

# AGENDA

## Planning Committee

Date: **Wednesday 26 June 2013**

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Time: **10.00 am**

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Place: **Council Chamber, Brockington, 35 Hafod Road,  
Hereford**

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Notes: Please note the **time, date** and **venue** of the meeting.

For any further information please contact:

**Ricky Clarke, Democratic Services Officer**

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If you would like help to understand this document, or would like it in another format or language, please call Ricky Clarke, Democratic Services Officer on 01432 261885 or e-mail [rclarke@herefordshire.gov.uk](mailto:rclarke@herefordshire.gov.uk) in advance of the meeting.

# Agenda for the Meeting of the Planning Committee

## Membership

**Chairman**

**Councillor PGH Cutter**

**Vice-Chairman**

**Councillor BA Durkin**

**Councillor PA Andrews**

**Councillor AM Atkinson**

**Councillor AN Bridges**

**Councillor PJ Edwards**

**Councillor DW Greenow**

**Councillor KS Guthrie**

**Councillor J Hardwick**

**Councillor JW Hope MBE**

**Councillor MAF Hubbard**

**Councillor RC Hunt**

**Councillor Brig P Jones CBE**

**Councillor JG Lester**

**Councillor RI Matthews**

**Councillor FM Norman**

**Councillor AJW Powers**

**Councillor GR Swinford**

**Councillor PJ Watts**



## AGENDA

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<b>1.</b>	<b>APOLOGIES FOR ABSENCE</b> To receive apologies for absence.	5 - 6
<b>2.</b>	<b>NAMED SUBSTITUTES (IF ANY)</b> To any details of Members nominated to attend the meeting in place of a Member of the Committee.	
<b>3.</b>	<b>DECLARATIONS OF INTEREST</b> To receive any declarations of interest by Members in respect of items on the agenda.	
<b>4.</b>	<b>MINUTES</b> To approve and sign the minutes of the meeting held on 5 June 2013.	7 - 32
<b>5.</b>	<b>CHAIRMAN'S ANNOUNCEMENTS</b> To receive any announcements from the Chairman.	
<b>6.</b>	<b>APPEALS</b> To be noted.	33 - 36
<b>7.</b>	<b>130907/O - PORTHOUSE FARM, TENBURY ROAD, BROMYARD, HEREFORDSHIRE</b>  An outline application for the erection of up to 127 dwellings (35% to be affordable) with all matters except access to be reserved for future consideration.	37 - 114
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<b>9.</b>	<b>130321/F - LAND AT STATION HOUSE, STOKE EDITH, HEREFORD, HR1 4EY</b>  Proposed re-building of former railway station to form 2 no. holiday units.	129 - 134
<b>10.</b>	<b>DATE OF NEXT MEETING</b>  Date of next site inspection - 16 July 2013  Date of next meeting - 17 July 2013	



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## HEREFORDSHIRE COUNCIL

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HEREFORDSHIRE COUNCIL

**MINUTES of the meeting of Planning Committee held at The Council Chamber, Brockington, 35 Hafod Road, Hereford on Wednesday 5 June 2013 at 10.00 am**

**Present:** Councillor PGH Cutter (Chairman)  
Councillor BA Durkin (Vice Chairman)

Councillors: PA Andrews, AM Atkinson, WLS Bowen, AN Bridges, PJ Edwards, KS Guthrie, J Hardwick, JW Hope MBE, MAF Hubbard, RC Hunt, Brig P Jones CBE, RI Matthews, FM Norman, AJW Powers, P Rone and PJ Watts

**In attendance:** Councillors MJK Cooper, JF Knipe and PJ McCaull

**1. APOLOGIES FOR ABSENCE**

Apologies were received from Councillors DW Greenow, JG Lester and GR Swinford.

**2. NAMED SUBSTITUTES (IF ANY)**

In accordance with paragraph 4.1.23 of the Council's Constitution, Councillors P Rone and WLS Bowen attended the meeting as substitute members for Councillors JG Lester and GR Swinford.

**3. DECLARATIONS OF INTEREST**

7. 130351/F - Land South of the B4349 and West of the C1221, Kingstone, Herefordshire, HR2 9HP.

Councillor FM Norman, Non-Pecuniary, The Councillor advised that she had met the applicant several times.

Councillor J Hardwick, Non-Pecuniary, The Councillor advised that he knew the applicant.

Councillor MAF Hubbard, Non-Pecuniary, The Councillor advised that he had met the applicant several times.

8. 130940/CD and 130983/CD - Leominster Infant and Junior Schools, Hereford Road, Leominster.

Councillor Brig P Jones CBE, Non-Pecuniary, The Councillor advised that he was the Chair of Governors for the Mortimer School.

Councillor FM Norman, Non-Pecuniary, The Councillor advised that she was a Governor for the Mortimer School.

Councillor RC Hunt, Disclosable Pecuniary, The Councillor advised that he was a Governor for the Leominster Junior School.

11. 130779/F - Land at Orchard House, Credenhill, Herefordshire.

Councillor J Hardwick, Non-Pecuniary, The Councillor advised that he knew the applicant.

12. 130870/N - Leadon Court Farm, Fromes Hill, Herefordshire, HR8 1QJ.

Councillor J Hardwick, Non-Pecuniary, The Councillor advised that he knew the applicant.

#### 4. MINUTES

**RESOLVED: That the Minutes of the meeting held on 15 May 2013 be approved as a correct record and signed by the Chairman.**

#### 5. CHAIRMAN'S ANNOUNCEMENTS

The Chairman advised the Committee that cakes were being sold in the glass link in order to raise money for research into motor neurone disease.

#### 6. APPEALS

The Planning Committee noted the report.

#### 7. 130351/F - LAND SOUTH OF THE B4349 AND WEST OF THE C1221, KINGSTONE, HEREFORDSHIRE, HR2 9HP

The Principal Planning Officer gave a presentation on the application and updates / additional representations received following the publication of the agenda were provided in the update sheet.

Members had asked for clarification on a number of points at the recent Planning Committee Site Inspection. The Principal Planning Officer advised that:

- The distance from the development to the community centre and shop was 600m, the distance to the Doctors' Surgery and school was less than 150 metres.
- The land transfer to the housing association had been put on hold pending the outcome of the proposed application and an additional appeal for 35 dwellings at Kingstone.
- The proposed cladding, Cedar and UK grown Douglas Fir, would have a life span of approximately 60 years.
- The Passivhaus standard was the most rigorous in Europe and resulted in heating costs of £70 per year.
- There were currently 470 households in Kingstone and the population, based upon average occupancy of 2.3 persons, was estimated at 1081 people, making it the fifth largest village in the County.

In accordance with the criteria for public speaking, Mr Wright, representing Kingstone and Thrupton Parish Council and Mr Barton, a neighbouring resident, spoke in objection to the application and Mr Hines and Mr Murrin-Earp, the applicant and a supporter, spoke in support.

In accordance with paragraph 4.8.2.2 of the Council's Constitution, Councillor JF Knipe, the local ward member, commented on a number of issues, including:

- The local residents were unhappy with the application with 95% of local people in objection to it.
- A freedom of information request had identified that £3000 had been paid to the Planning Department in 2011 for pre-application advice.
- Reference had also been made in the report to CIL contributions to the Council.
- Surprised that officers had not declared an interest in the application.
- Further concerned that it appeared that the case officer was reviewing his own work.

- The local MP had also stated that the application had been handled incorrectly.
- A comment was made regarding an email exchange between the case officer and the Housing Development Manager, with particular mention made of the informal tone of the correspondence.

The Chairman and Vice-Chairman interjected on three occasions to advise the local ward member in respect of comments made about the case officer. The local ward member was further advised to limit his comments to matters regarding the application. Following the advice from the Chairman and Vice-Chairman the local ward member made the following comments:

- 35 new homes in the area had been refused by the Planning Committee recently.
- The reasons given for refusing the previous application in Kingstone included; the application was outside of the settlement boundary; the application did not satisfy the exceptional criteria as set out in the NPPF; the application was contrary to 3,5 and 6 of policy H10 of the UDP; the proposed development was a mixed development; the application was deficient in terms of paragraph 14 of the NPPF; the impact would outweigh the benefits of the application; the application was contrary to UDP policies DR1, H4 and H13 in terms of character and size, and the application was contrary to UDP policy CF2.
- The same reasons for refusal should be given to refuse the proposed application.
- The Parish Council's concerns in respect of the application were reiterated.
- Mr Madison had recently been contacted by Mr Hines and Mr Pryce regarding the sports field. Mr Madison's view had not changed and he still had concerns regarding the proposed path.
- The applicants had failed to understand the importance of sport to the people of Kingstone.
- There were safety issues with people cycling in close proximity to football pitches.
- The case officer had omitted some statistics in his presentation regarding the need for affordable houses in the area. The figure for Kingstone was 15 units required.
- The spend was estimated at being £11m prior to a house being sold on the development.
- Some concern was expressed regarding the change in business name since the correspondence with the Council had first begun in 2008.

The debate was opened with a Member voicing his concerns in respect of the scale and form of the proposed application and the detrimental impact it would have on the village of Kingstone. Concerns were also expressed in respect of drainage and impact on the road network.

Another Member addressed the Committee with an opposing view. She considered that the application was an exemplar of sustainable development and was welcomed at a time when the world was facing serious climate change.

Some Members of the Committee continued to voice their concerns in respect of the application. Particular comment was made regarding the impact the application would have on the existing drainage network; the impact the application would have on the road network in the South-Wye area; concern regarding the design, scale and mass of the development; issues regarding a lack of jobs in the area and the large number of proposed dwellings in relation to the affordable units required in Kingstone. It was also

considered that 150 additional houses in a small village was too significant an increase and that the development should be taken stage by stage in consultation with the local residents.

One Member of the Committee made a significant number of points in support of the application, including:

- The application site would be developed at some stage in the future.
- The application was visionary.
- In future energy costs would continue to rise.
- Visited an existing Passivhaus in the County, which was a retrofit design but had still benefitted from a 70% reduction in fuel bills.
- Shared space had been proved to work in Cheshire where a busy junction had been converted to a shared space with no incidents.
- If there were concerns regarding the loss of any sports facilities then Sport England would object and the application would not be able to proceed.
- The professional advice was that the drainage proposal was acceptable.
- The Traffic Manager was happy with the access and egress to the site.
- The houses need to be aligned in a certain way to ensure sufficient light to ensure the Passivhaus standard was maintained.
- The density of the proposed dwelling was lower than the rest of the village.
- The application would be good for the County with Herefordshire having the first Passivhaus development in the Country.

In response to a question, the Principal Planning Officer advised that the development would take place in three phases; each phase would then be split into sub-phases. This would result in approximately 15 – 20 dwellings being constructed each year. Condition 4 of the recommendation addressed the proposed phasing and could be amended if the Committee wished for further restrictions to be put in place. In response to a further question he advised that all of the proposed dwellings would be constructed in a new production facility at Rotherwas.

The Committee continued to debate the application, some members spoke in support and reiterated the comments made previously, others spoke in objection and shared the concerns previously raised.

Councillor Knipe was given the opportunity to close the debate. He reiterated his opening remarks and made additional comments, including:

- Members had mentioned that the application was an improvement on a standard housing development, this was not agreed with as a company such as Barrett Homes had 50 years' experience in house building, the applicant in this case had none.
- The proposed development was too large.
- The local residents were in objection to the application.

**RESOLVED:**

**That officers named in the scheme of delegation be authorised to issue planning permission subject to:**



**1. The completion of a planning obligation under Section 106 of the Town and Country Planning Act 1990 in accordance with the Heads of Terms appended to this report.**

**2. The conditions set out in this report and any varied or additional conditions considered necessary by officers.**

- 1. A01 Time limit for commencement (full permission)**
- 2. B01 Development in accordance with the approved plans**
- 3. B07 Section 106 Agreement**
- 4. No development shall commence until a plan has been submitted to and approved in writing by the local planning authority identifying the construction phasing of the development. The development shall be constructed in accordance with the agreed phasing plan unless otherwise agreed in writing with the local planning authority.**

**Reason: To ensure the acceptable phasing of the construction and to comply with Policy DR1 of the Herefordshire Unitary Development Plan.**

- 5. C01 Samples of external materials**
- 6. E03 Site observation - archaeology**
- 7. F08 No conversion of garage to habitable accommodation**
- 8. G02 Retention of trees and hedgerows**
- 9. G11 Landscaping scheme - implementation**
- 10. G14 Landscape management plan**
- 11. The business floorspace of each live/work unit shall be finished and ready for occupation before the residential floorspace for that unit is occupied and the residential use shall not precede commencement of the business use.**

**Reason: To ensure the business floorspace is constructed and brought into use concurrently with the residential to achieve the live/work format and comply with Sections 1 and 3 of the NPPF.**

- 12. The business floorspace of each live/work unit shall not be used for any purpose other than for purposes within Class B1 in 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: To safeguard the amenities of the locality and to comply with policy DR2, E8 and E9 of the Herefordshire Unitary Development Plan.**

- 13. The residential floorspace of each live/work unit shall not be occupied other than by a person solely or mainly employed, or last employed in the business occupying the business floorspace of that unit, a widow or widower of such a person, or any resident dependants.**

**Reason: To ensure the linkages between the residential and business floorspace is retained and to protect the amenity of nearby properties in accordance with UDP policy DR2.**

- 14. F14 Removal of permitted development rights (fences and frontage hardstanding)**
- 15. H03 Visibility splays**
- 16. H08 Access closure**
- 17. H11 Parking - estate development (more than one house)**
- 18. H18 On site roads - submission of details**
- 19. No development shall take place until a construction method statement has been submitted to, and approved in writing by, the local planning authority. The approved statement shall include details of deliveries and timing,  
a) construction compound(s)  
b) hours of work,  
c) traffic and parking management scheme and  
d) measures to keep the highway free of mud.  
The approved statement shall thereafter be implemented for the duration of the construction unless otherwise agreed with the local planning authority in writing.**

**Reason: In the interest of the amenity of the area and highway safety and to comply with policies DR3 & DR4 of the Herefordshire Unitary development Plan.**

- 20. H30 Travel plans**
- 21. No construction works shall commence on any phase of the development that is to be connected to the public sewage system until a hydraulic modelling assessment has been completed by the developer in consultation with Dwr Cymru Welsh water in order to establish a point of discharge of the new foul drainage system serving the proposed development to a point of adequacy on the existing public sewerage system, together with any necessary associated foul sewerage infrastructure works.**

**There shall be no beneficial use of any buildings on site that are to be connected to the public sewerage system until any necessary foul sewerage infrastructure works required by the hydraulic modelling assessment have been completed and approved by Dwr Cymru Welsh Water and the local planning authority has been informed in writing of its completion.**

**Reason: To ensure the proposed development does not adversely affect the integrity of the existing public sewage system and to prevent pollution of the environment and to comply with policy DR4 of the Herefordshire Unitary Development Plan.**

- 22. I18 Scheme of foul and surface water drainage disposal**
- 23. I33 External lighting**
- 24. I45 Restriction of open storage**

- 25. I51 Details of slab levels
- 26. K2 Nature Conservation - site protection
- 27. K4 Nature Conservation - Implementation
- 28. F06 Restriction on Use

**Reason for Approval**

- 1. This is an innovative development proposal that is a radical and positive departure from conventional modern housing developments. The proposal is a mixed use development that embraces all aspects of the NPPF and Policies:

S1	-	Sustainable Development
S2	-	Development Requirements
S3	-	Housing
S4	-	Employment
S6	-	Transport
S7	-	Natural and Historic Heritage
S8	-	Recreation, Sport and Tourism
S10	-	Waste
S11	-	Community Facilities and Services
DR1	-	Design
DR2	-	Land Use and Activity
DR3	-	Movement
DR4	-	Environment
DR5	-	Planning Obligations
DR7	-	Flood Risk
DR13	-	Noise
DR14	-	Lighting
H4	-	Main Villages: Settlement Boundaries
H7	-	Housing in the Countryside Outside Settlements
H9	-	Affordable Housing
H13	-	Sustainable Residential Design
H16	-	Car parking
H19	-	Open Space Requirements
E8	-	Design Standards for Employment Sites
E10	-	Employment Proposals in or Adjacent to Main Villages
TCR14	-	Village Commercial Facilities
T1	-	Public Transport Facilities
T6	-	Walking
T7	-	Cycling
T8	-	Road Hierarchy
T11	-	Parking Provision
LA2	-	Landscape Character
LA3	-	Setting of Settlements
LA5	-	Protection of Trees, Woodlands and Hedgerows
LA6	-	Landscaping Schemes
NC1	-	Biodiversity and Development
NC3	-	Sites of National Importance
NC4	-	Sites of Local Importance
NC6	-	Biodiversity Action Plan Priority Habitats and Species
NC8	-	Habitat Creation, Restoration and Enhancement

<b>NC9</b>	-	<b>Management of Features for the Landscape Important for Fauna and Flora</b>
<b>ARCH 1</b>	-	<b>Archaeological Assessment and Field Evaluations</b>
<b>ARCH6</b>	-	<b>Recording of archaeological remains</b>
<b>RST1</b>	-	<b>Criteria for Recreation, Sport and Tourism</b>
<b>Development</b>		
<b>RST3</b>	-	<b>Standards for Outdoor Playing and Public Open Space</b>
<b>W11</b>	-	<b>Development and Waste Implications</b>
<b>CF2</b>	-	<b>Foul Drainage</b>
<b>CF5</b>	-	<b>New Community Facilities</b>

and is capable of delivery without compromising on the quality, design and functionality of the development. All technical matters including drainage, landscape, biodiversity, transport and employment have been addressed or can be addressed through conditions and the Section 106 Agreement. The development will also maintain and enhance the vitality and harmony of the community without harming its physical or social characteristics. Finally, the environmental sustainability of the buildings in particular is exemplar and would set the benchmark for other developments both within the county and elsewhere to follow.

Whilst the considerable local objection is acknowledged, the application is considered compliant with the NPPF and the relevant UDP policies that are consistent with the NPPF and having regard to the Councils deficit in deliverable housing land and applying the NPPF test of a presumption in favour of sustainable development, the development is considered acceptable.

#### **INFORMATIVES:**

1. **The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against planning policy and any other material considerations. Negotiations in respect of matters of concern with the application (as originally submitted) have resulted in amendments to the proposal. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.**
  2. **N02 Section 106 Obligation**
  3. **HN08 Section 38 Agreement & Drainage details**
  4. **HN07 Section 278 Agreement**
8. **130940/CD AND 130983/CD - LEOMINSTER INFANT AND JUNIOR SCHOOLS, HEREFORD ROAD, LEOMINSTER**

The Principal Planning Officer gave a presentation on the application and updates / additional representations received following the publication of the agenda were provided in the update sheet. Particular reference was made to the comments of Welsh Water which required two additional conditions to be added to the recommendation.

In accordance with the criteria for public speaking, Mr Parker and Mr Wright spoke in support of the application.

In accordance with paragraph 4.8.2.2 of the Council's Constitution, Councillor PJ McCaull, the local ward member, commented on a number of issues, including:

- The proposal was a vast improvement on the previously withdrawn application.
- The application was needed as the current school was deteriorating.
- The proposed design was the best for the budget available.
- The school was now contained within the site and did not spread onto the neighbouring field.

The Committee discussed the application and were fully in support of it. Some comments were made regarding the possibility of adding solar PV panels at a later stage; the importance of a sustainable travel plan and the possibility of a 20mph limit around the school.

Councillor McCaull was given the opportunity to close the debate. He reiterated his opening remarks and requested that the application be approved.

## **RESOLVED**

**For planning application 130940/CD:**

**That subject to there being no objection from Sport England, planning permission be granted subject to the following conditions:**

1. **A01 Time limit for commencement (full permission)**
2. **B01 Development in accordance with the approved plans**
3. **C01 Samples of external materials**
4. **G03 Retention of existing trees/hedgerows**
5. **G04 Protection of trees/hedgerows that are to be retained**
6. **G10 Landscaping scheme**
7. **G11 Landscaping scheme - implementation**
8. **Prior to the commencement of the development hereby approved a Construction & Delivery Traffic Management Plan shall be submitted to and approved in writing by the local planning authority. The plan should cover the following points:**
  - a. **Details of a routing agreement with construction and delivery vehicle operatives to ensure that all traffic enters and leaves the site via Hereford Road and Southern Avenue.**
  - b. **The method to segregate construction and delivery vehicles from school traffic at the point of access onto Hereford Road.**
  - c. **The arrival and departure of construction and delivery vehicles will not be permitted between 0815 to 0915 and 1445 to 1615 Monday to Friday.**

**Reason: In the interests of highway safety so that potential conflicts between construction and school traffic are avoided and to comply with Policy DR3 of the Herefordshire Unitary Development Plan.**

9. H21 Wheel washing
10. H27 Parking for site operatives
11. H29 Secure covered cycle parking provision
12. H30 Travel plans
13. I16 Restriction of hours during construction
14. I41 Scheme of refuse storage (commercial)
15. I43 No burning of material/substances
16. I55 Site Waste Management
17. Prior to the commencement of the development hereby approved a scheme for the comprehensive and integrated drainage of the site, showing how foul water, surface water and land drainage will be dealt with has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

**Reason: To ensure that effective drainage facilities are provided and to comply with Policy DR4 of the Herefordshire Unitary Development Plan.**

- 18 L02 No surface water to connect to public system
- 19 L03 No drainage run-off to public system

**Reasons for Approval:**

1. It is considered that the proposal would result in the significant enhancement of the existing facilities, would be of an appropriate scale in relation to the needs of the local community, is well related to the settlement that it serves and would not adversely impact upon the residential amenity of neighbouring residents in accordance with the principles set out in Policy CF5 of the Herefordshire Unitary Development Plan. This revised proposal addresses in full the previous concerns raised in relation to the visual impact and implications for biodiversity. The position of the building within the school grounds means that it will lie behind existing development and does not project beyond the clear edge of development that is currently defined by the southerly hedge. This reflects the landscape character of the area, whilst the retention of the hedge minimises the loss of a biodiversity asset. The scheme demonstrates the use of sustainable design methods and consequently the proposal complies with Policies S1, S2, S11, DR1, LA2, LA3, LA5, LA6, NC1, NC6, NC7, NC8 and NC9 of the Herefordshire Unitary Development Plan.
2. Matters relating to drainage arrangements and potential flooding of neighbouring property arising from surface water run-off have been carefully considered. The applicant's drainage consultant has been able to demonstrate that flow rates from the proposal would be lower than as presently exists. The methods proposed to be employed to control surface

water discharges in the event of high levels of rainfall are considered to be appropriate, subject to the submission of a detailed scheme. The scheme therefore accords with Policies DR4 and DR7 of the Herefordshire Unitary Development Plan.

3. The provision of a pedestrian and cycle link from the existing point of access into the Junior School on George Street to the new site will provide parents with a legitimate alternative to car usage. The parking area accessed via Hereford Road will also be available for drop off / pick up and it is considered that these combined elements will encourage sustainable travel methods. The proposal accords with Policies S1, DR3, E15, CF5 and T14 of the Herefordshire Unitary Development Plan.
4. In other respects the proposal is considered to be compatible with the surrounding residential environment and will not give rise to any significant effects upon the residential amenity of neighbouring residents in accordance with Policies CF5 and DR2 of the Herefordshire Unitary Development Plan.
5. It is considered that the policies of the Herefordshire Unitary Development Plan are consistent and therefore in accordance with the guidance provided by the National Planning Policy Framework.

**Informatives:**

1. The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against planning policy and any other material considerations, including any representations that have been received. It has subsequently determined to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.
2. HN25 Travel Plans
3. HN27 Annual Travel Plan Reviews
4. N20 Site Waste Management
5. If development works are perceived to be likely to endanger members of the public then a temporary closure order must be applied for from the Public Rights of Way Manager, Herefordshire Council, Unit 3, Thorn Business Park, Rotherwas Industrial Estate, Hereford, HR2 6JT (tel 01432 845900), at least six weeks in advance of works commencing.
6. The applicants should ensure that their contractors are aware of the line of the public right of way and that the right of way must remain at its historic width and suffer no encroachment or obstruction during the works or at any time after completion. No vehicles, materials debris, etc shall be stored on the line of the footpath at any time.

For planning application 130983/CD:

That subject to there being no objection raised by Sport England, planning permission be granted subject to the following conditions:



1. **A01 Time limit for commencement (full permission)**
2. **The recommendations set out in the ecologist's reports dated August 2012 should be followed in relation to the identified protected species [bats, great crested newts etc]. Prior to commencement of the development, a full working method statement and habitat enhancement scheme should be submitted to and be approved in writing by the local planning authority, and the work shall be implemented as approved.**

**Reason: To ensure that all species are protected having regard to the Wildlife and Countryside Act 1981 (as amended), the Conservation of Habitats and Species Regulations 2010 and Policies NC1, NC6 and NC7 of the Herefordshire Unitary Development Plan. To comply with Policies NC8 and NC9 of Herefordshire's Unitary Development Plan in relation to Nature Conservation and Biodiversity and to meet the requirements of the NPPF and the NERC Act 2006**

#### **Reasons for approval**

1. **The phased re-development of the area currently occupied by the existing school buildings will provide enhanced open space provision over and above that which currently exists. Although there will be a short term reduction whilst the new school building is constructed, this is necessary in order to enable the schools to continue operation and would be appropriately mitigated by the improvements that will be achieved. Therefore the scheme for the provision of sports pitches is compliant with RST4.**

#### **Informatives:**

1. **The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against planning policy and any other material considerations, including any representations that have been received. It has subsequently determined to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.**
2. **N11C – General**
3. **An appropriately qualified and experienced ecological clerk of works should be appointed (or consultant engaged in that capacity) to oversee the ecological mitigation work.**

#### **9. S123592/O - LAND OFF BREINTON LEE, KINGS ACRE ROAD, HEREFORD**

The Principal Planning Officer gave a presentation on the application and updates / additional representations received following the publication of the agenda were provided in the update sheet.

In accordance with the criteria for public speaking, Mr Geeson, representing Breinton Parish Council and Col. Farnes, a neighbouring resident, spoke in objection to the application and Mrs Tagg, the applicant, spoke in support.

In accordance with paragraph 4.8.2.2 of the Council's Constitution, Councillor RI Matthews, the local ward member, commented on a number of issues, including:



- Three previous applications had been refused in the area as they were contrary to UDP Policy H7. This application was also contrary to H7.
- The application must be considered on its merits.
- There had been unrecorded accidents on Kings Acre Road so the figures provided were not accurate.
- The Transport Manager had admitted that there was an issue with visibility hence why he had proposed closing part of the well-used layby.
- The application was contrary to DR3, DR4 and DR7 of the UDP.
- There was a serious issue with flooding in the area.
- There were a number of badger sets in the area which would be disturbed through the development.
- There were concerns regarding sewerage.
- An email had been received from the residents of 304 Kings Acre Road voicing their concern in respect of the proposed drainage works and stating that they may need to terminate the drain where it entered their land or take out an injunction to stop additional water being piped onto their land.
- The drainage issues would be moved to the other side of the road and not actually addressed.

Members discussed the application and had concerns regarding the drainage issues raised and also in respect of access and egress to the site. They therefore decided to defer the application pending further discussions with the applicant.

The Principal Planning Officer explained the reasons for the existing drainage problem in the area and advised that the changes to the drainage strategy had resulted from the concerns raised by local residents. He added that the site was capable of being developed as the surface water drainage could be collected and controlled to discharge at greenfield rates and therefore the proposals would represent a betterment.

The legislation relating to badgers was also explained and the Committee were advised that any works affecting the setts would need to be carried out under licence from Natural England.

Councillor Matthews was given the opportunity to close the debate. He reiterated his opening remarks and made additional comments, including:

- The drainage issues needed to be resolved before the application could be determined.

## **RESOLVED**

**That determination of the application be deferred pending further discussions with the applicant in respect of highway and drainage concerns.**

### **10. N123065/F - LAND ADJOINING PEPPER PLOCK, WEOBLEY, HEREFORDSHIRE**

The Senior Planning Officer gave a presentation on the application and updates / additional representations received following the publication of the agenda were provided in the update sheet.

In accordance with the criteria for public speaking, Mr Brenner, representing Weobley Action Group, spoke in objection to the application.

In accordance with paragraph 4.8.2.2 of the Council's Constitution, Councillor MJK Cooper, the local ward member, commented on a number of issues, including:

- The application was a proposed development outside of the settlement boundary in an area where there was already a high number of affordable housing.
- 95% of the local residents were against the application.
- Objections had been received from the Council's Ecology Officer and the Senior Landscape Officer.

The debate was opened with a member voicing his concerns in respect of the application and in particularly the loss of the historic meadow, hedgerow and field pattern. Concern was also expressed regarding development outside of the settlement boundary.

Other Members discussed the application and supported the officer's recommendation. They considered that an appeal could be difficult to defend due to the Council's current lack of a five year housing supply as required under the National Planning Policy Framework. It was also noted that although 40 yards of hedgerow was being removed a larger section was being planted.

In response to a question, the Senior Planning Officer advised that the existing footpath would be diverted around the boundary of the proposed dwelling. In response to a further question he advised that there had been a delay due to the need to undertake a newt survey, this had now been completed and conditions had been recommended accordingly.

Some concern was expressed regarding the effectiveness of replanting hedgerows. The Committee also noted that the proposed dwellings were not of a high standard in terms of sustainable features.

Councillor Cooper was given the opportunity to close the debate. He reiterated his opening remarks and asked the Committee to consider the concerns of the local residents.

## **RESOLVED**

**That subject to the completion of a S106 Agreement, in accordance with the attached Draft Heads of Terms, planning permission be granted subject to the following conditions:**

1. **A01 Time limit for commencement (full permission)**
2. **B01 Development in accordance with the approved plans**
3. **C01 Samples of external materials**
4. **L01 Foul/surface water drainage**
5. **L02 No surface water to connect to public system**
6. **L03 No drainage run-off to public system**
7. **H13 Access, turning area and parking**
8. **G09 Details of Boundary treatments**
9. **G12 Hedgerow planting**

10. **Prior to commencement of the development, a full working method statement should be submitted to and be approved in writing by the local planning authority, and the work shall be implemented as approved.**

**Prior to commencement of the development, a habitat enhancement scheme should be submitted to and be approved in writing by the local planning authority, and the work shall be implemented as approved.**

**Reasons: To ensure that all species are protected having regard to the Wildlife and Countryside Act 1981 (as amended), the Conservation of Habitats and Species Regulations 2010 and Policies NC1, NC6 and NC7 of the Herefordshire Unitary Development Plan.**

**To comply with Policies NC8 and NC9 of Herefordshire's Unitary Development Plan in relation to Nature Conservation and Biodiversity and to meet the requirements of the NPPF and the NERC Act 2006.**

11. **I16 Restriction of hours during construction**

12. **H28 Public rights of way**

#### **Reasons for Approval**

1. **Having regard to the principle of delivering affordable housing on the edge of a designated Main Village, the development is considered to be in accordance with the requirements of the Herefordshire Unitary Development Plan, Supplementary Planning Guidance, the Weobley Parish Plan and the National Planning Policy Framework.**
2. **There is an identified need for the provision of affordable housing in Weobley, and this development, subject to the completion of a Section 106 Agreement will contribute towards meeting the need and secure its availability in perpetuity.**
3. **It is considered that the acknowledged localised adverse impact upon the historic field pattern of the landscape in this particular location is outweighed by the needs for affordable housing and in reaching this decision, it was noted that the site, whilst located within the Weobley Conservation Area, does not have the benefit of any other landscape designation.**
4. **The development is considered acceptable having regard to the residential amenity of neighbouring residents, foul and surface water drainage arrangements, the impact upon the identified biodiversity value of the site and the mitigation proposals that would be secured by condition.**
5. **The access and parking arrangements are such that there would be no adverse impact upon the local road network.**
6. **On balance the development is considered to be in accordance with Policies S1, S7, DR1, DR2, DR3, DR4, H4, H7, H9, H10, HBA6, LA2, LA3, LA5, LA6, NC1, NC6, NC7, NC8 and NC9 of the Herefordshire Unitary Development Plan, the National Planning Policy Framework and other adopted Supplementary Planning Guidance and Documentation.**

#### **INFORMATIVES:**

- 1 **The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against planning policy and any other material considerations. Negotiations in respect of matters of concern with the application (as originally submitted) have resulted in amendments to the proposal. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.**
- 2 **HN04 Private apparatus within highway**

**11. 130779/F - LAND AT ORCHARD HOUSE, CREDENHILL, HEREFORDSHIRE**

The Principal Planning Officer gave a presentation on the application and updates / additional representations received following the publication of the agenda were provided in the update sheet.

In accordance with paragraph 4.8.2.2 of the Council's Constitution, Councillor RI Matthews, the local ward member, commented on a number of issues, including:

- There was no objection to the application.

In response to a question, the Head of Neighbourhood Planning advised that the application had been brought before the Committee as it was contrary to policy H7 of the Unitary Development Plan.

During the debate members considered the merits of an occupancy tie condition being added to the resolution. An amendment to the original motion, to approve the application in accordance with the case officer's recommendation, requesting an occupancy tie condition was supported, and therefore the resolution as set out below was approved.

**RESOLVED**

**That planning permission be granted subject to the following conditions:**

1. **A01 Time limit for commencement (full permission) - 1 year**
2. **B02 Development in accordance with approved plans and materials**
3. **C01 Samples of external materials**
4. **G10 Landscaping scheme**
5. **G11 Landscaping scheme – implementation**
6. **F28 – Occupation ancillary to existing dwelling only**

**Reason for Approval**

1. **The proposal fails to comply, in principle, with policies H4 and H7 of the Herefordshire Unitary Development Plan, however significant weight has been given to the guidance provided by the National Planning Policy Framework that clearly identifies that where sites are considered to be sustainably located, and where they comply with other relevant policies, there should be a presumption in favour of sustainable development. The**

sites development accords with policies in relation to character of the area, highway safety and relationship with neighbouring properties namely policies DR1, DR2, DR3, DR4, H13, LA5 and LA6 of the Herefordshire Unitary Development Plan. In conclusion, whilst the application would be contrary to Saved Policies of the Herefordshire Unitary Development Plan, the absence of a 5-year supply of housing land and the sustainable location of the site are of sufficient weight to grant planning permission in this case.

