

# AGENDA

## Planning Committee

Date: **Wednesday 16 July 2014**

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Time: **10.00 am**

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

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

For any further information please contact:

**Tim Brown, 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 Tim Brown, Democratic Services Officer on 01432 260239 or e-mail [tbrown@herefordshire.gov.uk](mailto:tbrown@herefordshire.gov.uk) in advance of the meeting.

# Agenda for the Meeting of the Planning Committee

## Membership

**Chairman**  
**Vice-Chairman**

**Councillor PGH Cutter**  
**Councillor PA Andrews**

Councillor AJM Blackshaw  
Councillor AN Bridges  
Councillor EMK Chave  
Councillor BA Durkin  
Councillor PJ Edwards  
Councillor DW Greenow  
Councillor KS Guthrie  
Councillor J Hardwick  
Councillor JW Hope MBE  
Councillor MAF Hubbard  
Councillor Brig P Jones CBE  
Councillor JG Lester  
Councillor RI Matthews  
Councillor RL Mayo  
Councillor FM Norman  
Councillor J Norris  
Councillor GR Swinford  
Councillor DB Wilcox

## AGENDA

### VISITING BROCKINGTON - POLICE REQUEST - CAR PARKING

There is a pay and display car park at Brockington.

However, please note that if this is full the police have requested that anyone seeking to park in the vicinity of Brockington parks with consideration for the local residents and does not obstruct a driveway, the footpath or the highway.

Please avoid parking on Hafod Road itself.

#### 1. APOLOGIES FOR ABSENCE

To receive apologies for absence.

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

To receive details of any Member nominated to attend the meeting in place of a Member of the Committee.

#### 3. DECLARATIONS OF INTEREST

To receive any declarations of interest by Members in respect of items on the Agenda.

#### 4. MINUTES

To approve and sign the Minutes of the meeting held on 25 June 2014.

#### 5. CHAIRMAN'S ANNOUNCEMENTS

To receive any announcements from the Chairman.

#### 6. APPEALS

To be noted.

#### 7. P132028/F LAND AT OVER ROSS STREET, ROSS-ON-WYE, HEREFORDSHIRE

Demolition of existing buildings and erection of a Class A1 retail foodstore, car parking, new access road, landscaping, associated works and change of use of Overross Garage Showroom Building to Class D2.

#### 8. P141526/O LAND SOUTH OF HAMPTON DENE ROAD, HEREFORD

Proposed residential development (up to 110 dwellings), access, parking, public open space with play facilities and landscaping.

#### 9. P141155/F LAND ADJ STONE HOUSE, BROMYARD ROAD, RIDGEWAY CROSS, CRADLEY, WR13 5JN

Proposed single storey dwelling with detached double garage.

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**10 P141369/F LODGE BUNGALOW, LUGWARDINE COURT ORCHARD,  
LUGWARDINE, HEREFORDSHIRE** 69 - 78

Proposed removal of conditions 6 and 7 and variation of condition 8 of planning permission DMS/110566/F (Demolition of existing bungalow and erection of new bungalow and garage block, construction of drive area and landscaping) to allow removal of Yew Tree and to facilitate excavation, consolidation, surfacing, tarmac area and drainage of the driveway.

**11 DATE OF NEXT MEETING**

Date of next site inspection – 5 August 2014

Date of next meeting – 6 August 2014

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- Attend all Council, Cabinet, Committee and Sub-Committee meetings unless the business to be transacted would disclose 'confidential' or 'exempt' information.
- Inspect agenda and public reports at least five clear days before the date of the meeting.
- Inspect minutes of the Council and all Committees and Sub-Committees and written statements of decisions taken by the Cabinet or individual Cabinet Members for up to six years following a meeting.
- Inspect background papers used in the preparation of public reports for a period of up to four years from the date of the meeting. (A list of the background papers to a report is given at the end of each report). A background paper is a document on which the officer has relied in writing the report and which otherwise is not available to the public.
- Access to a public Register stating the names, addresses and wards of all Councillors with details of the membership of Cabinet and of all Committees and Sub-Committees.
- Have a reasonable number of copies of agenda and reports (relating to items to be considered in public) made available to the public attending meetings of the Council, Cabinet, Committees and Sub-Committees.
- Have access to a list specifying those powers on which the Council have delegated decision making to their officers identifying the officers concerned by title.
- Copy any of the documents mentioned above to which you have a right of access, subject to a reasonable charge (20p per sheet subject to a maximum of £5.00 per agenda plus a nominal fee of £1.50 for postage).
- Access to this summary of your rights as members of the public to attend meetings of the Council, Cabinet, Committees and Sub-Committees and to inspect and copy documents.

### **Public Transport Links**

- Public transport access can be gained to Brockington via the service runs approximately every 20 minutes from the City bus station at the Tesco store in Bewell Street (next to the roundabout junction of Blueschool Street / Victoria Street / Edgar Street).
- The nearest bus stop to Brockington is located in Vineyard Road near to its junction with Old Eign Hill. The return journey can be made from the same bus stop.

## **HEREFORDSHIRE COUNCIL**

**BROCKINGTON, 35 HAFOD ROAD, HEREFORD.**

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Do not delay your vacation of the building by stopping or returning to collect coats or other personal belongings.

HEREFORDSHIRE COUNCIL

**MINUTES of the meeting of Planning Committee held at The Council Chamber, Brockington, 35 Hafod Road, Hereford on Wednesday 25 June 2014 at 10.00 am**

**Present:** Councillor PGH Cutter (Chairman)  
Councillor PA Andrews (Vice-Chairman)

Councillors: WLS Bowen, AN Bridges, EMK Chave, BA Durkin, PJ Edwards, DW Greenow, KS Guthrie, JW Hope MBE, MAF Hubbard, Brig P Jones CBE, JG Lester, FM Norman, J Norris, GR Swinford, GA Vaughan-Powell and DB Wilcox

**In attendance:** Councillors AM Atkinson and DC Taylor

**11. APOLOGIES FOR ABSENCE**

Apologies were received from Councillors J Hardwick, RI Matthews and RL Mayo.

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

In accordance with paragraph 4.1.23 of the Council's Constitution: Councillor WLS Bowen attended the meeting as a substitute member for Councillor J Hardwick; and Councillor GA Vaughan-Powell attended the meeting as a substitute member for Councillor RI Matthews.

**13. DECLARATIONS OF INTEREST**

7. P140534/F Land adjoining Kingsleane, Kingsland, Leominster, Herefordshire, HR6 9SP

Councillor WLS Bowen, Non-Pecuniary, Chairman of the Kingsland Millennium Green Trust.

8. P140684/O Land east of the A40, Ross on Wye, Herefordshire

Councillor PGH Cutter, Non-Pecuniary, Chairman of the Wye Valley Area of Outstanding Natural Beauty (AONB) Joint Advisory Committee.

Councillor BA Durkin, Non-Pecuniary, Member of the Wye Valley AONB Joint Advisory Committee.

(It was noted that the application site was approximately 1.2 kilometres from the boundary of the AONB)

9. Land for residential development at land adjacent to Harpacre, Clehonger, Hereford

Mr K Bishop (Development Manager), Non-Pecuniary, knew the applicant.

**14. MINUTES**

**RESOLVED:** That the minutes of the meeting held on 4 June 2014 be approved as a correct record and be signed by the Chairman.

## 15. CHAIRMAN'S ANNOUNCEMENTS

The Chairman reminded members that a training presentation on viability assessments was to be held at 2.00pm that afternoon. He also welcomed Councillor MAF Hubbard back to the committee after a short leave of absence.

## 16. APPEALS

The committee noted the report.

## 17. P140534/F LAND ADJOINING KINGSLEANE, KINGSLAND, LEOMINSTER, HEREFORDSHIRE, HR6 9SP

*Proposed development of 12 nos. dwellings consisting of 4 nos. affordable and 8 nos. open market. Works to include new road and landscaping.*

The Senior Planning Officer gave a presentation on the application. The following amendments to the report were identified:

- Paragraph 6.11 of the report should refer to 'the setting of ~~three~~ two nearby listed buildings'.
- Paragraph 3 of the draft Heads of Terms appended to the report should refer to 'The Millennium Green which is owned and maintained by the ~~Parish Council~~ Kingsland Millennium Green Trust'.
- Minor amendments were made to the wording of the recommendation.

In accordance with the criteria for public speaking, Mrs S Sharp-Smith, a local resident, spoke in objection and Mrs W Schenke, the applicant, spoke in support of the application; Mrs Schenke, due to her employment with the council, then left the meeting.

In accordance with paragraph 4.8.2.2 of the Council's Constitution, Councillor WLS Bowen, the local ward member, spoke on the application. Councillor Bowen made a number of points, including:

1. The committee was thanked for undertaking a site inspection.
2. Attention was drawn to the planning history and the reasons for refusal in relation to two previous applications for affordable housing units on this site. It was noted that the current application was for open market and affordable housing.
3. It was commented that the adjacent affordable housing development known as Kingsleane was of high quality in terms of both design and setting.
4. The position with the published absence of a five-year housing land supply, as required by the National Planning Policy Framework (NPPF), was acknowledged but this should not override other material planning considerations.
5. Development should preserve or enhance the character and appearance of the Conservation Area and attention was drawn to the comments of both the Conservation Manager (Landscape) and the Conservation Manager (Built Environment).
6. The layout and design of this application were considered mundane and suburban and would not preserve or enhance the Conservation Area. It was also disappointing that the proposal did not include energy efficiency measures.



7. Although Welsh Water had no objections, there were drainage capacity issues in the locality and perhaps this could be addressed by a willow bed drainage system on the site.
8. It was suggested that the proposal should be rejected or deferred until better designs and layout came forward. If the application was to be approved, higher standards should be required to ensure that development made a positive contribution to the Conservation Area and to the village as a whole.
9. Further clarity was needed about the maintenance of hedgerows and about the provision of footpaths.
10. It was considered unfortunate that there had only been a ten year requirement to manage the site as a hay meadow.
11. Referring to the draft Heads of Terms, it was questioned why St Mary's Roman Catholic School had been identified as a potential recipient of educational infrastructure contributions, as there were other schools nearer to the site. Comments were also made about the identified contributions towards off-site play facilities, indoor facilities, bus infrastructure, and waste reduction and recycling.

The debate opened and the following principal points were made:

- a. Although the NPPF indicated a presumption in favour of sustainable development, the planning authority should still insist on the highest possible standards.
- b. The local ward member's comments were supported, particularly in respect of design, energy efficiency features, drainage, hedgerows, footpaths, and educational infrastructure.
- c. It was considered regrettable that the biodiversity interest of the hay meadow had been lost and it was suggested that the restoration of part of it could be required as a condition on any planning permission granted. It was also commented that such features should be protected in perpetuity rather than for a set period.
- d. A number of members felt unable to support the application in its current form, especially given the comments of the Conservation Managers.
- e. It was noted that the housing land supply issue related only to the supply of housing, it did not impact on other adopted policies.
- f. A concern was expressed about the position of affordable housing units.
- g. It was considered that this was potentially an acceptable site to develop in terms of its relationship to the village, however the design and layout needed to be improved substantially in line with the Conservation Managers' comments.
- h. It was noted that the condition of the hedgerows needed urgent attention.

In response to comments made by members, the Development Manager confirmed that the impact of the development on heritage assets was a material planning consideration which was unaffected by the housing land supply issue.

A committee member did not consider that deferral would necessarily achieve the fundamental changes required to the proposal and emphasised the need to recognise and preserve the unique assets of small settlements and where development is

permitted high standards of design and layout are incorporated. It was considered that, whilst the site might be appropriate for some form of development, the current application was deficient in terms of design/layout and would have a detrimental impact on the Conservation Area.

The local ward member was given the opportunity to close the debate. Councillor Bowen commented that: it was apparent that the committee was fully aware of the importance of the Conservation Area; there were significant concerns about the current application; there were many good examples of vernacular architecture in the county that could inform any future proposal.

