site, and therefore has the potential to affect its interest features.

European sites are afforded protection under the Conservation of Habitats and Species Regulations 2017 (as amended), the 'Habitats Regulations'. The SAC is notified at a national level as the [River Wye Site of Scientific Interest \(SSSI\)](#). Please see the subsequent sections of this letter for our advice relating to SSSI features.

In considering the European site interest, Natural England advises that you, as a competent authority under the provisions of the Habitats Regulations, should have regard for any potential impacts that a plan or project may have¹. The [Conservation objectives](#) for each European site explain how the site should be restored and/or maintained and may be helpful in assessing what, if any, potential impacts a plan or project may have.

European site - River Wye SAC - No objection

Natural England notes that your authority, as competent authority under the provisions of the Habitats Regulations, has undertaken an Appropriate Assessment of the proposal, in accordance with Regulation 63 of the Regulations. Natural England is a statutory consultee on the Appropriate Assessment stage of the Habitats Regulations Assessment process.

Your appropriate assessment concludes that your authority is able to ascertain that the proposal will not result in adverse effects on the integrity of any of the sites in question. Having considered the assessment, and the measures proposed to mitigate for all identified adverse effects that could potentially occur as a result of the proposal, Natural England advises that we concur with the assessment conclusions, providing that all mitigation measures are appropriately secured in any permission given.

River Wye SSSI – No objection

Based on the plans submitted, Natural England considers that the proposed development will not damage or destroy the interest features for which the site has been notified and has no objection.

Other advice

Further general advice on the consideration of protected species and other natural environment issues is provided at Annex A.

We would be happy to comment further should the need arise but if in the meantime you have any queries please do not hesitate to contact us.

For any queries regarding this letter, for new consultations, or to provide further information on this consultation please send your correspondences to consultations@naturallengland.org.uk.

Yours sincerely

Sally Wintle
Consultations Team

¹ Requirements are set out within Regulations 63 and 64 of the Habitats Regulations, where a series of steps and tests are followed for plans or projects that could potentially affect a European site. The steps and tests set out within Regulations 63 and 64 are commonly referred to as the 'Habitats Regulations Assessment' process.

The Government has produced core guidance for competent authorities and developers to assist with the Habitats Regulations Assessment process. This can be found on the Defra website. <http://www.defra.gov.uk/habitats-review/implementation/process-guidance/guidance/sites/>

Annex - Generic advice on natural environment impacts and opportunities

Sites of Special Scientific Interest (SSSIs)

Local authorities have responsibilities for the conservation of SSSIs under [s28G of the Wildlife & Countryside Act 1981 \(as amended\)](#). The National Planning Policy Framework (paragraph 175c) states [that development likely to have an adverse effect on SSSIs should not normally be permitted](#). Natural England's SSSI Impact Risk Zones are a GIS dataset designed to be used during the planning application validation process to help local planning authorities decide when to consult Natural England on developments likely to affect a SSSI. The dataset and user guidance can be accessed from the [Natural England Open Data Geoportal](#). Our initial screening indicates that one or more Impact Risk Zones have been triggered by the proposed development, indicating that impacts to SSSIs are possible and further assessment is required. You should request sufficient information from the developer to assess the impacts likely to arise and consider any mitigation measures that may be necessary.

Biodiversity duty

Your authority has a [duty](#) to have regard to conserving biodiversity as part of your decision making. Conserving biodiversity can also include restoration or enhancement to a population or habitat. Further information is available [here](#).

Protected Species

Natural England has produced [standing advice](#)² to help planning authorities understand the impact of particular developments on protected species. We advise you to refer to this advice. Natural England will only provide bespoke advice on protected species where they form part of a SSSI or in exceptional circumstances.

Local sites and priority habitats and species

You should consider the impacts of the proposed development on any local wildlife or geodiversity sites, in line with paragraphs 171 and 174 of the NPPF and any relevant development plan policy. There may also be opportunities to enhance local sites and improve their connectivity. Natural England does not hold locally specific information on local sites and recommends further information is obtained from appropriate bodies such as the local records centre, wildlife trust, geoconservation groups or recording societies.