**12. 130870/N - LEADON COURT FARM, FROMES HILL, HEREFORDSHIRE, HR8 1QJ**

The Principal Planning Officer gave a presentation on the application and updates / additional representations received following the publication of the agenda were provided in the update sheet.

**RESOLVED**

**That planning permission be granted subject to the following conditions:**

- 1. A01 Time limit for commencement (full permission)**
- 2. B01 Development in accordance with the approved plans**
- 3. The external surface of the above-ground kiosk shall be coloured Midnight Green (BS4800 12B29) or a similar dark colour to be approved in writing in advance by the local planning authority.**

**Reason: To protect the visual amenity of the area and to ensure the development complies with policy DR1 of the Herefordshire Unitary Development Plan.**

- 4. G02 Retention of trees and hedgerows**
- 5. G09 Details of Boundary treatments**
- 6. The waste-water treatment plant hereby approved shall not be brought into use unless or until a scheme for the final discharge of treated effluent has been submitted to and approved in writing by the local planning authority. The scheme shall include details of the method of discharge and the means of disposal.**

**Reason: To ensure satisfactory final drainage arrangements are provided and to prevent pollution, in accordance with policy DR4 of the Herefordshire Unitary Development Plan.**

- 7. G11 Implementation of submitted landscaping scheme**
- 8. H15 Turning and parking: change of use - commercial**
- 9. I32 Details of floodlighting/external lighting**

**Reason for Approval**

- 1. The proposal has been considered with reference to all the key issues outlined in this report, including site choice and the overall low risk of adverse effects. Particular regard has been given to the wine-making farm diversification project and the clear need for adequate management of**

waste water and pollution prevention, along with improvements to car parking arrangements. Drainage aspects are regulated by the Environment Agency through consents and permits issued by that body. There is no reason to suppose that the proposal is not capable of compliance, and the finer operational detail lies outside of the planning system. National and local policies support sustainable development and the rural economy.

The applicant sought pre-application advice in advance of submission. The local planning authority has engaged in positive, pro-active negotiation through this provision. The applicant has heeded the written and verbal advice given. No objections have been received. In light of this the proposal is considered to accord with, or be capable of compliance with, policies S1, S2, S10, DR1, DR2, DR4, DR7, DR14, T8, T11, LA2, LA5, LA6, NC1, W1 and CF2 of the Herefordshire Unitary Development Plan. It is also considered to accord with the National Planning Policy Framework with particular reference to paragraphs 6 to 14, section 3 (Supporting a prosperous rural economy) and section 11 (Conserving and enhancing the natural environment). Paragraphs 120 to 125 stress the need to prevent pollution and meet environmental protection legislation. As a result, the local planning authority has been able to grant planning permission subject to conditions.

#### **INFORMATIVES:**

1. **N11C General**
2. **Final discharge is subject to additional Environment Agency consent. The effluent treatment system hereby approved may not be implemented unless or until such permits and consents as are required have been issued, in addition to submission and approval of final discharge methodology required under condition 6 above.**

#### **13. 131021/F - PEGASUS JUNIORS FOOTBALL, OLD SCHOOL LANE, HEREFORD, HR1 1EX**

The Development Manager gave a presentation on the application and updates / additional representations received following the publication of the agenda were provided in the update sheet.

In accordance with paragraph 4.8.2.2 of the Council's Constitution, Councillor PA Andrews, one of the local ward members, commented on a number of issues, including:

- The club had been at its current site since 2000.
- There had never been any complaints in respect of the club.
- The application was supported.

In response to a question, the Development Manager advised that a condition limiting hours of work had not been recommended and that this was an established recreational use in a mixed commercial and residential area with the nearest dwelling being a significant distance away.

Councillor Andrews was given the opportunity to close the debate. She reiterated her opening remarks and requested that the application be approved.

#### **RESOLVED**

That planning permission be granted subject to the following conditions:

1. **A01 Time limit for commencement (full permission)**
2. **B03 Amended plans - Site Location Plan, Site layout, New Dugouts, indicative hit and miss tanalised wood fencing with metal post, tea room and hospitality area - roof plan, end elevations, floor plan, drawing numbers TL 001 and TL 002 (amended - received 29.4.2013)**

**Reason for Approval**

1. **The proposal comprises the upgrading of existing sporting facilities and there would be no adverse impact upon amenity, highway safety or hazardous installations. The scheme accords with Herefordshire Unitary Development Plan policies S1, S2, S8, DR1, DR2, DR3, RST1 and CF6 and chapters 7 and 8 of the National Planning Policy Framework.**

**INFORMATIVES:**

1. **The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against planning policy and any other material considerations, including any representations that have been received. It has subsequently determined to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.**

**14. DATE OF NEXT MEETING**

The Planning Committee noted the date of the next meeting.

**APPENDIX 1 - SCHEDULE OF COMMITTEE UPDATES**

The meeting ended at Time Not Specified

**CHAIRMAN**





# PLANNING COMMITTEE

5 June 2013

## 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.

**130351/F - ERECTION OF 150 DWELLINGS (MIX OF 1-5 BED), NEW EMPLOYMENT (COMMERCIAL AND LIVE WORK UNITS), COMMUNITY BUILDING, 1.4 HECTARES OF PUBLIC OPEN SPACE, COMMUNITY ORCHARDS AND ALLOTMENTS, PLAY AREAS, CYCLE & FOOTPATHS, BUS STOP & PEDESTRIAN CROSSING. AT LAND SOUTH OF THE B4349 & WEST OF THE C1221, KINGSTONE, HEREFORDSHIRE, HR2 9HP**

**For: Mr Hines per Upper Twyford, Twyford, Hereford, Herefordshire HR2 8AD**

### OFFICER COMMENTS

Acceptable amended plans for the two commercial buildings along the frontage have now been received.

The proposed highway works have been independently audited and have been confirmed as acceptable

A revised framework travel has been received setting out more clearly the targets to be achieved

### CHANGE TO RECOMMENDATION

The issues identified in the report have now been addressed and therefore delegated authority is only required to complete the Section 106 Agreement and finalise the planning conditions.

**130940/CD - DEVELOPMENT OF A NEW PRIMARY SCHOOL ON THREE LEVELS, LOCATED ON AN EXISTING PLAYING FIELD FOLLOWED BY THE DEMOLITION OF THE EXISTING INFANTS AND JUNIOR SCHOOLS**

**130983/CD – DEMOLITION OF EXISTING SCHOOL BUILDING, SITE CLEARANCE AND THE DEVELOPMENT OF SCHOOL PLAYING FIELDS AT LEOMINSTER INFANT AND JUNIOR SCHOOLS, HEREFORD ROAD, LEOMINSTER**

**For: Mr Williams per Mr Philip Parker, Explorer 2, Fleming Way, Crawley, West Sussex RH10 9GT**

#### **ADDITIONAL REPRESENTATIONS**

Welsh Water raises no objection subject to conditions restricting foul and surface water drainage arrangements to the public sewerage system.

#### **CHANGE TO RECOMMENDATION**

Attach standard conditions L02 and L03 in addition to recommended condition 17

**S123592/O - PROPOSED OUTLINE PERMISSION FOR A RESIDENTIAL DEVELOPMENT OF 16 NO. DWELLINGS WITH ASSOCIATED INFRASTRUCTURE INCLUDING ALLTERATIONS ON A438 + DRAINAGE AND LANDSCAPING WITH ALL MATTERS RESERVED EXCEPT FOR ACCESS. AT LAND OFF BREINTON LEE, KINGS ACRE ROAD, HEREFORD,**

**For: Mr Wakeley per Mrs Sally Tagg, Normandy House, 305-309 High Street, Cheltenham, Gloucestershire, GL50 3SH**

#### **ADDITIONAL REPRESENTATIONS**

Additional representations have been received from Mr and Mrs Underhill (1 Breinton Lee) and Mr Calvert at 355 Kings Acre Road. These raise the following issues:

Technical issues regarding this application which we believe have not been adequately addressed by the Planning Officer:

1. There are no calculations as to whether or not the culverts (see attached complex plan), assuming they are cleared and repaired (survey shows “clay pipe has multiple displaced joints throughout”), is adequate to dispose of even the existing water flows (excluding that which currently comes into Breinton Lee/Conifer Walk). This question (amongst others) was raised by the Council’s Land Drainage Engineer on 15 April 2013, but has not been answered.

Our engineering son has calculated that a clear 225 mm pipe can handle some 37 litres per second. This is based on a head/height of 30 cm, but which may well be generous and, if less, will reduce flow capacity. Also, it does not take account of two almost right angle corners in the piping, nor total length of some 100 m; again, both factors will reduce flow capacity.

If it is assumed the ditches drain a very modest 10 Ha (25 acres) of fields to the south, 25 mm (one inch) of rain will generate 2.5 million litres (25 litres per square metre). If the ground is already saturated, a realistic discharge of this quantity over 4 hours and 6 hours will involve 173 and 115 litres per second respectively. **This does not include** the 10 litres per second which will be **added** by drainage of the development site itself, nor water flowing off the Kings Acre/Breinton Lee Roads.

Thus, even if cleared, the culvert would seem to be totally inadequate for the existing discharge, never mind any increase; if so, flooding of houses along the Kings Acre Road would continue and indeed be exacerbated if building went ahead. It is surely essential such calculations are undertaken and, if it is shown the culverts need enlarging, this is made a condition at the developer's expense.

2. The drainage Consultants' first report stated "a gravity discharge system, restricted or otherwise, is unlikely to be feasible"; their second report advocates such a system. There is no explanation for this contradiction; additionally, there must be doubt, due to its proposed siting on elevated ground, as to the functionality of Pond A. It is accepted any on site attenuation structures will be very shallow; is such a high maintenance system really workable in the long term? What happens if water inflows into the Ponds faster than the restricted discharge of 5 litres per second?

The Consultants advised 12 May 2013 "The enhanced perimeter ditches can be included within the on-site maintenance regime that will be required for the proposed balancing ponds." How will this be enforced? After all, the adjacent landowners (wife/sister-in-law of applicant) have a track record of delayed (it took some 10 years for the southern ditch to be dug and is not being maintained) and inadequate action to avoid frequent (and continuing) flooding of Breinton Lee and Conifer Walk over the past 13+ years.

Is a Management Company fair and practical for future house owners, some living in affordable housing; particularly bearing in mind their reliance on adjacent landowners/Highway Authority regarding future maintenance of the perimeter ditches and culverts?

3. Removal of half the lay-by will not really help safe egress from Breinton Lee. Adrian Smith, Area Engineer Control (Transportation), on 13 March 2013 considered "it would be beneficial to highway safety if the lay-by was removed to retain an unobstructed visibility splay". Why (para. 6.10) is this seemingly being ignored?

### **Comments from Applicant's agent in response to representations:**

#### **Drainage**

The culvert that runs along the eastern boundary of No. 343 King's Acre Road was constructed to replace the original ditch.

Under the Land Drainage Act 1991, it is the riparian owner's responsibility to ensure that any water draining through their land is allowed to freely pass. This is clearly stated on the Council's own website.

Site investigation work, funded by our Client, found this culvert to be almost totally blocked with silt, indicating that it has received little or no maintenance in recent years. Once cleaned out, again at our Client's expense, the culvert has been found to be in poor condition so as to affect its hydraulic performance.

The Council's website confirms that Amey Herefordshire, together with the Environment Agency and the relevant Internal Drainage Boards should ensure that landowners undertake their responsibilities. As far as we are aware, no such action has been taken in this case.

It should be noted that it cannot be the responsibility of any one developer to solve all the flooding problems in the vicinity of the site, especially when problems are caused by the lack of maintenance on third party land.

In response to issues raised the flood alleviation measures have either already been carried out or are offered as part of the development proposals.

- The cleaning out of the existing surface water drainage system (private culvert and highway drains).
- The re-profiling and extension of the existing drainage ditches.
- The restriction of surface water run-off from the new development to Greenfield equivalent rates with appropriate on site attenuation for the balance of flows up to the 1 in 100 year climate change event.
- The implementation of these measures will provide significant betterment to all local residents in the post development scenario.

In addition to the above, our Client is now prepared to offer the replacement of the deficient 225mm diameter culvert with a new pipe to be laid off-line within Breinton Lee. As this is an outline application, we suggest that the design details can be conditioned with the new pipe offered for adoption.

Also notes:

The client suggests that in terms of Para 6.14 that IE Developments no longer have any such riparian responsibility.

In addition the site map (attached to report) includes the hammerhead which is not included within the site redline

## **Highways**

In relation to the issue of the lay-by, the agreement with the highway authority is that works remove part or all of the lay by would be undertaken in association with the development. We and the highway officer are currently of the view that removal of half of the length of the lay by would increase the unobstructed visibility splay (beneficial in highway safety terms) and at the same time retain a degree of parking for existing users of the lay by.

However the final detail for the works would be agreed with the highway authority post planning at detailed design and at this stage a final decision would be made on the extent of the lay-by to be removed. This decision would be informed by the results of an independent safety audit that would be undertaken at the time.

An addendum report and revised plan in respect of drainage has also been submitted and the revised drainage arrangement, including a new culvert under the adopted highway will be presented to planning committee.

## **OFFICER COMMENTS**

### Queries in respect of drainage

#### *Maintenance and responsibility*

Land owners with a watercourse passing through or adjacent to their land have a responsibility to allow water to freely pass. They are required to maintain the bed and banks of the watercourse, and also the trees and shrubs growing on the banks. They must also clear debris, even if it did not originate from their land. This debris may be natural or man-made, and includes litter and animal carcasses.

Amey Herefordshire together with the Environment Agency and the Internal Drainage Boards in Herefordshire (River Lugg, Lower Wye, and Lower Severn Internal Drainage Boards) ensure landowners undertake this responsibility.(extract from HC website)

### **Use of Management Companies**

The ongoing responsibility for the maintenance of drainage solutions through management companies is not an unusual occurrence on developments where there are drainage or open spaces that require ongoing maintenance and that would not be adopted by the Council. This ensures that these areas are protected in the long term. Future occupiers of these properties would be aware of this upon purchase of the properties and this would form part of the Section 106 Agreement.

### **Change to Heads of Terms:**

Paragraph 1 should have identified Stretton Sugwas and St Francis Xavier Primary Schools as the recipients of contributions.

### **NO CHANGE TO RECOMMENDATION**

**N123065/F - PROPOSED ERECTION OF 8 NO. AFFORDABLE HOUSES WITH ASSOCIATED ACCESS AT LAND ADJOINING PEPPER PLOCK, WEOBLEY, HEREFORDSHIRE**

**For: Markey Builders (Gloucester) Ltd per Quattro Design Architects Ltd, Imperial Chambers, Longsmith Street, Gloucester, Gloucestershire, GL1 2HT**

### **ADDITIONAL REPRESENTATIONS**

A further letter of comment (via email) has been received from Mrs P Rockett. The letter expresses concerns as to why the houses subject to this application need to be built at Weobley, where residents have indicated they do not want the houses as proposed, whereas the neighbouring village of Dilwyn does want affordable houses. Concerns are also raised that the development as proposed will lead to further development to the rear of the site. The letter also raises concerns that the proposed development will lead to 16 more cars travelling through Weobley, which is already congested during school times. Comments are also made that the site is well used by children playing, dog walking and sheep that graze.

### **OFFICER COMMENTS**

Condition 3 is no longer required based upon the recommendation to secure the completion of S106 Agreement before issuing a Decision Notice

### **CHANGE TO RECOMMENDATION**

Omit Condition 3

**130779/F - PROPOSED REPLACEMENT CORRUGATED GARAGE AND IMPLIMENT STORE WITH TWO BEDROOM SINGLE STOREY DWELLING TO CARE FOR ELDERLY PARENTS. AT LAND AT ORCHARD HOUSE, CREDENHILL, HEREFORDSHIRE,**

**For: Mr Prosser per Mr R Pritchard, The Mill, Kenchester, Hereford, Herefordshire HR4 7QJ**

**CHANGE TO RECOMMENDATION**

**Additional Informative:**

The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against planning policy and any other material considerations, including any representations that have been received. It has subsequently determined to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

**131021/F - PROPOSED TEA BAR, EXTENSION TO CLUB ROOM AND REPLACE BOUNDARY FENCING AND DUG-OUTS. AT PEGASUS JUNIORS FOOTBALL CLUB, OLD SCHOOL LANE, HEREFORD, HEREFORDSHIRE, HR1 1EX**

**For: Mr Wells per Mr Chris Wells, Sports Ground And Club Room, Old School Lane, Hereford, Herefordshire, HR1 1EX**

**ADDITIONAL REPRESENTATIONS**

Sport England has raised no objection

The applicants have now provided a detailed materials schedule and as such there is no requirement to apply Condition 3

**CHANGE TO RECOMMENDATION**

Omit Condition 3

<b>MEETING:</b>	<b>PLANNING COMMITTEE</b>
<b>DATE:</b>	<b>26 JUNE 2013</b>
<b>TITLE OF REPORT:</b>	<b>APPEALS</b>

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**CLASSIFICATION:** Open

**Wards Affected**

Countywide.

**Purpose**

To note the progress in respect of the following appeals.

**Key Decision**

This is not a key decision.

**Recommendation:**

**That the report be noted**

**APPEALS RECEIVED**

**Application 122531/F**

- The appeal was received on 21 May 2013.
- The appeal is made under Section 78 of the Town and Country Planning Act 1990 against Refusal of Planning Permission.
- The appeal is brought by Mr A Thomas.
- The site is located at Barn at Goodrich OS 3660, Goodrich, Herefordshire.
- Conversion of and alterations to redundant period barn to create residential dwelling.
- The appeal is to be heard by Written Representations.

**Case Officer: Mr A Prior on 01432 261932**

**Application 130013/F**

- The appeal was received on 22 May 2013.
- The appeal is made under Section 78 of the Town and Country Planning Act 1990 against Refusal of Planning Permission.
- The appeal is brought by Mr & Mrs Rogers.
- The site is located at Barrats Orchard, Cradley, Near Malvern, Herefordshire, WR13 5NF.
- The development proposed is a single storey dwelling, partially submerged into ground to minimise visual impact. Greenroof and natural materials to be used.
- The appeal is to be heard by Written Representations.

**Case Officer: Mr R Close on 01432 261803**

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Further information on the subject of this report is available from the relevant case officer

#### **Application 120454/L**

- The appeal was received on 29 May 2013.
- The appeal is made under Section 78 of the Town and Country Planning Act 1990 against Refusal of Listed Building Consent.
- The appeal is brought by Mr A E Mifflin.
- The site is located at Wilcroft, Bartestree, Hereford, HR1 4BB.
- The development proposed is Change of use with alterations to form small residence from former Coach House.
- The appeal is to be heard by Written Representations.

**Case Officer: Mr E Thomas on 01432 260479**

#### **Application 120452/FH**

- The appeal was received on 29 May 2013.
- The appeal is made under Section 78 of the Town and Country Planning Act 1990 against Refusal of Planning Permission.
- The appeal is brought by Mr A E Mifflin.
- The site is located at Wilcroft, Bartestree, Hereford, HR1 4BB.
- The development proposed is Change of use with alterations to form small residence from former Coach House.
- The appeal is to be heard by Written Representations.

**Case Officer: Mr E Thomas on 01432 260479**

#### **Application 130070/FH**

- The appeal was received on 6 June 2013.
- The appeal is made under Section 78 of the Town and Country Planning Act 1990 against Refusal of Planning Permission.
- The appeal is brought by Mr N Tilby.
- The site is located at The Barn, Orchard Field, Tenbury Road, Brimfield, Ludlow, Herefordshire, SY8 4NE.
- The development proposed is proposed two storey extension.
- The appeal is to be heard by Householder Procedure.

**Case Officer: Mr A Banks on 01432 383085**

#### **Application 122658/F**

- The appeal was received on 6 June 2013.
- The appeal is made under Section 78 of the Town and Country Planning Act 1990 against Refusal of Planning Permission.
- The appeal is brought by Miss Margaret Rigby.
- The site is located at Log Cabin at Tan House Farm, Upton Bishop, Ross-on-Wye, Herefordshire
- The development proposed is Erection of temporary log cabin, treatment plant system and photo 8 voltaic panels.
- The appeal is to be heard by Hearing.

**Case Officer: Mr M Tompkins on 01432 261795**



## **APPEALS DETERMINED**

### **Application 121910/F**

- The appeal was received on 30 January 2013.
- The appeal was made under Section 78 of the Town and Country Planning Act 1990 against Refusal of Planning Permission.
- The appeal was brought by Mr K W Davis.
- The site is located at Alpine Nursery, Lingen, Herefordshire, SY7 0DY.
- The development proposed was Removal of condition 2 of planning permission 88/0951 to remove occupancy condition.
- The main issues were:
  - Whether sufficient marketing has taken place at a price which reflects the restrictive nature of the planning condition; and
  - Whether the conditions originally imposed is reasonable and necessary.

#### **Decision:**

- The application was Refused under Delegated Powers on 26 September 2012.
- The appeal was Allowed on 16 May 2013.

**Case Officer: Mr P Mullineux on 01432 261808**

### **Application 121554/F**

- The appeal was received on 2 May 2013.
- The appeal was made under Section 78 of the Town and Country Planning Act 1990 against Refusal of Planning Permission.
- The appeal was brought by Ms C Rout.
- The site is located at Former Pomona Works, Attwood Lane, Holmer, Hereford.
- The development proposed was Demolition of existing building and erection of 34 houses and garages.
- The main issues were:
  - The loss of designated employment land;
  - The potential effect of contamination on the development;
  - The loss of landscape amenity.

#### **Decision:**

- The application was Refused at Planning Committee (against Officer Recommendation) on 19 December 2012.
- The appeal was Withdrawn on 4 June 2013.

**Case Officer: Ms K Gibbons on 01432 261781**

### **Application 121535/F**

- The appeal was received on 27 February 2013.
- The appeal was made under Section 78 of the Town and Country Planning Act 1990 against Planning Conditions.
- The appeal was brought by Mr Alan Preece.
- The site is located at Mobile home Little Edwards, Newton St Margarets, Vowchurch, Herefordshire, HR2 0QG.
- Removal of condition 1 of planning permission DCSW2006/1699/F (upheld at appeal): For a permanent site for a mobile home.
- The main issue is:

- Whether, in the absence of the special circumstances that justified the permission, the retention of the mobile home would be acceptable, having regard to local and national planning policies applicable to residential development within the countryside.

**Decision:**

- The application was Approved under Delegated Powers on 5 September 2012.
- The appeal was Dismissed on 7 June 2013.

**Case Officer: Miss L Hughes on 01432 260141**

If Members wish to see the full text of decision letters copies can be provided.



<b>MEETING:</b>	<b>PLANNING COMMITTEE</b>
<b>DATE:</b>	<b>26 JUNE 2013</b>
<b>TITLE OF REPORT:</b>	<p><b>130907/O - AN OUTLINE APPLICATION FOR THE ERECTION OF UP TO 127 DWELLINGS (35% TO BE AFFORDABLE) WITH ALL MATTERS EXCEPT ACCESS TO BE RESERVED FOR FUTURE CONSIDERATION AT PORTHOUSE FARM, TENBURY ROAD, BROMYARD, HEREFORDSHIRE</b></p> <p><b>For: Marsten Developments Ltd per Mr John Wilson, 66 Stratford Road, Shirley, Solihull, West Midlands B90 3LP</b></p>
<b>WEBSITE LINK:</b>	<a href="http://news.herefordshire.gov.uk/housing/planning/58286.aspx?ID=130907&amp;NoSearch=True">http://news.herefordshire.gov.uk/housing/planning/58286.aspx?ID=130907&amp;NoSearch=True</a>

**Date Received: 28 March 2013**

**Ward: Bromyard**

**Grid Ref: 365239,255362**

**Expiry Date: 11 July 2013**

Local Members: Councillors JG Lester and A Seldon

## **1 Proposal and Context**

- 1.1 The proposed development is identical to that determined by the Planning Committee on 4 April 2012 under reference N111899/O. Prior to the decision a site visit was made on 1 February 2012. A copy of the report to the Planning Committee on 4 April 2012 is attached as **Annex 1** to this report.

## **2 Previous decision by the Local Planning Authority**

- 2.1 The Planning Committee refused the planning application on the following three grounds:-

- 1 Despite the extensive noise mitigation measures that form part of the application proposal, the Local Planning Authority consider that the occupiers of at least some of the proposed dwellinghouses would suffer an undue level of night-time noise as the likelihood is that there would be many individual night-time noise events arising from the movement of stillages within the the open yard of the Polytec site that would still exceed 45 dB LAmax internally with windows open. As such the proposal is considered to be contrary to the Central Government advice contained within paragraph 123 of the National Planning Policy Framework and policy DR13 of the Herefordshire Unitary Development Plan 2007.
- 2 The submitted application fails to address the issue as to the impact of the existing external lighting sited/installed on both the Polytec site and the Bromyard Rugby Club upon the amenities of the occupiers of the proposed dwellinghouses. In the absence of any evidence to the contrary, it is the opinion of the Local Planning Authority that the occupiers of the proposed dwellinghouses would not enjoy a satisfactory level of amenity due to excessive light pollution from the aforementioned sources. As such the proposal is

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Further information on the subject of this report is available from Mr R Close on 01432 261803

considered to be contrary to policy DR14 of the Herefordshire Unitary Development Plan 2007.

- 3 Given reasons for refusal 1 and 2 above the location of the proposed residential development adjacent to the general industrial use of the Polytec site is considered to represent an inappropriate land-use contrary to policy DR2 of the Herefordshire Unitary Development Plan 2007.

### **3 Appeal**

- 3.1 An appeal was lodged by the applicant against the decision. A copy of the planning appeal decision is attached as **Annex 2** and attached as **Annex 3** is the costs decision that the Inspector made in respect of an application by the appellant for an award of costs. The following is a summary of the appeal decision:-

#### **Reason for refusal 1**

- 3.2 The appeal proceedings examined the issue of noise in depth with both the Council and the appellants engaging professional experts. The Inspector made the point in paragraph 8 of the appeal decision (**Annex 2**) that when allocating land for residential purposes in the adopted Development Plan for Herefordshire the issue of the impact of the operation of the Polytec site on the future occupiers of the site, and the needs of the Polytec factory operators were given full consideration, and the Council produced a noise assessment report as a part of its evidence supporting the allocation at the Public Inquiry into objections to the Unitary Development Plan.

- 3.3 Notwithstanding the above, the Inspector addressed the noise matter again in detail with respect the appeal against the refusal of the planning application and concluded in paragraph 29 that:-

“I am satisfied that provided the package of factory source noise treatment measures, the 6 metre noise barrier and the acoustic double glazing to the new dwellings is secured and maintained into the future, there would be adequate control of noise within the residential development to secure acceptable living conditions for future residents”

- 3.4 In terms of the Costs Decision (**Annex 3**) Members specific attention is drawn to paragraph 10 where the Inspector stated:-

“In reaching its decision on noise, the Council did not follow the technical advice of its own consultants and officers in relation to the efficacy of the noise attenuation measures. Then in the appeal, the Council failed to produce any relevant technical evidence which would demonstrate reasonable planning grounds for making a contrary view in relation to the efficacy of noise attenuation measures. In these circumstances I find that the Council’s first reason for refusal is unreasonable, and fails to accord with the advice in the NPPF for local authorities to approach decision taking in a positive way”.

#### **Reason for refusal 2**

- 3.5 Members will note that the second ground of refusal with respect of the impact of external lighting was withdrawn by the Council during the course of the appeal. This was done following expert technical advice which essentially concluded that there was no technical evidence to support this ground of refusal. This decision was made after consultation with the Local Ward Members. However, Members will note in paragraph 11 of the costs decision (**Annex 3**) that the Inspector found that the “...Council acted unreasonably in imposing a reason for refusal without any technical support for its position, and then withdrawing it at a

late stage resulting in wasted preparatory work on behalf of and at the expense of the applicant”.

### **Reason for refusal 3**

- 3.6 The Inspector found the proposed land-use to be entirely appropriate. The Inspector made the point that the site is allocated within the Council’s own adopted Development Plan (i.e. Herefordshire Unitary Development Plan 2007) for residential development. The allocation was made by Herefordshire Council and the principle of residential use was considered by the Inspector who dealt with objections to allocation of the site at the examination in public of the Unitary Development Plan. The Council then allocated the site in accordance with the recommendation of the Inspector. The Inspector stated at the end of paragraph 6 of that costs decision (**Annex 3**) that:-

“It is clear from the status of the site in the development plan that the residential use is considered to be an appropriate land use”.

- 3.7 Also within the same paragraph the Inspector concluded that:-

“In these circumstances I find the third reason for refusal cited by the Council to be unreasonable”.

- 3.8 The Inspector found the proposed development to be NPPF compliant.

## **4 Costs**

- 4.1 The Inspector concluded that the Council’s three grounds of refusal were unjustified and found them all to be unreasonable. An award of costs was made against the Council.

- 4.2 The settled costs claim, after the Council engaging the services of a professional cost assessor was £27,000. The costs assessors’ fee was £3,494.98. As a consequence the total cost to the Council was £30,494.98.

## **5 Reason for appeal being dismissed**

- 5.1 Notwithstanding the above, the appeal was dismissed. Whilst the Inspector was entirely satisfied with the package of noise mitigation measures, it was concluded that an effective legal mechanism was not in place to secure their provision and long-term maintenance upon the Polytec site.

## **6 Legal mechanism now proposed**

- 6.1 This application proposes an agreement under Section 106 of the Town and Country Planning Act 1990 (as amended) which Polytec would also be a party to.

- 6.2 In summary, the owners’ and Polytec’s covenants would be:-

- a. Covenant by Polytec to install and complete to the Council’s reasonable satisfaction the (fixed) noise mitigation measures prior to the first occupation of the first dwelling (n.b. previously this was not forwarded as part of the legal agreement - there was a condition that did not meet the tests in the Circular and effectively there was only a promise that the developer would pay Polytec money to install);
- b. The owner of the housing site funds the above installation (no more than £60,000) - this will be evidenced to the Council with payment before occupation of the development;

- c. Thereafter Polytec (binds future owners also) keeps and maintains those noise mitigation measures as long as they are reasonably required;
- d. Prior to the first occupation of the first dwelling Polytec fit all forklift trucks at the factory with white noise reversing alarms / warning systems and thereafter maintain them satisfactorily;
- e. The owner of the housing site funds the installation of the white noise reversing alarms / warning systems (no more than £5,000) - this will be evidenced to the Council;
- f. A maintenance sum of £70,000 to be paid by the owners of the housing land to Polytec for future maintenance of a) and d) - this will be evidenced to the Council with payment before occupation of the development; and
- g. Following occupation of any of the dwellings no vehicle operating at the factory fitted with tonal reversing alarms / warning systems (e.g. delivery vehicles) shall operate between 23:00 hours and 07:00 hours.

6.3 The Section 106 would bind all future owners of housing site and factory site. All sums are index linked.

6.4 This is considered to be an appropriate legal mechanism that overcomes the technical matter that led to dismissal of the appeal.

6.5 Draft Heads of Terms are attached as **Annex 4** to this report.

## **7 Are there any new material planning considerations?**

7.1 Since the original decision of this Council to refuse this scheme under planning application reference N111899/O on 4 April 2012 it became evident that this Council had a demonstrated shortfall in its five year supply of housing land supply, and is unable to meet the requirement set out in the National Planning Policy Framework (NPPF) for a 5% oversupply. The Inspector made specific reference to this matter in paragraph 8 of the appeal decision (see **Annex 2**). This matter has also been given weight in other recent appeal decisions including the appeal that was allowed at Land off Attwood Lane, Holmer, Hereford HR1 1LJ (LPA Ref:- S112612/F & Appeal Ref:- APP/W1850/A/12/2185069) and other similar decisions across the country.

## **8 Consultation Summary**

### Internal

8.1 The Environmental Protection Manager does not raise any objections.

8.2 The Team Leader Waste Operations does not raise any objections.

8.3 The Transportation Manager has no objections.

8.4 Strategic Housing Manager has no objections to the proposal.

8.5 The Schools Organisation & Capital Investment Support Officer has no objections.

8.6 The Planning Ecologist has no objections. For Members' information an updated Extended Phase 1 Survey has been submitted in relation to this application.

8.7 Land Drainage Adviser (Amey) - No objections subject to the recommended conditions.

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Further information on the subject of this report is available from Mr R Close on 01432 261803

## External

8.8 River Lugg Internal Drainage Board - No objections raised.

8.9 Welsh Water - No objections subject to conditions.

8.10 Environment Agency - No objection subject to conditions.

## **9 Representations**

9.1 The application has resulted in objections being received from thirteen individuals, twelve local businesses and the Bromyard & District Chamber of Commerce. They raise the same objections to those previously raised by objectors in relation to planning application N111899/O and addressed through the appeal process.

9.2 The only new matter raised is concern as to:-

- Increase in commuter traffic to Hereford along the A465 through Burley Gate that has an accident history
- The aforementioned traffic will create undue levels of noise

9.3 Bromyard & Winslow Town Council made the following initial comments:-

"The above numbered planning application was discussed at a meeting of the Town Council last night and after a full and frank discussion the Council resolved to make the following comments.

1) Given that potential employment land at Linton Tile Works has been withdrawn from the emerging Local Development Plan - Core Strategy, the Town Council asks that any decision regarding this Planning Application be deferred until the District Council is in a position to identify an area of employment land to serve the needs and requirements of Bromyard.