**RESOLVED:**

**That planning permission be refused for the following reasons:**

- 1. The proposed development by reason of its design and layout does not enhance or preserve the Conservation Area and therefore will have a detrimental impact on the setting of the settlement. The proposed development is accordingly considered contrary to Policies HBA6, LA3 and H13 of the Herefordshire Unitary Development Plan and the National Planning Policy Framework.**
- 2. No completed Section 106 Agreement under the Town and Country Planning Act 1990 in relationship to planning obligations accompanied the application. Therefore, the proposal is considered contrary to Policy DR5 of the Herefordshire Unitary Development Plan.**

**18. P140684/O LAND EAST OF THE A40, ROSS ON WYE, HEREFORDSHIRE**

*Development of up to 290 dwellings, including affordable housing, public open space, access, landscaping, ground modelling and associated works.*

As Councillor PGH Cutter took his position as a local ward member, Councillor PA Andrews was in the Chair for this item.

The Principal Planning Officer gave a presentation on the application. It was reported that:

- The Head of Terms for the proposed planning obligation agreement had not been included in the agenda as there had been a delay in the completion of a plan by the parks department in respect of investment required in sports improvements for the town. The plan identified deficiencies in sports pitch provision and associated infrastructure. Therefore, a contribution of £143,715 was now sought.
- The Heads of Terms would also include contributions towards a new controlled crossing facility on Ledbury Road, sustainable transport measures, enhanced educational infrastructure, waste reduction and recycling, and library facilities.
- In light of the need for further discussions on the Heads of Terms, minor amendments were made to the wording of the recommendation; as reproduced in the resolution below.

In accordance with the criteria for public speaking, Mr G Wakefield, the applicant's agent, spoke in support of the application.

In accordance with paragraph 4.8.2.2 of the Council's Constitution, Councillor AM Atkinson and Councillor PGH Cutter, the local ward members, spoke on the application.

Councillor Atkinson made a number of points, including:

1. The committee was thanked for undertaking a site inspection.
2. Additional housing was needed in Ross on Wye and some form of development of this site was possible but there were significant issues that had to be addressed, especially road safety.
3. The A40 was described as a very fast stretch of road, particularly given its proximity to the M50, and local residents were not convinced that vehicle speeds had reduced.
4. The site was physically divorced from the main body of Ross on Wye; a comparison was made with Greytrees which was served by a bridge and an underpass.
5. The new residents of the development would expect road safety to be of paramount importance and this had to be addressed as part of this proposal.
6. Pedestrian and cycle connectivity to the town had not yet been secured for the recent Persimmon Homes development.
7. Road narrowing to reduce speeds was supported but there also needed to be sufficient reservations for pedestrians to cross safely.
8. There were significant road infrastructure issues in the town, with numerous single track pinch points, and the planning obligation agreement should identify contributions to help to alleviate these problems, particularly as additional vehicle movements from the development would exacerbate the situation.
9. It was noted that there was an error in the draft Heads of Terms, as reference should be made to the recycling centre at Ross on Wye, not Leominster.
10. It was important that officers, in consultation with the local ward members, looked closely at the road safety issues and connectivity to the town.

Councillor Cutter supported the comments of Councillor Atkinson and made a number of further points, including:

- i. An overview was given of the road network and the existing traffic problems.
- ii. It was estimated that the development could involve approximately 900 residents, with 700 vehicles.
- iii. It was noted that schools, facilities and services were located on opposite sides to the development and it was essential that safe passage for pedestrians and cyclists was secured from the outset.
- iv. The need to deal with existing issues with traffic and congestion in the town was emphasised.

The debate opened and the following principal points were made:

- a. In response to a question, the Principal Planning Officer confirmed that the application was made in outline with all matters apart from access reserved for future consideration.

- b. In view of the nature of the site, members would welcome high quality design and energy efficiency measures to feature strongly as part of any reserved matters application.
- c. The development would result in the enclosure of this section of the A40 by housing. Consequently, the road needed to be perceived as a town road rather than a boundary road. It was suggested that the Head of Terms should provide the financial means to address the identified issues and any problems that might arise subsequently.
- d. It was commented that it had taken years to secure a Traffic Regulation Order (TRO) to reduce the speed limit to the west of Hereford city and a TRO should be considered as part of this application. A number of members supported a reduction in the speed limit.
- e. Priority had to be given to pedestrians and cyclists, with pragmatic measures which minimised the potential for conflict between different users. A member commented that this could be an appropriate location for innovative underpass solutions. Other members supported surface crossings.
- f. It was questioned whether a condition could require the maintenance of a public right of way to the south. The Principal Planning Officer advised that the route fell outside the application site.
- g. It was suggested that, if suitable off-site provision could not be brought forward, there might be a need to incorporate sports pitch provision within the site.
- h. In response to questions, the Principal Planning Officer confirmed that the A40 was no longer a trunk road and the plans included controlled crossing points, as well as uncontrolled pedestrian reservations at the roundabout approaches.
- i. In response to a suggestion, the Principal Planning Officer said that the primary purpose of protecting the land near to the Rudhall Brook from development was for biodiversity enhancement and the introduction of allotments might not serve to achieve that aim.
- j. It was suggested that further consideration be given to the position and access onto the roundabouts, to minimise the potential for congestion and accidents.
- k. It was questioned whether the undeveloped land could be protected in perpetuity by a planning condition or an informative note be included, if the current application was granted planning permission. The Development Manager suggested that this should not be necessary as any development would require planning permission and would have to be considered in accordance with policy.
- l. It was suggested that Ross Town Council be consulted about the draft Heads of Terms given the point made in the representations section of the report.
- m. In response to a question, the Principal Planning Officer said that the mature hedgerow was to be retained as part of the scheme; it was felt that a solid boundary would appear suburban and would detract from the landscape quality. A member suggested that the hedgerow be stock-proofed and maintained.

The Highways Engineering Manager responded to questions and comments from members, the main points included:

- Since initial discussions through to detailed negotiations, road safety remained a key concern of officers and the applicant.
- Connectivity to the north, west and south of the site was explained.
- Section 278 agreements enabled proposed works on existing highways to be scrutinised in detail, particularly to ensure that they conformed to design standards.
- TROs were subject to the engineering measures that could be put forward; 30mph might be considered too low without housing frontage on the road.
- Bridges and underpasses were explored but these were not desired solutions within the 'Manual for Streets' guidance; surface crossings were the preferred approach.
- Roundabouts did influence vehicle speeds and additional measures, such as narrowing and surface treatments, would help to change the road environment.

The Development Manager commented that: other developments would be coming forward, in response to the five-year housing land supply issue and the housing growth identified in the Core Strategy; there were relatively few objections received in relation to this application given its scale; the committee had a good debate on this application, with the main focus on landscape, access and connectivity, and infrastructure requirements; and, although the code for sustainable homes was being abolished, the developer was likely to be mindful of the comments about energy efficiency measures for the reserved matters.

The local ward members were given the opportunity to close the debate. Councillor Atkinson re-iterated that: there was a need for housing in the locality but it was critical that road safety was addressed; it was essential that the local ward members had input into the discussions on planning obligations and highways and connectivity matters; and, as road surface treatments could erode after a short time, appropriate weight should be given to permanent solutions. Councillor Cutter commented that: the new residents of the Persimmon Homes development would be using the same roundabout; and local residents and the ward members had fought hard to secure safety improvements for other developments and would monitor the situation carefully with this site.

#### **RESOLVED:**

**That, subject to the completion of a Section 106 obligation agreement in accordance with terms to be finalised by officers, in consultation with the Chairman and local members, officers named in the Scheme of Delegation to Officers be authorised to grant outline planning permission subject to the conditions below and any further conditions that are considered necessary by officers.**

- 1. A02 Time limit for submission of reserved matters (outline permission)**
- 2. A03 Time limit for commencement (outline permission)**
- 3. A04 Approval of reserved matters**
- 4. A05 Plans and particulars of reserved matters**
- 5. E01 Site investigation - archaeology**

6. **The recommendations set out in Sections 5.2 and 5.3 the ecologist's report from Ecological Solutions Ltd. dated January 2014 should be followed in relation to the identified species and habitats. Prior to commencement of the development, a full working method statement for ecological works including the species mitigations with the full habitat protection and enhancements proposed should be submitted to and be approved in writing by the local planning authority, and the work shall be implemented as approved. An appropriately qualified and experienced ecological clerk of works should be appointed (or consultant engaged in that capacity) to oversee the ecological mitigation work.**

**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, NC7, NC8 and NC9 of the Herefordshire Unitary Development Plan and the National Planning Policy Framework**

7. **L01 Foul/surface water drainage**
8. **L02 No surface water to connect to public system**
9. **L03 No drainage run-off to public system**
10. **L04 Comprehensive & Integrated draining of site**
11. **Foul flows only from the proposed development shall be discharged to the 375mm public combined sewerage system located in Over Street, at or downstream of manhole SO60242601.**

**Reason: To protect the integrity of the public sewerage system and to comply with Policy CF2 of the Herefordshire Unitary Development Plan and the National Planning Policy Framework.**

12. **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 order that any potential risks from contaminated land are properly assessed and to comply with Policy DR10 of the Herefordshire Unitary Development Plan and the National Planning Policy Framework.

13. The Remediation Scheme, as approved pursuant to condition no. (12) above, shall be fully implemented before the 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 order that any potential risks from contaminated land are properly assessed and to comply with Policy DR10 of the Herefordshire Unitary Development Plan and the National Planning Policy Framework.

14. Prior to the commencement of the development hereby approved the applicant or any successor in title shall enter into an agreement under Section 278 of the Highways Act 1980 to determine the extent and precise details of highway improvement works required along the A40. The works as approved shall be completed in accordance with a timetable to be submitted to and agreed in writing by the local planning authority.

**Reason:** In order to provide an appropriate means of access to the site and to comply with Policies H13 and T8 of the Herefordshire Unitary Development Plan and the National Planning Policy Framework.

15. I13 Scheme to protect new dwellings from road noise
16. H17 Junction improvement/off site works
17. H21 Wheel washing
18. H30 Travel plans

**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. HN01 Mud on highway
3. HN04 Private apparatus within highway
4. HN05 Works within the highway
5. HN07 Section 278 Agreement
6. HN08 Section 38 Agreement & Drainage details
7. HN10 No drainage to discharge to highway

**19. P140056/O LAND ADJACENT TO HARPACRE, CLEHONGER, HEREFORD**

*Land for residential development.*

The Principal Planning Officer gave a presentation on the application. The following amendment was identified:

- Paragraph 2.1 of the Head of Terms appended to the report should read 'The provision of enhanced bus waiting facilities.'

In accordance with paragraph 4.8.2.2 of the Council's Constitution, Councillor DC Taylor, the local ward member, spoke on the application. Councillor Taylor made a number of points, including:

1. The principle of development was generally acceptable but Welsh Water maintained a holding objection.
2. The implications of this development upon other potential housing sites were questioned; it was noted that the parish council would prefer future development to be located to the south of the B4349.
3. It was requested that a small section of hedge be translocated further into the site to enable vehicles emerging from the site to see vehicles coming from the direction of Madley.
4. It was requested that the Heads of Terms be amended to reallocate funds to a local pre-school play group to support its relocation plans.

The debate opened and the following principal points were made:

- a. The site was adjacent to the settlement boundary and was suitable for development, with few objections received.
- b. It was noted that the application had been submitted by a local developer.
- c. It was hoped that the holding objection of Welsh Water could be removed, otherwise the application could not be approved.
- d. The matters raised by the local member about visibility splays and contributions towards the pre-school play group were supported.

In response to questions, the Principal Planning Officer advised that:

- i. Discussions were on-going with Welsh Water and, if connection to the public sewerage system could not be achieved, other appropriate drainage solutions might need to be considered.
- ii. Planning permission was sought in outline with all matters reserved but, in recognition of the proximity of this site to the junction, officers had not been content to move forward without a firm indication of where the access would be located.

The local ward member was given the opportunity to close the debate. Councillor Taylor indicated that he was content with the conclusions of the committee.