Priority habitats and Species are of particular importance for nature conservation and included in the England Biodiversity List published under section 41 of the Natural Environment and Rural Communities Act 2006. Most priority habitats will be mapped either as Sites of Special Scientific Interest, on the Magic website or as Local Wildlife Sites. The list of priority habitats and species can be found [here](#)³. Natural England does not routinely hold species data, such data should be collected when impacts on priority habitats or species are considered likely. Consideration should also be given to the potential environmental value of brownfield sites, often found in urban areas and former industrial land, further information including links to the open mosaic habitats inventory can be found [here](#).

Ancient woodland, ancient and veteran trees

You should consider any impacts on ancient woodland and ancient and veteran trees in line with paragraph 175 of the NPPF. Natural England maintains the Ancient Woodland [Inventory](#) which can help identify ancient woodland. Natural England and the Forestry Commission have produced [standing advice](#) for planning authorities in relation to ancient woodland and ancient and veteran trees. It should be taken into account by planning authorities when determining relevant planning applications. Natural England will only provide bespoke advice on ancient woodland, ancient and veteran trees where they form part of a SSSI or in exceptional circumstances.

² <https://www.gov.uk/protected-species-and-sites-how-to-review-planning-proposals>

³ <http://webarchive.nationalarchives.gov.uk/20140711133551/http://www.naturalengland.org.uk/ourwork/conservation/biodiversity/protectandmanage/habsandspeciesimportance.aspx>

Protected landscapes

For developments within or within the setting of a National Park or Area of Outstanding Natural Beauty (AONB), we advise you to apply national and local policies, together with local landscape expertise and information to determine the proposal. The National Planning Policy Framework (NPPF) (paragraph 172) provides the highest status of protection for the landscape and scenic beauty of National Parks and AONBs. It also sets out a 'major developments test' to determine whether major developments should be exceptionally be permitted within the designated landscape. We advise you to consult the relevant AONB Partnership or Conservation Board or relevant National Park landscape or other advisor who will have local knowledge and information to assist in the determination of the proposal. The statutory management plan and any local landscape character assessments may also provide valuable information.

Public bodies have a duty to have regard to the statutory purposes of designation in carrying out their functions (under (section 11 A(2) of the National Parks and Access to the Countryside Act 1949 (as amended) for National Parks and S85 of the Countryside and Rights of Way Act, 2000 for AONBs). The Planning Practice Guidance confirms that this duty also applies to proposals outside the designated area but impacting on its natural beauty.

Heritage Coasts are protected under paragraph 173 of the NPPF. Development should be consistent the special character of Heritage Coasts and the importance of its conservation.

Landscape

Paragraph 170 of the NPPF highlights the need to protect and enhance valued landscapes through the planning system. This application may present opportunities to protect and enhance locally valued landscapes, including any local landscape designations. You may want to consider whether any local landscape features or characteristics (such as ponds, woodland or dry stone walls) could be incorporated into the development in order to respect and enhance local landscape character and distinctiveness, in line with any local landscape character assessments. Where the impacts of development are likely to be significant, a Landscape & Visual Impact Assessment should be provided with the proposal to inform decision making. We refer you to the [Landscape Institute](#) Guidelines for Landscape and Visual Impact Assessment for further guidance.

Best and most versatile agricultural land and soils

Local planning authorities are responsible for ensuring that they have sufficient detailed agricultural land classification (ALC) information to apply NPPF policies (Paragraphs 170 and 171). This is the case regardless of whether the proposed development is sufficiently large to consult Natural England. Further information is contained in [GOV.UK guidance](#). Agricultural Land Classification information is available on the [Magic](#) website on the [Data.Gov.uk](#) website. If you consider the proposal has significant implications for further loss of 'best and most versatile' agricultural land, we would be pleased to discuss the matter further.

Guidance on soil protection is available in the Defra [*Construction Code of Practice for the Sustainable Use of Soils on Construction Sites*](#), and we recommend its use in the design and construction of development, including any planning conditions. Should the development proceed, we advise that the developer uses an appropriately experienced soil specialist to advise on, and supervise soil handling, including identifying when soils are dry enough to be handled and how to make the best use of soils on site.

Access and Recreation

Natural England encourages any proposal to incorporate measures to help improve people's access to the natural environment. Measures such as reinstating existing footpaths together with the creation of new footpaths and bridleways should be considered. Links to other green networks and, where appropriate, urban fringe areas should also be explored to help promote the creation of wider green infrastructure. Relevant aspects of local authority green infrastructure strategies should be delivered

where appropriate.