To proceed with this application would be contrary to UDP policy which calls for an 80:20 ratio of housing to employment land. A development of 127 houses on approximately 2.9 hectares of land should be accompanied by 0.625 hectares of employment land which does not exist. NPPF policy 156 says that "local planning authorities should set out the strategic priorities for the area in the Local Plan. This should include strategic policies to deliver the homes and jobs needed in the area..."

Should Herefordshire District Council be minded to consider the application at this stage, the Town Council OPPOSES the application on the following grounds;

2) In spite of comments by the applicants' agent Council was not persuaded that the proposed measures were sufficient to ensure the long term maintenance of the noise attenuation barrier. Council was not persuaded that the matter could be dealt with by an "unspecified" condition.

3) Although this Council acknowledges the decision of the Planning Inspector following the Hearing on 5th December 2012 regarding what she considered to be acceptable noise attenuation measures, this Council remains unconvinced that proposed noise attenuation measures will resolve issues caused by noise emanating from Polytec Car Styling Bromyard Ltd and affecting residents of existing properties in the Winslow Road area. The Inspector misunderstood the point put by the Town Council's representative regarding noise deflection and its effects upon those existing resident. To our knowledge no research has been carried out to counter this assertion.

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Further information on the subject of this report is available from Mr R Close on 01432 261803

4) The development represents on a 2.9 hectare developed site a proposed density is 44 DPH. The emerging Core Strategy appears to set a maximum density of 35 DPH. Given the current state of flux between the expiring UDP and the emerging Local Development Framework the Town Council maintains that the density of 44DPH is unacceptably high, particularly when set against the current UDP 2007, in which it is stated that the Inspector agreed to the designation of the Porthouse Farm Site from employment land to housing but on the basis of 87 dwellings representing 30DPH. Therefore this Council considers this to be an overdevelopment of the site.

5) The Town Council remains concerned that this development would have an adverse impact upon other industrial activities also adjacent. UDP policy DR2 and NPPF 123 "Planning policies and decisions should aim to:- recognise that development will often create some noise and existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established". Clearly these policies need to be taken into account.

6) UDPS4 states "Council should identify a suitable portfolio of land" including for housing and employment. Given the removal of employment land at Linton, nr. Bromyard (P105 Core Strategy - Draft) there is now no suitable portfolio of land to serve Bromyard.

7) NPPF 17 "Efficient Use of Land" - it should be noted that for this planning application a two acres buffer strip of land left unused. This cannot be regarded as an "efficient use of land".

9.4 and further comments:-

"The Town Council raises the following further objections to this application:-

#### The Section 106 agreement

The Town Council is astonished that Herefordshire Council can even be considering an application which places the financial burden, albeit after 15 years, of the maintenance of the bund, open space, children's play area and SUDS ponds on this proposed private housing development, in perpetuity, on the Council Tax payers of Herefordshire. The area in question is at least three acres. It is not clear to the Town Council who has authorised the agreement that Herefordshire Council will take on this responsibility after 15 years.

In any case this agreement is unacceptable and contrary to NPPF policy 176 which says that "development should not be approved if the measures required cannot be secured through appropriate conditions or agreements." An agreement which places the burden on the local taxpayer to upkeep in perpetuity several acres of open space and ponds on a private housing development is clearly not appropriate.

With regard to the landscaping of the bund, open space, children's play area and SUDS ponds the Town Council notes that this does not need to be carried out by the developer until half of the open market houses have been occupied. This means that the bund, open space and children's play area could be left as wasteland for an unspecified number of years. The prospect of children playing on such areas cannot be contemplated and should not be given any consideration whatsoever by Herefordshire Council. The Town Council also notes that there is no mention of timescales for the construction of the affordable housing element of the scheme, so it is perfectly feasible that the occupiers of the 27 affordable houses, which are designed to act as a noise barrier between the open market houses and the Polytec factory, could be looking onto wasteland for many years.

There is no provision whatsoever in the agreement for the construction and maintenance of the proposed 6 metre high, 123 metre long noise attenuation fence which is acknowledged by all parties to be necessary. The Town Council fundamentally disagrees with the Inspector that

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Further information on the subject of this report is available from Mr R Close on 01432 261803



one can rely on a condition (Condition 28) to achieve the construction and maintenance for 100 years of this enormous barrier.

The Town Council contends that this application should not even be considered without a written commitment from both Polytec and HSBC, which has a charge on the Polytec site.

### Overdevelopment

The site area is 3.7 hectares as stated in the UDP; the “buffer zone” (now called “open space”) was required by the Inspector to be 0.8 hectares, leaving 2.9 hectares of developable land. The suggested capacity of the site at 87 dwellings is a simple calculation: - 2.9 hectares x 30 dwellings per hectare = 87 dwellings.

The size of the site was confirmed at 3.7 hectares by Mr Singleton twice in emails to Cllr Swinford during the March/April 2013 LDF consultation process.

The applicant's agent Tyler Parkes has simply placed the SUDS ponds outside of the site identified in the UDP and reduced the buffer zone (open space) from 0.8 hectares to about 0.4 hectares, hence achieving an apparently larger site with lower density.

The correct density with the required 0.8 hectare buffer zone is 127 dwellings on 2.9 hectares = 44 dwellings per hectare. This is clearly a serious overdevelopment, as can be seen from a glance at the master-plan which accompanies the application.

### Lack of acoustic barrier between housing and stillage yard

The Town Council notes that there is no acoustic barrier proposed between Polytec Holden's stillage yard and the proposed new housing, merely an earth mound. The stillage yard is an extremely noisy environment with fork-lift trucks clattering about and metal stillages being manoeuvred and dropped 24/7. The Town Council does not believe this issue has been properly addressed.

### Reflection of sound from fence

If the proposed acoustic barrier fence is reasonably effective in reducing noise levels in the proposed new housing development then by definition that sound is going to be bounced back off the fence in a different direction. This will inevitably affect existing residential properties. The Town Council contends that this issue has not been addressed at all. The Town Council is pleased to see that Professor Colin Walters of CWA confirms its fears in his letter of the 29th April 2013 to Tyler Parkes, when he states that the noise when reflected can increase by “a maximum of 3dB”. He goes on to say that “the barrier surface would not be acoustically flat and would be further softened by the natural growth screening that is envisaged .... “. Firstly, there is no clarity whatsoever on how, when or by whom this fence is going to be built, let alone what its design characteristics might be. Furthermore there is no screening envisaged between the Polytec factory and the fence. The Town Council contends that this matter requires proper investigation.

### Location of affordable housing

It is perfectly clear to the Town Council from the master-plan that 27 of the proposed 44 affordable houses are to be used as a noise barrier, separating the open market houses from the Polytec factory and stillage yard. This same layout has come before the Planning Committee twice before and the applications have been refused. To rely upon reserved matters is simply not good enough and this fundamental issue should form part of the outline planning application.

The Town Council notes that Tina Wood, Housing Development Manager for Herefordshire Council, agrees. In her submission on this application she says “I would not like to see the affordable units being built as a buffer between the open market units and the industrial estate.”

#### Potential for flooding of properties

The Town Council notes that in its submission on this application the River Lugg Drainage Board states, in its letter of the 29th April 2013, that “... both current and future developers/owners should be made aware of the risks associated within the area being considered.”

9.5 A petition with 205 signatures has been received objecting to the proposed development and requesting that consideration of the application be deferred until a “Local Plan” has been agreed for Bromyard. It is submitted that significant new housing can not be justified in the absence of new employment land being allocated for Bromyard. It is stated that this site is the only land suitable for a future employment land allocation. In addition it is stated that the proposed housing requires extreme noise mitigation measures represents an inefficient use of land and represents an overdevelopment.

9.6 Six letters of support have been received. In summary, they state:-

- Bringing more houses to the Bromyard can only be of benefit to local retailers and the local schools;
- The development would bring more business to the area and help to develop the future of Bromyard; and
- The proposal would bring affordable housing to Bromyard that is required.
- In 2006/07 Elgar Properties built five industrial units at the Porthouse Farm Industrial Estate. These five units stood vacant for a number of years, proving that there was not a need for these commercial premises in Bromyard;
- The appeal Inspector found the proposed development to be acceptable, other than upon one technicality, that has now been addressed;
- The financial cost of the actions of a few objectors is regrettable;
- From the late 1980's to the time the site was sold to the current applicants in approximately 2006 there was no interest in this site for employment related purposes despite marketing;
- All three of the Council's previous grounds of refusal were found to be unreasonable in the appeal decision, a full award of costs was made against the Council;
- If the site were to be developed for employment purposes it would involve heavy traffic passing through the congested Town Centre;
- Land could be developed for employment related in the vicinity of the existing Linton Industrial Estate and the Draft Core Strategy identifies 5 hectares of employment land.

## **10 Appraisal**

10.1 To avoid repetition the previous appraisal is as set out in the report to Planning Committee on 4 April 2012.

10.2 The only material matters with weight that have emerged since that date are:-

- a) The appeal decision that found all three of the previous grounds of refusal to be unreasonable; and
- b) The demonstrated shortfall in the Council's housing land supply.

- 10.3 The proposed legal mechanism now advanced to secure the noise mitigation measures is considered to be acceptable.
- 10.4 For the avoidance of any doubt it is worth noting that planning permission was granted for the retention of the earth bund in a materially different form under planning permission DMN/111900/N.
- 10.5 With respect to the initial seven matters raised by the Bromyard & Winslow Town Council the following comments are made:-

- 10.5.1 In paragraph 9 of the appeal decision (see **Annex 2**) the Inspector considered the matter raised by the Town Council relating to the need for further employment land within Bromyard, including the Town Council's reference to the unsuitability of the Linton site, but concluded that:-

“However, since the site has been designated for housing in a statutory development plan, and having regard to the shortfall in the supply of housing land, these considerations do not outweigh the strong presumption in favour of planning permission being granted for residential development of the site”

In paragraph 8 (see **Annex 2**) of the appeal decision, the Inspector found that “the (*residential*) allocation is clearly important to the fulfilment of the Council's housing land strategy in view of the shortfall in the Council's five year housing land, and its inability to meet the requirement set out in the NPPF for a 5% oversupply”.

- 10.5.2 The Inspector was clear in paragraph 27 of the appeal decision that the provision and future maintenance of the acoustic fence on the applicant's land (not Polytec's land) could satisfactorily be dealt with by way of a planning condition.
- 10.5.3 The matter concerning noise reflection from the proposed barrier was raised by the Town Council at the Informal Hearing in respect of the appeal. The Town Council were concerned with the reflection of noise from traffic on the Tenbury Road being reflected back onto the residents adjacent to that road and to the potential new residents. The professional Acoustic Consultant on behalf of the appellant was asked by the Inspector to give an opinion as to whether this was a possibility and to comment upon the Town Council's point. He replied that there was no reason to assume that noise would be reflected in this way and that no impact or subsequent effect would be expected. He then explained his answer as follows:-

“Noise can be reflected from a suitable surface and when this occurs the reflected sound ray is equal to the incident ray in energy terms. As a result an observer close to the reflector would experience a maximum theoretical increase in noise of 3dB. At a distance of more than about 2m from the reflector the reflected ray would decrease according to the normal laws of acoustic reduction with distance so that after about 3-4m the noise increase due to reflection would be at about +1 dB. This is the theoretical maximum. For a real case there are a number of other factors that affect the level of the reflected ray.

- The characteristics of the reflecting surface. It has to be flat, and for maximum effect, be at right angles to the incident ray.
- The nature of the incident noise. If it is diffuse and not a narrow 'beam' then the reflections are further diffused.

For the case under consideration the barrier surface would not be acoustically flat and would be further softened by the natural growth screening. It would not be at right angles to the incident sound. The potentially affected dwellings would be at some distance from the barrier ensuring that any reflected sound is further attenuated, diffused and screened. It is therefore

evident that any reflections from the barrier would be reduced to an increase of a tiny fraction of a dB before they could impact upon local residents. As it is accepted that increases of the order of 3dB are not usually perceptible to most people it can be seen that a theoretical increase of very much less than 1dB is of no consequence.”

This explanation was accepted at the Hearing by the Council’s noise consultant and the Council’s Environmental Health Officer.

This answer was accepted by the Inspector at the Hearing and in the appeal decision (**Annex 2**) where she stated in paragraph 28:-

“There is also concern that noise would be reflected by the fence from the highway onto the residential site. However, having regard to the angle of the fence in relation to the road, and the existence of the bund which would be in front of the fence, I am satisfied that such effects would not occur”

10.5.4 This matter of an “overdevelopment” was not a ground that the Council previously refused the application upon. This matter was fully addressed in paragraph 5.3 of Annex 1 to the report to Committee on 4 April 2012 (see **Annex 1**).

Furthermore the Inspector stated in paragraph 8 of the appeal decision that:-

“Although the UDP indicated the site as being suitable for 87 dwellings, the site area is greater than originally indicated and the Council do not object in principle to the increase in the number of new dwellings proposed. The allocation is clearly important to the fulfilment of the Council’s housing land strategy in view of the shortfall in the Council’s five year supply of housing land, and its inability to meet the requirement set out in the National Planning policy Framework (NPPF) for a 5% oversupply.”

10.5.5 This matter of noise impact is covered earlier. The appeal decision is clear that the Inspector found that the package of noise attenuation measures proposed would create a satisfactory residential environment whilst not prejudicing the legitimate interests of existing businesses.

In many ways the NPPF recognises that providing residential properties in proximity to existing businesses should not impede the future or diversification of such businesses. In paragraph 123 it specifically states that:-

“Planning policies and decisions should aim to recognise that development will often create noise and existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of nearby changes in nearby land uses since they were established”.

Therefore if any of the existing adjoining businesses were to apply for planning permission for say some form of expansion, it is not considered that the existence of residential properties upon the site the subject of this application would in itself create a planning problem.

10.5.6 Portfolio of employment land – this matter is dealt with in 10.5.1 above.

10.5.7 The point raised by the Town Council appears to conflict with their expressed concern with respect an “overdevelopment”. The proposal for a landscape buffer to separate the residential development from existing employment uses was accepted by the Inspector reporting into objections to the Unitary Development Plan and is reflected in paragraph 5.4.27 of the UDP. As stated earlier planning permission has been granted for the retention of the earth bund, albeit in a remodelled form.

10.6 With regard to the further comments from Bromyard & Winslow Town Council, the following observations are made:-

10.6.1 *The Section 106 Agreement* - The layout is submitted for illustrative purposes only. The Town Council appears to be under the misunderstanding that Herefordshire Council would adopt and maintain the bund and SUDS ponds. No such agreement or commitment is in place. In any reserved matters application the layout would need to include useable children's play area(s) and useable amenity public open space in accordance with the Council's UDP policies. This would certainly not include the bund and is unlikely to include the SUDS ponds in this case although on occasions, such as the Holmer site in Hereford balancing ponds can form part of a larger integrated open space with bio-diversity value. In such circumstances such provision would be additional to the UDP requirement and an additional commuted sum required.

No more than 50% of the open market dwellings could be occupied without the open space and children's play equipment being provided. This is normal procedure and regarded as an effective timing/phasing mechanism.

The location of the affordable housing is not a matter to be considered as part of this application which is an outline planning application with all matters except for the vehicular means of access reserved for future consideration. The layout is a reserved matter. The only matter being considered at this stage is the affordable housing provision. A level of 35% is proposed in accordance with UDP policy. The legal agreement requires that prior to 50% of the open market dwellings being occupied the affordable housing would have to be provided. Again this is normal practice in terms of timing/phasing mechanism.

The legal agreement does not deal with the issue of the acoustic fence as this is on the applicant's land and can satisfactorily be dealt with by a planning condition. This was confirmed by the Inspector in paragraph 27 of the appeal decision (**Annex 2**).

10.6.2 *Over development* - this matter has been dealt with in 10.5.4 above.

10.6.3 *Lack of an acoustic barrier between housing and stillage yard* - a 6 metre high fence is proposed. The professional noise consultants are of the view that this acoustic fence and the fitting of the "white noise" reversing warning systems to the forklift trucks would satisfactorily address the matter of noise from the stillage yard. Again, attention is drawn to the Inspector's decision that concluded that the package of noise mitigation measures would ensure a satisfactory residential environment.

10.6.4 *Reflection of sound from fence* - This matter is dealt with in 10.5.3 above. There would be landscaping between the Tenbury Road and the fence on the bund. The remodelled bund would in itself partially screen the acoustic fence.

10.6.5 *Location of affordable housing* - As stated earlier the layout and location of the affordable housing is a reserved matter. The Local Planning Authority would wish any layout to show affordable housing "pepper-potted" / dispersed around the site with no single group of affordable housing having more than 15 dwellings.

10.6.6 *Potential for flooding of properties* - The Environment Agency did not object to the previous application. This matter is dealt with by recommended conditions 2, 3, 4 and 5.

10.7 It is not considered that there are any safety or noise issues associated with the use of the A465 in the vicinity of Burley Gate. The adequacy of the wider highway network is a matter that was considered by the Council when allocating the land for housing purposes.

- 10.8 The draft legal agreement is considered to comply with policy DR5 of the Herefordshire Unitary Development Plan 2007 and the Council's Planning Obligations Supplementary Planning Document 2008. The only material change is the omission of the financial contribution with regard CCTV coverage. This is due to changes within West Mercia Police which have meant that they have withdrawn from the project and there is no longer a specific project in any capital programme to which funding is sought.
- 10.9 The law requires that decisions are made in accordance with the development plan unless material considerations indicate otherwise (NPPF paragraph 11). In Herefordshire the development plan remains as the Herefordshire Unitary Development Plan 2007.
- 10.10 The NPPF sets out (in its Annex 1) the implementation programme for national policy in relation to current policy. Paragraph 215 requires that from March 2013 weight can be given to policies in existing development plans according to their degree of consistency with the NPPF.
- 10.11 In respect of emerging plans Paragraph 216 of the NPPF is relevant. This states that weight (in decision making) can be given to such plans depending on:
- their stage of preparation;
  - the extent to which there are unresolved objections; and
  - the degree of consistency to the policies in the NPPF.
- 10.12 Herefordshire Local Plan; Core Strategy 2011-2031 was published for consultation on 4 March and ran until 22 April 2013.
- 10.13 At this stage of preparation it is considered that no or minimal weight should be given in decision making on planning applications to the Core Strategy as the recently published draft plan has only been approved for consultation purposes. An independent examination of the Core Strategy is not anticipated until Winter 2013 with final adoption Spring 2014.
- 10.14 Bromyard and Winslow Town Council intend to prepare a neighbourhood plan with Avenbury Parish Council. To date they have merely applied to designate area of the Plan that is out for consultation at the moment. Such a plan will need to be in conformity with the Core Strategy. It is unlikely that such a Neighbourhood Plan would progress through the full preparation process and be adopted before Spring 2014.
- 10.15 Consequently planning applications should be determined in accordance with the Unitary Development Plan where the relevant policy is consistent with the NPPF.
- 10.16 The UDP policies as far as they relate to this site were considered to be compliant with the National Planning Policy Framework (NPPF) by the Inspector determining the recent appeal.
- 10.17 Furthermore, I advise Members that the Draft Core Strategy uses the housing land position as of 2011 as the base which treats commitments as extant planning permissions and UDP allocations at that time. Therefore in ensuring adequate housing land supply the Core Strategy itself assumes the development of sites allocated in the UDP for housing purposes. That includes the Porthouse Farm site.

## 11. **Conclusion**

- 11.1 There is a statutory duty for the Council to determine planning applications in accordance with the Development Plan unless material planning considerations indicate otherwise.
- 11.2 The application is made in outline with all matters except for access reserved for future consideration.

- 11.3 The Development Plan for the area remains the Herefordshire Unitary Development Plan 2007 that allocates the site for residential development. The allocation of the land for residential development was the subject of scrutiny by the Planning Inspector appointed by the Secretary of State to consider objections to the Unitary Development Plan prior to its adoption.
- 11.4 The other material planning considerations of considerable weight are:-
- a) the Central Government advice contained within the National Planning Policy Framework (NPPF); and
  - b) the appeal decision relating to the previously refused application N111899/O.
- 11.5 The Inspector's decision with respect the refusal of planning application N111899/O considered the policies of the Herefordshire Unitary Development Plan 2007 and the proposal itself to be compliant with the provisions of the National Planning Policy Framework. The lack of a five year housing land supply plus 5 % oversupply as required by the NPPF is a significant additional factor.
- 11.6 The Inspector also found all three of the Council's previous grounds of refusal to be unreasonable, resulting in a substantial award of costs against the Council.
- 11.7 The only reserved matter to be considered is the access to which there are no objections and to which the Council did not previously object.
- 11.8 The legal mechanism to secure the package of noise attenuation measures is now in place.
- 11.9 As a consequence the recommendation is for approval.

## **RECOMMENDATION**

**That subject to the completion of the Section 106 legal agreement, the Assistant Director Economic, Environment & Cultural Services be authorised to issue the Planning Permission subject to the following conditions:-**

- 1. The development shall not commence until approval of the following reserved matters has been obtained from the Local Planning Authority:-**
  - **Layout**
  - **Scale**
  - **Appearance**
  - **Landscaping**

**Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.**

**The development hereby permitted shall be begun either before the expiration of five years from the date of this permission, or before the expiration of two years from the date of approval of the last reserved matters to be approved, whichever is the later.**

**Reason: No such details have been submitted and in accordance with Section 92 of the Town and Country Planning act 1990.**

- 2. The finished floor levels of all the dwelling houses shall be set a minimum of 600mm above Q1000 flood level at each river station section (sections referred to in Appendix H of the Flood risk Assessment Report 1577 dated 26 June 2009).**

**Reason: To protect the development from flooding, in accordance with policy DR7 of the Herefordshire Unitary Development Plan 2007.**

3. **There shall be no raising of ground levels within flood zone 3, the 'high risk', 1% annual probability flood plain.**

**Reason: To protect the development from flooding, in accordance with policy DR7 of the Herefordshire Unitary Development Plan 2007.**

4. **Prior to commencement of the development hereby permitted the following matters shall be submitted to the Local Planning Authority for their written approval:-**
- **Full details of foul sewerage disposal arrangements**
  - **Full details of surface water drainage arrangements**
  - **Full details of land drainage arrangements**

**The development hereby permitted shall not commence until the Local Planning Authority has given such written approval. The development shall be carried out in strict accordance with the approved detail and thereafter maintained as such.**

**Reason: To ensure that effective drainage facilities are provided for the proposed development and that no adverse impact occurs to the environment or the existing public sewerage system, in accordance with policies DR4 and DR6 of the Herefordshire Unitary Development Plan 2007.**

5. **With regard the details required to be submitted pursuant to condition 4 above, no surface water or land drainage run-off shall be discharged, either directly or indirectly, to the public sewerage system.**

**Reason: To protect the integrity of the public sewerage system, to prevent hydraulic overloading of the public sewerage system and ensure no detriment to the environment, in accordance with policies DR4 and DR6 of the Herefordshire Unitary Development Plan 2007.**

6. **With regard the details of foul sewerage disposal arrangements required to be submitted pursuant to condition 4 above, no more than 7 litres per second shall be discharged into the public sewerage system, thus requiring an on-site pumping station. The scheme shall be implemented with this restricted flow and thereafter maintained as such.**

**Reason: To protect the integrity of the public sewerage system, to prevent hydraulic overloading of the public sewerage system and ensure no detriment to the environment, in accordance with policies DR4 and DR6 of the Herefordshire Unitary Development Plan 2007.**

7. **No development shall take place until the following has been submitted to and approved in writing by the Local Planning Authority:**

**a) a 'desk study' report including previous site and adjacent site uses, potential contaminants arising from those uses, possible sources, pathways, and receptors, a conceptual model and a risk assessment in accordance with current best practice.**

**b) if the risk assessment in (a) confirms the possibility of a significant pollutant linkage(s), a site investigation should be undertaken to characterise fully the nature and extent and severity of contamination, incorporating a conceptual model of all the potential pollutant linkages and an assessment of risk to identified receptors.**

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Further information on the subject of this report is available from Mr R Close on 01432 261803



c) if the risk assessment in (b) identifies unacceptable risk(s) a detailed scheme specifying remedial works and measures necessary to avoid risk from contaminants/or gases when the site is developed. The Remediation Scheme shall include consideration of and proposals to deal with situations where, during works on site, contamination is encountered which has not previously been identified.

Any further contamination encountered shall be fully assessed and an appropriate remediation scheme submitted to the local planning authority for written approval.

Reason: In the interests of human health in accordance with policy DR10 of the Herefordshire Unitary Development Plan 2007.

8. The Remediation Scheme, as approved pursuant to condition number 7 above, shall be fully implemented before development is first occupied. On completion of the remediation scheme the developer shall provide a validation report to confirm that all works were completed in accordance with the agreed details, which must be submitted before the development is first occupied. Any variation to the scheme including the validation reporting shall be agreed in writing with the Local Planning Authority in advance of works being undertaken.

Reason: In the interests of human health in accordance with policy DR10 of the Herefordshire Unitary Development Plan 2007.

9. No building operation shall take place until the re-graded bund permitted by planning permission DMN/111900/N has been completed. Thereafter this bund shall remain in-situ and be maintained in accordance with the approved details.

Reason: To ensure that the occupiers of the dwellinghouses enjoy a satisfactory level of amenity in compliance with policy DR13 of the Herefordshire Unitary Development Plan 2007.

10. The hedgerow along the western boundary of the site on the eastern side of the Tenbury Road shall be retained as shown on the approved plans.

Reason: The roadside hedgerow is considered to be of both landscape and ecological value, to accord with policy LA5 of the Herefordshire Unitary Development Plan 2007.

11. The details of layout required to be submitted pursuant to condition 1 above shall show the entirety of the residential development, including the dwelling houses, gardens, roadways, pedestrian routes, cycle routes, outdoor playing space, open space and equipped children's play space, confined to the allocated housing site as defined on the Proposals Map to the Herefordshire Unitary Development Plan 2007.

Reason: To ensure that there is no unjustified encroachment of development into the open countryside or onto employment land in accordance with policies H7 and E5 of the Herefordshire Unitary Development Plan 2007.

12. The details of layout required to be submitted pursuant to condition 1 above shall show the entirety of the provision of a shared pedestrian/cycleway route along the approximate route of the former railway line adjacent to the eastern boundary of the site.

Reason: To ensure that there is adequate permeability through the development and to enhance both cycle and pedestrian routes, in accordance with policies T6 and T7 of the Herefordshire Unitary development Plan 2007.

13. The details of layout required to be submitted pursuant to condition 1 above shall include the provision of outdoor playing space, open space and equipped children's play space in accordance with policies H19 and RST3 of the Herefordshire Unitary Development Plan 2007.

Reason: In accordance with policies H19 and RST3 of the Herefordshire Unitary Development Plan 2007.

14. Prior to commencement of the development hereby permitted protective fencing in accordance with the advice contained within BS5837:2012 shall be erected at the furthest extent of the root protection areas to the seven trees protected by way of a Tree Preservation Order and the furthest extent of the roots of the roadside hedgerow that is to be retained. Once these protective measures have been erected but prior to commencement of the development hereby permitted a suitably qualified arboricultural consultant shall inspect the site and write to confirm that the protective measures specified by this condition are in-situ. Upon receipt of that letter by the Local Planning Authority the development may commence but the protective measures must remain in-situ until completion of the development. No storage may take place within the tree protection areas. If any works are required within the tree protection areas an Arboricultural Method Statement shall be submitted to and approved by the Local Planning Authority prior to commencement of the development.

Reason: To ensure that the trees and hedgerow of amenity value that are both worthy and capable of retention are not damaged and their long- term health and future retention not prejudiced, in accordance with policy LA5 of the Herefordshire Unitary Development Plan 2007.

15. The details of layout and landscaping required to be submitted pursuant to condition 1 above shall include a scheme for the permanent closure of the two existing vehicular means of accesses. The two existing vehicular means of accesses shall be permanently closed in full accordance with the approved scheme prior to the commencement of any building operation hereby permitted.

Reason: In the interests of highway safety, in accordance with policy DR3, T6 and T7 of the Herefordshire Unitary Development Plan 2007.

16. The approved vehicular accesses including visibility splays, cycleway and pedestrian route shown upon drawing number 617-05 Revision A shall be fully implemented prior to the first occupation of any of the dwellinghouses hereby permitted and thereafter maintained in accordance with the approved details.

Reason: In the interests of highway safety and to encourage travel by alternative modes of transport in accordance with policy DR3 of the Herefordshire Unitary Development Plan 2007.

17. The details of layout required to be submitted pursuant to condition 1 above, shall include full details of all proposed boundary treatments (i.e. walls, gates, fences or any other means of enclosure).

Reason: To ensure a satisfactory appearance to the development in accordance with policies DR1 and LA2 of the Herefordshire Unitary Development Plan 2007.

18. The details of layout required to be submitted pursuant to condition 1 above, shall include full details of existing site levels, all proposed earthworks and proposed finished levels.

Reason: To ensure that the development is satisfactorily integrated into the landscape

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Further information on the subject of this report is available from Mr R Close on 01432 261803

in accordance with policy LA2 of the Herefordshire Unitary Development Plan 2007.

19. The recommendations set out in the ecologist's reports dated February 2013 and June 2010 shall be followed unless otherwise agreed in writing by the local planning authority. Prior to commencement of the development, an update assessment and full working method statement should be submitted to and be approved in writing by the local planning authority, and the work shall be implemented as approved.

Reasons: To ensure that all species are protected having regard to the Wildlife and Countryside Act 1981 (as amended), the Conservation of Habitats and Species Regulations 2010 and Policies NC1, NC6 and NC7 of the Herefordshire Unitary Development Plan.

To comply with Policies NC8 and NC9 of Herefordshire's Unitary Development Plan in relation to Nature Conservation and Biodiversity and to meet the requirements of PPS9 Biodiversity and Geological Conservation and the NERC Act 2006.

20. Prior to commencement of the development, a full habitat enhancement and management scheme, including reference to Herefordshire's Biodiversity Action Plan Priority Habitats and Species, including timescale for implementation, shall be submitted to and be approved in writing by the local planning authority. The work shall be implemented as approved.

Reasons: To ensure that all species are protected having regard to the Wildlife and Countryside Act 1981 (as amended), the Conservation of Habitats and Species Regulations 2010 and Policies NC1, NC6 and NC7 of the Herefordshire Unitary Development Plan.

To comply with Policies NC8 and NC9 of Herefordshire's Unitary Development Plan in relation to Nature Conservation and Biodiversity and to meet the requirements of PPS9 Biodiversity and Geological Conservation and the NERC Act 2006.

21. An appropriately qualified and experienced ecological clerk of works shall be appointed (or consultant engaged in that capacity) to oversee the ecological mitigation and enhancement work.

Reasons: To ensure that all species are protected having regard to the Wildlife and Countryside Act 1981 (as amended), the Conservation of Habitats and Species Regulations 2010 and Policies NC1, NC6 and NC7 of the Herefordshire Unitary Development Plan.

To comply with Policies NC8 and NC9 of Herefordshire's Unitary Development Plan in relation to Nature Conservation and Biodiversity and to meet the requirements of PPS9 Biodiversity and Geological Conservation and the NERC Act 2006.

22. No development shall take place until a Site Waste Management Plan has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the provisions of the approved Plan.

Reason: In the interests of pollution prevention and efficient waste minimisation and management so as to comply with Policies S10 and DR4 of Herefordshire Unitary Development Plan.

23. H27 Parking for site operatives.

24. The two new vehicular means of access hereby permitted shall be provided prior to commencement of any building operation hereby permitted.

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Further information on the subject of this report is available from Mr R Close on 01432 261803

**Reason:** In the interests of highway safety, in accordance with policies DR3, T6 and T7 of the Herefordshire Unitary Development Plan 2007.

25. Prior to the start of construction of any dwellinghouse hereby permitted a detailed scheme for the future maintenance of a continuous and imperforate 6 metre high timber acoustic fence, sealed at the base, with a density of at least 15 kg/m<sup>2</sup> shall be submitted for approval to the Local Planning Authority. The fence shall then be erected prior to the first occupation of any dwellings along the alignment shown on the drawing number 2589/027 Revision A and thereafter be retained and maintained in accordance with the approved scheme.

**Reason:** To ensure that the occupiers of the dwelling houses hereby permitted do not suffer an undue level of noise in accordance with policy DR13 of the Herefordshire Unitary Development Plan 2007.

26. All dwellings shall be constructed in accordance with BS 8233:1999 so as to provide sound insulation against externally generated noise. The "good" room criteria shall be applied, meaning internal noise levels must be no more than 30 dB LAeq for living rooms and bedrooms, with windows shut and other means of ventilation provided. Levels of 45 dB L<sub>Amax</sub>, fast shall not normally be exceeded in bedrooms (23:00 to 07:00 hours night-time) with the windows closed.

Prior to the construction of any houses on the site, written details of the methods of construction and attenuation to achieve this standard shall be submitted to the Local Planning Authority for their written approval. None of the houses hereby permitted shall start to be constructed until the Local Planning Authority has given such written approval. The development shall take place in full accordance with the approved details and thereafter maintained as such.

**Reason:** To ensure the occupants of the dwellings enjoy a satisfactory noise environment with regard to LAeq and night-time L<sub>Amax</sub> noise levels, in accordance with policy DR13 of the Herefordshire Unitary Development Plan 2007.