**RESOLVED:**

**Subject to the completion of a Section 106 obligation agreement in accordance with the heads of terms stated in the report and the removal of Welsh Water's holding objection, officers named in the Scheme of Delegation to Officers be authorised to grant outline planning permission, subject to the conditions below and any other further conditions considered necessary by officers:**

- 1. A02 Time limit for submission of reserved matters (outline permission)**
  - 2. A03 Time limit for commencement (outline permission)**
  - 3. A04 Approval of reserved matters**
  - 4. H04 Visibility over frontage**
  - 5. H08 Access closure**
  - 6. H09 Driveway gradient**
  - 7. H11 Parking - estate development (more than one house)**
  - 8. H13 Access, turning area and parking**
  - 9. H17 Junction improvement/off site works**
  - 10. H20 Road completion in 2 years**
  - 11. H21 Wheel washing**
  - 12. H27 Parking for site operatives**
  - 13. I51 Details of slab levels**
  - 14. G04 Protection of trees/hedgerows that are to be retained**
  - 15. G10 Landscaping scheme**
  - 16. G11 Landscaping scheme - implementation**
  - 17. Development shall not commence until details of the scheme for translocation of an agreed area of existing grassland on site (between 0.1-0.2ha) has been submitted to and approved by the local planning authority. The scheme shall include detailed proposals for the removal, storage, transportation and re-laying of the grassland at a location that shall also be agreed in writing.**
- Reason: To ensure that the ecological interest associated with the site is preserved so as to comply with Unitary Development Plan Policies NC1 and NC7 and the National Planning Policy Framework.**
- 18. I18 Scheme of foul drainage disposal**
  - 19. I20 Scheme of surface water drainage**

**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. HN01 Mud on highway
3. HN04 Private apparatus within highway
4. N16 Welsh Water Informative
5. HN05 Works within the highway
6. HN22 Works adjoining highway
7. HN08 Section 38 Agreement & Drainage details
8. HN07 Section 278 Agreement

**20. DATE OF NEXT MEETING**

It was noted that the next scheduled meeting of the Planning Committee was 16 July 2014.

The meeting ended at 12.35 pm

**CHAIRMAN**

<b>MEETING:</b>	<b>PLANNING COMMITTEE</b>
<b>DATE:</b>	<b>16 JULY 2014</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 an executive decision

## Recommendation

That the report be noted

## APPEALS RECEIVED

### Application 133174/F

- The appeal was received on 18 June 2014
- 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 Donald McIntyre
- The site is located at Burnt Barn, Green Lane, Titley, Kington, Herefordshire, HR5 3RW
- The development proposed is Conversion of stone barn to form residential and home office accommodation
- The appeal is to be heard by Written Representations

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

### Application 140751/O

- The appeal was received on 20 June 2014
- 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 Karen Harris
- The site is located at Land at, Losito Stud, Harris Lodge, Whitchurch, Ross on Wye
- The development proposed is Outline application with all matters reserved for a single dwelling at Losito Stud
- The appeal is to be heard by Written Representations

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

## **APPEALS DETERMINED**

### **Application 131049/F**

- The appeal was received on 17 December 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 M Parsons
- The site is located at Land adjoining Ivydene, Munstone, Herefordshire
- The development proposed was Proposed construction of two new dwellings.
- The main issue(s) were: whether or not the proposal would provide a suitable site for two dwellings, having regard to the principles of sustainable development; and whether the proposed development would be likely to increase the likelihood of flooding in the area.

#### **Decision:**

- The application was Refused under Delegated Powers on 3 September 2013
- The appeal was Dismissed on 16 June 2014

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

### **Application 131632/F**

- The appeal was received on 31 December 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 Bernard Jones
- The site is located at Land at Redlea, Dinedor, Hereford
- The development proposed was Erection of a single storey chalet bungalow.
- The main issue(s) were: (i) whether or not the proposal would provide a suitable site for a dwelling, having regard to the principles of sustainable development. (ii) the effect of the proposed development on the landscape character of the area.

#### **Decision:**

- The application was Refused under Delegated Powers on 13 September 2013
- The appeal was Dismissed on 30 June 2014

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

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>16 JULY 2014</b>
<b>TITLE OF REPORT:</b>	<p><b>P132028/F - DEMOLITION OF EXISTING BUILDINGS AND ERECTION OF A CLASS A1 RETAIL FOODSTORE, CAR PARKING, NEW ACCESS ROAD, LANDSCAPING ASSOCIATED WORKS AND CHANGE OF USE OF OVERROSS GARAGE SHOWROOM BUILDING TO CLASS D2 AT LAND AT OVER ROSS STREET, ROSS-ON-WYE, HEREFORDSHIRE</b></p> <p><b>For: Tesco Stores Limited per DPP Sophia House, 28 Cathedral Road, Cardiff, CF11 9LJ</b></p>
<b>WEBSITE LINK:</b>	<a href="https://www.herefordshire.gov.uk/planningapplicationsearch/details/?id=132028">https://www.herefordshire.gov.uk/planningapplicationsearch/details/?id=132028</a>

**Date Received: 24 July 2013**

**Ward: Ross-on-Wye East**

**Grid Ref: 360315,224462**

**Expiry Date: 14 November 2013**

Local Members: Councillors AM Atkinson and PGH Cutter

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

- 1.1 The application relates to a substantial, irregular shaped parcel of land within the built environs of Ross on Wye which amounts to approximately 4 hectares. The site lies to the north east of the town centre. It is bounded to the north by existing residential development – Brookmead and Rudhall Meadow; to the north-east by Broadmeadow Camping and Caravan Park; the east by Ashburton Industrial Estate; the south by a disused railway embankment and in turn Morrisons supermarket, and to the west by a public car park.
- 1.2 The site, Broadmeadows Industrial Estate, is currently used for a variety of commercial purposes that include a coach depot, recycling centre and pallet business. Outlying areas of the site also include the Ross and Monmouth Sea Cadets premises that are located in the south eastern corner, Overross Garage buildings to the north-west and fronting onto Overross Street, and two residential properties on the opposite side of the road.
- 1.3 The site has a number of environmental constraints. It is listed as being potentially contaminated due to an historic use as a coal yard, although current uses are also likely to have the potential to cause additional contamination. It is dissected by two watercourses – Chatterley and Rudhall Brook, and is part of a wider area that has been subject to improvement works as part of the Ross on Wye Flood Alleviation Scheme. Notwithstanding this, the majority of the site is identified as falling within Flood Zone 3, and also within a Groundwater Source Protection Zone 3.
- 1.4 A public footpath crosses the site and links Station Street to the south with the caravan site to the north east. The disused railway embankment is well vegetated and brings about a

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

significant level change within this locality, the site being approximately 5.5 metres lower. The topographical survey submitted as part of the application also suggests significant level differences at the north western corner of the site – the Overross Garage buildings being approximately 5 metres above the site, and the Sea Cadets premises to the south-east 2.5 metres above.

- 1.5 Part of the site is within the Wye Valley Area of Outstanding Natural Beauty (AONB), but the majority of the site lies adjacent to the AONB. The Plough Inn; a Grade II listed building, is immediately adjacent to Overross Garage.

### **Proposal**

- 1.6 The application is made in full and is for the demolition of existing buildings contained within the site; including the Sea Cadets premises, Overross Garage building, and two residential properties opposite, and proposes the erection of a food retail supermarket, associated car park and link road. The original submission also includes the provision of a petrol filling station but this has since been withdrawn following continued concerns raised by the Environment Agency and local residents. The Sea Cadets are to be provided with alternative premises in a remaining part of Overross Garage on the opposite side of the road, and the application also incorporates a proposed change of use of the building.
- 1.7 In detail, the proposed supermarket has a gross floor area of 5,814 square metres, with 3,000 square metres of retail floor space divided between convenience goods (2313m<sup>2</sup>) and comparison goods (687m<sup>2</sup>). The plans show a predominantly single storey building with a shallow pitched asymmetric roof to a height of approximately 8.7 metres, with a taller, monopitch roof element rising to a height of 12.1 metres. The front elevation of the store, facing onto the car park, is mainly glazed, with timber cladding used to create visual breaks. Side and rear elevations continue the use of timber cladding in a more substantial form with high level glazing in all elevations.
- 1.8 The car park provides up to 307 spaces, with provision made for disabled and parent and child parking close to the store entrance. A pedestrian link is to be established along the southern boundary of the site, cutting across the disused railway embankment and through a public car park to link the site to Ross town centre. This aspect of the proposal also requires alterations to be made to the width and alignment of Millpond Street, close to the Five Ways junction. This will allow the pavement to be widened on its western side and the plans also show the provision of a new pedestrian crossing.
- 1.9 The proposals also include the provision of a new link road between Overross Road and Ashburton Industrial Estate. At Overross Road this requires the construction of a new roundabout and, in order for this to be accommodated, the demolition of two dwellings on its westerly side and the Overross Garage building. A roundabout within the application site provides access to the new supermarket and the link road continues past the flank wall of the building to link up with an existing road spur on to Ashburton Industrial Estate in the south eastern corner.
- 1.10 The application is accompanied by a series of supporting documents which are listed below:
- Design & Access Statement
  - Planning & Retail Statement
  - Landscaping Statement
  - Transport Assessment
  - Travel Plan
  - Land Study
  - Flood Risk Assessment
  - Drainage Strategy

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

- Ecological Assessment
- Noise Assessment
- Air Quality Assessment
- Sustainability Statement
- Phase 1 Environmental Assessment
- Heritage Assessment
- Statement of Community Involvement
- Draft Heads of Terms Agreement

## 2 Policies

### **Relevant Development Plan Policies**

#### 2.1 National Planning Policy Framework

Paragraph 14 – Emphasizes the presumption in favour of sustainable development. In terms of decision-taking the paragraph reads as follows:

- approving development proposals that accord with the development plan without delay; and
- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
  - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
  - specific policies in this Framework indicate development should be restricted

Paragraph 19 – This reinforces the Government’s desire to support sustainable economic growth and reads as follows:

*The Government is committed to ensuring that the planning system does everything it can to support sustainable economic growth. Planning should operate to encourage and not act as an impediment to sustainable growth. Therefore significant weight should be placed on the need to support economic growth through the planning system.*

Paragraphs 23 to 27 – These paragraphs comments specifically on the need to ensure that town centres retain their vitality. They also comment on matters to be considered when assessing proposals for new retail proposals:

*Local planning authorities should apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. They should require applications for main town centre uses to be located in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered. When considering edge of centre and out of centre proposals, preference should be given to accessible sites that are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale.*

This part of the NPPF goes on to advise that applications should be supported by retail assessments to determine the impact of the proposal on town centre vitality and viability up to five years from the time the application is made. For major schemes where the full impact will not be realised in five years, the impact should also be assessed up to ten years from the time the application is made. It concludes by stating that where an application fails to satisfy the sequential test or is likely to have significant adverse impacts it should be refused.

## 2.2 Herefordshire Unitary Development Plan:

S1	-	Sustainable Development
S4	-	Employment
S5	-	Town Centres and Retail
S6	-	Transport
S7	-	Natural and Historic Heritage
DR1	-	Design
DR2	-	Land Use and Activity
DR3	-	Movement
DR4	-	Environment
DR5	-	Planning Obligations
DR7	-	Flood Risk
DR9	-	Air Quality
DR10	-	Contaminated Land
DR13	-	Noise
E5	-	Safeguarding Employment Land and Buildings
TCR1	-	Central Shopping and Commercial Areas
TCR2	-	Vitality and Viability
TCR3	-	Primary Shopping Frontages
TCR9	-	Large Scale Retail and Leisure Development Outside Central Shopping and Commercial Areas
TCR18	-	Petrol Filling Stations
T6	-	Walking
T8	-	Road Hierarchy
T11	-	Parking Provision
NC1	-	Biodiversity and Development
NC3	-	Sites of National Importance
NC4	-	Sites of Local Importance
NC7	-	Compensation for Loss of Biodiversity
NC8	-	Habitat Creation, Restoration and Enhancement

## 2.3 Herefordshire Local Plan Core Strategy – Deposit Draft:

SS1	-	Presumption in Favour of Sustainable Development
SS4	-	Movement and Transportation
SS6	-	Addressing Climate Change
RW1	-	Development in Ross on Wye
RA6	-	Rural Economy
MT1	-	Traffic Management, Highway Safety and Promoting Active Travel
E2	-	Re-development of Existing Employment Land and Buildings
E5	-	Town Centres
LD3	-	Biodiversity and Geodiversity
LD4	-	Green Infrastructure
LD5	-	Historic Environment and Heritage Assets
SD1	-	Sustainable Design and Energy Efficiency
ID1	-	Infrastructure Delivery

As part of the evidence base for the completion of the Core Strategy the Council has commissioned a Town Centres Study update and this was completed in December 2012. This is referred to in the Appraisal and is considered to be material to the determination of this application.