Rights of Way, Access land, Coastal access and National Trails

Paragraphs 98 and 170 of the NPPF highlights the important of public rights of way and access. Development should consider potential impacts on access land, common land, rights of way, coastal access routes and coastal margin in the vicinity of the development and the scope to mitigate any adverse impacts. Consideration should also be given to the potential impacts on any nearby National Trails, including the England Coast Path. The National Trails website www.nationaltrail.co.uk provides information including contact details for the National Trail Officer.

Environmental enhancement

Development provides opportunities to secure net gains for biodiversity and wider environmental gains, as outlined in the NPPF (paragraphs 8, 72, 102, 118, 170, 171, 174 and 175). We advise you to follow the mitigation hierarchy as set out in paragraph 175 of the NPPF and firstly consider what existing environmental features on and around the site can be retained or enhanced or what new features could be incorporated into the development proposal. Where onsite measures are not possible, you should consider off site measures. Opportunities for enhancement might include:

- Providing a new footpath through the new development to link into existing rights of way.
- Restoring a neglected hedgerow.
- Creating a new pond as an attractive feature on the site.
- Planting trees characteristic to the local area to make a positive contribution to the local landscape.
- Using native plants in landscaping schemes for better nectar and seed sources for bees and birds.
- Incorporating swift boxes or bat boxes into the design of new buildings.
- Designing lighting to encourage wildlife.
- Adding a green roof to new buildings.

You could also consider how the proposed development can contribute to the wider environment and help implement elements of any Landscape, Green Infrastructure or Biodiversity Strategy in place in your area. For example:

- Links to existing greenspace and/or opportunities to enhance and improve access.
 - Identifying opportunities for new greenspace and managing existing (and new) public spaces to be more wildlife friendly (e.g. by sowing wild flower strips)
 - Planting additional street trees.
 - Identifying any improvements to the existing public right of way network or using the opportunity of new development to extend the network to create missing links.
- Restoring neglected environmental features (e.g. coppicing a prominent hedge that is in poor condition or clearing away an eyesore).

PLANNING AND REGULATORY COMMITTEE

10 NOVEMBER 2020

PUBLIC SPEAKERS

APPLICATIONS RECEIVED

Ref No.	Applicant	Proposal and Site	Application No.	Page No.
6	L.T.F Properties Ltd. per Mr Graham Clark	The proposed erection of seven dwellings with garages and associated development at Monksbury Court Barns, Monkhide Village Road, Monkhide, Herefordshire, HR8 2TU	192765	13
		PARISH COUNCIL	MR J HUGHES (Yarkhill PC)	
		OBJECTOR	MR R DURMAN (Local resident)	
		SUPPORTER	MR O FRY (Applicant's agent)	
7	Mr Edward Evans	1) change of use of the barn from agricultural to office space. Works undertaken include replacement beams and glazing to open north gable end of barn. 2) formalise an historic change of use from riding arena to car park - works included tarmacking the arena. 3) access road. (all works retrospective) at Crumplebury Farm, Whitbourne, Worcester, WR6 5SG	200500	59
		PARISH COUNCIL	J BROMLEY (Whitbourne Parish Council)	
		OBJECTOR	L KERSHAW (Local resident)	
		SUPPORTER	MR J EVANS (Applicant)	

8	Mr Edward Evans per Mr Ben Greenaway,	Proposed removal of condition 4 and variation of condition 16 of planning permission p163902/f (demolition of 5no. Existing redundant agricultural outbuildings to facilitate expansion of existing restaurant and following events facilities: function suite, fine dining restaurant and lounge, conference space and 16no. Accommodation suites) at Crumplebury Farm, Whitbourne, Worcester, WR6 5SG	194408	85
PARISH COUNCIL J BROMLEY (Whitbourne Parish Council) OBJECTOR L KERSHAW (Local resident) SUPPORTER MR B GREENAWAY (Applicant's agent)				

9	Mr & Mrs Farr Per Mr Matt Tompkins	The erection of two dwellings and associated works including the demolition of the piggery building at The Piggeries, Llangarron, Herefordshire	201254	135
PARISH COUNCIL MR N MOORE (Llangarron PC) OBJECTOR MR C CALIGARI (Local Resident) SUPPORTER MR M TOMPKINS (Applicant's agent)				