#### **INFORMATIVES:**

1. A written Land Drainage Consent will need to be obtained from the Board under the terms of the Land Drainage Act 1991 and the Flood and Water Management Act 2010.
2. The details of layout required to be submitted pursuant to condition 1 should follow the advice contained within 'Manual for Streets 2' and include the vehicle parking and cycle parking facilities as set out in the Herefordshire Council 'Highways Design Guide for New Development (July 2006)'.
3. This permission does NOT relate to illustrative drawing 2589/008 Revision F.
4. The documents to which this decision relate are:
  - Proposed Site Access - Drawing number 617-05 Revision A
  - Colin Water Acoustics (Consultants in Environmental Acoustics) Report CWA 26310/R05/1/ May 2011;
  - Tree Survey Report prepared by Illman Young May 2011 2011 which sets out the root protection areas in Appendix 2 (i.e. T15 - T7 of the TPO - 6 metres radius, T7 - T6 of the TPO - 6.48 metres radius, T6 - T5 of the TPO - 7.08 metres radius, T4 - T3 of the TPO - 5.64 metres radius, T3 - T2 of the TPO - 6 metres radius and T2 - T1 of the TPO - 7.2 metres radius);
  - Phil Jones Associates Transport Assessment dated May 2011;
  - Proposed Zebra Crossing (Porthouse Farm Development) - Stage 2 Road Safety

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Further information on the subject of this report is available from Mr R Close on 01432 261803

- Audit prepared by Amey dated 21 June 2011;
- Flood Risk Assessment (Report No. 1577) prepared by Robert West Consulting;
- Topographical Survey Drawing No. T 5637/2;
- Application Site Plan - Drawing number 2589/015 (Scale 1:1250);
- Ecological Appraisal (March 2010);
- Reptile Survey (June 2010);
- Extended Phase 1 Survey (March 2013); and
- Proposed Acoustic Fence Location Plan - Drawing Number 2589/027 Revision A

5. **N11C General**

6. The details of landscaping required to be submitted pursuant to Condition 1 shall include hard landscaping, soft landscaping and a fully detailed landscape management plan.

7. **HN01 Mud on highway**

8. **HN04 Private apparatus within highway**

9. **HN05 Works within the highway**

10. The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against planning policy and any other material considerations, including any representations that have been received. It has subsequently determined to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

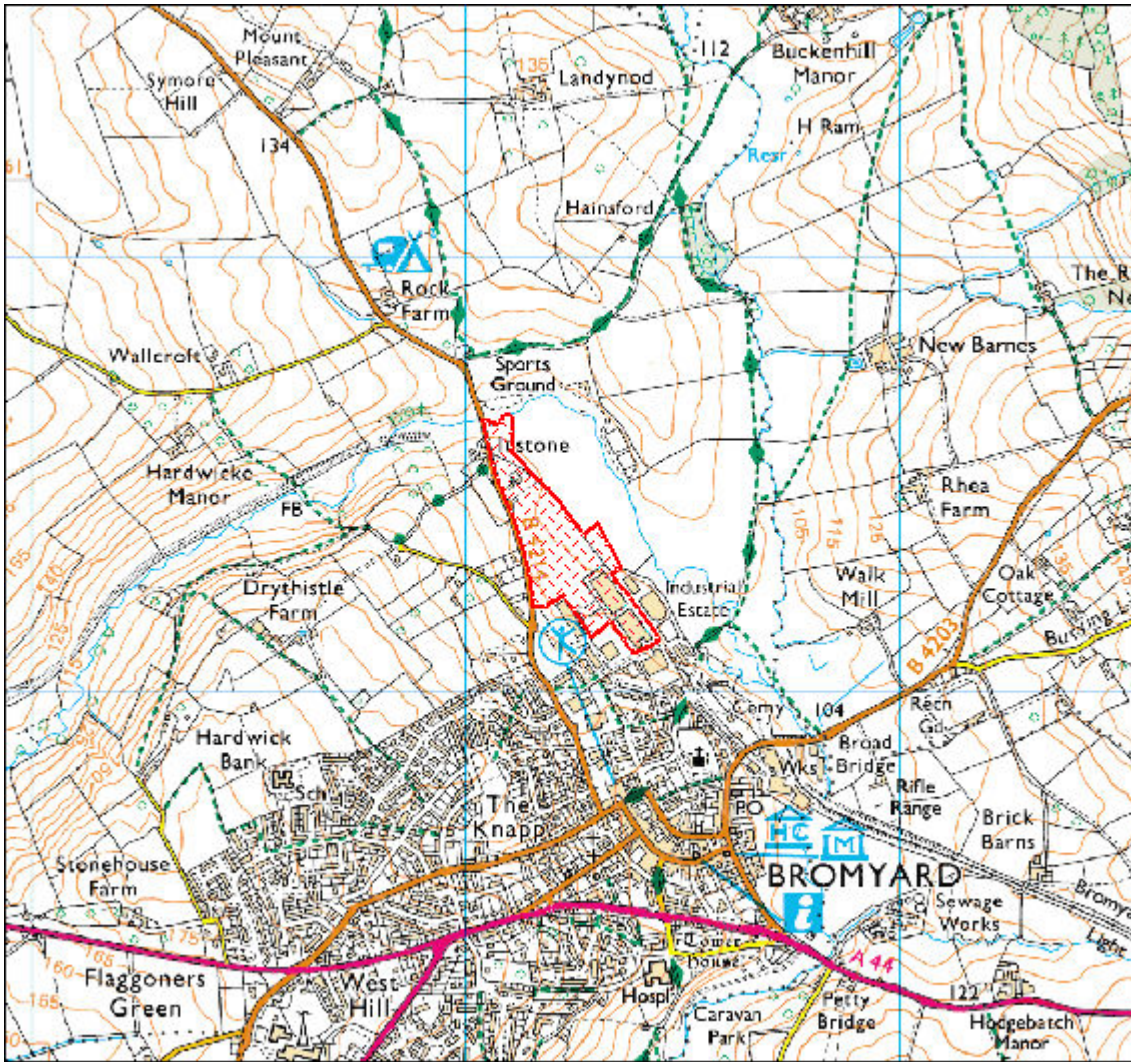
Decision: .....

Notes: .....

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**Background Papers**

Internal departmental consultation replies.



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**APPLICATION NO:** 130907/O

**SITE ADDRESS :** PORTHOUSE FARM, TENBURY ROAD, BROMYARD, HEREFORDSHIRE

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# **ANNEX 1**

## **Report to Planning Committee**

**On 4<sup>th</sup> April 2012**

**Re: N111899/O**



<b>MEETING:</b>	<b>PLANNING COMMITTEE</b>
<b>DATE:</b>	<b>4 APRIL 2012</b>
<b>TITLE OF REPORT:</b>	<b>N111899/O - AN OUTLINE APPLICATION FOR THE ERECTION OF UP TO 127 DWELLINGS (35% TO BE AFFORDABLE) WITH ALL MATTERS EXCEPT ACCESS TO BE RESERVED FOR FUTURE CONSIDERATION AT PORTHOUSE FARM, TENBURY ROAD, BROMYARD, HEREFORDSHIRE,</b>  <b>For: Ms Harrison per Mr John Cornwell, Oakview House, Station Road, Hook, Hampshire, RG27 9TP</b>
<b>WEBSITE LINK:</b>	<a href="http://www.herefordshire.gov.uk/housing/planning/58286.aspx?ID=111899&amp;NoSearch=True">http://www.herefordshire.gov.uk/housing/planning/58286.aspx?ID=111899&amp;NoSearch=True</a>

Date Received: 14 July 2011

Ward: Bromyard

Grid Ref: 365239,255362

Expiry Date: 13 October 2011

Local Members: Councillors A Seldon and JG Lester

## 1. Background

- 1.1 This planning application was reported to the Planning Committee on 1<sup>st</sup> February 2012. Attached, as **Annex 1** is a copy of that report (amended to include the update report to that earlier Committee).
- 1.2 The application was deferred to enable the issue of noise to be addressed in more detail. Specific concern had been expressed by Members as to noise from the Polytec open yard where forklifts trucks operate on a 24 hour basis moving metal stillages.

## 2. Representations

- 2.1 Since the Planning Committee on 1<sup>st</sup> February 2012, further representations have been received.
- 2.2 Three further letters of OBJECTION have been received. They do not raise any matters not expressed by the other objectors (see Annex 1 paragraph 4.1).
- 2.3 Five further letters of SUPPORT have been received. In addition to the points previously made (see Annex 1 paragraph 4.2), they make the following points:-
  - There is no interest in the site for industrial use;
  - The Linton site is preferable for employment land as it has direct access onto the A44
  - Bromyard has a shortage of suitable labour – the reason why Polytec Holden (and Holden Aluminium) employ workers from Eastern Europe;
  - There is no indigenous labour on which to draw;

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Further information on the subject of this report is available from Mr R Close on 01432 261803



- Employment development upon this land would create traffic and pollution problems;
- Housing on this land, in contrast would benefit local traders & boost school populations providing more resources and security;
- More people residing in Bromyard may assist in revitalising aspects of the town social and cultural life;
- The proposed new housing may have a more beneficial effect on Bromyard's economy and well being than industry which is unlikely to materialise; and
- Unless there is some urgent economic regeneration of the town in the form of new residents, one cannot foresee Legges of Bromyard being able to remain in the town, in the forthcoming years.

2.4 The Bromyard and Winslow Town Council has written again to request an increase in the financial contribution towards CCTV coverage from £6,150 (index linked) to £16,150 (index linked) and to request a financial contribution towards Queen Elizabeth Humanities College.

### 3.0 Officer Appraisal

#### Noise

3.1 With respect the issue of noise, professional independent expert consultants (RPS) have been engaged and their detailed report is attached as **Annex 2** to this report. It is worth noting that they consider both of the acoustic / noise reports accompanying the planning application to be "... professional and fit for purpose. Measurement and assessment appears to have been undertaken in accordance with current good practice" (paragraph 3.2 of the RPS report). However, a few areas were identified as requiring further examination. In summary, RPS considers that appropriate mitigation measures can be secured to ensure that the occupiers of the proposed houses would enjoy a satisfactory level of amenity (paragraph 6.7).

3.2 I would draw Members specific attention to the following elements of the RPS report:-

- Paragraph 3.6 that recommends a change to condition 7 of the original report to Committee;
- Paragraph 3.11 that recommends attaching a condition preventing the use of tonal reversing alarms to vehicles within the Polytec site. This would effectively require the fitting of a white noise reversing alarm such as the bbs-tek "white sound warning system";
- Paragraph 5.13 that recommends the erection of a 6 metre high timber acoustic fence along the northern boundary of the Polytec site (at the base of the bund on the "industrial side"); and
- Paragraphs 5.17 & 5.18 that recommends a condition that would secure double glazing and ventilation to certain dwellings.

3.3 It is the recommended 6 metre high acoustic fence and the non-use of tonal reversing alarms that would primarily provide the noise mitigation with respect the activities within the open yard (i.e. the forklift trucks moving the stillages). The 6 metre high timber acoustic fence would be a significant structure. However, it would screen the open yard of stillages that are not in themselves an attractive feature. Furthermore the bund as proposed to be remodelled would partially obscure the acoustic fence. Landscaping of the bund would assist in softening the visual impact of this fence further. Therefore it is considered that such an acoustic barrier can satisfactorily be integrated into the landscape. With the provisions of the acoustic fence, the bund would no longer fulfill an acoustic function but would still provide a landscape function.

3.4 Other significant points within the RPS report that I would draw Members attention to are:-

- The garden areas would not suffer from an unacceptable level of noise (paragraphs 5.21 and 5.22); and



- No noise which would significantly affect the application site, either during the day or night was observed from any facility other than the Polytec site (paragraph 4.9);

3.5 As a consequence it is considered the noise mitigation measures proposed would ensure that a satisfactory level of amenity would be enjoyed by future occupiers of the proposed development.

3.6 In addition, to the noise issue Members raised a number of other matters at the Planning Committee on 2<sup>nd</sup> February 2012 that are addressed below.

### **Affordable Housing**

3.7 The Housing Needs and Development Team of the Places and Communities Directorate confirm that there is a need in Bromyard for 107 affordable houses. The proposed development would secure up to 44 affordable houses. This is considered to be a significant benefit of the scheme. The delivery of affordable housing is identified as a priority within Herefordshire Council's Corporate Plan 2011-14.

### **Vacant Business Units in Bromyard**

3.8 For Members information, research since the Planning Committee on 2<sup>nd</sup> February 2012 has revealed some business units being marketed in Bromyard and its immediate surroundings. These include Unit 2/3 Porthouse Farm Industrial Estate (144.23 sq m), units of varying size at Collington Works and small office units in two buildings in Rowberry Street.

### **Highways**

3.9 It is recommended that a condition be attached securing the closure of the existing vehicular means of access and the provision of the two new vehicular means of access prior to commencement of any of the building operations.

3.10 Whilst the speed limit along Tenbury Road past the application site is in the national limit (i.e. 60mph), it is likely that if the application is approved, steps can be taken to lower the limit to a more appropriate value for a road adjoining a residential site. This is done through a Traffic Regulation Order, which is subject to consultation, and various criteria must also be met (e.g. number of accesses per 500m; current speeds on the road; usage by pedestrians etc). It is unlikely that the criteria would be met prior to development approval.

3.11 The proposed access points have sufficient visibility splay dimensions to be acceptable without the speed limit being lowered.

### **Publicity of Planning Application**

3.12 For information purposes, Members are informed that all those business premises on the northern side of the road into the Porthouse Farm Industrial Estate were advised by letter of the planning application and two site notices were displayed along that specific road.

### **Draft Heads of Terms**

3.13 With regard the further views of the Bromyard and Winslow Town Council with respect the Draft Heads of Terms, attention is drawn to paragraph 5.40 of the report to the Planning Committee on 1<sup>st</sup> February 2012 (see Annex 1). In addition, the People's Services Directorate state:-



"Queen Elizabeth Humanities College have recently reduced their planned admission numbers as they were aware that the children were not coming through the system to fill the school and have therefore removed teaching spaces in order to achieve this. As a little exercise I have looked at the number of children coming through the system in the primary sector that can be considered to be their feeder primary children. Obviously it is never that clear cut and parents with children in the catchment area can express a preference and send their children to alternative schools. However, historical information would suggest that 90% of the children attending Queen Elizabeth come from within their own catchment and that the school consistently take in around 65% of all children from their catchment.

- 3.14 Based on current numbers on roll it is unlikely that the school will fill to capacity even with this new development taking place. Even if the development was for 127 4+ bedroom houses we would only expect 28 children of secondary age to be created from the development. Not all these children will be the same age and therefore we have to assume that the spread of ages will be even resulting in 5-6 children per year group. The school would therefore need to have at least 74 children in any one year group currently or anticipated in the future in order for us to justify a contribution for the school. Based on the numbers on roll in the feeder primary schools and the percentages identified above, I cannot see this figure being reached."
- 3.15 The Council's Commissioning Officer (CCTV) has obtained an up-to-date quote for the CCTV coverage (i.e. 6 cameras fully fitted). The quote is £9,250. I therefore recommend a change to the figure clause 7. of the Heads of Terms from £,6150 (index linked) to £9,250 (index linked).

### Summary

- 3.16 In the light of the above, it is considered that the recommendation for approval should remain. Members specific attention is drawn to recommended conditions 7, 16, 26, 27, 28 and 29.

### RECOMMENDATION

**Subject to the prior completion of a Section 106 legal agreement in accordance with the Draft Heads of Terms attached as Annex 1 to the report to Planning Committee on 1<sup>st</sup> February 2012 with the amendment to the figure in clause 7. to £9,250 (index linked), the Assistant Director Economic, Environment & Cultural Services be DELEGATED POWERS TO GRANT OUTLINE PLANNING PERMISSION subject to the following conditions:-**

1. The development shall not commence until approval of the following reserved matters has been obtained from the Local Planning Authority:-
  - Layout
  - Scale
  - Appearance
  - Landscaping

Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.

The development hereby permitted shall be begun either before the expiration of five years from the date of this permission, or before the expiration of two years from the date of approval of the last reserved matters to be approved, whichever is the later.

Reason: No such details have been submitted and in accordance with Section 92 of the Town and Country Planning act 1990.



2. The finished floor levels of all the dwelling houses shall be set a minimum of 600mm above Q1000 flood level at each river station section (sections referred to in Appendix H of the Flood risk Assessment Report 1577 dated 26th June 2009).

Reason: To protect the development from flooding, in accordance with policy DR7 of the Herefordshire Unitary Development Plan 2007.

3. There shall be no raising of ground levels within flood zone 3, the 'high risk', 1% annual probability flood plain.

Reason: To protect the development from flooding, in accordance with policy DR7 of the Herefordshire Unitary Development Plan 2007.

4. Prior to commencement of the development hereby permitted the following matters shall be submitted to the Local Planning Authority for their written approval:-

Full details of foul sewerage disposal arrangements  
Full details of surface water drainage arrangements  
Full details of land drainage arrangements

The development hereby permitted shall not commence until the Local Planning Authority has given such written approval. The development shall be carried out in strict accordance with the approved detail and thereafter maintained as such.

Reason: To ensure that effective drainage facilities are provided for the proposed development and that no adverse impact occurs to the environment or the existing public sewerage system, in accordance with policies DR4 and DR6 of the Herefordshire Unitary Development Plan 2007.

5. With regard the details required to be submitted pursuant to condition 4 above, no surface water or land drainage run-off shall be discharged, either directly or indirectly, to the public sewerage system.

Reason: To protect the integrity of the public sewerage system, to prevent hydraulic overloading of the public sewerage system and ensure no detriment to the environment, in accordance with policies DR4 and DR6 of the Herefordshire Unitary Development Plan 2007.

6. With regard the details of foul sewerage disposal arrangements required to be submitted pursuant to condition 4 above, no more than 7 litres per second shall be discharged into the public sewerage system, thus requiring an on-site pumping station. The scheme shall be implemented with this restricted flow and thereafter maintained as such.

Reason: To protect the integrity of the public sewerage system, to prevent hydraulic overloading of the public sewerage system and ensure no detriment to the environment, in accordance with policies DR4 and DR6 of the Herefordshire Unitary Development Plan 2007.



7. The scheme of noise attenuating measures proposed for the Polytec-Holden facility by Colin Waters Acoustics and submitted as part of the application, including:-
- Digester Fan - Acoustic Louvre Air - In & Out, Blockwork Enclosure
  - Paint Dryer Fan - Acoustic Louvre Enclosure End Intake – 2 sides & Top Acoustic Panel Enclosure
  - Extract next to Paint Dryer - Exhaust attenuator upgrade
  - Compressor House 'A' - Acoustic Louvre's & Acoustic Louvre Door
  - Compressor House 'B' - Acoustic Louvre's & Acoustic Louvre Door
  - Chemical Mixer Extract - Exhaust Attenuator
  - Dust Extractor - Acoustic Panel Surround & Exhaust Attenuator

shall be completed prior to the first occupation of any of the dwelling houses and thereafter maintained to the satisfaction of the Local Planning Authority.

All other individual noise sources associated with fixed plant on the Polytec Holden site shall be installed and maintained so that they emit to the external environment no more than 50 dB Laeq SPL sound pressure level as measured at 4 metres from the individual noise source.

A rating level of 35 dB LAr,Tr using the methodology prescribed by BS 4142 'Method for Rating Industrial Noise affecting mixed residential and industrial areas' shall not be exceeded at the facade when measured at ground and upper floor level at any dwelling on the site.

Reason: To ensure that the occupiers of the dwellinghouses enjoy a satisfactory level of amenity in compliance with policy DR13 of the Herefordshire Unitary Development Plan 2007.

8. No development shall take place until the following has been submitted to and approved in writing by the Local Planning Authority:

a) a 'desk study' report including previous site and adjacent site uses, potential contaminants arising from those uses, possible sources, pathways, and receptors, a conceptual model and a risk assessment in accordance with current best practice.

b) if the risk assessment in (a) confirms the possibility of a significant pollutant linkage(s), a site investigation should be undertaken to characterise fully the nature and extent and severity of contamination, incorporating a conceptual model of all the potential pollutant linkages and an assessment of risk to identified receptors.

c) if the risk assessment in (b) identifies unacceptable risk(s) a detailed scheme specifying remedial works and measures necessary to avoid risk from contaminants/or gases when the site is developed. The Remediation Scheme shall include consideration of and proposals to deal with situations where, during works on site, contamination is encountered which has not previously been identified. Any further contamination encountered shall be fully assessed and an appropriate remediation scheme submitted to the local planning authority for written approval.

Reason: In the interests of human health in accordance with policy DR10 of the Herefordshire Unitary Development Plan 2007.

9. The Remediation Scheme, as approved pursuant to condition number 8 above, shall be fully implemented before development is first occupied. On completion of the remediation scheme the developer shall provide a validation report to confirm that all works were completed in accordance with the agreed details, which must be submitted before the



development is first occupied. Any variation to the scheme including the validation reporting shall be agreed in writing with the Local Planning Authority in advance of works being undertaken.

Reason: In the interests of human health in accordance with policy DR10 of the Herefordshire Unitary Development Plan 2007.

10. No building operation shall take place until the regraded bund permitted by planning permission DMN/111900/N has been completed. Thereafter this bund shall remain in-situ and be maintained to the satisfaction of the Local Planning Authority.

Reason: To ensure that the occupiers of the dwellinghouses enjoy a satisfactory level of amenity in compliance with policy DR13 of the Herefordshire Unitary Development Plan 2007.

11. The hedgerow along the western boundary of the site on the eastern side of the Tenbury Road shall be retained as shown on the approved plans.

Reason: The roadside hedgerow is considered to be of both landscape and ecological value, to accord with policy LA5 of the Herefordshire Unitary Development Plan 2007.

12. The details of layout required to be submitted pursuant to condition 1 above shall show the entirety of the residential development, including the dwelling houses, gardens, roadways, pedestrian routes, cycles routes, outdoor playing space, open space and equipped children's play space, confined to the allocated housing site as defined on the Proposals Map to the Herefordshire Unitary Development Plan 2007.

Reason: To ensure that there is no unjustified encroachment of development into the open countryside or onto employment land in accordance with policies H7 and E5 of the Herefordshire Unitary Development Plan 2007.

13. The details of layout required to be submitted pursuant to condition 1 above shall show the entirety of the provision of a shared pedestrian/cycleway route along the approximate route of the former railway line adjacent to the eastern boundary of the site.

Reason: To ensure that there is adequate permeability through the development and to enhance both cycle and pedestrian routes, in accordance with policies T6 and T7 of the Herefordshire Unitary development Plan 2007.

14. The details of layout required to be submitted pursuant to condition 1 above shall include the provision of outdoor playing space, open space and equipped children's play space in accordance with policies H19 and RST3 of the Herefordshire Unitary Development Plan 2007.

Reason: In accordance with policies H19 and RST3 of the Herefordshire Unitary Development Plan 2007.

15. Prior to commencement of the development hereby permitted protective fencing in accordance with the advice contained in Section 9.2 of BS5837 comprising vertical and horizontal framework of scaffolding (well braced to withstand impacts) supporting either chestnut cleft fencing or chain link fencing in accordance with figure 2 of BS5837:2005 shall be erected at the furthest extent of the root protection areas to the seven trees protected by way of a Tree Preservation Order and the furthest extent of the roots of the roadside hedgerow that is to be retained. Once these protective measures have been erected but prior to commencement of the development hereby permitted a suitably qualified arboricultural consultant shall inspect the site and write to confirm that the



protective measures specified by this condition are in-situ. Upon receipt of that letter by the Local Planning Authority the development may commence but the protective measures must remain in-situ until completion of the development. No storage may take place within the tree protection areas. If any works are required within the tree protection areas an Arboricultural Method Statement shall be submitted to and approved by the Local Planning Authority prior to commencement of the development.

Reason: To ensure that the trees and hedgerow of amenity value that are both worthy and capable of retention are not damaged and their long- term health and future retention not prejudiced, in accordance with policy LA5 of the Herefordshire Unitary Development Plan 2007.

16. The details of layout and landscaping required to be submitted pursuant to condition 1 above shall include a scheme for the permanent closure of the two existing vehicular means of accesses. The two existing vehicular means of accesses shall be permanently closed in full accordance with the approved scheme prior to the commencement of any building operation hereby permitted.

Reason: In the interests of highway safety, in accordance with policy DR3, T6 and T7 of the Herefordshire Unitary Development Plan 2007.

17. The approved vehicular access including visibility splays, cycleway and pedestrian route shown upon drawing number 617-05 Revision A received 8th November 2011 shall be fully implemented prior to the first occupation of any of the dwellinghouses hereby permitted and thereafter maintained to the satisfaction of the Local Planning authority.

Reason: In the interests of highway safety and to encourage travel by alternative modes of transport in accordance with policy DR3 of the Herefordshire Unitary Development Plan 2007.

18. **B01 Development in accordance with the approved plans**

19. The details of layout required to be submitted pursuant to condition 1 above, shall include full details of all proposed boundary treatments (i.e. walls, gates, fences or any other means of enclosure).

Reason: To ensure a satisfactory appearance to the development in accordance with policies DR1 and LA2 of the Herefordshire Unitary Development Plan 2007.

20. The details of layout required to be submitted pursuant to condition 1 above, shall include full details of existing site levels, all proposed earthworks and proposed finished levels.

Reason: To ensure that the development is satisfactorily integrated into the landscape in accordance with policy LA2 of the Herefordshire Unitary Development Plan 2007.

21. The recommendations set out in the ecologist's reports dated March 2010 and June 2010 shall be followed unless otherwise agreed in writing by the local planning authority. Prior to commencement of the development, an update assessment and full working method statement should be submitted to and be approved in writing by the local planning authority, and the work shall be implemented as approved.

Reasons: To ensure that all species are protected having regard to the Wildlife and Countryside Act 1981 (as amended), the Conservation of Habitats and Species Regulations 2010 and Policies NC1, NC6 and NC7 of the Herefordshire Unitary Development Plan.



To comply with Policies NC8 and NC9 of Herefordshire's Unitary Development Plan in relation to Nature Conservation and Biodiversity and to meet the requirements of PPS9 Biodiversity and Geological Conservation and the NERC Act 2006.

22. Prior to commencement of the development, a full habitat enhancement and management scheme, including reference to Herefordshire's Biodiversity Action Plan Priority Habitats and Species, including timescale for implementation, shall be submitted to and be approved in writing by the local planning authority. The work shall be implemented as approved.

Reasons: To ensure that all species are protected having regard to the Wildlife and Countryside Act 1981 (as amended), the Conservation of Habitats and Species Regulations 2010 and Policies NC1, NC6 and NC7 of the Herefordshire Unitary Development Plan.

To comply with Policies NC8 and NC9 of Herefordshire's Unitary Development Plan in relation to Nature Conservation and Biodiversity and to meet the requirements of PPS9 Biodiversity and Geological Conservation and the NERC Act 2006.

23. An appropriately qualified and experienced ecological clerk of works shall be appointed (or consultant engaged in that capacity) to oversee the ecological mitigation and enhancement work.

Reasons: To ensure that all species are protected having regard to the Wildlife and Countryside Act 1981 (as amended), the Conservation of Habitats and Species Regulations 2010 and Policies NC1, NC6 and NC7 of the Herefordshire Unitary Development Plan.

To comply with Policies NC8 and NC9 of Herefordshire's Unitary Development Plan in relation to Nature Conservation and Biodiversity and to meet the requirements of PPS9 Biodiversity and Geological Conservation and the NERC Act 2006.

24. **I55 Site Waste Management**

25. **H27 Parking for site operatives**

26. The two new vehicular means of access hereby permitted shall be provided prior to commencement of any building operation hereby permitted.

Reason: In the interests of highway safety, in accordance with policies DR3, T6 and T7 of the Herefordshire Unitary Development Plan 2007.

27. No vehicle upon the Polytec site fitted with tonal reversing alarms shall operate on site between the hours of 23:00 and 07:00 hours. Prior to the first occupation of any of the dwelling houses hereby permitted, all forklift trucks upon the general industrial site that forms part of the planning application site shall be fitted with white noise reversing alarms / warning systems and thereafter maintained as such;

Reason: To ensure that the occupiers of the dwelling houses hereby permitted do not suffer an undue level of night-time noise, in accordance with policy DR13 of the Herefordshire Unitary Development Plan 2007.



28. Prior to the first occupation of any dwellinghouse hereby permitted a continuous and impermeable 6 metre high timber acoustic fence, sealed at the base, with a density of at least 15 kg/m<sup>2</sup> be erected along the alignment shown on the drawing number 2589/027 Revision A received 19 March 2012 and thereafter maintained to the satisfaction of the local planning authority.

Reason: To ensure that the occupiers of the dwelling houses hereby permitted do not suffer an undue level of noise in accordance with policy DR13 of the Herefordshire Unitary Development Plan 2007.

29. All dwellings shall be constructed in accordance with BS 8233:1999 so as to provide sound insulation against externally generated noise. The "good" room criteria shall be applied, meaning internal noise levels must be no more than 30 dB LA<sub>eq</sub> for living rooms and bedrooms, with windows shut and other means of ventilation provided. Levels of 45 dB LA<sub>max,fast</sub> shall not normally be exceeded in bedrooms (23:00 to 07:00 hours night-time) with the windows closed.

Before any of the development hereby permitted takes place, written details of the methods of construction and attenuation to achieve this standard shall be submitted to the Local Planning Authority for their written approval. None of the development hereby permitted shall take place until the Local Planning Authority has given such written approval. The development shall take place in full accordance with the approved detail and thereafter maintained as such.

Reason: To ensure the occupants of the dwellings enjoy a satisfactory noise environment with regard to LA<sub>eq</sub> and night-time LA<sub>max</sub> noise levels, in accordance with policy DR13 of the Herefordshire Unitary Development Plan 2007.

#### INFORMATIVES:

1. **A written Land Drainage Consent will need to be obtained from the Board under the terms of the Land Drainage Act 1991 and the Flood and Water Management Act 2010.**
2. **The details of layout required to be submitted pursuant to condition 1 should follow the advice contained within 'Manual for Streets 2' and include the vehicle parking and cycle parking facilities as set out in the Herefordshire Council 'Highways Design Guide for New Development (July 2006)'.**
3. **This permission does NOT relate to illustrative drawing 2589/008 Revision F.**
4. **The documents to which this decision relate are:-**
  - **Proposed Site Access – Drawing number 617-05 Revision A received 8th November 2011;**
  - **Colin Water Acoustics (Consultants in Environmental Acoustics) Report CWA 26310/R05/1/ May 2011 received 14th July 2011;**
  - **Tree Survey Report prepared by illmanyounng May 2011 received 14th July 2011 which sets out the root protection areas in Appendix 2 (i.e. T15 – T7 of the TPO – 6 metres radius, T7 – T6 of the TPO – 6.48 metres radius, T6 – T5 of the TPO – 7.08 metres radius, T4 – T3 of the TPO – 5.64 metres radius, T3 – T2 of the TPO – 6 metres radius and T2 – T1 of the TPO – 7.2 metres radius;**

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Further information on the subject of this report is available from Mr R Close on 01432 261803

- Phil Jones Associates Transport Assessment dated May 2011 received 14th July 2011;
- Proposed Zebra Crossing (Porthouse Farm Development) – Stage 2 Road Safety Audit prepared by Amey dated 21st June 2011 received 14<sup>th</sup> July 2011;
- Flood Risk Assessment (Report No. 1577) prepared by Robert West Consulting received on 14th July 2011;
- Topographical Survey Drawing No. T 5637/2 received 14th July 2011;
- Application Site Plan – Drawing number 2589/015 (Scale 1:1250) received 14th July 2011.
- Ecological Appraisal (March 2010)
- Reptile Survey (June 2010); and
- Proposed Acoustic Fence Location Plan - Drawing Number 2589/027 Revision received 19 March 2012

5. N15 Reason(s) for the Grant of PP/LBC/CAC
6. N11C General
7. The details of landscaping required to be submitted pursuant to Condition 1 shall include hard landscaping, soft landscaping and a fully detailed landscape management plan.
8. HN01 Mud on highway
9. HN04 Private apparatus within highway
10. HN05 Works within the highway

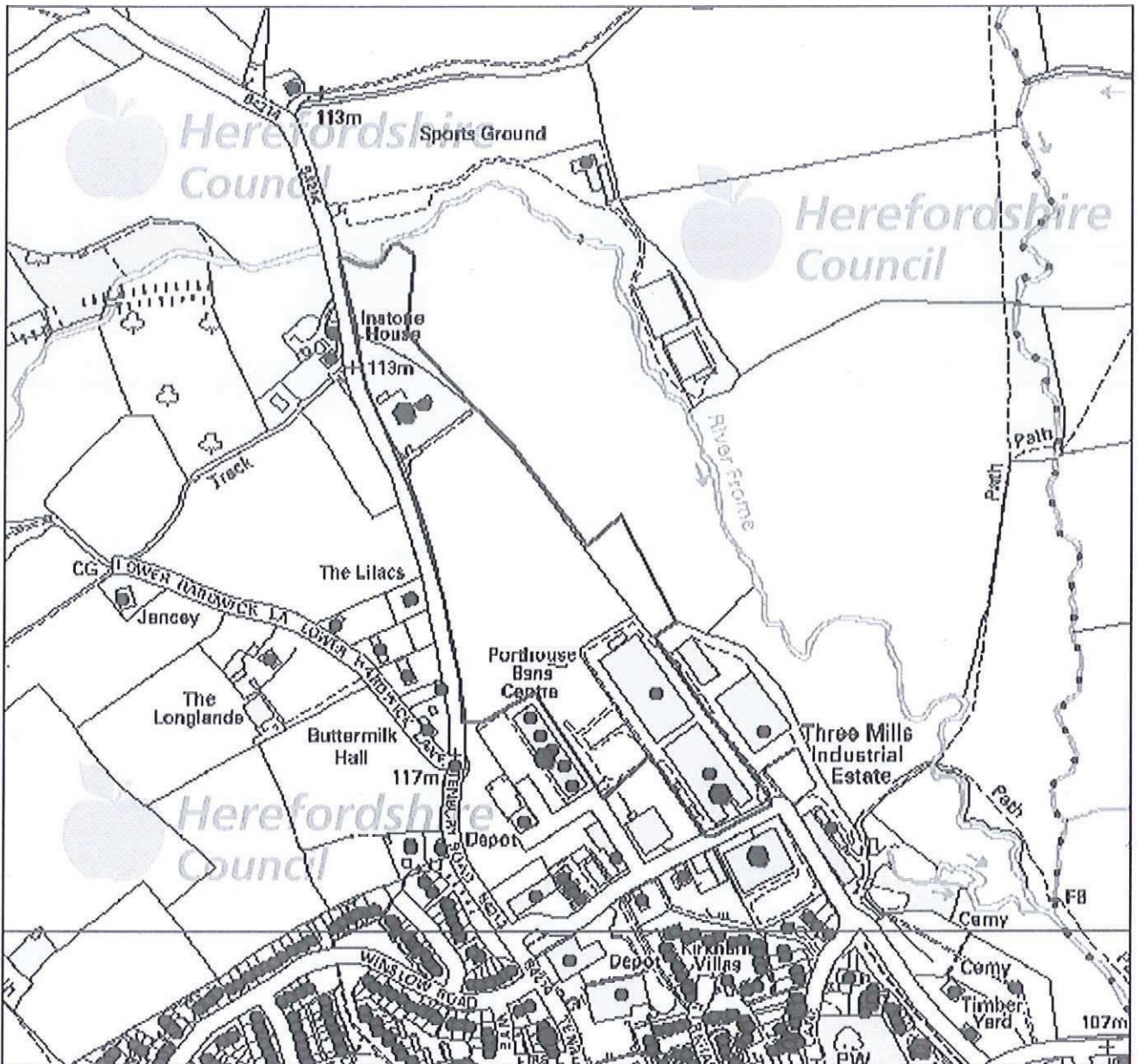
Decision: .....