- 2.4 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:-

<https://www.herefordshire.gov.uk/planning-and-building-control/planning-policy/unitary-development-plan>

### **3. Planning History**

- 3.1 None relevant to the application.

### **4. Consultation Summary**

#### Statutory Consultees

- 4.1 Welsh Water: No objection subject to the imposition of conditions to ensure that foul and surface water are dealt with separately and that surface water run-off should not be allowed to discharge to the main sewer.
- 4.2 Highways Agency: No objection subject to the imposition of a condition requiring the implementation of the Travel Plan.
- 4.3 Environment Agency: On the basis that the petrol filling station is removed from the application the Environment Agency have removed their holding objection and now recommend that if planning permission is granted it should be subject to the imposition of conditions to require further investigation of the extent of contamination of the land and to agree mitigation for this in order to ensure that controlled waters are protected.

Other concerns regarding development within the flood plain have been addressed through a revised Flood Risk Assessment. The applicant has proposed to install gauging stations and CCTV cameras at the entrance to culverts on both Rudhall and Chattersley Brooks and any approval should be subject to a condition to secure these.

There is also a requirement for a detailed Flood Management and Evacuation Plan and a Maintenance Plan to ensure that the watercourses are kept clear to prevent flooding.

#### Internal Council Advice

- 4.4 Transportation Manager: An assessment of the proposal concludes that there will be increases in traffic movements at some localised junctions, with reductions at others. Requires the submission of further information about traffic flows but does not raise an objection in principle to the application.
- 4.5 Conservation Manager (Ecology): No objection subject to conditions.
- 4.6 Conservation Manager (Landscape): No objection subject to conditions.
- 4.7 Conservation Manager (Archaeology): No objection subject to condition.
- 4.8 Land Drainage Engineer: No objection.
- 4.9 Public Rights of Way Officer: No objection providing the legal diversion of public footpath ZK8 has been confirmed before works commence.
- 4.10 Environmental Manager (Contaminated Land): No objection subject to conditions. These reflect the advice also given by the Environment Agency in this regard.
- 4.11 Environmental Manager (Air Quality): No objection.

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

- 4.12 Environmental Manager (Lighting): No objection subject to condition.
- 4.13 Environmental Manager (Noise): No objection subject to conditions to restrict deliveries, to control noise emanating from plant and machinery and to control construction times.
- 4.14 Economic Development Manager: Comments on the application as follows:

Contrary to the assessment made in the Employment Land Report submitted as part of the planning application, from our experience we believe there is a significant undersupply of employment land and units within Ross-on-Wye. Within the last year Economic Development have struggled to assist a number of firms looking to relocate or expand in Ross-on-Wye and the surrounding area due to the lack of readily available units and development land. This situation has been confirmed through conversation with commercial agents based in Ross.

We welcome the information provided by DPP on the business movements from the site to other locations and note that some of these have been within the South of Herefordshire. It is with some concern that we also note that another business “will shortly vacate the site and consolidate its operation in Gloucestershire”.

Whilst we would accept that the movement to other locations within Herefordshire does demonstrate a certain supply of alternative sites/premises it is apparent that businesses are also looking at locations outside of the County.

Additionally there is no information supplied within the DPP correspondence relating to the relocation plans of the remaining 8 businesses, and what support will be given, if any, by the applicant for these businesses to find suitable alternative accommodation. Consequently it is difficult for us to assess what proportion of these businesses, and jobs, are likely to remain in operation within Herefordshire, and therefore what impact the development will have on the existing Herefordshire business base.

As with our prior comments the majority of industrial estates and business parks in the town are running at close to 100% occupancy rates, reflected by the fact that there are only six B1, B2 or B8 units listed on the Council’s Commercial Property Register as of April 2014. Included in these five are the 23,500 square metre former Somerfield national distribution centre, which has remained empty for three years and is clearly impractical to most small businesses in its current form. The remaining units total less than 1150 square metres of floorspace.

We note the information supplied on the estimated job numbers for the redevelopment of the site for a B2 or B8 use and would agree that these figures represent a realistic target should the site be redeveloped for a B2 or B8 use. We further agree that there is a high degree of certainty around the job creating figures should the application be approved whilst there are a number of constraints and viability issues to overcome to bring the site forward for an employment class use.

We maintain that we would ideally like for site to be redeveloped for traditional employment uses but given the poor condition of the site and poor access onto the site, we accept that would be challenging in the current economic climate, and whilst the majority of the jobs created by this application will be relatively low paid and low skilled, they will still provide a boost to the current employment situation in the area.

On balance, and without any information on the future relocation plans of all the remaining businesses, it is considered that the impact on existing businesses on Broadmeadows, and the current lack of supply of industrial premises within Ross and its immediate locality, outweigh the jobs created and landscape improvements but would accept that there is a strong economic and social case for the proposal.

## 5. Representations

### 5.1 Ross Town Council: Comment as follows:

In the light of the recent Deloitte report on the potential impact on the town centre of this development, and the response from Tesco, Ross Town Council Planning & Sustainable Development committee has again discussed this application. The outcome of our discussions was that our original submission stands, however we would like to add this additional point:

We welcome the provision of paths etc. to generate links between the development and the town centre. We request that it should be a condition of any granted planning permission that these are kept open during the life of the store.

The health of the town centre is of paramount importance and this was recognised in the Ross Town Plan. We would therefore also like to re-emphasise the following points made in our original response:

- The terms and conditions of the free parking (three hours) should be made a planning condition
- In order to protect the health of the existing town centre there should be imposed planning conditions in terms of the types of goods that cannot be traded on the site, for example books, clothes, electrical goods, tools, garden products etc.
- In order to protect the health of the existing town centre there should be imposed planning conditions in terms of the types of concessions which are not allowed in the site, for example pharmacy, post office counter etc.

In respect of this latter point, we request that the widest possible restrictions are placed on the trading of non-food items at the store in order to protect existing small businesses in the town. This should include pharmacy, post office counter, florist, clothing and footwear, dry cleaning, travel shop, toys, and DIY goods.

### 5.2 Ross Civic Society – Initial reservations about the proposal have been strengthened by a report that the Council has commissioned. It provides a professional, dispassionate examination which raises concerns that the proposal is out of centre and that it could significantly undermine the shopping role and function of the town centre. On this basis Ross Civic Society opposes the application.

### 5.3 Association of Ross Traders (ART) – Object to the application on the basis of the negative impact that it will have on the sustainability of Ross town centre.

### 5.4 Letter of objection submitted by Peacock & Smith Planning Consultants on behalf of Morrisons Supermarkets Plc. In summary the points raised are as follows:

- The proposal is contrary to Policy E5 of the UDP which seeks to safeguard employment land. Supporting text of the policy says it is important to avoid the introduction of retail uses in such areas.
- There has been no demonstration of substantial improvement to residential or other amenity being delivered by the proposal to justify the loss of employment land.
- Council's own Employment Land Study shows that the greatest demand for employment land is in Ross on Wye and further indicates the importance of retaining the site for such purposes.
- The site is located outside of the Central Shopping and Commercial Area identified by Policy TCR1 of the UDP.
- The proposal is contrary to Policy TCR9 of the UDP and the NPPF as it will have a detrimental impact on the vitality and viability of the town centre.

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

- Morrisons helps to anchor the town centre and generates linked trips.
- With the in-centre Sainsburys food store and the Aldi currently being built on Brookend Street, there is no expenditure capacity in Ross on Wye.
- The Council's own Town Centre Study Update indicates an over-provision of retail floor space in Ross on Wye.
- There is no evidence of significant leakage of expenditure from the catchment area, or any justification for the projected £4.94 million claw back suggested by the applicant's retail assessment. The likelihood of significant claw back is therefore questioned.
- The projected sales density is significantly lower than Tesco's company average. Not aware of any other Tesco proposal where the retail impact assessment is based on such a low turnover.
- Disagreement about the agents claim that the site is edge of centre. The actual store entrance is approximately 450 metres from the primary shopping frontage and is therefore out of centre.
- The site relates poorly to the town centre, would serve as a stand alone retail development and is unlikely to generate linked trips.

5.5 Letter of objection submitted on behalf of Ross Labels (UK) Ltd. In summary the points raised are as follows:

- Accepts that there is limited choice for food shopping in the town, but the current proposal is too large.
- The proposed store would only trade at two thirds of the company average and would also leave existing retailers significantly under-trading. Ultimately this is not to the benefit of the public.
- The level of expenditure does not exist in the catchment area to support the level of floor space proposed.
- Concerned about the range of comparison goods to be sold. Trade diversion in this regard is considered to be under-estimated and is likely to have an impact on Ross Labels.
- Impacts on existing retailers will lead to job substitution, not job creation.

5.6 HOW Planning on behalf of FI Real Estate Management Ltd – FI Real Estate acts as asset manager for The Maltings Shopping Centre, which includes Sainsburys as an anchor unit. The letter is submitted as an objection to the application and raises the following points:

- Eight of the fifteen units in The Maltings are currently vacant. This is a clear sign of the fragile state of the economy.
- Concerned that an out of centre development will have further trading effects; reducing footfall to Sainsburys and in turn The Maltings, reducing the chance of vacant units being let and re-occupied.
- FI Retail has first hand evidence to show that the proposal is affecting take-up of its vacant units, with interest from a discount clothes retailer cooling when they learnt of the Tesco application.
- Poor connectivity between the site and town centre suggests that it should be considered as out of centre and not edge of centre as the applicant suggests.
- The creation of a pedestrian route through a public car park is not attractive and will be a disincentive to customers to make linked trips to the town centre.
- No visual link between the site and town centre.
- The retail assessment submitted by the applicant is fundamentally flawed in the assumptions that it makes about the level of trade to be drawn from beyond the catchment area. It pays no regard to a recent planning permission granted for a new food store in Cinderford.
- As a result of the above the assessment over-estimates expenditure in-flow from outside of the catchment area.
- It also over-estimates Aldi's grade draw from beyond the same catchment area.

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

- The assessment assumes that the proposed store would trade at 30% below the company benchmark, but no substantive evidence is provided to justify this.
- The consequence of a reduced convenience turnover is to significantly downplay the potential trading impacts on Ross on Wye.
- The turnover of existing retailers has been over-estimated without any evidence to support the assumptions made. The in-centre Sainsburys store is not trading at £3.9 million above its company benchmark as suggested, but is in line with it.
- The retail assessment suggests significant trade draws from in-centre independent retailers and Sainsburys, as well as the edge of centre Morrisons. Sainsburys and Morrisons in particular have an important part to play in creating linked trips to the town centre. A loss of footfall will impact upon this and will affect the viability and vitality of the town centre.
- Planning permission should be refused given the clear conflict with the retail policies of the Local Plan and Paragraph 26 of the NPPF which seeks to protect the vitality and viability of existing centres.

5.7 Ninety four letters and a petition containing sixteen signatures objecting to the application have been received. In summary the points raised are as follows:

#### Town Centre Impacts

- Detrimental impact on Ross town centre.
- The proposal is outside the defined town centre and is contrary to the UDP and NPPF which both seek to protect the vitality and viability of the town centre
- People will be discouraged from visiting the town centre.
- The completion of Aldi and superstores planned in the Forest of Dean will affect trade at Morrisons and will compete with town centre shops.
- Impacts on the town centre will also affect tourist trade.
- The proposed pedestrian link will not be used because of the sites distance from the town centre.

#### Other Economic Factors

- The land should continue to be used for employment purposes and retail use should not be allowed
- A new supermarket would be better located out of town.
- The proposal will not create 250 new jobs as suggested as many would be lost as existing retailers are forced to close.
- The draft Core Strategy states that there is no requirement for additional retail floor space in Ross.

#### Highway Matters

- Access off Ledbury / Overcross Road is ill-considered.
- Increased risk to highway safety of road users and pedestrians using Ledbury / Overcross Road.
- Already congestion at the Five Ways junction.
- Additional traffic generated will exacerbate this to the detriment of highway safety. The proposed link road will be used as a rat run.
- The link road serves the sole purpose of directing traffic away from main competitor (Morrisons). A single point of access from Ashburton Industrial Estate would be more appropriate.
- The pedestrian link ends at a dangerous junction (Fiveways / Millpond Street) and this will discourage its use.
- It does not appear that the zebra crossing over Millpond Street can be provided.

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

### Residential Amenity

- Significant increase in noise from traffic using the link road detrimental to the amenity of nearby dwellings.
- Increase in light pollution will cause a nuisance to dwellings.
- Unacceptably close proximity of petrol filling station to residential properties.

### Flooding and Land Contamination

- Concerns that the proposal will introduce more hard surfaces and will increase flood risk in the area.
- What containment measures are to be put in place in the event of a fuel spillage?

### Other Matters

- Detrimental impact on streetscape, particularly along Overross Road with the introduction of a new roundabout.
- Adverse impact on the setting of the Plough Inn as a Grade II listed building.
- The Landscape Statement and Flood Risk Assessment are contradictory about vegetation within the vicinity of existing watercourses.
- The proposed landscaping scheme is not appropriate.

5.8 Seventy one letters of support have been received. In summary the points raised are as follows:

- Good for competition. Will help to reduce food and petrol prices.
- Will give people a greater choice.
- Morrisons currently have a monopoly on food shopping and petrol.
- New residential development that is proposed for Ross needs to be support by a new supermarket. Not enough capacity within the town at the present time
- The proposal will not accelerate the decline of the town centre.
- More people in town would increase footfall to local businesses.
- Will help to enhance a poor quality area that has become an eyesore.
- The offer of three hours free parking will benefit the town as people can shop and then walk into the town centre.
- A supermarket will provide new employment opportunities.
- The development is close to the High Street and in line with Government advice to avoid out of town shops.
- Will help to reduce travel costs for shoppers who currently shop in Hereford or Gloucester
- The new link road will improve highway safety as it will take traffic off Overross Road and the Fiveways junction.
- The scheme provides improved cycle and pedestrian links with the town.

5.9 Seven letters expressing mixed views about the proposal have also been received. In summary the points raised are as follows:

- The proposal must demonstrate that it will not cause disruption through flooding to other businesses and properties in the locality.
- Some concern about the road link onto Ashburton Industrial Estate as the road is already congested.
- Restrictions should be placed on the supermarket if planning permission is forthcoming to exclude the sale of some convenience goods including clothing, garden products and electrical goods.

- 5.10 The applicant's agent has submitted a number of additional pieces of correspondence. These principally relate to matters of economic impact, the delivery of the new road and the methods used to calculate highway contributions through a Section 106 Agreement. In summary the points raised are as follows:

#### Economic Factors

- The site is significantly under-utilised as an employment site at the present time and is likely to be so for the foreseeable future.
- Paragraph 22 of the NPPF advises against the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose.
- Almost half of the site is unoccupied and contributing nothing to the local economy. Even if it were to be used to its optimum it would only provide an average of 110 full time equivalent jobs. This compares to 175 full time equivalents for the proposal.
- There is little or no prospect of the site reaching its full potential in terms of Class B2/B8 job creation. The proposal brings with it the certainty of 175 full time equivalent jobs.
- Several of the businesses previously occupying the site have been successfully re-located elsewhere within the county. The eight remaining account for 20 full time equivalent jobs.
- The planning balance is firmly in favour of the employment and economic benefits that would be delivered if planning permission is granted.
- It has recently been confirmed that a major new comparison retailer, The Original Factory Shop, will shortly be opening in The Maltings. This demonstrates that a major retailer does not believe that Tesco's proposal will have a significant adverse effect on the town centre's vitality and viability.
- Two other lettings in the town involving antiques and craft shops have recently been confirmed.
- A local agent has confirmed that they do not have a single retail unit to let or for sale in Ross town centre.
- This all serves to demonstrate that the town centre is healthy and would not be undermined by Tesco's proposal.

#### Highway Matters

- The Transport Assessment relies on an assumption that only 40% of vehicle trips are transferred from Morrisons. The retail assessment shows that this figure could be up to 60%. Morrisons do not dispute this figure.
- The highway related S106 contribution should be based on relevant trade draw assumptions used in the retail assessment and the calculations base on such an approach total £225,000.
- Concerns about the possibility of a new store opening prior to the new road being in place can be dealt with by condition. In any event the road is required to ensure access for delivery vehicles.

- 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 In order to ensure a detailed assessment of this proposal, the Council has commissioned its own independent advice in respect of the retail impact study submitted by the applicant. This has been undertaken by Deloitte, who also completed the Town Centres Study update as part of the evidence base for the Core Strategy. Their response covers a number of aspects in relation to retail impact as follows:

- The impact of the proposal on the vitality and viability of Ross on Wye town centre;
- The degree to which Morrisons is overtrading and the likely scale of trade diversion from it and other town centre units.
- The scale of leaked expenditure from the Ross catchment and the likelihood of the proposal reversing this trend.
- The scale of expenditure in-flow to the catchment and the likelihood of this continuing if committed stores elsewhere are built.
- The likelihood or otherwise of linked trips to the town centre and the impact of creating a new link road;
- Whether the development is otherwise compliant with Central Government advice (NPPF) and Development Plan policy.

The report will also consider whether there are any other sites that would be sequentially preferable to that proposed and what impact the development is likely to have on Ross on Wye's town centre as a Conservation Area and heritage asset. The application has generated significant public interest and other material considerations that have been raised are detailed in the representations section of this report. Matters relating to highway safety, flood risk, impacts on heritage assets, loss of employment land and environmental issues will also be assessed.

### 6.2 Impact upon the vitality and viability on the town centre

The quantitative assessment of convenience goods floor space needs in Ross on Wye in the Council's Town Centre Study Update indicates that there is a limited demand for additional floor space over the Core Strategy period (up to 2031):

Year	Floor space capacity (net sq m)
2012	-221 to -508
2016	-473 to -1,088
2021	-354 to -815
2026	-211 to -485
2031	-54 to -124

Surveys completed as part of the update show the two principal foodstores, Morrisons and Sainsbury trading around their company benchmarks. Combined with the expected completion and opening of the Aldi store at Brookend Street by the end of 2014 the Town Centre Update concludes that there is no quantitative capacity throughout the plan-period.

The retail assessment submitted by the applicant, and updated following the completion of the original report for the Council by Deloitte, suggests that the proposed store will have a convenience goods sales density of £7,760 per square metre. The Deloitte report has questioned this, suggesting that this is significantly lower than the Tesco company average. Whilst lower trading figures might be justified to an extent by the location and catchment area, the Deloitte report also refers to another current application submitted by Tesco in Bromyard, where the estimated convenience goods sales density is £9,085 per square metre.



The significance of this is that the use of a lower average sales density will ultimately suggest that the development will have a lower impact on the town centre. The applicant has not satisfactorily explained why a lower figure has been used.

The assessment submitted by the applicant also assumes that the existing Sainsburys and Morrisons are trading well above company benchmarks, a fact that is disputed by the consultant acting on behalf on Sainsburys who suggests that his client is trading at the company benchmark.

Notwithstanding this, the projected residents expenditure on convenience goods within the Ross on Wye Catchment Area for 2018 is estimated to be £44.77 million. On the basis of existing and committed development (Aldi), the combined projected turnover of all convenience stores in Ross is £62.05 million. This represents a shortfall of £17.28 million. Including a completed development for Tesco, with the applicant's projected turnover of £17.95 million, the combined projected turnover of all stores at 2018 rises to £80 million and would see a shortfall within the catchment of £35.23 million.

The figures provided above assume that all resident expenditure within the catchment will be spent there. In reality, the current convenience goods retention rate is 77%, with 23% leaked to other catchments. The report completed by the applicant assumes that some of this leaked expenditure will be clawed back, and that the retention rate would rise to 83%.

The proposal therefore relies on the ability of existing stores and the proposal to draw trade from outside of the catchment area. If the combined turnover of £80 million were to be met, this would mean that over 50% of income would have to be drawn from other catchments.

Survey figures suggest that, at present, Morrisons draws 34% of its trade from outside of the Ross catchment, with Sainsburys drawing 16% of its trade. It is suggested that much of this inflow is currently derived from adjoining catchments in the Forest of Dean which incorporate the towns of Lydney and Cinderford.

The report completed by Deloitte notes the fact that permissions have been granted in both Lydney and Cinderford for two new Asda stores. It expresses some concern that the impact of these two developments has not been considered in the assessment completed by the applicant, and opinions that the development of these two new stores will have the effect of significantly reducing trade drawn by existing stores from outside of the catchment area.

The Deloitte report concludes that, despite the relative economic health of Ross on Wye's town centre, it is vulnerable to change. The shortcomings identified by Deloitte and others in the accuracy of the retail assessment cast significant doubts over its projected impacts on the town centre. The amount of convenience goods retail expenditure within the catchment is limited and falls well short of projected turnover levels of businesses committed to Ross at present. The development of new Asda stores outside of the Ross catchment area will undoubtedly reduce the amount of trade to be drawn in and in reality it is more likely to be that resident expenditure would be spread more thinly between an increased number of retailers. This will impact upon the profitability of all convenience retailers, both multi-nationals and independent retailers alike. This is evidenced to some degree by the low turnover estimate for the proposed Tesco store. Whilst larger companies may be able to absorb reduced profits and adapt to changing market conditions, small independent retailers are less likely to be able to do so. It is therefore concluded that the addition of the proposal would have a significant detrimental effect on the vitality and viability of the town centre. For this reason the proposal is considered to be contrary to Paragraph 27 of the NPPF and Policy TCR2 of the UDP.

### 6.3 Sequential Testing

The application of a sequential approach and impact tests to non-central retail proposals (and other town centre uses) remains a key policy requirement of the NPPF. It maintains a 'town centre first approach' as the Government is committed to promote the vitality and viability of town centres and in this respect Policy TCR9 of the UDP is consistent with the NPPF. In addition, town centre sites tend to be in sustainable locations that reduce the need to travel, especially by car.

There is disagreement between the applicant's agent and Deloitte as to whether the site is edge of or out of centre. The applicant contends that it should be considered edge-of-centre because the footpath link onto Millpond Road is just 175 metres from the town centre Primary Shopping Frontage, whilst Deloitte are of the view that a measurement should be taken to the main entrance of the store, in which case the distance is 450 metres.

The Government has published guidance entitled 'Planning For Town Centres' and this offers clear advice about determining whether a site is considered edge of or out of centre. Paragraphs 6.5 and 6.6 are of particular relevance:

*For retail purposes, this is a location that is well connected to, and within easy walking distance (i.e. up to 300 metres) of the PSA. For all other main town centre uses, this is likely to be within 300 metres of a town centre boundary.*

*In determining whether a site falls within the definition of edge of centre, account should be taken of local circumstances. For example, local topography will affect pedestrians' perceptions of easy walking distances from the centre. Other considerations include barriers, such as crossing major roads and car parks, the attractiveness and perceived safety of the route and the strength of attraction and size of the town centre. A site will not be well connected to a centre where it is physically separated from it by a barrier such as a major road, railway line or river and there is no existing or proposed pedestrian route which provides safe and convenient access to the centre.*

It should be noted that the guidance makes no specific mention of where a measurement should be taken from, but that local circumstances should be taken into account. It is the Council's view that the local circumstances: the fact that pedestrians would be required to navigate a busy road junction, would be required to cross a public car park and at some point cross the steep railway embankment that runs along the southern boundary of the main site, lead it to conclude that the site should be considered as out of centre.