Notes: .....

**Background Papers**

Internal departmental consultation replies.





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**APPLICATION NO:** N/111899/O

**SITE ADDRESS :** PORTHOUSE FARM, TENBURY ROAD, BROMYARD, HEREFORDSHIRE

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<b>MEETING:</b>	<b>PLANNING COMMITTEE</b>
<b>DATE:</b>	<b>1 FEBRUARY 2012</b>
<b>TITLE OF REPORT:</b>	<p><b>DMN/111899/O - AN OUTLINE APPLICATION FOR THE ERECTION OF UP TO 127 DWELLINGS (35% TO BE AFFORDABLE) WITH ALL MATTERS EXCEPT ACCESS TO BE RESERVED FOR FUTURE CONSIDERATION AT PORTHOUSE FARM, TENBURY ROAD, BROMYARD, HEREFORDSHIRE,</b></p> <p><b>For: Ms N Harrison per Mr John Cornwell, Oakview House, Station Road, Hook, Hampshire, RG27 9TP</b></p>

**Date Received: 14 July 2011**

**Ward: Bromyard**

**Grid Ref: 365239,255362**

**Expiry Date: 13 October 2011**

Local Members: Councillors A Seldon and J G Lester

## **1. Site Description**

- 1.1 The application site is on the eastern side of Tenbury Road (B4214) at the northern end of Bromyard. The boundary of the site, adjacent to Tenbury Road, is largely characterised by a roadside hedge of indigenous species. Within or immediately to the rear of this hedge are seven trees of amenity value. These trees are protected by a Tree Preservation Order (Ref: TPO 557/T1-T7). Within the application site in its south-eastern corner is the Polytec factory which is a general industrial premises. The eastern boundary of the site largely follows the line of the former railway in a general arc. The land slopes down from west to east towards the River Frome. Between the application site and the River Frome is an attractive riverside meadow, a part of which is liable to flood. Upon the application site, parallel to the industrial premises to the south is a bund. The retention of that bund in a materially different form (in terms of grading) is the subject of a separate application (DMN/111900/N) reported upon this agenda. The application site, other than the Polytec premises, was formerly used for agricultural purposes.
- 1.2 Beyond the application site on the western side of the Tenbury Road and to the north built development is of a sporadic nature. To the north beyond the River Frome is the Bromyard Rugby Club.
- 1.3 The site is located approximately 500 metres from the Town Centre.

### **Proposal**

- 1.4 The planning application is made in outline form and proposes to erect up to 127 dwellings (35% to be affordable). Significantly all matters, other than access, are reserved for future

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Further information on the subject of this report is available from «offname» on «offtel»



consideration. This means that matters of layout, scale (i.e. design), appearance (i.e. materials) and landscaping are reserved for future consideration.

- 1.5 There would be two vehicular means of access onto the Tenbury Road. One would be located to the south of the site some 15 metres south of the property known as 'Becks Cottage' which is situated on the opposite (western) side of Tenbury Road accessed off Lower Hardwick Lane. The second would be sited further north some 25 metres north of the property known as 'The Lilacs' on the opposite (western) side of Tenbury Road. The southernmost access would have a visibility splay of 2.4m x 112 metres in a southerly direction and a splay of 2.4 metres x 160 metres in a northerly direction. The northernmost access would have splays of 2.4 metres x 160 metres in both directions. The two existing vehicular means of accesses would be closed.
- 1.6 The issue of access is not merely confined to how vehicles would enter the site from the public highway but also how pedestrians and cyclists would enter the site. The access plans show the provision of a shared pedestrian/cycleway parallel to the Tenbury Road but set inside the site to the rear of the existing roadside hedgerow, other than a small section to the north of the site immediately south of the River Frome that would be in front of the roadside hedgerow. A zebra crossing for pedestrians would be provided to the south of the southernmost access allowing pedestrians to cross to the western side of Tenbury Road prior to Winslow Road.
- 1.7 A Section 106 Agreement would be required and Draft Heads of Terms are attached as Annex 1.

### **Planning History**

- 1.8 As will become apparent within the appraisal below the site is allocated for housing development. It is worth noting that its allocation for housing purposes was the subject of objections at the time by twelve persons or organisations (although two of those objections were withdrawn). An Inspector appointed by the Secretary of State held an Inquiry to consider the objections that had been lodged to the Herefordshire Unitary Development Plan Revised Deposit Draft. After considering the objections and examining all the evidence the Inspector accepted the suitability of the land for housing purposes and supported the residential allocation. The Council accepted the Inspector's conclusions and the allocation for housing purposes were retained in the adopted Herefordshire Unitary Development Plan 2007.
- 1.9 On 5<sup>th</sup> January 2010 an outline planning application (DCNC0009/2844/O) was submitted for the erection of up to 175 dwellings with garages, sports pavilion and pitches, community/youth building, landscaping and associated works. That application proposed, amongst other matters, the erection of new housing beyond the allocated site and as such within open countryside. That planning application was refused on the following summarised grounds:-
- The unjustified erection of new residential development within the countryside;
  - The failure to demonstrate that the local highway network has sufficient capacity to cater with the traffic generated by the proposal;
  - The failure to provide sufficient detail with regard access for pedestrians and cyclists;
  - The failure to demonstrate how the additional community facilities they were proposing were to be managed and maintained;
  - The deficiency of the ecological assessment;
  - The failure to satisfactorily address the inter-relationship between the industrial development and the proposed residential development;
  - The failure to complete the requisite Planning Obligation; and
  - The failure to demonstrate that the local sewerage network had sufficient capacity.
- 1.10 An appeal was then lodged but formally withdrawn in July 2010.

- 1.11 Pre-application discussions then took place that resulted in the submission of this materially different application that limits the extent of residential development to the allocated housing site.

## 2. Policies

### Central Government advice

Planning Policy Statement 1 – ‘Delivering Sustainable Development’ and Planning Policy Statement: ‘Planning and Climate Change’ Supplement to Planning Policy Statement 1.

Planning Policy Statement 3 – ‘Housing’

Planning Policy Statement 9 – ‘Biodiversity and Geological Conservation’

Circular 06/2005 ‘Bio-diversity and Geological Conservation – statutory Obligations and their impact within the planning system’

Planning Policy Statement 12 – ‘Local Spatial Planning’

Planning Policy Guidance Note 13 – ‘Transport’

Planning Policy Guidance Note 23 – ‘Planning and Pollution Control’

Planning Policy Guidance Note 24 – ‘Planning and Noise’

Planning Policy Statement 25 – ‘Development and Flood Risk’

Draft National Planning Policy Framework – July 2011

Circular 05/05 – ‘Planning Obligations’

### Herefordshire Unitary Development Plan 2007

#### Part I

S1 – Sustainable Development

S2 – Development Requirements

S3 – Housing

S6 – Transport

S7 – Natural and Historic Heritage

S8 – Recreation, Sport and Tourism

#### Part II – Development Requirements

DR1 – Design

DR2 – Land Use and Activity

DR3 – Movement



DR4 – Environment

DR5 – Planning Obligations

DR7 – Flood Risk

DR10 – Contaminated Land

DR13 – Noise

#### Housing

H1 – Hereford and the Market Towns: Settlement Boundaries and Established Residential Areas

H2 – Hereford and the Market Towns: Housing Land Allocations

H9 – Affordable Housing

H13 – Sustainable Residential Design

H15 – Density

H19 – Open Space Requirements

#### Transportation

T6 – Walking

T7 – Cycling

#### Natural and Historic Heritage

LA2 – Landscape Character and Areas Least Resilient to Change

LA5 – Protection of Trees, Woodlands and Hedgerows

NC1 – Regard for and Retention of Biodiversity

NC6 – Protection and Enhancement of Herefordshire's Biodiversity Action Plan Priority Habitats and Species

NC7 – Habitat Mitigation and Compensation Measures

NC8 – Habitat Creation, Restoration and Enhancement Measures

NC9 – Habitat Management and Monitoring

#### Recreation Sport and Tourism

RST3 – Standards for Outdoor Playing and Public Open Space

#### Supplementary Planning Guidance

Supplementary Planning Document entitled 'Planning Obligations' (April 2006)

### **3. Consultation Summary**

#### External Consultees

- 3.1 Environment Agency – no objections raised, although conditions are recommended.
- 3.2 The Land Drainage advisor is satisfied with the proposal.
- 3.3 Welsh Water – no objection. A condition is recommended.
- 3.4 River Lugg Internal Drainage Board – No objections raised.

#### Internal Consultees

- 3.5 Transportation/Highways – Area Engineer (Development Control) – No objections to the proposed access.
- 3.6 Strategic Housing – No objections. Satisfied with the level of affordable housing provision (35%) and the proposed tenure mix of at least 65% social rent and the remainder intermediate tenure.
- 3.7 Public Rights of Way – no public rights of way affected.
- 3.8 The County Archaeologist has no objections.
- 3.9 The Environmental Health Section has no objections to the proposal subject to conditions.

### **4 Representations**

- 4.1 Thirteen letters have been received raising the following matters and/or objecting to the development:-
  - Bromyard requires employment land also to ensure an adequate balance;
  - Concern regarding noise and odour from the Polytec factory;
  - Concern with regard foul sewerage capacity;
  - Potential traffic congestion;
  - Undue visual impact;
  - Concern as to light pollution from headlights into 'Becks Cottage' adversely affecting amenity;
  - Devaluation of property.
  - Concern as to the juxtaposition of the proposed residential development in close proximity to several industrial premises some of which operate on a 24-hour a day basis;
  - Further land is necessary for employment related development in Bromyard and the application site would be suitable; and
  - Concern with regard security.
- 4.2 Three letters of support have been received which makes the following points:-
  - Additional housing in Bromyard will make it a more attractive place to live & work;
  - The company struggles to attract the right calibre of people. Provision of such housing may assist in attracting people; and
  - The noise mitigation measures are adequate.



- The advantages of building more houses within Bromyard – creating greater expenditure capacity thus enhancing the viability and vitality of the Town Centre, bringing more children into the schools.
- The application site would not be attractive as an employment site due to the problems associated with larger vehicles accessing the site;
- The noise issue has been satisfactorily addressed and the Managing Director Polytec has no objections; and
- The Section 106 contributions would be of benefit to the local community especially sporting facilities.

4.3 Bromyard and Winslow Town Council in their response to the initial consultation merely stated “A resolution to support this application was defeated”.

4.4 In a subsequent response to amended details the Bromyard and Winslow Town Council stated that they oppose the housing development and made detailed comment upon the Draft Heads of Terms in relation to the proposed Planning Obligation.

4.5 Brockhampton Group Parish Council object on the following summarised grounds:-

- Concern that a residential development in close proximity to the existing industrial premises could potentially prejudice the future of those businesses;
- The adequacy of the local highway network
- There still needs to be employment land provided to ensure sufficient supply;
- Doubt as to whether the sewerage network has sufficient capacity;
- Concern re: flood risk; and
- Concern as to whether the bund includes any contaminated material.

4.6 The full text of these letters can be inspected at Hereford Customer Services, Franklin House, 4 Commercial Road, Hereford, HR1 2BB and prior to the Committee meeting.

## 5. Officer’s Appraisal

### 5.1 Principle of Development

5.2 The proposal involves residential development upon a parcel of land that is specifically allocated for residential development in the Herefordshire Unitary Development Plan 2007 (UDP) by virtue of policy H2. As stated earlier within this report the allocation of this land for residential purposes was the subject of objection when the Plan was on Deposit. Those objections were heard by an Inspector appointed by the Secretary of State at a public inquiry. Following consideration of all the objections raised, the Inspector concluded that the land was suitable as a residential allocation.

5.3 The site does not immediately adjoin other residential development and would need to create an identity of its own. Whilst policy H2 of the Herefordshire Unitary Development Plan estimated that the site may have a capacity of 87 dwellings, it must be understood that the figures given in that policy are estimates. The figure of 87 was based on an estimated site area of 3.7 hectares and an estimated net site area of 2.9 hectares. Some sites may yield a greater number of dwellings whilst others may yield a lesser number. In this particular case the site area of the allocated site is actually 3.9 hectares (net area of some 3.4 hectares excluding the bund). The planning application proposes “up to 127 dwellings” which would create a density of development of some 32.63 dwellings to the hectare (or some 37.35 dwellings to the hectare excluding the bund). Your officers consider that the site could accommodate this number of dwellings. Much would depend on the size and mix of the dwelling houses. This is a matter that can adequately be dealt with at the reserved matters stage.



#### 5.4 Affordable Housing

5.5 The application proposes 35% affordable housing provision. Within the affordable housing element of the development 65% of dwellings will be made available for social rent with the remainder being available for intermediate tenure. This accords with the level of affordable housing provision set out in policy H2 of the Herefordshire Unitary Development Plan 2007.

#### 5.6 Sewerage Capacity

5.7 At the time of the previous application there was an issue of foul sewerage capacity at Bromyard. However, Welsh Water has undertaken improvements such that the Petty Bridge Sewage Pumping Station or the Bromyard Waste Water Treatment Works can now cater with the amount of development proposed upon this allocated housing site.

5.8 Discussions with Welsh Water did reveal, however, that the developer would either need to undertake improvement works to the Porthouse Farm Industrial Estate Sewage Pumping Station or construct a new pumping station upon the allocated site. It is the latter option that the applicant has chosen. The new pumping station would need to be designed such that the flow into the system is controlled.

5.9 Welsh Water has recommended a series of conditions, which are reflected in the recommendation.

#### 5.10 Flooding

5.11 Unlike the previous application (DCNC0009/2844/O), this application does not propose any housing development within the riverside meadow, east of the disused railway line and boundary of the allocated housing site. The application site is not liable to flood.

5.12 The Environment Agency has been consulted upon the planning application and do not raise objection.

#### 5.13 Noise

5.14 The inter-relationship between the proposed residential development and the adjoining employment uses needs to be addressed to ensure that the occupiers of any residential development enjoy a satisfactory level of amenity and the operators of the industrial premises do not receive complaint.

5.15 This issue has been assessed in detail. The current position is that the noise from the Polytec general industrial premises (which operates on a 24 hours a day basis) would have an adverse impact upon the occupiers of the proposed residential development.

5.16 However, following thorough analysis and discussions it is considered that this issue can be satisfactorily addressed by a series of noise mitigation measures. Firstly, it is proposed to undertake a series of noise mitigation measures at source (i.e. upon the Polytec premises themselves). Noise/acoustic experts have identified seven elevated sources of noise upon the Polytec site that are capable of radiating noise to the proposed residential development. A technical solution has been found to attenuate these sources as follows:-

- Digester Fan – Acoustic Louvre Air – In & Out, Blockwork Enclosure
- Paint Dryer Fan – Acoustic Louvre Enclosure End Intake – 2 sides & Top Acoustic Panel Enclosure
- Extract next to Paint Dryer – Exhaust attenuator upgrade
- Compressor House 'A' – Acoustic Louvre's & Acoustic Louvre Door
- Compressor House 'B' – Acoustic Louvre's & Acoustic Louvre Door

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- Chemical Mixer Extract – Exhaust Attenuator
- Dust Extractor – Acoustic Panel Surround & Exhaust Attenuator

- 5.17 The Environmental Health Manager is satisfied as to the efficacy of these works. The works together with the future maintenance can be secured by way of a planning condition.
- 5.18 The bund proposed to be retained by way of planning application DMN/111900/N, albeit in a regraded form, also has an acoustic function in attenuating the Polytec noise sources closer to the ground. These include the storage and movement of materials / products, general activity on the yard area and plant that is located near the ground level. This would become more relevant with the reduction in noise output of the higher level sources as the noise from these lower areas would become more pronounced. The retention of the bund, albeit in its modified form, would have the benefit of mitigating this noise.
- 5.19 The retention of the bund, albeit in a modified form, is an integral part of the acoustic design of the noise reduction package of the Polytec site. It serves to safeguard the amenities of the occupiers of future residents whilst protecting Polytec's operational activities from possible adverse reaction by new residents.
- 5.20 It is concluded that this package of noise mitigation measures will ensure that the future occupiers of the dwelling houses would enjoy a satisfactory level of quietude and as such the proposal complies with policy DR13 of the Herefordshire Unitary Development Plan 2007.
- 5.21 Odour
- 5.22 The control of odours due to the operations at Polytec are regulated by means of a permit from the Local Authority which requires that emissions to air are controlled at an acceptable level and there is a requirement for ongoing improvement. The Environmental Health Manager is satisfied that the occupiers of the proposed dwellings are sufficiently protected. The company is required by the permit to comply with nationally set standards.
- 5.23 Transportation
- 5.24 The Transportation Manager is satisfied that the local highway network has sufficient capacity. The proposed development would generate significantly less vehicle movements than the previously refused planning application which proposed 175 dwellings rather than a maximum of 127 dwellings.
- 5.25 Two vehicular means of access are required for this scale of development. The positions of the accesses are logical and the visibility splays acceptable.
- 5.26 The proposed accesses for pedestrians and cyclists are also considered to be suitable.
- 5.27 The site is in a sustainable location being within reasonable walking distance of the Town Centre, community facilities and employment premises. There are no objections from the Transportation Manager.
- 5.28 Residential Amenity
- 5.29 The occupiers of 'Becks Cottage' on the western side of Bromyard Road have expressed concerns as to the impact upon their amenity by the southernmost vehicular access. The case officer has specifically visited their property, which is split-level, to assess the impact. There is a need for a vehicular access in this area close to the Town and it has in fact been deliberately offset from 'Becks Cottage', so that it is not directly opposite, to safeguard the amenities of the occupiers of that property. It is considered that the occupiers of 'Becks Cottage' would not suffer any undue loss of amenity.



5.30 Landscape & Ecology

5.31 By allocating the site for residential development the Council has accepted that such a development can be satisfactorily integrated into the landscape.

5.32 The trees along the road frontage of amenity value have been protected by way of a Tree Preservation Order and are shown to be retained as is the majority of the roadside hedgerow on the eastern side of the Tenbury Road which is considered to be of both landscape and ecological value.

5.33 An ecological assessment and reptile survey did not identify any protected species on the housing development site. The site is allocated for housing in the UDP and it is concluded that whilst there will be some loss of nesting bird habitat on site, the revised scheme will retain roadside hedgerow where possible as well as the mature oak tree. A habitat and biodiversity enhancement scheme will compensate for habitat loss and provide opportunities to enhance local wildlife.

5.34 Employment Land Supply

5.35 Concern has been expressed with regard the adequacy of employment land supply in the Bromyard area. The Inspector in considering objections to the deposit version of the UDP considered that there was sufficient employment land supply in the area, as the Council also considered in adopting the Plan.

5.36 The current position is that there is limited available employment land in Bromyard and for a variety of reasons the allocated employment site south of the Linton Trading Estate has limited prospects of being delivered. However, the Economic Development Manager advises that demand for employment land in and around Bromyard is only moderate and tends to be locally derived demand.

5.37 With regard the future, the need for 5 hectares of employment land for Bromyard for the Core Strategy Plan Period (2011-2031) has been identified. This is linked to the additional housing proposed for Bromyard. The original preferred options for the Market Towns identified the general area for the provision of this further 5 hectares being in the vicinity of the Linton Trading Estate. The Planning Policy Team are currently reviewing this issue as part of the consideration of the comments received during the recent Core Strategy consultation. However, ultimately, the precise allocation of land would need to be considered via the Market Town and Rural Areas Plan or a Neighbourhood Plan.

5.38 Draft Heads of Terms

5.39 The Draft Heads of Terms set out in Annex 1 comply with the policy DR5 of the Herefordshire Unitary Development Plan 2007 and the Council's adopted Supplementary Planning Document entitled 'Planning Obligations' (April 2008).

5.40 Bromyard and Winslow Town Council are satisfied with the proposal other than on two matters:-

1. They wish an education contribution for the Queen Elizabeth Humanities College also. However, based on the numbers on roll at October 2011 and the latest census data, no year groups are at or near capacity and therefore there is no justification to put forward to request a contribution for the secondary school.
2. They wish the financial contribution with regard the CCTV coverage to be increased from (£6,150 index linked) to £16,150 (index linked), an increase of £10,000. This has been reviewed by the Commissioning Officer (CCTV) who sees no justification for such an

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increase and actually has a quote for a scheme that demonstrates that a payment of £6,150 (index linked) is sufficient.

## 6. Conclusion

- 6.1 The application site is allocated in the Herefordshire Unitary Development Plan 2007 for housing development.
- 6.2 The principle of the development has been established. The application is made in outline with, other than the access, all matters reserved for future consideration. There are no objections to the access.
- 6.3 As such, the proposal clearly accords with the provisions of the development plan and there are no other material considerations that indicate that a decision should be made contrary to the Council's adopted policy.

## RECOMMENDATION

Subject to the prior completion of a Section 106 legal agreement in accordance with the Draft Heads of Terms attached as Annex 1, the Assistant Director Economic, Environment & Cultural Services be DELEGATED POWERS TO GRANT OUTLINE PLANNING PERMISSION subject to the following conditions:-

1. The development shall not commence until approval of the following reserved matters has been obtained from the Local Planning Authority:-
  - Layout
  - Scale
  - Appearance
  - Landscaping

Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.

The development hereby permitted shall be begun either before the expiration of five years from the date of this permission, or before the expiration of two years from the date of approval of the last reserved matters to be approved, whichever is the later.

Reason: No such details have been submitted and in accordance with Section 92 of the Town and Country Planning act 1990.

2. The finished floor levels of all the dwelling houses shall be set a minimum of 600mm above Q1000 flood level at each river station section (sections referred to in Appendix H of the Flood risk Assessment Report 1577 dated 26th June 2009).

Reason: To protect the development from flooding, in accordance with policy DR7 of the Herefordshire Unitary Development Plan 2007.

3. There shall be no raising of ground levels within flood zone 3, the 'high risk', 1% annual probability flood plain.

Reason: To protect the development from flooding, in accordance with policy DR7 of the Herefordshire Unitary Development Plan 2007.

4. Prior to commencement of the development hereby permitted the following matters shall be submitted to the Local Planning Authority for their written approval:-

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- Full details of foul sewerage disposal arrangements
- Full details of surface water drainage arrangements
- Full details of land drainage arrangements

The development hereby permitted shall not commence until the Local Planning Authority has given such written approval. The development shall be carried out in strict accordance with the approved detail and thereafter maintained as such.

Reason: To ensure that effective drainage facilities are provided for the proposed development and that no adverse impact occurs to the environment or the existing public sewerage system, in accordance with policies DR4 and DR6 of the Herefordshire Unitary Development Plan 2007.

5. With regard the details required to be submitted pursuant to condition 4 above, no surface water or land drainage run-off shall be discharged, either directly or indirectly, to the public sewerage system.

Reason: To protect the integrity of the public sewerage system, to prevent hydraulic overloading of the public sewerage system and ensure no detriment to the environment, in accordance with policies DR4 and DR6 of the Herefordshire Unitary Development Plan 2007.

6. With regard the details of foul sewerage disposal arrangements required to be submitted pursuant to condition 4 above, no more than 7 litres per second shall be discharged into the public sewerage system, thus requiring an on-site pumping station. The scheme shall be implemented with this restricted flow and thereafter maintained as such.

Reason: To protect the integrity of the public sewerage system, to prevent hydraulic overloading of the public sewerage system and ensure no detriment to the environment, in accordance with policies DR4 and DR6 of the Herefordshire Unitary Development Plan 2007.

7. The scheme of noise attenuating measures proposed by Colin Waters Acoustics and submitted as part of the application, including:-

- Digester Fan - Acoustic Louvre Air - In & Out, Blockwork Enclosure
- Paint Dryer 7Fan - Acoustic Louvre Enclosure End Intake – 2 sides & Top Acoustic Panel Enclosure
- Extract next to Paint Dryer - Exhaust attenuator upgrade
- Compressor House 'A' - Acoustic Louvre's & Acoustic Louvre Door
- Compressor House 'B' - Acoustic Louvre's & Acoustic Louvre Door
- Chemical Mixer Extract - Exhaust Attenuator
- Dust Extractor - Acoustic Panel Surround & Exhaust Attenuator

shall be completed prior to the first occupation of any of the dwelling houses and thereafter maintained to the satisfaction of the Local Planning Authority

A noise level rating level of 35dBA Laeq,T using the methodology prescribed by BS4142 'Method for Rating Industrial Noise affecting mixed residential and industrial areas' shall not be exceeded at the façade when measured at ground and first floor level at any dwelling on the site.

Reason: To ensure that the occupiers of the dwellinghouses enjoy a satisfactory level of amenity in compliance with policy DR13 of the Herefordshire Unitary Development Plan 2007.



8. No development shall take place until the following has been submitted to and approved in writing by the Local Planning Authority:

a) a 'desk study' report including previous site and adjacent site uses, potential contaminants arising from those uses, possible sources, pathways, and receptors,

a conceptual model and a risk assessment in accordance with current best practice

b) if the risk assessment in (a) confirms the possibility of a significant pollutant linkage(s), a site investigation should be undertaken to characterise fully the nature and extent and severity of contamination, incorporating a conceptual model of all the potential pollutant linkages and an assessment of risk to identified receptors

c) if the risk assessment in (b) identifies unacceptable risk(s) a detailed scheme specifying remedial works and measures necessary to avoid risk from contaminants/or gases when the site is developed. The Remediation Scheme shall include consideration of and proposals to deal with situations where, during works on site, contamination is encountered which has not previously been identified. Any further contamination encountered shall be fully assessed and an appropriate remediation scheme submitted to the local planning authority for written approval.

Reason: In the interests of human health in accordance with policy DR10 of the Herefordshire Unitary Development Plan 2007.

9. The Remediation Scheme, as approved pursuant to condition number 8 above, shall be fully implemented before development is first occupied. On completion of the remediation scheme the developer shall provide a validation report to confirm that all works were completed in accordance with the agreed details, which must be submitted before the development is first occupied. Any variation to the scheme including the validation reporting shall be agreed in writing with the Local Planning Authority in advance of works being undertaken.

Reason: In the interests of human health in accordance with policy DR10 of the Herefordshire Unitary Development Plan 2007.

10. No building operation shall take place until the regraded bund permitted by planning permission DMN/111900/N has been completed. Thereafter this bund shall remain in-situ and be maintained to the satisfaction of the Local Planning Authority.

Reason: To ensure that the occupiers of the dwellinghouses enjoy a satisfactory level of amenity in compliance with policy DR13 of the Herefordshire Unitary Development Plan 2007.

11. The hedgerow along the western boundary of the site on the eastern side of the Tenbury Road shall be retained as shown on the approved plans.

Reason: The roadside hedgerow is considered to be of both landscape and ecological value, to accord with policy LA5 of the Herefordshire Unitary Development Plan 2007.

12. The details of layout required to be submitted pursuant to condition 1 above shall show the entirety of the residential development, including the dwelling houses, gardens, roadways, pedestrian routes, cycles routes, outdoor playing space, open space and equipped children's play space, confined to the allocated housing site as defined on the Proposals Map to the Herefordshire Unitary Development Plan 2007.



Reason: To ensure that there is no unjustified encroachment of development into the open countryside or onto employment land in accordance with policies H7 and E5 of the Herefordshire Unitary Development Plan 2007.

13. The details of layout required to be submitted pursuant to condition 1 above shall show the entirety of the provision of a shared pedestrian/cycleway route along the approximate route of the former railway line adjacent to the eastern boundary of the site.

Reason: To ensure that there is adequate permeability through the development and to enhance both cycle and pedestrian routes, in accordance with policies T6 and T7 of the Herefordshire Unitary development Plan 2007.

14. The details of layout required to be submitted pursuant to condition 1 above shall include the provision of outdoor playing space, open space and equipped children's play space in accordance with policies H19 and RST3 of the Herefordshire Unitary Development Plan 2007.

Reason: In accordance with policies H19 and RST3 of the Herefordshire Unitary Development Plan 2007.

15. Prior to commencement of the development hereby permitted protective fencing in accordance with the advice contained in Section 9.2 of BS5837 comprising vertical and horizontal framework of scaffolding (well braced to withstand impacts) supporting either chestnut cleft fencing or chain link fencing in accordance with figure 2 of BS5837:2005 shall be erected at the furthest extent of the root protection areas to the seven trees protected by way of a Tree Preservation Order and the furthest extent of the roots of the roadside hedgerow that is to be retained. Once these protective measures have been erected but prior to commencement of the development hereby permitted a suitably qualified arboricultural consultant shall inspect the site and write to confirm that the protective measures specified by this condition are in-situ. Upon receipt of that letter by the Local Planning Authority the development may commence but the protective measures must remain in-situ until completion of the development. No storage may take place within the tree protection areas. If any works are required within the tree protection areas an Arboricultural Method Statement shall be submitted to and approved by the Local Planning Authority prior to commencement of the development.

Reason: To ensure that the trees and hedgerow of amenity value that are both worthy and capable of retention are not damaged and their long- term health and future retention not prejudiced, in accordance with policy LA5 of the Herefordshire Unitary Development Plan 2007.

16. The details of layout and landscaping required to be submitted pursuant to condition 1 above shall include a scheme for the permanent closure of the two existing vehicular means of accesses. The two existing vehicular means of accesses shall be permanently closed in full accordance with the approved scheme prior to the first occupation of any of the dwellinghouses hereby permitted.

Reason: In the interests of highway safety, in accordance with policy DR3, T6 and T7 of the Herefordshire Unitary Development Plan 2007.

17. The approved vehicular access including visibility splays, cycleway and pedestrian route shown upon drawing number 617-05 Revision A received 8th November 2011 shall be fully implemented prior to the first occupation of any of the dwellinghouses hereby permitted and thereafter maintained to the satisfaction of the Local Planning authority.

Reason: In the interests of highway safety and to encourage travel by alternative modes of



transport in accordance with policy DR3 of the Herefordshire Unitary Development Plan 2007.

18. B01 Development in accordance with the approved plans
19. The details of layout required to be submitted pursuant to condition 1 above, shall include full details of all proposed boundary treatments (i.e. walls, gates, fences or any other means of enclosure).

Reason: To ensure a satisfactory appearance to the development in accordance with policies DR1 and LA2 of the Herefordshire Unitary Development Plan 2007.

20. The details of layout required to be submitted pursuant to condition 1 above, shall include full details of existing site levels, all proposed earthworks and proposed finished levels.

Reason: To ensure that the development is satisfactorily integrated into the landscape in accordance with policy LA2 of the Herefordshire Unitary Development Plan 2007.

21. The recommendations set out in the ecologist's reports dated March 2010 and June 2010 shall be followed unless otherwise agreed in writing by the local planning authority. Prior to commencement of the development, an update assessment and full working method statement should be submitted to and be approved in writing by the local planning authority, and the work shall be implemented as approved.

Reasons:

To ensure that all species are protected having regard to the Wildlife and Countryside Act 1981 (as amended), the Conservation of Habitats and Species Regulations 2010 and Policies NC1, NC6 and NC7 of the Herefordshire Unitary Development Plan.

To comply with Policies NC8 and NC9 of Herefordshire's Unitary Development Plan in relation to Nature Conservation and Biodiversity and to meet the requirements of PPS9 Biodiversity and Geological Conservation and the NERC Act 2006.

22. Prior to commencement of the development, a full habitat enhancement and management scheme, including reference to Herefordshire's Biodiversity Action Plan Priority Habitats and Species, including timescale for implementation, shall be submitted to and be approved in writing by the local planning authority. The work shall be implemented as approved.

Reasons:

To ensure that all species are protected having regard to the Wildlife and Countryside Act 1981 (as amended), the Conservation of Habitats and Species Regulations 2010 and Policies NC1, NC6 and NC7 of the Herefordshire Unitary Development Plan.

To comply with Policies NC8 and NC9 of Herefordshire's Unitary Development Plan in relation to Nature Conservation and Biodiversity and to meet the requirements of PPS9 Biodiversity and Geological Conservation and the NERC Act 2006.

23. An appropriately qualified and experienced ecological clerk of works shall be appointed (or consultant engaged in that capacity) to oversee the ecological mitigation and enhancement work.