Notwithstanding this, the definition is not key to the outcome of the application. The Council accepts that there are no sequentially preferable sites within closer proximity to the town centre. The primary concern is whether the site and the provisions made in the application will help to ensure linked trips to the town centre, and this will be considered in more detail in the following section of the report.

### 6.4 Linked Trips

The notion that customers will visit the proposed supermarket and, as part of the same trip visit other shops and/or use other services within the town centre is an important factor when determining the impact of a scheme on the vitality and viability of a town centre. This not only relates to the location of the proposed development, but also upon the diversity of the goods and services that it seeks to provide.

A number of objection letters suggest that the provision of associated retail services that are typically found in large supermarkets such as a pharmacy, post office counter or shoe repairers are likely to create a single destination for shoppers and would reduce the likelihood

of linked trips being made to access other services within the town centre. It has been suggested that conditions could be imposed to restrict the creation of such ancillary uses and that this would help to reinforce functional linkages with the town centre. Notwithstanding this, there also needs to be an attractive and direct physical link to the town centre if people are to walk between the two.

As concluded above, it is the Council's view that the site represents an out-of-centre location. By definition these are sites that are not within easy walking distance of the centre and are therefore unlikely to contribute to linked trips. In this instance pedestrians walking to and from the proposed store to the town centre would need to cross Fiveways junction at Millpond Street, Although the applicant has proposed to make modifications to the width of the footpath, re-model Millpond Street and introduce a Zebra crossing, this represents a clear physical barrier between the site and town centre. Furthermore, the proposed route takes pedestrians directly through a Council owned car park. The plans do not indicate that this route is to be formalised in any way and it is the Council's view that this will give rise to vehicular / pedestrian conflicts, contrary to Policy DR3 of the UDP.

There is no visual link between the site and the town centre due to the changes in levels at the site boundaries – the site being significantly lower than its southern boundary, and the proposed meandering route of the footpath across third party land as described above. This represents a significant constraint in terms of the propensity for linked shopping trips as pedestrians would have no perception of the necessary walking distance. The proposals lack any meaningful connectivity to the town centre and it is concluded that this would further erode its vitality and viability, contrary to Policy TCR2 of the UDP and the NPPF.

## 6.5 Loss of Employment Land

The site has a long established employment use where Policy E5 of the Unitary Development Plan is applicable. It advises that proposals that result in the loss of employment land will only be permitted where there are substantial benefits to residential or other amenity in allowing other forms of development and that the site concerned is unsuitable for other employment purposes. The policy also states that any retail use within designated employment sites should be ancillary to an otherwise acceptable Part B or other employment generating use.

It is accepted that the site may be considered as an eyesore, accommodating B2 uses that typically require outside storage and that lead to an unkempt and untidy appearance. The site is under utilized, and this may well stem from historic flood events. Notwithstanding this, it does provide a site for those uses that may not be so willingly accommodated on other industrial estates within the locality.

The clear inference of the Land Study that accompanies the application is that the loss for employment use is justified as there is adequate provision elsewhere within the town and across the county. However, the Council's Economic Development Manager has advised that he considers there to be a significant undersupply of employment land and units within Ross-on-Wye. This is evidenced by the fact that the Economic Development Manager has found it difficult to assist a number of firms looking to relocate or expand in Ross-on-Wye and the surrounding area due to the lack of readily available units and development land.

The Council's Economic Development Manager also expresses the view that the site does provide low cost space that is unavailable elsewhere within Ross, and given the current gap in the market of employment units, relocating the businesses within the town would be challenging.

Policy E5 of the UDP is clear that there the loss of employment land will only be permitted in exceptional circumstances. Paragraph 6.4.26 of the supporting text to the policy states that retail development within employment sites could detrimentally impact future employment

development. The applicant has failed to demonstrate that it is unsuitable for other employment uses. It has benefitted from the recent flood alleviation scheme which means that it is less likely to flood and, although it is unkempt, it is not clear that it currently gives rise to significant nuisance complaints to bordering residential properties. Any suggestion that there would be significant benefits to residential amenity if the site were to be developed for another purpose are therefore unsubstantiated.

Moreover, the additional correspondence submitted by the applicant's agent advises that there are eight local businesses that have no clear plan to re-locate should planning permission be granted. In view of the uncertainty in this regard The Council's Economic Development Manager expresses the view that it is very difficult to properly assess the impact of their potential loss.

Paragraph 22 of the NPPF advises that the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose should be avoided. However, this has not been demonstrated and the comments of the Council's Economic Development Manager indicate that, notwithstanding a challenging economic climate, a demand for employment land in Ross on Wye remains.

In conclusion, the loss of the land to retail use is unwarranted. Its loss would unacceptably erode the ability of the Council to ensure adequate provision of employment land moving forward. The lack of a clear strategy for the re-location of existing businesses also gives rise to a degree of uncertainty over the precise impact of the development on the local economy. It is therefore concluded that the proposal is contrary to Policies E5 and S4 of the Herefordshire UDP.

## 6.6 Impact Upon Heritage Assets

Ross on Wye's town centre is considered to be an important heritage asset as it is designated as a Conservation Area and contains many listed buildings. Intrinsic to its character are the retail uses. Given the view formed above that the proposal would have an adverse impact upon the viability and vitality of Ross-on-Wye town centre, it is submitted that there would be a secondary negative impact upon the character of the Conservation Area. Clearly to retain retail uses within existing premises, many of which are listed, the businesses must remain viable.

Chapter 12 of the NPPF relates to the historic environment. It requires that local planning authorities should take into account the desirability of sustaining and enhancing heritage assets and of new development making a positive contribution to local character and distinctiveness. Paragraph 128 of the NPPF states:

*"In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected..."*

It goes on to say;

*"The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance."*

The potential trade diversion from retail premises within the town centre which includes Sainsburys, and Morrisons which is an edge of centre store and does promote linked trips to independent retailers, leads the Council to conclude that there is a prospect of existing retail businesses ceasing trading. This would lead to the vibrancy of Ross on Wye's town centre declining. If one does not have viable uses for listed buildings they are likely to fall into disrepair. Whilst alternative uses may be found, these would be of a fundamentally different character. It is considered that this would be detrimental to the Conservation Area and may

lead to it becoming a heritage asset which is at risk, contrary to the National Planning Policy Framework and Policy S7 of the Herefordshire Unitary Development Plan.

The creation of a new vehicular access to the site, comprising a new roundabout, requires the demolition of the existing garage workshop buildings on the western side of Overross Road, as well as two dwellings opposite. The garage workshop is immediately adjacent to The Plough Inn, which is a Grade II listed building. It is a prominent building in the street scene and, whilst the nature and character of its immediate environs would be changed substantially through the introduction of a new traffic island, it is not considered that this would be to the detriment of its setting. The existing garage workshops are set back from the road and the essential character of the areas immediately surrounding the pub is quite open and this would remain the case as a consequence of the development proposed. This part of the scheme therefore accords with Policy HBA4 which seeks to ensure that the setting of listed buildings is not adversely affected.

## 6.7 Highway Matters

A request for further information to be submitted from the Highways Agency in order to determine the impacts of the development on their road network has been satisfied and they have no objection to the proposal subject to conditions. As stated in the retail impact section of this report, trade to be drawn from outside the catchment area is likely to be less than that estimated by the applicants as a result of planning permissions for Asda stores in Lydney and Cinderford and consequently it is considered that this will serve to mitigate the effects of any development on the strategic road network.

More locally, the effects of the development arise through the introduction of the link road and the associated traffic movements within the local road network. It has already been established that there is limited expenditure capacity within the Ross catchment area and that, if planning permission were to be granted for the proposal, it would result in a re-distribution of this expenditure across existing retailers. To a certain extent the same can be said of traffic movements. Analysis provided by the Council's Transportation Manager shows that the proposal will result in increases in traffic movements at some junctions and a reduction at others, principally due to the introduction of the link road and the fact that some customers will be travelling to this application site rather than Morrisons. With a projected expenditure retention rate in the catchment area increasing from 77% to 83% it is reasonable to conclude that local traffic movements will increase marginally and therefore that the scheme is unlikely to cause demonstrable harm to highway safety. The proposal is therefore considered to accord with Policies DR3 and T8 of the UDP.

## 6.7 Flooding

Following the submission of further information, the Environment Agency has advised that their original objection regarding flood risk can be removed subject to the imposition of a series of conditions. These are outlined in the Representations section of this report. The plans show the finished floor levels of the supermarket to be set above the 1 in 200 year flood level, which in this case is considered to be the 1 in 100 year plus climate change flood event. In actual fact the Environment Agency advise that floor level is set at 35.5 metres AOD, a level that is actually 900mm above the 1 in 200 year flood event. It is therefore considered that the proposal accords with Policy DR7 of the UDP and the NPPF.

## 6.8 Conclusion

The applicant has failed to demonstrate that the proposal will not have a detrimental impact upon the vitality and viability of the town centre. On the basis of all of the evidence available to the Council it is considered that there is a very limited expenditure capacity within the Ross on Wye catchment. The retail assessment submitted by the applicant does not have proper

regard for approved retail development outside of the catchment and over-estimates the inflow of expenditure into the catchment, consequently under-playing the effect on the town centre.

The Council is also concerned that the development would result in the loss of employment land and, whilst there may be some benefits to be derived from the visual improvement of the site, these are not out-weighed by the loss of employment land.

Finally, there are no agreed heads of terms for a Section 106 Agreement. It is concluded that, for the reasons outlined above, the proposal is contrary to the adopted Herefordshire Unitary Development Plan and the National Planning Policy Framework. The application is therefore recommended for refusal.

## **RECOMMENDATION**

**That planning permission be refused for the following reasons:**

- 1. The applicant has failed to demonstrate that the proposal would not have a significant adverse impact upon the viability and vitality of Ross on Wye Town Centre contrary to paragraph 26 of the National Planning Policy Framework and Policies S5, TCR1, TCR2 and TCR9 of the Herefordshire Unitary Development Plan 2007.**
- 2. Given reason for refusal 1 above, the Local Planning Authority consider that the proposed development would be likely to adversely affect the character of the Ross on Wye Conservation Area contrary to paragraphs 128 to 133 of the National Planning Policy Framework and policy S7 of the Herefordshire Unitary Development Plan 2007.**
- 3. The proposal would result in the loss of existing employment land. The applicant has not demonstrated that there is a surplus of such land or that removal of the existing use from the site would give rise to substantial benefits to residential or other amenity issues. Furthermore, the proposal is not a minor or incidental activity associated with another use that is compliant with policy. The proposal is therefore contrary to paragraphs 7 and 8 of the National Planning Policy Framework and policies S4 and E5 of the Herefordshire Unitary Development Plan 2007.**
- 4. The proposed development would necessitate a planning obligation compliant with the criteria set out in the Supplementary Planning Document - 'Planning Obligations' to secure contributions toward sustainable transport infrastructure, including enhanced pedestrian and cycle links to Ross on Wye Town Centre, to mitigate against the impact of the development. A completed Planning Obligation has not been deposited and as such the proposal is contrary to Policy DR5 of the Herefordshire Unitary Development Plan 2007 and the Council's Supplementary Planning Document entitled 'Planning Obligations' (April 2008).**

### **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 and identifying matters of concern with the proposal and discussing those with the applicant. However, the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory way forward and due to the harm which have been clearly identified within the reasons for the refusal, approval has not been possible.**

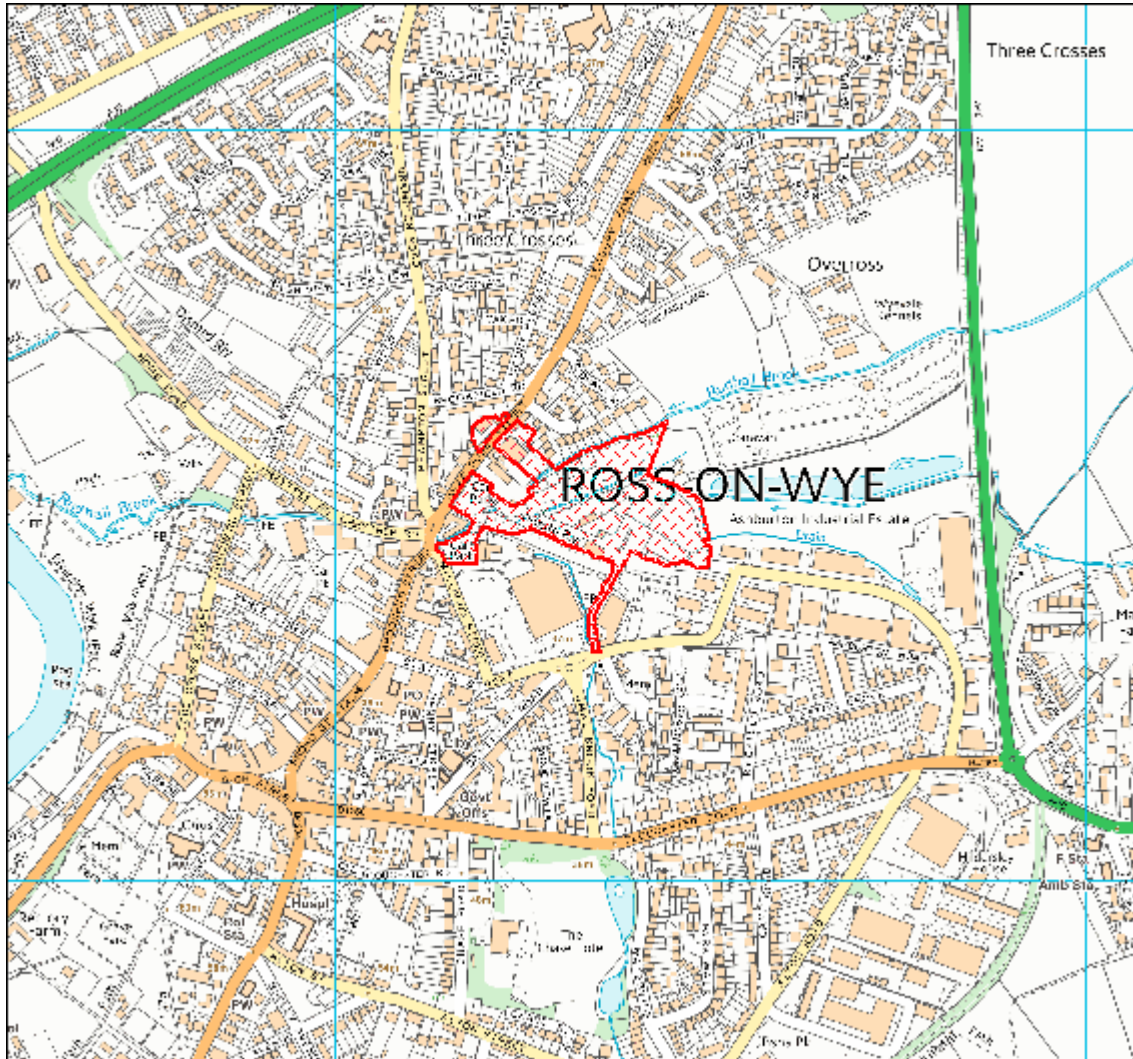
Decision: .....

Notes: .....

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**Background Papers**

Internal departmental consultation replies.



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**APPLICATION NO:** 132028/F

**SITE ADDRESS :** LAND AT OVER ROSS STREET, ROSS-ON-WYE, HEREFORDSHIRE

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<b>MEETING:</b>	<b>PLANNING COMMITTEE</b>
<b>DATE:</b>	<b>16 JULY 2014</b>
<b>TITLE OF REPORT:</b>	<b>P141526/O - PROPOSED RESIDENTIAL DEVELOPMENT (UP TO 110 DWELLINGS), ACCESS, PARKING, PUBLIC OPEN SPACE WITH PLAY FACILITIES AND LANDSCAPING AT LAND SOUTH OF HAMPTON DENE ROAD, HEREFORD</b>  <b>For: Gladman Developments Ltd per Planning Prospects Limited, 4 Mill Pool, Nash Lane, Belbroughton, Worcestershire DY9 9AF</b>
<b>WEBSITE LINK:</b>	<a href="https://www.herefordshire.gov.uk/planningapplicationsearch/details/?id=141526">https://www.herefordshire.gov.uk/planningapplicationsearch/details/?id=141526</a>

**Date Received: 27 May 2014**

**Ward: Backbury**

**Grid Ref: 353504,239909**

**Expiry Date: 26 August 2014**

Local Member: Councillor J Hardwick

Adjoining Ward Members: Councillors JLV Kenyon, MD Lloyd-Hayes and CA North

### **Introduction**

Outline planning permission with all matters bar access reserved is sought for the erection of up to 110 dwellings with landscaping which includes public open space, allotments and a structural planted 'buffer' on land south of Hampton Dene Road, Hereford.

The application is a revised resubmission of an earlier outline application for the erection of up to 120 dwellings (S132851/O), which is subject to an appeal against non-determination. That application was reported to Committee on 2 April 2014 and the appeal will be heard at Public Inquiry commencing on 30 September. The Committee resolved that it would have been minded to delegate authority to officers to refuse the first application as contrary to saved Unitary Development Plan (UDP) policies LA2, LA3, LA4, HBA4 and NPPF paragraph 109.

In response, the number of dwellings for which planning permission is sought has been reduced to 110 and the structural landscaping along the site's north-eastern boundary towards the Lugg Meadows is enhanced. The means of access to the site and the principles regarding site layout, affordable housing and public open space remain as per the appeal scheme.

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

1.1 The site is situated in the parish of Hampton Bishop which lies on the eastern edge of Hereford City. The land lies outside the settlement boundary and was identified as land with no potential during the Plan Period in the Herefordshire Strategic Housing Land Availability Assessment (SHLAA).

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Further information on the subject of this report is available from Mr E Thomas on 01432 260479

- 1.2 There is a distinct division between the modern built edge / townscape to the west and open countryside to the east which is clearly marked by Holywell Gutter Lane (and its associated vegetation), which runs roughly north – south along the ridgeline and forms the site’s south-western boundary.
- 1.3 To the east of the site is arable farmland, the land sloping down to the River Lugg valley and then rising towards Lugwardine to the north east. The Wye Valley Area of Outstanding Natural Beauty (AONB) is visible to the south-east some 3.8km distant. To the south there are orchards and beyond, the River Wye.
- 1.4 To the north, beyond the properties and grounds of Hampton Dene and Tupsley Court, is the A438 and beyond is the Upper Lugg Meadow.
- 1.5 The site area is approximately 4.7 hectares. It comprises a grassed field currently used for horse-keeping, and there is a small stable / storage area. The boundaries of the site are variously established native species hedgerows (with good, mature oak along Holywell Gutter Lane), bramble scrub, occasional trees and dense woodland along the north-western boundary of the site adjacent to Hampton Dene Road. There is a mature oak in the middle of the field which is an important local feature.
- 1.6 The majority of the site is flat but it slopes away along the eastern and south-eastern boundaries. The site is well-screened from most viewpoints to the north, south and west but it is visible from several viewpoints to the north-east, east and south-east and from public rights of way adjacent to, and close to the site.
- 1.7 A single point of vehicular and pedestrian access is proposed directly from Hampton Dene Road. This is a modification of the existing access to the site and the Grade II listed Meadow Cottage which backs onto the application site. The access would comprise a 5.5m carriageway with 2.0m footways on either side and would be formed so as to provide 4.5m x 45m visibility splays to the nearside of Hampton Dene Road in each direction. The formation of this access would necessitate removal of a section of the existing low stone wall which defines the carriageway’s edge and some of the existing tree cover associated with the Unregistered Park and Garden at Hampton Dene House.
- 1.8 The application is accompanied by a wide range of supporting material including the following:-
  - Planning Statement;
  - Design and Access Statement and Development Framework Plan;
  - Landscape and Visual impact Assessment;
  - Ecological Appraisal;
  - Transport Assessment and Travel Plan;
  - Summary Statement of Community Involvement;
  - Drainage and Flood Risk Assessment; &
  - Arboricultural Assessment.
- 1.9 The Design and Access Statement (DAS) sets out the aspirations for the development, setting out the intention to utilise a street hierarchy influenced by Manual for Streets, with opportunities taken to make connections to the existing settlement via the local footway network; including direct access onto Holywell Gutter Lane. The Development Framework Plan shows a ‘street’ running through the site from north-west to south-east from which a series of secondary roads spur.

- 1.10 The revised Development Framework Plan also omits the originally proposed attenuation basins in response to Welsh Water's original comments. It is now intended to increase the capacity of below ground storage of surface water and land drainage, with this pumped at an agreed attenuated rate to the mains in Hampton Dene Road.
- 1.11 The application also proposes more significant structural planting to the eastern boundary, with dwellings pulled further from this boundary and the planting enhanced. On the northern boundary provision is made for allotments. As with the earlier application a buffer zone is also intended against the common boundary with the Grade II listed Meadow Cottage. The plan also indicates the proposed location of public open space next to the veteran oak tree on site.
- 1.12 The application is also accompanied by a Housing Land Supply Study. This confirms the deficit that has been identified by the Inspector's decision in relation to the Home Farm, Belmont appeal (S122747/O) and is acknowledged in the Council's published Housing Land Supply Interim Position Statement (May 2014) – which suggests a housing land supply of between 2.09 and 2.6 years depending upon the method employed to calculate the housing requirement.
- 1.13 The Council has adopted a Screening Opinion in relation to proposals for 95, 110 and 120 dwellings on this site and considers that none represent development requiring the submission of an Environmental Statement.

## 2. Policies

### 2.1 National Planning Policy Framework (NPPF)

The following sections are of particular relevance:

- Introduction - Achieving Sustainable Development
- Section 6 - Delivering a Wide Choice of High Quality Homes
- Section 7 - Requiring Good Design
- Section 8 - Promoting Healthy Communities
- Section 11 - Conserving and Enhancing the Natural Environment

### 2.2 Saved Policies of the Herefordshire Unitary Development Plan 2007 (UDP)

- S1 - Sustainable Development
- S2 - Development Requirements
- S3 - Housing
- S7 - Natural and Historic Heritage
- DR1 - Design
- DR3 - Movement
- DR4 - Environment
- DR5 - Planning Obligations
- DR7 - Flood Risk
- H1 - Hereford and the Market Towns: Settlement Boundaries and Established Residential Areas
- H7 - Housing in the Countryside Outside Settlements
- H13 - Sustainable Residential Design
- H15 - Density
- H19 - Open Space Requirements
- HBA4 - Setting of Listed Buildings
- HBA9 - Protection of Open Areas and Green Spaces
- T8 - Road Hierarchy

LA2	-	Landscape Character and Areas Least Resilient to Change
LA3	-	Setting of Settlements
LA4	-	Protection of Historic Parks and Gardens
LA5	-	Protection of Trees, Woodlands and Hedgerows
LA6	-	Landscaping Schemes
NC1	-	Biodiversity and Development
NC6	-	Biodiversity Action Plan Priority Habitats and Species
NC7	-	Compensation for Loss of Biodiversity
ARCH3	-	Scheduled Ancient Monuments
ARCH6	-	Recording of Archaeological Remains
CF2	-	Foul Drainage

### 2.3 Herefordshire Local Plan – Draft Core Strategy

SS1	-	Presumption in Favour of Sustainable Development
SS2	-	Delivering New Homes
SS3	-	Releasing Land for Residential Development
SS4	-	Movement and Transportation
SS6	-	Addressing Climate Change
RA1	-	Rural Housing Strategy
H1	-	Affordable Housing – Thresholds and Targets
H3	-	Ensuring an Appropriate Range and Mix of Housing
OS1	-	Requirement for Open Space, Sports and Recreation Facilities
OS2	-	Meeting Open Space, Sports and Recreation Needs
MT1	-	Traffic Management, Highway Safety and Promoting Active Travel
LD1	-	Local Distinctiveness
LD2	-	Landscape and Townscape
LD3	-	Biodiversity and Geodiversity
SD1	-	Sustainable Design and Energy Efficiency
SD3	-	Sustainable Water Management and Water Resources
ID1	-	Infrastructure Delivery

### 2.4 Neighbourhood Planning

Hampton Bishop has a designated Neighbourhood Plan Area. The area includes the application site. Whilst a draft plan has been prepared it is not sufficiently advanced towards adoption to attract weight for the purposes of decision taking.