Reasons:

To ensure that all species are protected having regard to the Wildlife and Countryside Act 1981 (as amended), the Conservation of Habitats and Species Regulations 2010 and Policies NC1, NC6 and NC7 of the Herefordshire Unitary Development Plan.



To comply with Policies NC8 and NC9 of Herefordshire's Unitary Development Plan in relation to Nature Conservation and Biodiversity and to meet the requirements of PPS9 Biodiversity and Geological Conservation and the NERC Act 2006.

24 CCO – Site Waste Management

25 CAZ - Parking for Site Operatives

#### INFORMATIVES:

1. A written Land Drainage Consent will need to be obtained from the Board under the terms of the Land Drainage Act 1991 and the Flood and Water Management Act 2010.
2. The details of layout required to be submitted pursuant to condition 1 should follow the advice contained within 'Manual for Streets 2' and include the vehicle parking and cycle parking facilities as set out in the Herefordshire Council 'Highways Design Guide for New Development (July 2006)'.
3. This permission does NOT relate to illustrative drawing 2589/008 Revision F.
4. The documents to which this decision relate are:-
  - Proposed Site Access – Drawing number 617-05 Revision A received 8<sup>th</sup> November 2011;
  - Colin Water Acoustics (Consultants in Environmental Acoustics) Report CWA 26310/R05/1/ May 2011 received 14<sup>th</sup> July 2011;
  - Tree Survey Report prepared by illmanyounng May 2011 received 14<sup>th</sup> July 2011 which sets out the root protection areas in Appendix 2 (i.e. T15 – T7 of the TPO – 6 metres radius, T7 – T6 of the TPO – 6.48 metres radius, T6 – T5 of the TPO – 7.08 metres radius, T4 – T3 of the TPO – 5.64 metres radius, T3 – T2 of the TPO – 6 metres radius and T2 – T1 of the TPO – 7.2 metres radius;
  - Phil Jones Associates Transport Assessment dated May 2011 received 14<sup>th</sup> July 2011;
  - Proposed Zebra Crossing (Porthouse Farm Development) – Stage 2 Road Safety Audit prepared by Amey dated 21<sup>st</sup> June 2011 received 14<sup>th</sup> July 2011;
  - Flood Risk Assessment (Report No. 1577) prepared by Robert West Consulting received on 14<sup>th</sup> July 2011;
  - Topographical Survey Drawing No. T 5637/2 received 14<sup>th</sup> July 2011; and
  - Application Site Plan – Drawing number 2589/015 (Scale 1:1250) received 14<sup>th</sup> July 2011.
  - Ecological Appraisal (March 2010)
  - Reptile Survey (June 2010)
5. N15 Reason(s) for the Grant of Outline Permission
6. N11C – General
7. The details of landscaping required to be submitted pursuant to Condition 1 shall include hard landscaping, soft landscaping and a fully detailed landscape management plan.
8. I11 - Mud on Highway
9. I09 - Private Apparatus within Highway
10. I45 - Works within the Highway

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Decision: .....

Notes: .....

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**Background Papers**

Internal departmental consultation replies.

## ANNEX 1

### HEADS OF TERMS Proposed Planning Obligation Agreement Section 106 Town and Country Planning Act 1990

Planning Application: N/111899/O

Proposal: Construction of up to 127 dwelling houses with all matters other than the means of access reserved for future consideration

Site: Porthouse Farm, Tenbury Road, Bromyard, Herefordshire

1. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of
  - £ 1,809 (index linked) for a 2 bedroom open market unit
  - £ 2,951 (index linked) for a 3 bedroom open market unit
  - £ 4,953 (index linked) for a 4+ bedroom open market unit

The contributions will provide for enhanced educational infrastructure at St Peters Primary School, Post 16, Bromyard Early Years, Bromyard Youth Service and the Special Education Needs Schools. The sum shall be paid on or before first occupation of the 1<sup>st</sup> open market dwelling house, and may be pooled with other contributions if appropriate.

2. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of
  - £ 2,092 (index linked) for a 1 bedroom open market unit
  - £ 2,457 (index linked) for a 2 bedroom open market unit
  - £ 3,686 (index linked) for a 3 bedroom open market unit
  - £ 4,915 (index linked) for a 4 bedroom open market unit
  - £ 6,143 (index linked) for a 5 bedroom open market unit

The contributions will provide for sustainable transport infrastructure to serve the development, which sum shall be paid on or before occupation of the 1st open

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market dwelling house and may be pooled with other contributions if appropriate. The monies shall be used by Herefordshire Council at its option for any or all of the following purposes:-

- Dropped crossings in the Town. All along routes used by residents of the development to shops and schools.
  - Improved cycle parking in the town centre and schools.
  - Improvements to the junction from the B4214 into Porthouse Industrial Estate. The footway to be diverted to the open grass area on the town side. This is on the route from the development to town/schools.
  - Provision/improvements to proposed Greenway along old railway.
  - Old Road Footway
  - Extension of footway on the A465 towards the garage and Panniers Lane
  - Enhancement of southerly visibility at junction of Winslow Road with Tenbury Road (B4214)
3. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of £627 (index linked) per head of population (the population shall be calculated by multiplying the total number of open market and affordable dwellings by 2.3 which is the assumed occupancy of each dwelling) to be spent for the enhancement / provision of outdoor sports facilities in consultation with local sports clubs in Bromyard & Winslow and adjacent parishes. The sums shall be paid on or before the occupation of the 1st open market dwelling. The monies may be pooled with other contributions if appropriate.
4. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of £292 (index linked) per head of population (the population shall be calculated by multiplying the total number of open market dwellings by 2.3 which is the assumed occupancy of each dwelling) to be spent to support the existing indoor sports provision in Bromyard & Winslow and adjacent parishes. The sums shall be paid on or before occupation of the 1st open market dwelling. The monies may be pooled with other contributions if appropriate.
5. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of
- £120 (index linked) for a 1 bedroom open market unit
  - £146 (index linked) for a 2 bedroom open market unit
  - £198 (index linked) for a 3 bedroom open market unit
  - £241 (index linked) for a 4+ bedroom open market unit

The contributions will provide for enhanced Library facilities in Bromyard. The sum shall be paid on or before the occupation of the 1st open market dwelling, and may be pooled with other contributions if appropriate.



6. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of £120 (index linked) per open market dwelling. The contribution will provide for waste reduction and recycling in Bromyard & Winslow. The sum shall be paid on or before occupation of the 1st open market dwelling, and may be pooled with other contributions if appropriate.
7. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of £6,150 (index linked) towards the enhancement of CCTV provision in Bromyard Town Centre to include 6 cameras, DVR, PC review station and wireless links to the local police station. The sum shall be paid on or before the occupation of the 1<sup>st</sup> open market dwelling, and may be pooled with other contributions if appropriate.
8. The developer covenants with Herefordshire Council to pay a sum equal to 1% of the gross project cost, which will be used to provide for public art within the development or within the vicinity of the development. The sum shall be paid on or before the occupation of the 1st open market dwelling.
9. The developer covenants with Herefordshire Council that 35% of the residential units shall be "Affordable Housing" which meets the criteria set out in policy H9 of the Herefordshire Unitary Development Plan or any statutory replacement of those criteria and that policy including the Supplementary Planning Document on Planning Obligations.
10. Of those Affordable Housing units, at least 65% shall be made available for social rent with the remainder being available for intermediate tenure.
11. All the affordable housing units shall be completed and made available for occupation prior to the occupation of no more than 50% of the general market housing or in accordance with a phasing programme to be agreed in writing with Herefordshire Council.
12. The Affordable Housing Units must be let and managed or co-owned in accordance with the guidance issued by the Homes and Communities Agency (or successor agency) from time to time with the intention that the Affordable Housing Units shall at all times be used for the purposes of providing Affordable Housing to persons who are eligible in accordance with the allocation policies of the Registered Social Landlord; and satisfy the following requirements:-
  - 12.1 registered with Home Point at the time the Affordable Housing Unit becomes available for residential occupation; and
  - 12.2 satisfy the requirements of paragraphs 13 & 14 of this schedule
13. The Affordable Housing Units must be advertised through Home Point and allocated in accordance with the Herefordshire Allocation Policy for occupation as a sole residence to a person or persons one of who has:-
  - 13.1 a local connection with the parish of Bromyard and Winslow; or Grendon Bishop, Bredenbury, Wacton, Edwyn Ralph, Norton, Linton, Avenbury, Stoke Lacy, Little Cowarne, Pencombe and Grendon Warren



- 13.2 in the event there being no person with a local connection to any of the above parishes any other person ordinarily resident within the administrative area of Herefordshire Council who is eligible under the allocation policies of the Registered Social Landlord if the Registered Social Landlord can demonstrate to the Council that after 28 working days of any of the Affordable Housing Units becoming available for letting the Registered Social Landlord having made all reasonable efforts through the use of Home Point have found no suitable candidate under sub-paragraph 12.1 or 12.2 above.
14. For the purposes of sub-paragraph 13.1 or 13.2 of this schedule 'local connection' means having a connection to one of the parishes specified above because that person:
- is or in the past was normally resident there; or
  - is employed there; or
  - has a family association there; or
  - a proven need to give support to or receive support from family members; or
  - because of special circumstances
15. The developer covenants with Herefordshire Council to construct the Affordable Housing Units to the Homes and Communities Agency 'Design and Quality Standards 2007' (or to a subsequent design and quality standards of the Homes and Communities Agency as are current at the date of construction) and to Joseph Rowntree Foundation 'Lifetime Homes' standards. Independent certification shall be provided prior to the commencement of the development and following occupation of the last dwelling confirming compliance with the required standard.
16. The developer covenants with Herefordshire Council to construct the Affordable Housing Units to Code Level 3 of the 'Code for Sustainable Homes – Setting the Standard in Sustainability for New Homes' or equivalent standard of carbon emission reduction, energy and water efficiency as may be agreed in writing with the local planning authority. Independent certification shall be provided prior to the commencement of the development and following occupation of the last dwelling confirming compliance with the required standard.
17. In the event that Herefordshire Council does not for any reason use the sum specified in paragraphs 1, 2, 3, 4, 5, 6, 7 and 8 above for the purposes specified in the agreement within 10 years of the date of this agreement, the Council shall repay to the developer the said sum or such part thereof, which has not been used by Herefordshire Council.
18. The sums referred to in paragraphs 1, 2, 3, 4, 5, 6, 7 and 8 above shall be linked to an appropriate index or indices selected by the Council with the intention that such sums will be adjusted according to any percentage increase in prices occurring between the date of the Section 106 Agreement and the date the sums are paid to the Council.
19. The developer covenants with Herefordshire Council to pay a surcharge of 2% of the total sum detailed in this Heads of Terms, as a contribution towards the cost of

monitoring and enforcing the Section 106 Agreement. The sum shall be paid on or before the commencement of the development.

20. The developer shall pay to the Council on or before the completion of the Agreement, the reasonable legal costs incurred by Herefordshire Council in connection with the preparation and completion of the Agreement.
21. The Children's Play Area and amenity public open space area shall be provided on-site prior to the occupation of 50% of the open market dwellings. The Children's Play Area and public open space shall be maintained by the developer for a period of one year and then transferred to Herefordshire Council at a cost of £1 provided that the play area and open space are to an acceptable standard as agreed by Herefordshire Council. At the time of transfer the developer shall pay Herefordshire Council a 15 year maintenance sum in accordance with the Tariff for Calculation of Commuted Sums 2011.



## PLANNING COMMITTEE

4 April 2012

### 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.

**N111899/O - AN OUTLINE APPLICATION FOR THE ERECTION OF UP TO 127 DWELLINGS (35% TO BE AFFORDABLE) WITH ALL MATTERS EXCEPT ACCESS TO BE RESERVED FOR FUTURE CONSIDERATION AT PORTHOUSE FARM, TENBURY ROAD, BROMYARD, HEREFORDSHIRE**

**For: Ms Harrison per Mr John Cornwell, Oakview House, Station Road, Hook, Hampshire, RG27 9TP**

### ADDITIONAL REPRESENTATIONS

A letter of SUPPORT has been received from the occupier of 'Rosebank', 52 New Road, Bromyard. In summary the following points are made:-

- The current Council's policies of directing housing to Porthouse Farm and employment to the east at Linton would benefit Bromyard and its future wealth creation potential;
- The Porthouse Farm site would not be attractive to any modern, efficient company due to the poor highway network that serves it which is unsuitable for lorries;
- There are no current plans by Herefordshire council for a relief road and finance would not be forthcoming;
- Bromyard requires employment land but it must be in the correct place at Linton. Interestingly after the current industrial buildings were completed, although aggressively marketed they remained empty for approximately four years;
- The issues of noise and odour are satisfactorily addressed;
- Congestion in town is caused by lorries finding their way to Porthouse through the Town Centre. A plan for employment use of the Porthouse Farm site would make this intolerable;
- Housing would be more visually acceptable than industrial development;
- Linton is a suitable location for industrial development. There is an additional three acres of level land available.
- Polytec support the proposal; and



- Bromyard desperately needs affordable housing for young people. The proposed development would deliver some 44 affordable houses. During the last 12 months only 52 such affordable houses were delivered in the whole of Herefordshire; and
- The proposal is policy compliant.

A letter has been received from the Micron Group who state that they intend expanding their operations and state that they need to retain the ability to utilise their existing Porthouse Farm facility.

It has come to Officers attention that at an Extraordinary Meeting of the Bromyard & Winslow Town Council on 28<sup>th</sup> March 2012 a resolution was passed to send a report to Members of the Planning Committee with respect this application. In summary that report urges Members to refuse the planning application. The following summarised planning arguments are made:-

- The decision by the Planning Inspector reporting into objections to the Unitary Development Plan endorsing the residential allocation of the land at Porthouse site was unsound;
- Building houses next to the Porthouse Industrial Estate will jeopardise the operation of successful companies on the estate, which employ hundreds of people and will damage the residential amenity of new households – with regard the amenity issue it is stated that some houses will have to be designed to allow for ventilation without opening windows and the report fails to address the issue of outdoor amenity for residents;
- Porthouse Farm is the only area of land available in Bromyard for employment. If it is lost to housing Bromyard will be left with no employment land, in perpetuity;
- Housing on Porthouse farm would deprive Bromyard of the ability to build a very much needed relief road; and
- The planning application is contrary to UDP policies and PPS4.

## OFFICER COMMENTS

No comment upon the support representation received.

With regard the report of the Bromyard & Winslow Town Council, the following summarised points are made:-

- The site is allocated for residential development within the adopted Herefordshire Unitary Development Plan 2007. The allocation of the land for housing purposes was the subject of objections at the time by twelve persons or organisations (although two of those objections were withdrawn). One objector was the Bromyard & Winslow Town Council who advanced their objections to the Inspector appointed by the Secretary of state to consider the objections that had been lodged to the Herefordshire Unitary Development Plan Revised deposit Draft. After considering the objections and examining all of the evidence the Inspector accepted the suitability of the land for housing purposes and supported the allocation. The Inspector did not recommend any change to the policy. The Council were not obliged to accept the Inspector's recommendations but did so and effectively retained the allocation in accordance with his recommendation and adopted the Herefordshire Unitary Development Plan 2007. In the event that the Town Council or any other group considered this allocation to still be "unsound" they could have legally challenged the adopted Plan within 90 days of its adoption (as was done with regard the Bullinghope allocation with an approximate yield of 300 dwellings). No such challenge was lodged by the Bromyard & Winslow Town Council or any other group.



- There is no reason to believe that the proposed development would jeopardise existing businesses in the area. Concern has been expressed as to whether the provision of a residential development will in some way inhibit existing business premises in the immediate vicinity and any future plans they may have for expansion. It is interesting that paragraph 123 of NPPF states that:-

“Planning policies and decisions should aim to:-

Recognise development will often create some noise and existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established.”

It is considered that it is worth clarifying a few issues with regard the noise issue. With respect the garden areas Members attention is drawn to paragraph 3.4 of the Committee Report. With regards to outdoor amenity areas, such as gardens, the RPS report draws upon the noise contours provided in the TSA report, indicating that outdoor levels will fall below 50/55 dB LAeq during the day, the BS8233 recommended limits for external amenity areas. With the increased barrier specification, external noise levels across amenity areas would further reduce.

It must be noted that the metrics used to determine 'appropriate internal night-time maximum noise levels required for sleep' and 'external daytime levels for amenity use' are very different, and not comparable. The requirement for ventilation does not indicate that amenity areas are unsatisfactory.

It appears that there may be an impression that the housing development would only be acceptable if windows are kept permanently shut with the benefit of ventilation. That is not the case. Satisfactory internal levels will be achieved during daytime with windows open. The proposed timber acoustic barrier design is such as to bring the majority of night-time noise events below 45 dB L<sub>Amax</sub> internally with windows open. However, some individual night-time noise events may still exceed 45 dB L<sub>Amax</sub> ; which could adversely affect more noise-sensitive individuals. The proposed scheme allows these individuals to close windows and sleep in a noise environment surpassing the mandated levels whilst also experiencing appropriate ventilation.

- The issue at the supply of employment land is dealt with in paragraphs 5.34 – 5.37 (inclusive) of the report to Planning Committee on 1<sup>st</sup> February 2012 attached as Annex 1; and
- It remains Officers views that the proposal is UDP compliant and it must be recognised that the Central Government advice contained within PPS4 was cancelled on 27<sup>th</sup> March 2012 prior to the meeting of the Bromyard & Winslow Town Council meeting on the Wednesday.

Last week new Central Government advice with respect Planning was published and came into force in the form of the 'National Planning Policy Framework' (NPPF). This replaced much existing Central Government advice including Planning Policy Statements 1, 3, 9, 12, 13, 23, 24 and 25 and Circular 05/05 mentioned in the Committee Report. The existing report has been reviewed in the light of the new Central Government advice. The NPPF makes it clear (para. 12) that there is no change to the statutory status of the development plan as the starting point for decision making. Proposed development that accords with an



up-to-date Local Plan should be approved unless other material considerations indicate otherwise. Indeed the NPPF states (para. 14) that in terms of decision making development proposals that accord with the plan should be approved without delay. The NPPF stresses the importance of delivering an adequate supply of housing and the provision of affordable housing to meet local need. The recommendation to grant conditional outline planning permission subject to the prior completion of a legal agreement remains unchanged.

#### **CHANGE TO RECOMMENDATION**

For the purposes of precision substitute the words in conditions 7, 17 and 28 "...to the satisfaction of the Local Planning Authority" with the words "...in accordance with the approved details".

Amend reason for condition 10 to read:-

To ensure that there is a satisfactory landscape buffer between the residential development hereby permitted and the Porthouse Industrial Estate including the acoustic fence required to be erected by way of condition 28 below in accordance with policy LA2 of the Herefordshire Unitary Development Plan 2007 paragraph 5.4.27 of the explanatory text to the Herefordshire Unitary Development Plan 2007;

Change recommended informative 5 to read:-

The reasons for granting planning permission in respect of the development are:-

The proposal is in outline form with all matters except access reserved for future consideration. The proposal is for residential development upon a site allocated for residential development by virtue of policy H2 of the adopted Herefordshire Unitary Development Plan 2007. The proposed means of access is considered to be acceptable in all respects including highway safety. It is considered that the density of development being a maximum of 32.63 dwellings to the hectare (or some 37.35 dwellings to the hectare excluding the bund) would be acceptable in terms of the context of this site. The development would deliver affordable housing in compliance with policy H2 of the Herefordshire Unitary Development Plan 2007. There are no environmental reasons (i.e. sewage capacity, flooding, noise, odour, residential amenity, landscape & ecology) to justify refusal of the application. The matter of noise impact from the adjoining general industrial use has been fully assessed and it is considered that a mitigation strategy secured by way of conditions 7, 27, 28 and 29 will ensure a satisfactory level of residential amenity for the occupiers of the dwellinghouses hereby permitted. In conclusion the proposal complies with the provisions of the Herefordshire Unitary Development Plan 2007 together with the Central Government advice contained within the National Planning Policy Framework and there are no other material planning considerations that justify refusal of the application.



**ANNEX 2**  
**Appeal Decision**

**Re: N111899/O**



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## Appeal Decision

Site visit made on 17 October 2012; Hearing held on the 4 December 2012.

**by Wendy J Burden BA(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 31 December 2012

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**Appeal Ref: APP/W1850/A/12/2177220**

**Porthouse Farm, Tenbury Road, Bromyard, HR7 4LW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Marsten Developments Ltd against the decision of Herefordshire Council.
  - The application Ref N111899/O, dated 12 July 2011, was refused by notice dated 4 April 2012.
  - The development proposed is the erection of up to 127 dwellings comprising 83 open market and 44 affordable units, with all matters except access reserved for future determination, garages, car parking areas estate roads, footpaths and cycleways, landscaping and public open space, including 0.2 hectares of on-site children's play areas and 2.6 hectares of on-site public amenity open space; remodelling of existing bund and noise mitigation works at the Polytec site.
- 

### Decision

1. The appeal is dismissed.

### Application for costs

2. An application for costs was made by Marsten Developments Ltd against Herefordshire Council in relation to the written representations appeal. This application is the subject of a separate Decision.

### Procedural Issue

3. The Council has withdrawn the second reason for refusal relating to the impact of external lighting on both the Polytec site and the Bromyard Rugby Club. This was as a result of a review by a professional lighting engineer which found that the nearby lighting would have no undue impact on the amenities of future occupiers of the proposed dwellings. In these circumstances I consider that the impact of external lighting has been adequately assessed and find no reason to identify it as an issue in my decision.
4. A completed S106 agreement between the appellant and the Council has been submitted to secure the delivery of the affordable housing and a financial contribution towards open space facilities. There is also an agreement between the appellant and Polytec for the installation of noise attenuation measures at the appellant's expense.
5. Following the accompanied site visit on the 17 October, and the consideration of all the submitted written evidence, I raised concerns about the conditions proposed to secure noise mitigation. A letter was sent to the parties on the 19 October alerting them to these matters and calling for a Hearing to be held in



accordance with the powers conferred by S319A of the Town and Country Planning Act 1990. A further letter was sent on the 16 November to direct the parties to the particular matters on which the hearing should focus.

6. For the Hearing some amendments were proposed to conditions 7, 27, 28 and 29 which deal with the implementation and maintenance of the noise mitigation measures. I deal with the appeal scheme on the basis of the amended conditions. In addition, a Unilateral Undertaking (UU) under S106 of the Town and Country Planning Act 1990 has been submitted in favour of Herefordshire Council, and a UU in common law has been submitted in favour of Polytec Car Styling Bromyard Ltd. I take these undertakings into account in reaching my decision.

### **Main Issue**

7. The main issue is whether the implementation and maintenance of noise attenuation measures can be secured; and in the event that they could be secured, whether future residents of the proposed development would be affected by an unacceptable level of night time noise nuisance arising from the movement of stillages in the open yard of the adjoining Polytec site.

### **Reasons**

8. The appeal site was allocated for residential development in the Herefordshire Unitary Development Plan (UDP) adopted in 2007. It is the largest of the 4 allocated sites in Bromyard required to fulfil the strategy set out in Policy S3 of the plan. The allocation was made by Herefordshire Council and the principle of the residential use was considered by the Inspector who dealt with objections to the allocation of the site at the UDP examination. The issues of the impact of the operation of the Polytec site on future occupiers of the site, and the needs of the Polytec Holden factory operators were given full consideration, and the Council produced a noise assessment report as a part of its evidence to support the allocation. Although the UDP identified the site as suitable for 87 dwellings, the site area is greater than originally indicated and the Council does not object in principle to the increase in the number of dwellings now proposed. The allocation is clearly important to the fulfilment of the Council's housing land strategy in view of the shortfall in the Council's five year supply of housing land, and its inability to meet the requirement set out in the National Planning Policy Framework (NPPF) for a 5% oversupply.
9. In this case the proposed residential development would adjoin the site of an acknowledged noise generating use in the form of the general industrial premises of Poytec-Holden with its outside storage area. The Bromyard Town Council and other objectors argue that there is a need for further industrial sites within Bromyard and that the appeal site is ideally located to meet that need. They also point out the unsuitability of another site which has been allocated for industrial development in the town. However, since the site has been designated for housing in a statutory development plan, and having regard to the shortfall in the supply of housing land, these considerations do not outweigh the strong presumption in favour of planning permission being granted for the residential development of the site.
10. UDP Policy DR13 sets out the criteria to be applied when considering noise issues. This states that "development which after taking account of mitigation measures proposed, would still have an unacceptable noise impact or result in



unacceptable exposure to noise will not be permitted". At the Polytec site, noise from the industrial operation arises primarily from plant upon and within the existing buildings, and external noise from the operation of fork lift trucks and movement of stillages in the outside open yard.

11. The appellants have put forward noise attenuation measures which would address the output from seven items of plant which form the main sources of noise within and upon the Polytec building. The Council is satisfied that these sources of noise could be effectively mitigated by the listed measures, and clearly any reduction in such noise would be of benefit to the employees of the company as well as other residential occupiers within the locality. There is an amendment proposed to condition 7 to put it in the negative form, with no dwellings to be occupied until these measures have been implemented. Together with the agreement that the appellants have entered with Polytec for the mitigation measures to be installed into the Polytec site at the developer's expense, I am satisfied that the implementation of the attenuation measures to the building could be secured through condition 7.
12. In terms of maintenance, the appellants argue that the measures would be virtually maintenance free, since there are no moving parts involved. Materials used in the acoustic louvres which would replace existing dilapidated wooden louvres would be made from galvanised or stainless steel, powder coated to counteract corrosion. Similar materials would be used for the acoustic enclosures and exhaust attenuators which would be installed to equipment within and on the building. With the use of such materials, the measures would be expected to have a 20-25 year lifespan on this site. External damage from fork lift trucks or vandalism was considered to be unlikely. However, the residential development is likely to endure beyond 25 years, and to maintain a satisfactory noise environment for residents into the long term I consider it essential that maintenance or repair of the noise attenuation measures can be secured. To achieve this, the appellants propose to provide Polytec with a sum of money to carry out any future repair or replacement of the attenuation measures through the UU which was submitted for the Hearing. I deal with the efficacy of this approach below.
13. There is some dispute as to whether it is necessary to seek further control over fixed plant on the Polytec site, with a requirement in condition 7 that no more than 50 dB Laeq SPL sound pressure level as measured at 4 metres from the individual noise source be achieved. However, as the appellant argued, the surveys of the Polytec building have identified the main sources of noise and those are to be provided with measures for attenuation. New fixed plant could be introduced, but if it is at the opposite end of the building from the residential development, it could operate above those noise levels without causing any nuisance to the occupiers of the dwellings. Furthermore, the appellants do agree to a clause which would allow for noise to be monitored at the façade of any dwellings, and requires that noise should not exceed a certain level. Since it is the amenities of the future occupiers of the dwellings which the condition seeks to protect, this seems to me to be an adequate way of providing the Council with a means of ensuring that any new fixed plant should not cause nuisance to future occupiers. The clause relating to the fixed plant is therefore not necessary.
14. Turning now to the issue of securing the maintenance of the provisions of condition 7, the maintenance of the scheme of attenuation is required by the



condition, but the condition does not specify where the responsibility for maintenance would lie. For the developer of the residential site to ensure compliance in the future with the maintenance clause of the condition, the company would require access to the Polytec land which may not be forthcoming. However, since the Polytec land is included within the red line and forms part of the development site for which planning permission is being sought, it would be open to the Council to issue an enforcement notice on Polytec requiring the company to comply with the condition. Enforcement of the condition against Polytec is therefore theoretically possible, but the question then arises as to whether enforcing the condition would be reasonable.

15. Circular 11/95 para 28 provides an example of a situation where it would be unreasonable to enforce a condition requiring works within the application site but on land outside the control of the applicant. In this example the developer failed to acquire consent over land included within his application which meant that the only way for the Council to enforce would be to serve a notice on the third party who derived no benefit from the application. In this scenario the condition would be unreasonable. However, in the appeal case a letter has been provided from the Managing Director of Polytec to indicate the satisfaction of the company with the arrangements which have been put in place with the appellants, and the company's acceptance of responsibility for the future maintenance of the noise attenuation measures. Furthermore, through the provisions of the UU, the appellant intends to provide Polytec with a sum of money to meet the costs of future maintenance and repair of the attenuation measures.
16. The working environment at the Polytec site would be improved through the noise attenuation measures both within the factory building and on the fork lift trucks. Thus through the provisions of the UU, Polytec would become a beneficiary of the appeal scheme, and it would be reasonable for the Council to enforce condition 7 relating to maintenance against the company by issuing a breach of condition notice or enforcement notice. However, this would depend upon whether or not Polytec is able to ensure, through the UU, that the company is compensated for assuming this responsibility.
17. The question therefore arises as to whether the UU in favour of Polytec is enforceable. This undertaking is not made under S106 TCPA and can not be enforceable by the Council as a third party who do not receive any benefit from the undertaking. I accept that at common law a deed executed by one person alone can be enforced by a third party in whose favour it is executed. This means that: provided that it is clear that the document is intended to be a deed, Polytec is clearly identified as a beneficiary, and the deed is correctly executed, Polytec should be able to take the benefit of and enforce the obligations given in its favour even though it has not executed the deed itself. However, I have some concerns about the drafting of the deed.
18. Clause 5.4 states that the deed shall only be enforced by the Owner or the Council. It appears that this provision has simply been lifted from a standard S106 agreement and included within this document in error. Firstly, the term Owner is not defined anywhere in this deed; Marsten Developments Limited refer to themselves as "Marston" and not the Owner. Secondly, this clause would appear to exclude Polytec, as a third party, from enforcing the deed against Marston. The appellant argued that this error does not alter the



application of the deed. However, this is not a matter on which I can be at all certain, and may ultimately be a matter for the courts to decide.

19. Secondly, as the UU is not made in accordance with the provisions of S106, it will not automatically run with the land. Clause 1.1 of the deed purports to provide that it will apply to the successors in title of Marsten and Polytec. However, I am not convinced that it is possible for Marsten to bind their successors in title in this way. It might be possible for Polytec successors in title, as beneficiaries of the deed, to enforce against Marston, but in view of the error in clause 5.4, this is far from certain.
20. I am also concerned that the undertaking does not specify when the money is to be paid to Polytec. In the Third Schedule at para 1.1 it provides that prior to first occupation the Noise Attenuation Measures will be paid for and installed and this does not pose any problems. Unfortunately paras 1.2 – 2.2 do not contain such a provision or any indication of when payment should be made. This could cause problems for Polytec if it was necessary to take action to enforce the agreement. In these circumstances I am not convinced that the UU would provide certainty that Polytec would be compensated for assuming the responsibility of future maintenance. Without the certainty of the payment to underpin the provisions of the maintenance clause in condition 7, an action by the Council against Polytec to secure compliance with condition 7 may be regarded as unreasonable.
21. The other main source of noise relates to the operation of fork lift trucks within the open storage area together with the sounds of clanking and banging as stillages are moved around the industrial site. Condition 27 is proposed to stop any vehicle fitted with a tonal reversing alarm from operating on the Polytec site between the hours of 23.00 and 07.00, and before any dwellings are occupied, there is a requirement to fit all forklift trucks with white noise reversing alarms. Clearly the imposition of such a condition would have the effect of reducing noise from within the open storage area of the industrial site. In addition, condition 28 would require the erection of a 6 metre high timber acoustic fence along the boundary with the industrial site before the occupation of any dwelling, and condition 29 is worded to secure a high level of internal sound insulation for the new dwellings. Nevertheless, even with these measures in place, the Council maintains its objection to the development on the basis of the potential for night time noise events that exceed 45dB L<sub>Max</sub> within future dwellings when windows are open.
22. Taking first the Council's objection, and then turning to the efficacy of the two conditions, I find as follows. BS8233 indicates that for a reasonable standard in bedrooms at night, individual noise events should not normally exceed 45 dB L<sub>Max,fast</sub>. Survey work undertaken by the Council's noise consultants concluded that even with the proposed noise barriers in place, with windows partially open, some noise events would occur which exceeded the sleep disturbance threshold within the dwellings. However, with appropriate means of alternative ventilation in dwellings with facades facing the Polytec site, such that adequate ventilation can be achieved with windows shut, and provided the other mitigation measures meet the performance indicated, noise emissions from the Polytec site would meet appropriate criteria and would not be expected to result in any loss of amenity for the occupiers of the new dwellings.



23. I understand that the Council considers it to be unfair that the occupiers of dwellings with windows facing the industrial site would not be able to open their windows without the risk of some noise disturbance. However, with the mitigation measures in place, it is clear from the noise evidence that the number of such noise events would most likely be limited. Since alternative means of ventilation would be built into those dwellings which could be affected, future occupiers would not be obliged to open their windows in order to properly ventilate their bedrooms. Furthermore, purchasers of the properties would be aware of the presence of the industrial estate. They could make their own decisions as to whether a choice between an open window with the risk of limited noise disturbance or use of an expressly fitted ventilation system was acceptable. In these circumstances I consider that the new dwellings would provide an appropriate standard of residential amenity.
24. This conclusion is dependent on the implementation and maintenance of all the mitigation measures which would be provided through conditions 7, 27, 28 and 29. I turn now to consider whether the remaining noise mitigation conditions are capable of implementation and enforcement and whether enforcement would be reasonable.
25. The first part of condition 27 requires that no vehicle on the Polytec site fitted with a tonal reversing alarm shall operate on the site between the hours of 23:00 and 07:00 hours. In their letter, Polytec confirms that no vehicle fitted with a tonal reversing alarm operates on the site between those hours apart from fork lift trucks. The second part of condition 27 requires white noise reversing alarms to be fitted to all fork lift trucks on the general industrial estate before any of the new dwellings are occupied. The appellant is to pay for the fitting of the new alarms, and I am satisfied that the Council could enforce this second part of the condition. Having regard to the assurance provided by Polytec, and with the fork lift trucks fitted with white noise reversing alarms at the appellant's expense, it seems to me that it would be reasonable for the Council to take action against Polytec in the event that the first part of condition 27 was breached.
26. Condition 27 requires all fork lift trucks to be maintained with white noise reversing alarms in the future. This means that any new fork lift truck would require to be fitted with the alarms in order to comply with the condition. The UU in favour of Polytec provides at clause 2.1 payment by the appellant for the fitting of the white noise reversing alarms to existing fork lift trucks on the factory site. Since this measure is required by condition 27 to be in place before any dwelling is occupied, I am satisfied that the provision at 2.1 would be fulfilled. However, para 2.2 gives no date for the provision of funds to ensure that all fork lift trucks be maintained with white noise reversing alarms in the future, and in any event the enforceability of this provision is subject to the flaws in the UU which I identified in relation to the requirements of condition 7. Without the certainty of the payment to underpin the provisions of the maintenance clause in condition 27, an action by the Council against Polytec to secure compliance with condition 27 may be regarded as unreasonable.
27. The acoustic fence would be constructed using galvanised steel posts and high quality timber which has been vigorously treated. It would benefit from a 25 year guarantee which could be transferred from the purchaser to whoever is responsible for its long term maintenance. On this basis it is unlikely that any



maintenance would be required for many years. However, I would expect the houses to have a longer than 25 year lifespan, and damage to the fence could occur from vandalism or abnormal weather events. In my view therefore it is necessary to ensure that future maintenance can be secured. As a means of securing future maintenance of the fence, the appellants have provided a S106 UU which would pay a sum of money to the Council to cover future maintenance costs. The Council has indicated that it is not prepared to take on that responsibility, but an amended form of condition 28 is proposed by the appellants through which a scheme for the future maintenance of the 6 metre high fence would be required for submission and approval before the start of construction of the dwelling houses. The condition then requires the erection of the fence before first occupation of the dwellings, and its retention and maintenance in accordance with the approved scheme. Therefore whether the Council or a management company takes the responsibility for maintenance, I am satisfied that the requirements of condition 28 could be met.

28. Objectors raise issues concerning the visual impact of the 6 metre acoustic fence. In views from within the new housing site, it would be largely screened by the existing bund with the new planting which would be provided along its ridge. At the site visit I was taken to more distant viewpoints in the Bromyard Downs which overlook the appeal site. From these locations the fence would appear in the context of the existing industrial estate, and in my judgement its scale would not appear excessive adjacent to the substantial buildings within the Polytec site. I am therefore satisfied that the fence would not be so visually intrusive as to justify refusal of planning permission. There is also concern that noise would be reflected by the fence from the highway into the residential site. However, having regard to the angle of the fence in relation to the road, and the existence of the bund which would be in front of the fence, I am satisfied that such effects would not occur.
29. There is little dispute that condition 29 generally meets the tests of Circular 11/95. Clearly the level of noise attenuation measures which needs to be constructed into the new dwellings to secure the criteria identified in the condition will depend to some extent on the noise environment which is achieved adjacent to the industrial site. I am satisfied that provided the package of factory source noise treatment measures, the 6 metre noise barrier and the acoustic double glazing to the new dwellings is secured and maintained into the future, there would be adequate control of noise within the residential development site to secure acceptable living conditions for future residents.
30. With the rewording of the conditions proposed by the appellant, I find that the implementation of the noise attenuation measures required in the conditions could be secured. The only concern that remains relates to the flaws which I have identified in the UU in favour of Polytec which bring into doubt the future maintenance of the noise attenuation measures required in conditions 7 and 27. There is a risk that action by the Council against Polytec for example to enforce the repair of the attenuation measures to the fixed plant, or to ensure that future fork lift trucks were fitted with white noise reversing alarms would not be reasonable in the event that the UU failed to deliver the specified funds to Polytec. For this reason alone I consider that the appeal should not succeed.

*Wendy Burden*

INSPECTOR

## APPEARANCES

### FOR THE APPELLANT:

Miss N Sharif of Counsel	instructed by Mr Wilson of Tyler Parkes
Mr Wilson	Tyler Parkes
Mr Waters	Colin Waters Acoustics
Mr Davison	Noico
Mr Tune	Jacksons Fencing

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Close	Planning Officer
Mr Scott	RPS Acoustic Consultant
Mr Trezins	Environmental Protection Manager
Mr Tansley	Development Manager - Enforcement

### INTERESTED PERSONS:

Councillor Page	Bromyard Town Council
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### DOCUMENTS

- 1 Council's letter of Notification
- 2 Attendance list
- 3 Statement submitted by Tyler Parkes re Planning
- 4 Statement submitted by Colin Waters re Noise issues
- 5 S106 UU in favour of Herefordshire Council
- 6 UU in favour of Polytec Car Styling Bromyard Limited
- 7 Closing statement on behalf of the Appellant
- 8 Statement submitted on behalf of Herefordshire Council dated 27 November 2012
- 9 Council's comments on Unilateral Undertakings
- 10 Submissions of RPS on behalf of the Council



**ANNEX 3**  
**Costs Decision**

**Re: N111899/O**



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## Costs Decision

Site visit made on 17 October 2012

**by Wendy J Burden BA(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

**Decision date: 21 January 2013**

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### **Costs application in relation to Appeal Ref: APP/W1850/A/12/2177220 Porthouse Farm, Tenbury Road, Bromyard, HR7 4LW**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Marsten Developments Ltd for a partial award of costs against Herefordshire Council.
  - The appeal was against the refusal of planning permission for the erection of up to 127 dwellings comprising 83 open market and 44 affordable units, with all matters except access reserved for future determination, garages, car parking areas estate roads, footpaths and cycleways, landscaping and public open space, including 0.2 hectares of on-site children's play areas and 2.6 hectares of on-site public amenity open space; remodelling of existing bund and noise mitigation works at the Polytec site..
- 

### **Decision**

1. The application for an award of costs is allowed in the terms set out below.

### **Procedural issue**

2. The appeal was originally submitted to be dealt with under the written representation procedure, and the costs application was made on the basis of the work carried out for that procedure. However, I had a number of questions concerning the conditions which had been agreed between the parties relating to the implementation and maintenance of the noise mitigation measures. A Hearing was then held on the 4 December 2012 in accordance with the powers conferred by S319A of the Town and Country Planning Act 1990. The Hearing focussed entirely on the issues raised in relation to the 4 conditions which were agreed to be required in order to attenuate noise from the adjoining industrial estate. At the Hearing, it was confirmed on behalf of the applicant that no addition to the costs application submitted in relation to the written representations appeal was to be made to cover the costs of the Hearing. I am therefore dealing with the application as one for a partial award of costs relating to the work carried out for the written representations part of the procedure only.

### **Reasons**

3. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.



4. In this case the officers recommended to the planning committee of the Council that planning permission should be granted. That recommendation was not accepted by the members of the committee, but it is clear from para B20 of Circular 03/2009 that Planning Authorities are not bound to accept the recommendations of their officers. Nevertheless, the Circular goes on to make it clear that where the officer's advice is not followed, authorities will need to show reasonable planning grounds for taking a contrary decision and to produce relevant evidence on appeal to support the decision in all respects.
5. The appeal site is allocated for residential development in the statutory Herefordshire Unitary Development Plan (UDP) adopted in 2007. The allocation was made by Herefordshire Council and the principle of the residential use was considered by the Inspector who dealt with objections to allocation of the site at the UDP examination. The issues of the impact of the operation of the Polytec site on future occupiers of the site, and the needs of the Polytec Holden factory operators were given full consideration; and the Council produced a noise assessment report as a part of its evidence to support the allocation.
6. The Council adopted the UDP with the allocation of the site in accordance with the recommendation of the Inspector. There has been no suggestion of any change in circumstances since the UDP was adopted, and there is no proposal in the emerging LDF documents to suggest that the allocation should be reconsidered. In these circumstances I find the third reason for refusal cited by the Council to be unreasonable. It is clear from the status of the site in the development plan that the residential use of the site is considered to be an appropriate land use.
7. In these circumstances where the Council is dealing with a site which has been designated for development in the statutory plan, the National Planning Policy Framework makes it clear that Councils should approve development proposals which accord with the development plan without delay. Local planning authorities should approach decision taking in a positive way to foster the delivery of sustainable development and to seamlessly translate plans into high quality development on the ground.
8. I accept that it was appropriate for the Council to give full consideration to the future living conditions of the residents of the proposed houses. Clearly in adopting the allocation of this site in the UDP, the Council would have had in mind the requirements of Policy DR13 which sets out the criteria to be applied when considering noise issues. Having regard to the extent to which noise was considered at the UDP examination, it is safe to assume that the Council would have been satisfied that in principle the objectives of DR13 could be achieved on the appeal site.
9. The appeal scheme has been the subject of noise reports from three reputable firms of acoustic consultants. Agreement was reached among experts as to the level of mitigation measures required, and the applicant has included all those measures in the appeal scheme. The Council's own consultant concluded that with those measures in operation, noise emissions from the Polytec site would meet appropriate criteria and would not be expected to result in any loss of amenity for the occupiers of the new dwellings. In dealing with the application, the Council did not question whether the implementation and maintenance of the noise attenuation measures could be secured through condition and/or legal agreements. Consequently the Council assumed that the noise attenuation measures could be put in place, and the first reason for refusal



relates solely to the potential for disturbance at night with those noise attenuation measures in place. I accept that the Council is entitled to use its own judgement, but in this case it has made that judgement in spite of the technical advice from its noise consultants.

10. Para B16 of Circular 3/2009 states that unreasonable behaviour can result from a council's failure to substantiate a reason for refusal, and para B20 states that it may also result from failure to follow professional or technical advice without demonstrating reasonable planning grounds for taking a contrary decision and producing relevant evidence to support their decision. In reaching its decision on noise, the Council did not follow the technical advice of its own consultants and officers in relation to the efficacy of the noise attenuation measures. Then in the appeal, the Council failed to produce any relevant technical evidence which would demonstrate reasonable planning grounds for taking a contrary view in relation to the efficacy of the noise attenuation measures. In these circumstances I find that the Council's first reason for refusal is unreasonable, and fails to accord with the advice in the NPPF for local authorities to approach decision taking in a positive way.
11. No issue in relation to lighting had been raised during the discussion of the application and this was confirmed by the officer to the planning committee. The Council had no relevant technical evidence to support its second reason for refusal, which was then withdrawn by the Council some 13 days prior to the end of the six week period for the submission of the applicant's case. Meanwhile it is clear from the history of email exchanges between the applicant's consultants that a lighting expert had been instructed and had carried out the work and produced a report in response to the reason for refusal. In these circumstances I find the Council has acted unreasonably in imposing a reason for refusal without any technical support for its position, and then withdrawing it at a late stage resulting in wasted preparatory work on behalf of and at the expense of the applicant.
12. I have dismissed the planning appeal on the basis of flaws in a supporting unilateral undertaking which I consider to be necessary to underpin the conditions required to secure the long term maintenance of the noise attenuation measures. This reason for dismissing the appeal is not one which was raised by the Council. In my view the Council should have satisfied itself that appropriate conditions and agreements were in place to secure both the implementation and long term maintenance of the noise attenuation measures. If the Council had accepted the advice of its consultants, and conditions and their long term enforceability had been resolved between the Council and the appellant, then the matter would not have necessitated an appeal in order to progress the implementation of this development plan allocation.
13. It is clear that the applicant has incurred unnecessary and wasted expense as a result of the Council's unreasonable refusal of this planning application which brought about the appeal under the written representations procedure.

#### **Costs Order**

14. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Herefordshire Council shall pay to Marsten Developments Ltd, the costs of the

appeal proceedings described in the heading of this decision limited to those costs incurred in respect of the written representations procedure.

15. The applicant is now invited to submit to Herefordshire Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

*Wendy Burden*

INSPECTOR

# **ANNEX 4**

## **Section 106 Legal Agreement**

### **Draft Heads of Terms**

**Re: 130907/O**



## ANNEX 4

### HEADS OF TERMS Proposed Planning Obligation Agreement Section 106 Town and Country Planning Act 1990

Planning Application: 130907/O

Proposal: Construction of up to 127 dwelling houses with all matters other than the means of access reserved for future consideration

Site: Porthouse Farm, Tenbury Road, Bromyard, Herefordshire

1. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of
  - £ 1,809 (index linked) for a 2 bedroom open market unit
  - £ 2,951 (index linked) for a 3 bedroom open market unit
  - £ 4,953 (index linked) for a 4+ bedroom open market unit

The contributions will provide for enhanced educational infrastructure at St Peters Primary School, Post 16, Bromyard Early Years, Bromyard Youth Service and the Special Education Needs Schools. The sum shall be paid on or before first occupation of the first open market dwelling house, and may be pooled with other contributions if appropriate.

2. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of
  - £ 2,092 (index linked) for a 1 bedroom open market unit
  - £ 2,457 (index linked) for a 2 bedroom open market unit
  - £ 3,686 (index linked) for a 3 bedroom open market unit
  - £ 4,915 (index linked) for a 4 bedroom open market unit
  - £ 6,143 (index linked) for a 5 bedroom open market unit

The contributions will provide for sustainable transport infrastructure to serve the development, which sum shall be paid on or before occupation of the first open market dwelling house and may be pooled with other contributions if appropriate. The monies shall be used by Herefordshire Council at its option for any or all of the following purposes:

- Dropped crossings in the Town. All along routes used by residents of the development to shops and schools
  - Improved cycle parking in the town centre and schools
  - Improvements to the junction from the B4214 into Porthouse Industrial Estate. The footway to be diverted to the open grass area on the town side. This is on the route from the development to town/schools
  - Provision/improvements to proposed Greenway along old railway
  - Old Road Footway
  - Extension of footway on the A465 towards the garage and Panniers Lane
  - Enhancement of southerly visibility at junction of Winslow Road with Tenbury Road (B4214)
3. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of £627 (index linked) per head of population (the population shall be calculated by multiplying the total number of open market dwellings by 2.3 which is the assumed occupancy of each dwelling) to be spent for the enhancement/provision of outdoor sports facilities in consultation with local sports clubs in Bromyard & Winslow and adjacent parishes. The sums shall be paid on or before the occupation of the 1st open market dwelling. The monies may be pooled with other contributions if appropriate.



4. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of £292 (index linked) per head of population (the population shall be calculated by multiplying the total number of open market dwellings by 2.3 which is the assumed occupancy of each dwelling) to be spent to support the existing indoor sports provision in Bromyard & Winslow and adjacent parishes. The sums shall be paid on or before occupation of the 1st open market dwelling. The monies may be pooled with other contributions if appropriate.
5. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of
  - £120 (index linked) for a 1 bedroom open market unit
  - £146 (index linked) for a 2 bedroom open market unit
  - £198 (index linked) for a 3 bedroom open market unit
  - £241 (index linked) for a 4+ bedroom open market unit

The contributions will provide for enhanced Library facilities in Bromyard. The sum shall be paid on or before the occupation of the 1st open market dwelling, and may be pooled with other contributions if appropriate.

6. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of £120 (index linked) per open market dwelling. The contribution will provide for waste reduction and recycling in Bromyard & Winslow. The sum shall be paid on or before occupation of the 1st open market dwelling, and may be pooled with other contributions if appropriate.
7. The developer covenants with Herefordshire Council to pay a sum of £100 per open market dwelling which will be used to provide for public art within the development or within the vicinity of the development. The sum shall be paid on or before the occupation of the 1st open market dwelling.
8. The developer covenants with Herefordshire Council that 35% of the residential units shall be "Affordable Housing" which meets the criteria set out in policy H9 of the Herefordshire Unitary Development Plan or any statutory replacement of those criteria and that policy including the Supplementary Planning Document on Planning Obligations.
9. Of those Affordable Housing units, at least 65% shall be made available for social rent with the remainder being available for intermediate tenure.
10. All the affordable housing units shall be completed and made available for occupation prior to the occupation of no more than 50% of the general market housing or in accordance with a phasing programme to be agreed in writing with Herefordshire Council.
11. The Affordable Housing Units must be let and managed or co-owned in accordance with the guidance issued by the Homes and Communities Agency (or successor agency) from time to time with the intention that the Affordable Housing Units shall at all times be used for the purposes of providing Affordable Housing to persons who are eligible in accordance with the allocation policies of the Registered Social Landlord and satisfy the following requirements:-
  - 11.1 registered with Home Point at the time the Affordable Housing Unit becomes available for residential occupation; and
  - 11.2 satisfy the requirements of paragraphs 12 & 13 of this schedule
12. The Affordable Housing Units must be advertised through Home Point and allocated in accordance with the Herefordshire Allocation Policy for occupation as a sole residence to a person or persons one of who has:-
  - 12.1 a local connection with the parish of Bromyard and Winslow; or Grendon Bishop, Bredenbury, Wacton, Edwyn Ralph, Norton, Linton, Avenbury, Stoke Lacy, Little Cowarne, Pencombe and Grendon Warren
  - 12.2 in the event there being no person with a local connection to any of the above parishes any other person ordinarily resident within the administrative area of



Herefordshire Council who is eligible under the allocation policies of the Registered Social Landlord if the Registered Social Landlord can demonstrate to the Council that after 28 working days of any of the Affordable Housing Units becoming available for letting the Registered Social Landlord having made all reasonable efforts through the use of Home Point have found no suitable candidate under sub-paragraph 11.1 or 11.2 above.

13. For the purposes of sub-paragraph 12.1 or 12.2 of this schedule 'local connection' means having a connection to one of the parishes specified above because that person:
  - is or in the past was normally resident there; or
  - is employed there; or
  - has a family association there; or
  - a proven need to give support to or receive support from family members; or
  - because of special circumstances
14. The developer covenants with Herefordshire Council to construct the Affordable Housing Units to the Homes and Communities Agency 'Design and Quality Standards 2007' (or to a subsequent design and quality standards of the Homes and Communities Agency as are current at the date of construction) and to Joseph Rowntree Foundation 'Lifetime Homes' standards. Independent certification shall be provided prior to the commencement of the development and following occupation of the last dwelling confirming compliance with the required standard.
15. The developer covenants with Herefordshire Council to construct the Affordable Housing Units to Code Level 3 of the 'Code for Sustainable Homes – Setting the Standard in Sustainability for New Homes' or equivalent standard of carbon emission reduction, energy and water efficiency as may be agreed in writing with the local planning authority. Independent certification shall be provided prior to the commencement of the development and following occupation of the last dwelling confirming compliance with the required standard.
16. In the event that Herefordshire Council does not for any reason use the sum specified in paragraphs 1, 2, 3, 4, 5, 6, and 7 above for the purposes specified in the agreement within 10 years of the date of this agreement, the Council shall repay to the developer the said sum or such part thereof, which has not been used by Herefordshire Council.
17. The sums referred to in paragraphs 1, 2, 3, 4, 5, 6, and 7 above shall be linked to an appropriate index or indices selected by the Council with the intention that such sums will be adjusted according to any percentage increase in prices occurring between the date of the Section 106 Agreement and the date the sums are paid to the Council.
18. The developer covenants with Herefordshire Council to pay a surcharge of 2% of the total sum detailed in this Heads of Terms, as a contribution towards the cost of monitoring and enforcing the Section 106 Agreement. The sum shall be paid on or before the commencement of the development.
19. The developer shall pay to the Council on or before the completion of the Agreement, the reasonable legal costs incurred by Herefordshire Council in connection with the preparation and completion of the Agreement.
20. The Children's Play Area and amenity public open space area shall be provided on-site prior to the occupation of 50% of the open market dwellings. The Children's Play Area and public open space shall be maintained by the developer for a minimum period of one year and then transferred to Herefordshire Council at a cost of £1 provided that the play area and open space are to an acceptable standard as agreed by Herefordshire Council. At the time of transfer the developer shall pay Herefordshire Council a 15 year maintenance sum in accordance with the Tariff for Calculation of Commuted Sums 2013.



21. Covenant by Polytec to install and complete to the Council's reasonable satisfaction the (fixed) noise mitigation measures prior to the first occupation of the first dwelling.
22. The owner of the housing site shall fund the above installation (no more than £60,000) – this will be evidenced to the Council with payment before occupation of the development.
23. Thereafter Polytec or successors in title keeps and maintains those noise mitigation measures as long as they are reasonably necessary.
24. Prior to the first occupation of the first dwelling Polytec shall fit all forklift trucks at the factory with white noise reversing alarms/warning systems and thereafter maintain them satisfactorily.
25. The owner of the housing site shall fund the installation of the white noise reversing alarms/warning systems (no more than £5,000) – this will be evidenced to the Council.
26. A maintenance sum of £70,000 shall be paid by the owners of the housing land to Polytec for future maintenance of 22. and 25. – this will be evidenced to the Council with payment before occupation of the development; and
27. Following occupation of any of the dwellings no vehicle operating at the factory fitted with tonal reversing alarms/warning systems (e.g. delivery vehicles) shall operate between 23:00 hours and 07:00 hours.





<b>MEETING:</b>	<b>PLANNING COMMITTEE</b>
<b>DATE:</b>	<b>26 JUNE 2013</b>
<b>TITLE OF REPORT:</b>	<p><b>N123540/F - ADAPTATION AND CHANGE OF USE OF STORAGE BUILDING (BUILDING 7) FOR STORAGE AND MANUFACTURING, ADDITIONAL CAR PARKING, EXTERNAL STORAGE TANKS AND THE ERECTION OF A 26 METRE ODOUR STACK AND ASSOCIATED INFRASTRUCTURE AT TYRRELLS COURT, STRETFORD, LEOMINSTER, HR6 9DQ</b></p> <p><b>For: Tyrrells Potato Chips Ltd per Drivers Jonas Deloitte, 4 Brindley Place, Birmingham, West Midlands, B1 2HZ</b></p>
<b>WEBSITE LINK:</b>	<a href="http://news.herefordshire.gov.uk/housing/planning/58286.aspx?ID=123540&amp;NoSearch=True">http://news.herefordshire.gov.uk/housing/planning/58286.aspx?ID=123540&amp;NoSearch=True</a>

**Date Received: 18 December 2012**

**Ward: Golden Cross with Weobley**

**Grid Ref: 343110,255825**

**Expiry Date: 6 May 2013**

Local Member: Councillor MJK Cooper

## **1. Site Description and Proposal**

- 1.1 The application site occupies an area of land comprising approximately 4 ha. It is used for commercial purposes and produces and distributes potato crisps and popcorn nationwide. The site is located to the south of the A4112 and west of the B4457 and is capable of being accessed via two unclassified roads - the U93208 and U93209. Access into the site is gained from two positions. HGV access is via a purpose built access point into the site from the U93208, while access for staff and visitors is via the original access that is sited adjacent to Tyrrells Court at the junction of the two unclassified roads and leads directly into the car parking area.
- 1.2 Much of the site is covered by a series of utilitarian commercial buildings, some of which have been converted from a former agricultural use. They are fairly typical in their appearance, being a dark coloured profiled sheet, and are used to provide storage, areas for crisp and popcorn production and office space.
- 1.3 The application relates specifically to building 7, a large steel framed building currently used for storage purposes. It is proposed to change its use to a combination of storage and manufacture, with the latter involving the installation of eight new fryers, effectively doubling crisp production on the site. Most significantly, the installation of the new fryers would also require the installation of a second chimney stack and its associated infrastructure, to disperse their associated odours. This is in addition to the approved, but as yet uninstalled, permitted under application reference N121981/F. The proposal also includes the creation of a new car park immediately to the north east of building 7 to provide an additional 26 spaces.

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Further information on the subject of this report is available from Mr A Banks on 01432 383085



1.4 The application is supported by the following documents:

- Transport Assessment
- Noise and Odour Assessment
- Landscape and Visual Impact Assessment
- Planning Statement

## 2. Policies

2.1 National Planning Policy Framework:

Paragraph 14 – Sustainable Development  
Paragraph 18 to 22 – Building a Strong Competitive Economy  
Paragraph 28 – Supporting a Prosperous Rural Economy  
Paragraphs 109 and 120 to 123 – Conserving and Enhancing the Natural Environment

2.2 Herefordshire Unitary Development Plan:

DR1 - Sustainable Development  
S4 - Employment  
DR1 - Design  
DR2 - Land Use and Activity  
DR3 - Movement  
DR4 - Environment  
E8 - Design Standards for Employment Sites  
E11 - Employment in the Smaller Settlements and Open Countryside  
LA2 - Landscape Character and Areas Least Resilient to Change  
LA6 - Landscaping Schemes  
NC8 - Habitat Creation, Restoration and Enhancement

2.3 The Unitary Development Plan policies together with any relevant supplementary planning documentation can be viewed on the Council's website by using the following link:-

<http://www.herefordshire.gov.uk/housing/planning/29815.aspp>

## 3. Planning History

3.1 There are a number of applications relating to the site. The following are considered to be most relevant to this application.

3.2 NW2001/3173/F - Change of use of part of portal frame building to potato packing/storage to potato crisp making. Approved subject to conditions 13 February 2002.

3.3 DCNW2004/2397/F - Change of use of potato store to food room for frying of potato chips. Approved subject to conditions 3 November 2004.

3.4 DMNW/100313/F - Retrospective application for change of use from agriculture to a mixed commercial use of B1 and B8, loading bay extension, temporary portacabin and various items of ancillary plant. Approved subject to conditions 24 December 2010.

3.5 DMN/113427/F - Change of use of agricultural building to storage (building 1). Adaptation of office/storage building (building 2) for mixed use of office, store and popcorn manufacture, and change of use of storage building (building 7) for additional crisp manufacture, associated infrastructure improvements and additional car parking – Withdrawn.

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Further information on the subject of this report is available from Mr A Banks on 01432 383085

- 3.6 The following three applications were all considered simultaneously and approved by Planning Committee, subject to conditions, on 17 October 2012 -

N120896/F - Change of use of building 1 from agricultural building to storage; change of use and adaptation of old factory building (building 2) from offices and storage to offices, storage and manufacturing.

N121877/F - Provision of a sprinkler system comprising the erection of a water tank and pump room building.

N121981/F - Erection of a 26 metre high stack together with the provision of ducting and other associated infrastructure, together with the removal of roof mounted fans from production plant (building 3).

#### 4. Consultation Summary

##### Statutory Consultations

- 4.1 Environment Agency: Raises no objection but comments as follows:

Flood Risk: The storage building (existing and proposed) lies predominantly in Flood Zone 1, the low risk Zone. A portion of the building also lies within Flood Zone 2, the medium risk Zone.

The National Planning Policy Framework (NPPF - paragraph 103) requires that a planning application should be accompanied by a Flood Risk Assessment (FRA). However, due to the scale and nature of the development, we recommend consultation with your Land Drainage team and also the Lugg Internal Drainage Board (IDB), to provide information and review the submitted FRA.

Pollution Prevention: We note that the proposals include a new 26 metre odour stack and that a detailed odour assessment has been submitted with the application. Tyrrells Court currently falls under the threshold for requiring an Environmental Permit (EP) from us. We would therefore recommend you seek the comments of your own Environmental Health colleagues.

- 4.2 Natural England: Raises no objection and comments as follows:

Development within the catchment of the River Lugg has the potential to contribute to adverse effects on the SAC in terms of poor water quality. We understand that the application proposes that foul discharge will be to cess pit, which will be regularly emptied and disposed of by licensed contractors.

The LPA has undertaken a HRA Screening and has concluded that the proposal has **no likely significant effects** on the River Wye SAC. This is because the site is more than 10 km from the SAC.

Natural England advises your authority that the proposal, if undertaken in strict accordance with the details submitted, is not likely to have a significant effect on the interest features for which the River Wye SAC has been classified. Natural England therefore advises that your Authority is not required to undertake an Appropriate Assessment to assess the implications of this proposal on the site's conservation objectives.

- 4.3 National Air Traffic Control Service: The proposal has been examined from a technical safeguarding aspect and does not conflict with our safeguarding criteria. Accordingly no safeguarding objections are raised to this proposal.

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Further information on the subject of this report is available from Mr A Banks on 01432 383085

- 4.4 Civil Aviation Authority: No objection.
- 4.5 Ministry of Defence: The application relates to a site outside of the Ministry of Defence safeguarding areas and therefore no safeguarding objections are raised to this proposal.

Internal Council Advice

- 4.6 Transportation Manager - I am very uncomfortable about the increase in HGV movements. I have not been able to obtain definitive guidance on appropriate HGV traffic levels on narrow roads, but in my opinion, the level of HGV traffic proposed will compromise highway safety, particularly if HGVs meet head-on and one has to reverse to allow passage.

In traffic situations, all will work smoothly until a 'tipping threshold' is reached, beyond which gridlock occurs. I consider it very likely that the traffic increase proposed will bring the 'tipping point' too close.

It is acknowledged that only 45% of the HGV traffic between "lane 1" and the A44 is generated by Tyrrells, but in the absence of police intervention to reduce the illegal use of the lane, my primary concern must be highway safety.

- 4.7 Economic Development Manager - From an economic development perspective we would be generally supportive of the above planning application. Tyrrells are a nationally renowned Herefordshire business and an important local employer, currently employing 160 staff, most of whom are from the local area. The proposals will allow a successful business to continue to grow, safeguarding existing employment and helping to create a further 70 jobs. Whilst we acknowledge there are some constraints facing the existing site, we feel the potential economic benefits achieved are significant enough, especially within the current economic climate, to outweigh these considerations and would advocate that the application be recommended for approval.

- 4.8 Conservation Manager: Landscape - The Landscape Officer objects to the application. In summary she comments as follows:

I agree with the LVA assessment of sensitivity of the landscape resource as being medium (it is not high, not protected at national level or include rare elements). I disagree, however, with the predicted landscape effects. The combined impact of two stacks in this isolated, rural location will intrude upon often familiar and cherished horizons. As stated earlier in the LVA the existing buildings are of a modern agricultural appearance, however both of the chimneys and associated steam plumes, are completely alien to the rural setting, being more suitable to an industrial estate. The lower 10.7m sections will be screened by the existing buildings, however 15.3m will be visible above the ridgelines. There would be no loss of hedgerow (the key characteristic), however the stacks are not in keeping with the mixed farming land use, small scale pattern of winding lanes, or the notably domestic character. I consider that there would be a high magnitude of change through the addition of new uncharacteristic features or elements that would lead to a change in the overall landscape quality and character (from agricultural to industrial). This change would have an adverse effect as the stacks are a new element that is not currently found in the landscape. The previously approved stack cannot be considered to be comfortably accommodated within the small scale and rural character of the existing landscape and the introduction of a second stack will compound this negative impact.

Prevention or avoidance of the significant negative landscape and visual effects of this development could not be adequately achieved due to the height and nature of the industrial structure. Alternative methods of odour control should be developed.

If the development is permitted then the proposed mitigation to ensure that the stack is finished in a subtle colour, such as matte blue/grey is suitable. This should be considered as

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Further information on the subject of this report is available from Mr A Banks on 01432 383085



reducing the negative visual impact, however, not completely removing it. The fact that this stack will be a narrower column is noted.

Where a negative landscape or visual effect cannot be avoided, or reduced to an acceptable degree, consideration should be given to any opportunities to offset, or compensate for, such unavoidable residual effects. For example the boundary hedgerow on the east boundary is well established, but it is clipped low so doesn't provide any screening. If let to grow taller it would filter views of the site as well as improve biodiversity. It does not appear that the area of reed bed / wetlands for treatment of waste water from the site has established successfully. Addressing this large feature at the front of the site could help to change the perception of the site becoming purely industrial. New tree planting and enhancement of Tippet's Brook would enhance the western boundary. Provision of a site wide landscape and ecological assessment, together with a management plan, could be considered as compensation as well as addressing the cumulative impact of development on the site.

In conclusion, this application does not meet the requirements of UDP Policy LA2 as an identifiable significant change in the character of the landscape and visual amenity will occur as a result of the proposal. The LVA professional assessment of the proposal has addressed this issue, however I remain against the principle of an industrial type construction in this domestic scale, rural landscape setting.

- 4.9 Conservation Manager: Ecology - A Screening report to assess the impact of the proposal upon the River Wye Special Area of Conservation (SAC) has been completed, and it concludes as follows:

The application proposes a non-mains collection and licensed disposal of foul discharge with unlikely impacts upon adjacent watercourses and ground water in relation to phosphates. The site is over 10 km from the SAC boundary with foul discharges of less than 5 m<sup>3</sup>. No odour emissions are expected to result in any likely significant effect on qualifying site features. It is therefore concluded that the proposal will have no likely significant effects on water quality within the River Wye SAC.

- 4.10 Environmental Health and Trading Standards Manager - I can confirm that I have had opportunity to consider the proposals and the supporting documentation particularly as regards odour and noise. The assessments provided indicate that whilst there may be some resultant loss in amenity to the closest neighbours that this will be within acceptable levels. I would refer you to my comments on a previous application should you have any concerns about the methodologies employed in the assessments.

## **5. Representations**

- 5.1 Dilwyn Parish Council wishes to object most strongly to the chimney stack and other proposed works in this application and to stress that the on-going problems relating to light pollution, noise, traffic and other issues at this site have still not been addressed.
- 5.2 River Lugg Internal Drainage Board: Do not object to the proposal but comment that no additional surface water run-off is permitted into the viewed watercourse (Tippets Brook) without written Land Drainage Consent, to be obtained from the Board.
- 5.3 The application has generated some objection amongst people living locally to the site. In summary the points raised are as follows:
- Proposals will contribute materially to the existing and future problems of vehicle use of the narrow local lanes to the site.
  - The immediate road network is inadequate to accommodate the additional traffic movements associated with the development.

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Further information on the subject of this report is available from Mr A Banks on 01432 383085

- Parts of the Transport Statement do not accurately reflect the actual use of the local road network.
- Vehicles are not complying with the requirements of the Transport Management Plan and are leaving the site and travelling in a southerly direction along the B4457 to its junction with the A4110.
- The erection of a second 26 metre high chimney stack will have an unacceptable visual impact in an area of open countryside. Such impacts cannot be mitigated through additional planting.
- The application should be put on hold until the first stack has been erected and its effectiveness analysed.
- The installation of chimney stacks will mean that odours are dispersed but not abated at source.
- Concern about the potential for increased noise from fans and other machinery associated with the chimney stack.
- The proposals represent a further intensification in the use of the site and should be relocated to a location and premises appropriate for manufacturing.
- The continued industrialisation of the site will have a negative impact on local tourism and businesses that rely on the countryside.
- Further development of this site is not sustainable.

- 5.4 In response to the concerns raised by the Council's Transportation Manager, the applicant's consultants have provided an additional statement to clarify the projected increases in traffic movements. This advises that the greatest number of additional staff vehicle movements in any one hour, associated with the change of use application, would be 16 vehicles per hour (vph) two-way (12 arrivals and 4 departures) between 17:00 and 18:00. These movements are associated with the start of the 18:00 to 06:00 production shift (12 arrivals) and office workers finishing at 17:30. Additional car movements during all other one-hour periods of the day will be fewer.
- 5.5 It goes on to summarise that, on average, some 61 no. additional HGV deliveries per week during the working day would be generated, and a maximum of 13 of these would occur between 23:00 and 06:00, relating to dispatch of final product, stating that such movements would be minimised wherever possible by putting finished goods manufactured during the night shift either into Stores 1 & 6 or onto waiting trailers, prior to being shipped later that morning. Other movements would typically take place during the normal working day.
- 5.6 It further suggests that it is not possible to tabulate the HGV movements during specific one-hour periods as these will vary from day-to-day according to when full loads of finished product are complete etc. However, an average increase during the normal working day of some 7 HGV deliveries per day or 14 two-way movements (arrivals + departures) per day can be expected.
- 5.7 The report notes that the uplift in manufacturing capability is not directly reflected in the uplift in HGV movements. This is because the increased manufacturing output will allow for existing regular part-load deliveries to and from the site to become full-loads. For example, in terms of inbound deliveries, part-load deliveries of flat-packed packaging materials (packets and storage boxes) will become full-loads. Similarly, despatch of final product will more frequently comprise a full-load.
- 5.8 The statement analyses existing traffic movements and calculates flows to/from Tyrrells Court to be 402vpd two-way, of which 34vpd are HGV movements (in or out or a combination of the two). It suggests that the development proposal would result in an additional 78vpd (in or out) of which 18vpd would be additional HGV movements. This would result in additional vehicle

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Further information on the subject of this report is available from Mr A Banks on 01432 383085

flows of an overall percentage uplift on existing traffic flows to and from Tyrrells Court of some 19.4% across the day.

- 5.9 The statement considers possible measures to mitigate the impact of traffic movements along the B4457, particularly ways to reduce the existing unlawful use by HGV drivers of the B4457 as a through-route. It suggests the potential to implement CCTV at either end of the B4457 in addition to improved (advance) signage of the imposed weight restrictions at its northern end. The implementation of these works would need to be a Council-led scheme, which Tyrrells would fund through developer contributions. Once implemented, CCTV footage would be monitored by West Mercia Police.
- 5.10 The statement concludes that the proposal presents additional employment opportunities in the county, whilst the predicted additional vehicle movements would not cause detriment to the existing situation along the B4457. Notwithstanding, appropriate mitigation measures have been suggested which Tyrrells would be prepared to fund via developer contributions.
- 5.11 The consultation responses can be viewed on the Council's website by using the following link:-  
<http://news.herefordshire.gov.uk/housing/planning/searchplanningapplications.aspx>

Internet access is available at the Council's Customer Service Centres:-  
[www.herefordshire.gov.uk/government-citizens-and-rights/complaints-and-compliments/contact-details/?q=contact%20centre&type=suggestedpage](http://www.herefordshire.gov.uk/government-citizens-and-rights/complaints-and-compliments/contact-details/?q=contact%20centre&type=suggestedpage)

## **6. Officer's Appraisal**

- 6.1 Like the previous applications referred to above, this proposal has raised significant objection locally. These can be summarised as relating to matters of highway safety and intensification of traffic movements, nuisance caused by odour and noise and landscape and visual impact. This part of the report will consider each of these, together with the perceived benefits of allowing the proposal which are based on the promotion of economic activity in the county.

### Highway Safety and Increased Traffic Movements

- 6.2 In determining the three most recent applications described in the Planning History section of this report, the Planning Committee has made it clear that it was concerned about the continued growth of the business at this site and an informative note was attached to the decision notice for the new chimney stack which reads as follows:
- "The applicant's attention is drawn to the concern expressed by the Planning Committee about the capacity of the site to accommodate further expansion and the effect that this may have on the amenities of local residents."
- 6.3 A summary of the increases in traffic movements is provided by paragraphs 5.4 to 5.10, including a proposed scheme of mitigation in order that existing weight limit restrictions along the B4457 can be better policed.
- 6.4 Although the proposed installation of new fryers would effectively double production, the anticipated increase in traffic movements is only around 20% above existing. Increased output will not necessarily require a doubling of the workforce and the contention of the applicant's transport consultant that fuller loads on HGVs will limit their additional movements appears appropriate.
- 6.5 The Council's Transportation Manager has expressed concerns about the increased traffic movements to and from the site, suggesting that the additional HGV movements along the narrow B4457 bring highway safety close to its 'tipping point'.

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Further information on the subject of this report is available from Mr A Banks on 01432 383085



- 6.6 The methodology used to complete the Transport Assessment is accepted and it advises that, over the course of a 24 hour period, an additional 9 HGVs will enter and leave the site (7 during the day and 2 at night). It also advises that 45% of HGV movements along the B4457 can be attributed to Tyrrells, with the remaining 55% being vehicles using the road as a 'rat run' between the A44 and A4110. No particular reference is made to additional movements associated with staff and visitors and therefore a judgement has to be made as to whether these additional movements are so detrimental to highway safety and residential amenity to warrant the refusal of this application.
- 6.7 On the basis of the figures provided, HGV movements along the road in a 24 hour period amount to 75. 34 of these (45%) are attributed to Tyrrells, the remaining 41 (55%) being daily traffic movements. In accordance with previous permissions, Tyrrells have adopted an HGV routing agreement where they are required to enter and leave the site via the A44 to the north, rather than negotiating the narrower part of the B4457 to the south of the site and avoiding the potential of lorries meeting head to head. Correspondence from objectors advises that there are occasions where the routing agreement has been breached by drivers visiting the Tyrrells site.

#### Landscape and Visual Impact

- 6.8 The application is accompanied by a Landscape and Visual Impact Assessment that has been carried out in accordance with well-established and accepted industry methodology. It identifies a 1.5 kilometre zone of theoretical visibility, within which all of the objector's properties lie.
- 6.9 The assessment considers that the impact of the installation of a second stack should be categorised as medium in terms of its visual impact for a majority of public viewpoints in the surrounding area, and that this can be absorbed by the surrounding landscape because of its topography and the existence of mature trees and hedgrows. In her comments, the Council's Senior Landscape Officer, maintains that this moderate change in view will be negative. The visual effect of the stack will be permanent. It will detract from the existing quality and visual amenity of the area and therefore it cannot be considered beneficial.
- 6.10 The site is located at a low point in the surrounding landscape. The local topography is gently rolling, with many localised changes in level which restrict views towards the site from many directions. There are no public footpaths in close proximity to the site, nor areas of public open space. Nor does the landscape have any local or national designation. Where views are possible of the site, these are generally through field gateways or while travelling along the winding roads.
- 6.11 The impact of the chimney stack is, however more significant as it will clearly project above the ridge heights of all of the buildings presently on site. However, this has to be balanced against the fact that permission has already been granted for one 26 metre high stack and the test to be applied is whether cumulatively the introduction of a second will cause such significant landscape harm so as to warrant refusal. She concludes that the proposal does not comply with Policy LA2 and that the visual impact cannot be mitigated through the implementation of a landscaping scheme as required by Policy LA6. However, given the surrounding topography, the fact that the site is not visually prominent from public vantage points and that the landscape is not afforded any specific designation, it is concluded that the impact of a second chimney stack would not be so harmful to warrant refusal if it can be demonstrated that there are other benefits to outweigh this impact.
- 6.12 It is also considered that where negative landscape or visual effect cannot be avoided, or reduced to an acceptable degree, consideration should be given to any opportunities to offset, or compensate for, such unavoidable residual effects. Provision of a site-wide landscape and

ecological assessment, together with a management plan, could be considered as compensation as well as addressing the cumulative impact of development on the site.

#### Noise and Odour Nuisance

- 6.13 The odour dispersion model employed by the assessment is one that is widely used throughout the UK and is an adopted industry standard. This has previously been confirmed by the Council's Environmental Health and Trading Standards Manager in his comments on the previous application for the first stack.
- 6.14 The report is based on local meteorological data which shows a consistent pattern of wind direction and speed over a five year period (2006 to 2010), and on odour outputs from the existing extraction and ventilation systems currently installed at the Tyrrells factory.
- 6.15 The assessment model identifies sensitive receptors (dwellings) within the locality of the factory and specifies a maximum odour concentration that would be acceptable at these locations, based on standards set under the Environmental Permitting Regulations (EPR). Tyrrells do not currently have to comply with these regulations due to the size of the business, but have chosen to adopt their standards.
- 6.16 The conclusion of the report is that, even in a worst case scenario of the poorest meteorological conditions in 2007, and based on a maximum odour output at source, the odour annoyance caused at the closest sensitive receptor would be below the levels set by the EPR.
- 6.17 The suggestion that odours will simply be deposited further afield through the installation of chimney stacks is not endorsed by the findings of the assessment. Their purpose is to disperse odourous particles into the atmosphere in order that their impact is reduced closest to the source and dissipated over a wider area.
- 6.18 Although the assessment considers that further testing once the first stack is erected and operational may identify further mitigation measures to be employed, there does not appear to be any evidence to suggest that the installation of a second chimney stack would give rise to unacceptable levels of nuisance caused by odour, and it is therefore concluded that the proposal is compliant with Policy DR4 of the Unitary Development Plan in this regard. It is, however, suggested that if planning permission is forthcoming for a second stack, a condition is imposed to the effect that it should not be installed until the first stack has been erected and is fully operational. This will ensure that existing odour control measures are satisfied before any further development takes place.
- 6.19 It has been suggested that the fans associated with the proposed chimney stack will give rise to an increase in noise from the site. The fans are an integral part of the proposed system for odour mitigation and draw fumes into the stack. They will replace a number of older roof mounted units that do give rise to some background noise. A noise assessment submitted as part of the application confirms that these are audible from some of the objector's properties but that the levels recorded are below 35dBA and are not considered to constitute a statutory nuisance. The report concludes that, provided the noise levels do not exceed those existing the proposal should not give rise to significant detriment to the residential amenity of the area.
- 6.20 The noise assessment also comments on noise associated with addition traffic movements, and particularly night time HGV movements to and from the Tyrrells site. It concludes that the noise level from these movements will be within suggested noise impact criterion and should give rise to no more than a minor impact on residential amenity, concluding that this is compatible with the general planning requirement to ensure that there is no significant impact on residential amenity.

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Further information on the subject of this report is available from Mr A Banks on 01432 383085

- 6.21 The new equipment is positioned at ground level and existing buildings will serve to act as a sound barrier. In light of the fact that the equipment is new, and is positioned at a lower level than existing fans, it is not considered that it would cause an increase in noise levels to justify the refusal of the application and the proposal is again considered to accord with Policy DR4 of the Herefordshire Unitary Development Plan.

#### Economic Benefits

- 6.22 The Planning Statement supporting the application advises that Tyrrells has seen considerable growth in recent years and that this trend is set to continue. It also states that the company are aware of the constraints of the site and that the future growth of the business will be accommodated through strategies other than the continued development of this site, such as the development of an additional site or the acquisition of other businesses. However, due to the speed at which demand is increasing, there is an immediate need to increase manufacturing capacity that cannot be met by these longer term options.

- 6.23 The Planning Statement includes a statement from Tyrrells, the final two paragraphs of which read as follows:

*“The development of Store 7 into a second factory will secure the growth of the business for another 5 years in accordance with its existing strategic plan. Therefore The Board warrants that this proposal will be the final major intensification of activity on the farm site whilst the company remains under its control and current ownership.*

*Any further development would be within the footprint of existing buildings on site; or by way of development of a second site; or the co-manufacture of product by crisp manufacturers in other key markets; and/or the acquisition of another factory.”*

- 6.24 The proposal will result in an increase in staffing levels, the Planning Statement suggesting that numbers will increase from the existing 160 staff to approximately 230, offering a range of unskilled, semi-skilled, administrative and management posts.

- 6.25 The National Planning Policy Framework (NPPF) seeks to encourage sustainable economic growth, and paragraph 19 is quite specific in stating that planning should encourage and not act as an impediment to sustainable growth. The paragraph concludes:

*“Therefore significant weight should be placed on the need to support economic growth through the planning system.”*

- 6.26 Paragraph 28 refers specifically to the support economic growth in rural areas to create jobs and prosperity by taking a positive approach to sustainable new development. In this case the business exists and, although it has previously been acknowledged that the site would not be promoted as a location for a new business of this scale, the fact that it is well established is material to the determination of this proposal.

#### Conclusion

- 6.27 The determination of this application is finely balanced. The proposal will increase traffic movements, particularly HGVs, within a road network that is not best suited for commercial activity, and the installation of a second chimney stack will have a negative visual impact. However, the NPPF is clear in its support of economic growth that is sustainable. The proposals will create new job opportunities within an existing and established business, using an existing building to do so, and the proposal is considered to be sustainable in this respect.

- 6.28 In light of the fact that permission has already been granted for the installation of one chimney stack, the erection of a second in a location with no specific landscape designation and that

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Further information on the subject of this report is available from Mr A Banks on 01432 383085



sits in a natural bowl that is not widely visible from surrounding public vantage points, the proposal is acceptable in landscape impact terms. It is not considered to have a cumulative effect that would cause such harm to make the proposal unacceptable, and the introduction of new car parking within the context of existing development is also considered acceptable and in accordance with Policy LA2 of the Herefordshire Unitary Development Plan.

- 6.29 The proposal will result in an increase in traffic movements along the B4457. Tyrrells have previously undertaken to enforce a routing agreement with HGV drivers and, whilst there have been occasional breaches of this, it has been successful. If this application is to be approved, it is recommended that a condition to ensure that this continues is imposed. It is however evident that a lack of enforcement of the weight restriction along the road is a contributory factor to problems experienced by local residents and Tyrrells have offered to pay for a CCTV system to help to address this. This however, is an existing problem that is not directly relevant to the proposal, and it is your officer's view that it would be unreasonable to seek a financial contribution for this reason.
- 6.30 The issues of noise and odour have been considered in detail by the reports accompanying the application and neither concludes that there will be a significant impact on residential amenity in the local area. The proposal is therefore compliant with Policy DR4 of the Herefordshire Unitary Development Plan.
- 6.31 On balance, it is considered that the additional numbers of traffic movements created by the proposal are not sufficient to justify the refusal of the application on highway safety grounds. In particular the additional HGV movements would represent a modest proportion of all traffic movements along the B4457 and the continued use of a routing agreement by Tyrrells to ensure that all HGV traffic enters and leaves the site via the A44 to the north will serve to minimise traffic conflicts occurring on the narrower part of the B4457 to the south of the site.
- 6.32 The proposal will bring economic benefits, including the creation of a number of new jobs and the continued growth of an established business in the county, and this is compliant with the aims of the NPPF to support economic growth. It is therefore concluded that the proposal is acceptable and the application is recommended for approval.

## **RECOMMENDATION**

**That planning permission be granted subject to the following conditions:**

- 1. A01 Time limit for commencement (full permission)**
- 2. B01 Development in accordance with the approved plans**
- 3. The development hereby approved shall not be commenced until the first chimney stack approved on the site to service existing production plant in building 3, as approved under application reference N121981/F, is fully implemented and operational.**

**Reason:** In order to ensure that existing odour mitigation measures are implemented before any further development occurs on the site, and to comply with Policy DR4 of the Herefordshire Unitary Development Plan.

- 4. The chimney stack hereby approved shall be coloured a matt grey/blue colour, the precise detail of which shall be submitted to and approved in writing by the local planning authority prior to its installation. The development shall be carried out in accordance with the approved details.**

**Reason:** In order to mitigate the visual impact of the development and to comply with Policies E8 and LA2 of the Herefordshire Unitary Development Plan.

5. A detailed site-wide landscape and ecological assessment and management plan shall be submitted to and approved in writing by the local planning authority prior to the commencement of development. The provisions of the management plan shall be implemented in the first planting season preceding the commencement of development and shall be maintained thereafter.

Reason: In order to provide some compensation for the visual impact of the development and to comply with Policies LA6 and NC8 of the Herefordshire Unitary Development Plan.

6. In the event that the chimney stack hereby permitted becomes redundant, inoperative or permanently unused for a period in excess of six months, it, and all of its associated infrastructure, shall be permanently removed from the site.

Reason: The chimney stack has been permitted to address concerns about odour emanating from the site. Should it become redundant, its visual impact would be unwarranted, contrary to Policy LA2 of the Herefordshire Unitary Development Plan.

7. The Traffic Management Plan submitted in accordance with the approved and implemented development under application reference N120896/F shall be applied, without modification, to the development hereby approved.

Reason: In the interests of protecting local amenities and having regard to highway safety in accordance with policies DR1, DR2 and DR3 of the Herefordshire Unitary Development Plan.

**Informative:**

1. The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against planning policy and any other material considerations, including any representations that have been received. It has subsequently determined to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

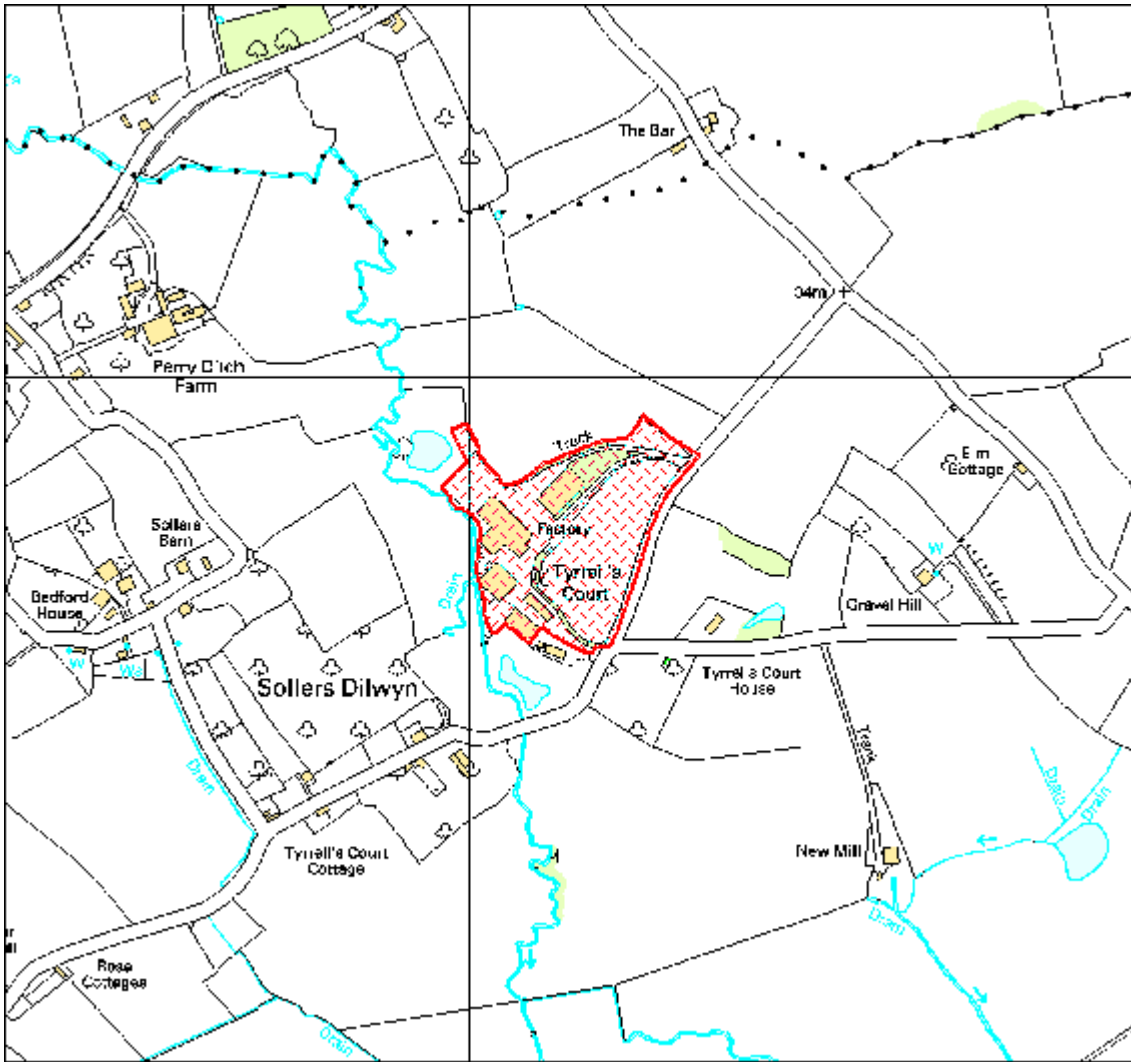
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Notes: .....

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**Background Papers**

Internal departmental consultation replies.



This copy has been produced specifically for Planning purposes. No further copies may be made.

**APPLICATION NO:** N/123540/F

**SITE ADDRESS :** TYRRELLS COURT, STRETFORD, LEOMINSTER, HEREFORDSHIRE, HR6 9DQ

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<b>MEETING:</b>	<b>PLANNING COMMITTEE</b>
<b>DATE:</b>	<b>26 JUNE 2013</b>
<b>TITLE OF REPORT:</b>	<p><b>130321/F - PROPOSED RE-BUILDING OF FORMER RAILWAY STATION TO FORM 2 NO HOLIDAY UNITS AT LAND AT STATION HOUSE, STOKE EDITH, HEREFORD, HR1 4EY</b></p> <p><b>For: Mr Davies per Mr R Pritchard, The Mill, Kenchester, Hereford, Herefordshire HR4 7QJ</b></p>
<b>WEBSITE LINK:</b>	<a href="http://news.herefordshire.gov.uk/housing/planning/58286.aspx?ID=130321&amp;NoSearch=True">http://news.herefordshire.gov.uk/housing/planning/58286.aspx?ID=130321&amp;NoSearch=True</a>

**Date Received: 1 February 2013**

**Ward: Backbury**

**Grid Ref: 361458,241307**

**Expiry Date: 10 April 2013**

Local Member: Councillor J Hardwick

## **1. Site Description and Proposal**

- 1.1 Planning permission is sought for the erection of a replica station building for use as a pair of holiday lets on the site of the former Stoke Edith station, just outside Tarrington. The application site is previously developed land encompassing the former Station Master's House, an original Victorian engineer's shed and further to the west a larger replica locomotive shed approved in 2001. The site sits immediately adjacent the main Hereford-Worcester rail line in the open countryside 500 metres from the edge of Tarrington, a main village as defined under Policy H4 of the Herefordshire Unitary Development Plan.
- 1.2 The former station building was demolished in the 1960s and replaced with a portacabin. The proposed building is not an exact replica of the former station building, but is designed to resemble a typical rural station building that can be let as two individual units, but also combined for use by a larger group if required.
- 1.3 The proposal is part of the applicant's aspiration to meet a demand for specialist or niche self-catered tourist accommodation for those who may have a specific desire to stay in accommodation connected to the former station, adjacent the existing main line.

## **2. Policies**

### **2.1 National Planning Policy Framework (NPPF)**

Chapter 3 – Supporting a prosperous Rural Economy

Chapter 11 – Conserving and Enhancing the Historic Environment

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Further information on the subject of this report is available from Mr E Thomas on 01432 260479

## 2.2 Herefordshire Unitary Development Plan (HUDP):

S1	-	Sustainable Development
S2	-	Development Requirements
S7	-	Natural and Historic Heritage
S8	-	Recreation, Sport and Tourism
DR1	-	Design
DR2	-	Land Use and Activity
DR3	-	Movement
H7	-	Main Villages: Settlement Boundaries
H13	-	Sustainable Residential Design
H14	-	Re-using Previously Developed Land and Buildings
H15	-	Density
H16	-	Car Parking
LA2	-	Landscape Character
RST12	-	Visitor Accommodation

2.3 The Unitary Development Plan policies together with any relevant supplementary planning documentation can be viewed on the Council's website by using the following link:-

<http://www.herefordshire.gov.uk/housing/planning/29815.aspp>

## 3. Planning History

- 3.1 MH97/0747 Two storey extension to dwelling. Approved 4 August 1997.
- 3.2 NE01/2514/F Erection of industrial building. Approved 27 September 2001.

## 4. Consultation Summary

### Statutory Consultations

4.1 Network Rail: Acknowledge that the applicant owns the entirety of the application site but retain concerns regarding the proximity of the building to the running line and the position and type of fence envisaged. Network Rail considers it likely that a solution can be found that would remove their objection.

### Internal Council Advice

4.2 Traffic Manager: No objection.

## 5. Representations

- 5.1 Tarrington Parish Council: "Tarrington Parish Council fully supports this application."
- 5.2 There have been no letters of representation.
- 5.3 As part of the application the applicant has submitted a written statement explaining that the proposal is intended to revive the original ambience of the Great Western Railway station pre-Beeching and that as a commercial venture the revenue stream from the accommodation letting will enable the further maintenance, conservation and redevelopment of the existing rail-related infrastructure. The main benefits are summarised as follows:

- Improvement to the visual amenity of the area via the removal of the old portacabin;



- Potential spin-off benefits to the local economy from the provision of good quality, niche tourist accommodation, which is in demand;
- The employment of skilled local tradesmen for the construction;
- The building is designed such that it could revert to station use should it ever be decided to stop trains at Stoke Edith/Tarrington again.

5.4 The consultation responses can be viewed on the Council's website by using the following link:- <http://news.herefordshire.gov.uk/housing/planning/searchplanningapplications.aspx>

Internet access is available at the Council's Customer Service Centres:-  
[www.herefordshire.gov.uk/government-citizens-and-rights/complaints-and-compliments/contact-details/?q=contact%20centre&type=suggestedpage](http://www.herefordshire.gov.uk/government-citizens-and-rights/complaints-and-compliments/contact-details/?q=contact%20centre&type=suggestedpage)

## **6. Officer's Appraisal**

- 6.1 The application promotes the provision of tourist accommodation beyond, but within reasonable proximity of the identified main village. At face value the proposal runs contrary to 'saved' HUDP Policy RST12, which requires that permanent serviced or self-catering accommodation in the open countryside should only be permitted if it consists of the re-use and adaptation of a rural building.
- 6.2 However, the NPPF states that "Planning policies should support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development."
- 6.3 To promote a strong rural economy, the NPPF requires that local and neighbourhood plans should support the sustainable growth and expansion of all types of business and enterprise in rural areas, both through conversion of existing buildings and well-designed new buildings. Policies should support sustainable rural tourism and leisure developments that benefit businesses in rural areas, communities and visitors, and which respect the character of the countryside. This should include supporting the provision and expansion of tourist and visitor facilities in appropriate locations where identified needs are not met by existing facilities in rural service centres.
- 6.4 In this context, it is considered that the site, albeit in open countryside, is within reasonable proximity of the main village of Tarrington and also that the site represents previously developed or brownfield land. The building design is considered appropriate to the context of the site in that it represents a typical Victorian station building. The proposal is also part of the applicant's proposal to derive an income stream that will benefit the retention and conservation of pre-existing railway infrastructure on the site. Furthermore the provision of specific, niche tourist accommodation will have the potential to support existing local services such as the public house.
- 6.5 The development would clearly be prominent from the main rail line but otherwise would have comparatively little impact in the wider landscape. Subject to the use of appropriate materials it is considered that the development would, in accordance with Policies DR1, DR2, LA2 and H13, respect the character and appearance of the locality and would not affect adjoining amenity.
- 6.6 The Traffic Manager has no objection to the proposal, which would utilise the existing means of access and expansive parking and turning area.
- 6.7 In the event that planning permission is granted it is recommended that a planning condition is imposed to restrict occupation of the accommodation to tourist accommodation.

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Further information on the subject of this report is available from Mr E Thomas on 01432 260479

## 7. Conclusion

7.1 The HUDP remains the development plan for the area and the proposal is contrary to Policy RST12 insofar as it promotes the provision of new build self-catered tourist accommodation within the open countryside. However, in this case there are significant material considerations that when taken as a whole are considered to warrant a recommendation for approval. These are as follows:

- The site is previously developed land within a context of historic railway development and is within reasonable distance of a main village. The site is thus considered sustainable.
- The proposal would enhance the immediate setting of the area by promoting a high quality new building to support sustainable rural tourism in a manner consistent with the objectives of the NPPF.
- The proposal will assist in meeting a need for high-quality tourist accommodation.

7.2 Although attracting little weight at its stage of preparation, the proposal is consistent with the objectives of Core Strategy Policy E4 Tourism.

## RECOMMENDATION

**That subject to the resolution of Network Rail's outstanding concerns, Officers named in the Scheme of Delegation be authorised to issue planning permission subject to the following conditons:**

1. **A01 Time limit for commencement (full permission)**
2. **B01 Development in accordance with the approved plans**
3. **C01 Samples of external materials**
4. **F30 Use as holiday accommodation**
5. **H13 Access, turning area and parking**

### Informative:

1. **The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against planning policy and any other material considerations, including any representations that have been received. It has subsequently determined to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.**

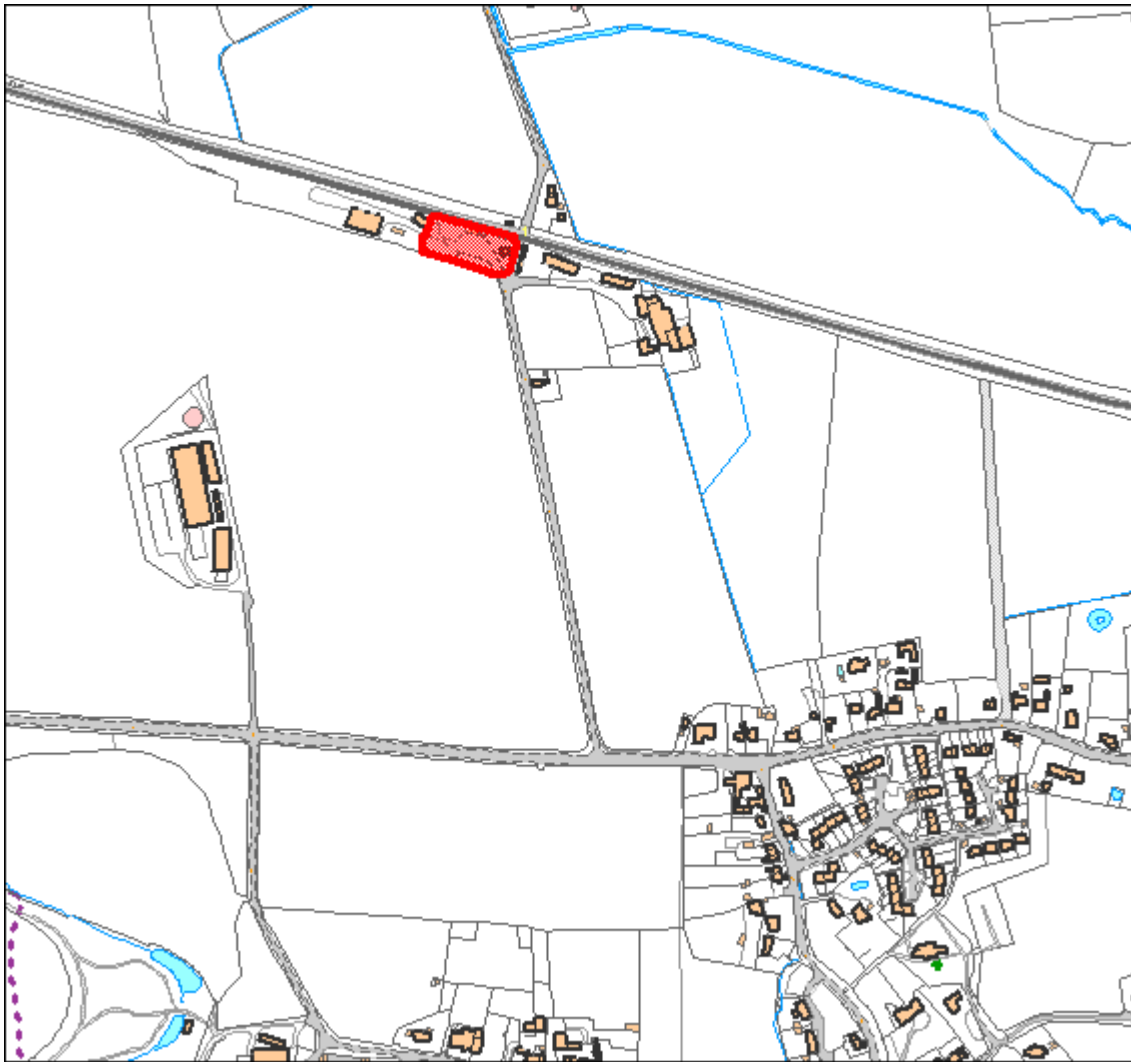
Decision: .....

Notes: .....

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## Background Papers

Internal departmental consultation replies.



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**APPLICATION NO:** 130321/F

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