### 2.5 Other Relevant National and Local Guidance / Material Considerations

National Planning Practice Guidance (2014)  
 Annual Monitoring Report  
 Five year housing land supply (2013-2018) Interim Position Statement  
 Urban Fringe Sensitivity Analysis  
 Planning for Growth – 2011  
 Laying the Foundations – 2011  
 Housing and Growth – 2012  
 Green Infrastructure Strategy

### 2.6 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:-

<https://www.herefordshire.gov.uk/planning-and-building-control/planning-policy/unitary-development-plan>

### 3. Planning History

- 3.1 132851/O – Residential development (up to 120 dwellings), access, parking, public open space with play facilities and landscaping at land South of Hampton Dene Road, Hereford.

Appeal lodged against non-determination to be heard via public inquiry in September. The Planning Committee resolved on 2 April 2014 that it would have been minded to delegate authority to officers to refuse the application as being contrary to saved UDP policies LA2, LA3, LA4, HBA4 and NPPF 109.

### 4. Consultation Summary

#### Statutory Consultees

- 4.1 Welsh Water: No objection subject to conditions. There are no anticipated problems with treatment of foul drainage or the supply of drinking water.
- 4.2 Environment Agency: No response, but no objection to the appeal scheme S132851/O.

#### Internal Council Advice

- 4.3 Traffic Manager:

The additional traffic generated by the proposal has the potential to impact the signalised junction at Ledbury Road/Folly Lane/Church Road; as indicated by the addendum assessment provided in relation to the 120 dwelling scheme. However, the flows predicted to join Ledbury Road at the Hampton Dene Road junction and then travel westbound under the 120 dwelling scheme was only 33 vehicles in the morning peak hour and will be proportionately less under this scheme. The impact would remain in the region of an increase of 4% for the westbound traffic flow. The assessment assumes, moreover, that all trips joining Ledbury Road will arrive at the signals, which are close to saturation. However, in practice, a proportion of existing A438 westbound traffic in the morning peak currently uses the Whittern Way route to Folly Lane and some cuts through Winchester Drive and onwards to access A438 at Quarry Road. A similar, but opposite direction of travel, scenario occurs in the evening peak. This alleviates the flows on Ledbury Road at the signals.

It is likely that some of the development traffic may also choose these routes. It may also be that more of the development traffic travels south west from the site and onwards through the residential area via Old Eign Hill and Vineyard Road to access B4224 Hampton Park Road and enter the city centre via that route in the morning peak and the reverse in the evening peak. Whilst the re-routing of traffic through residential areas is undesirable, if all the development traffic re-routed through one of those routes, it would only equate to one vehicle every two minutes which is minimal.

Furthermore, if greater queuing occurs on Ledbury Road westbound at the signals, as indicated in the assessment, then it is also likely that drivers travelling on A438 from further field may choose an alternative route such as from A438 Bartestree to A4103 at Whitestone and on to Hereford via that road, or from Dormington via Mordiford and then on B4224 through Hampton Bishop to Hereford. Therefore the effect on the signals may not be as predicted. Paragraph 32 of the National Planning Policy Framework states that “Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe”. “Severe” is not defined and is therefore open to interpretation. I am of the view that the resultant traffic impact of the development would not constitute a severe impact, and therefore would not form transport grounds for refusal, particularly as in sustainable terms the site is well placed for schools, local facilities, colleges and with regular (half hourly) public transport to/from the city centre from nearby stops on Hampton Dene

Road. Section 106 contributions/off-site highway works will enable improvements to travel by sustainable modes to encourage greater usage of those modes, thereby mitigating, at least in part, the residual impact of the development.

#### 4.4 Conservation Manager (Landscapes): Objection.

The proposed development comprises up to 110 dwellings with landscaping which includes public open space and a structural planted 'buffer' along the site's eastern boundary. This application is a variation of a previously submitted scheme on the same site (Ref. 132851/O), which is currently the subject of an appeal.

There are minor differences in the proposals. As far as I have ascertained these are:

- Up to 110 dwellings as opposed to 120;
- Replacement of proposed tree planting along the northern boundary of the site (adjacent to Hampton Dene House, to 'mitigate' for the removal of trees at the new access point) with allotments;
- Increased area of landscape buffer to eastern edge of site;
- Omission of attenuation ponds;
- Reduction in area of central public open space.

The landscape and visual effects reported in the LVIA for this application are unchanged from those in the original assessment apart from a slight reduction in long term (beyond year 15) residual visual effects for receptors at Refs 7 and 8 (effects are predicted to reduce from Minor to Moderate Adverse to Minor Adverse).

The revised scheme is not materially different from the original. I consider that the principle of development of this type in this location is unacceptable and the significance of effects on landscape character, visual amenity and heritage assets still have the potential to be Major Negative. The landscape comments issued for the previous application (Ref. 132851/O) therefore apply to the new one. The previous conclusions are set out below:

*Development in this prominent, historic and sensitive location would be inappropriate and out of keeping with both local and wider landscape character. It would give rise to major negative effects on landscape character and visual amenity.*

*The development does not comply with Policy DR1 in particular Para. 3: the effects on 'townscape and landscape character and topography, including the impact of the proposal on urban vistas, longer distance views and ridgelines' are likely to be moderate to major adverse on a local level.*

*For the reasons set out above the development is contrary to Landscape Policies LA2 Landscape character and LA3 Setting of settlements.*

*The proposed development is likely to give rise to adverse impacts on the setting of the adjacent listed building which is contrary to Policy HBA4 Setting of listed buildings.*

*The application should be refused.*

#### 4.5 Conservation Manager (Ecology): No objection subject to the imposition of conditions.

#### 4.6 Conservation Manager (Building Conservation): Objection

Part of the historic interest and significance of Meadow Cottage is its rural setting. The building was constructed as a standalone, rural dwelling that was actually quite isolated within its setting. It also had a physical connection with the landscape of Hampton Dene. This

setting has already been affected by more recent development but the proposed scheme will fundamentally and unfavourably transform its setting. The fabric of the building and the significance of that fabric would not be directly affected by the proposals but the setting of the building would be substantially harmed by the proposals. The scheme would complete the encroachment of modern development around Meadow Cottage and fully isolate it from its rural, original context.

Given that the proposed development also encroaches on the unregistered garden of Hampton Dene House, the proposals also physically separate two heritage assets from each other and undermine the historic character and appearance of the area. As an outline application, there is little detail on which to fully assess the application but given the amount of development and the proposed indicative site layout, the proposed scheme would be intrusive and inappropriate within this setting. The unregistered garden, a heritage asset, would be directly affected and substantially harmed by the proposals – to the detriment of the local area – and there is no clear justification or public benefit that would outweigh this harm. This applies also to the harm caused to the setting of the grade II listed Meadow Cottage.

The proposals fail to accord with policies HBA8 and HBA4 which seek to protect the setting of listed buildings and the special interest of locally important buildings/heritage assets. The proposals also fail to accord with NPPF policy relating to the setting of listed buildings (paragraphs 132 and 133) or to non-designated heritage assets (paragraph 135).

4.7 Land drainage: No objection in principle to the proposals for an outline application, subject to the following matters being addressed through a reserved matters application:

- The Applicant should provide more information with regards to the risk of groundwater flooding to the development. Having provided trial holes indicating shallow groundwater we would expect the Applicant to discuss this risk and any mitigation required to ensure that risks of flooding posed to property or the potential users of the site have been appropriately mitigated.
- The Applicant should also demonstrate they have considered the risk of flooding in the event that the proposed surface water system fails or a rainfall event greater than the 1 in 100 year rainfall event, including an allowance for climate change, occurs. Whilst surface water is free to discharge off site in this event, it should be demonstrated where this flow would go such that no unacceptable risk is being introduced to neighbouring property.

Following adequate consideration of these items, we would recommend that pre-commencement planning conditions be applied requiring:

- Infiltration test results should be provided in the locations of proposed soakaways. These should be undertaken in accordance with the methodology laid out in BRE Digest 365 to inform the design prior to construction;
- Where infiltration is feasible, the use of infiltration to discharge surface water should be maximised on site. Where infiltration is not feasible, an attenuated discharge to a watercourse must be considered. Where neither is feasible, an attenuated discharge to a public sewer is acceptable;
- Demonstration that above ground storage of attenuated runoff has been considered in preference to below ground storage;
- Confirmation should be provided that the invert level of soakaways should be at least 1m above the groundwater level on site;
- Where the surface water drainage strategy is altered, updated calculations are required to demonstrate that infiltration and/or attenuation of surface water is designed such that there will be no flooding of the on-site drainage system in all rainfall events up to the 1 in 30 year event and no unacceptable flood risk to the proposed development or discharge of flood

waters to adjacent land in all rainfall events up to the 1 in 100 year flood event, including the relevant allowances for climate change in accordance with NPPF;

- Confirmation of any adoption agreements relevant to the management of surface water and confirmation of who will be responsible for maintenance of the different aspects of the Applicant's proposed system should be provided;
- Evidence of adequate separation and/or treatment of polluted water (including that from vehicular areas) should be provided to ensure no risk of pollution is introduced to groundwater or watercourses, both locally and downstream of the site. The use of SUDS should be prioritised.

4.8 Principal Leisure and Countryside Officer: No objection.

The developers have agreed to provide on-site provision to include public open space and Children's Play requirement. The total area of 0.63ha, including 400sq m LEAP and 750sq m of allotments exceeds the UDP policy requirement of 0.3ha for a development of this size. The developer has also agreed to provide an off-site contribution towards outdoor sports to meet identified needs as provided by the evidence base: Playing Pitch Assessment for Hereford and the emerging Investment Plan and identified project at Aylestone Park to provide a junior football hub for the city. The level of contribution towards an off-site sports pitch contribution based on the market housing only would equate to approximately £68,500. This is based on predicted occupancy rates at £420 per person.

4.9 Public Rights of Way Manager: The proposal does not appear to affect the bridleway HER47 (Holywell Gutter Lane), although the developer will need to liaise with the Public Rights of Way Section in order to agree points of connection to the bridleway.

4.10 Environmental Health Manager: No objection in relation to the submitted Air Quality Assessment

4.11 Schools Capital and Investment Manager: Negotiations are on-going in relation to the extent of the contribution towards primary and secondary provision. The developer has however accepted the principle of making a contribution towards meeting short-term capacity deficits at the catchment schools.

4.12 Housing Development Manager: The scheme proposes 35% of the units to be affordable, which is acceptable. The affordable units need to be tenure neutral and well integrated within the development. The units would need to be built to Homes and Community's Design and Quality Standards, Lifetime Homes and Level 3 of the Code for Sustainable Homes with local connection to Hereford. The units should comprise an appropriate mix of 1, 2, 3 and 4-bed units built to minimum space requirements. The recommended tenure split is 54% social rent and 46% intermediate tenure, this will allow an option of intermediate rental, shared ownership or low cost market.

4.13 Archaeological Advisor: No objections, but in accordance with policy ARCH6 of the UDP and Para 141 of the NPPF, would advise inclusion of the standard 'programme of work' archaeological condition to provide mitigation.

## **5. Representations**

5.1 Hampton Bishop PC: Objection.

Herefordshire cannot currently demonstrate a five year housing land supply. Planning policy for housing in the UDP must therefore be considered out of date. The emerging Core Strategy at this stage can only be given limited weight.



This planning application should therefore be determined with regard to the current housing land supply position and also whether the proposals would give rise to any adverse impacts, particularly having regard to the character and appearance of the area and increasing flood risk elsewhere.

The Parish Council are of the opinion that the proposal does affect the character and appearance of the area, and would lead to increased flood risk elsewhere, particularly the village of Hampton Bishop. These impacts significantly and demonstrably outweigh the benefits of the scheme (see also Home Farm appeal decision APP/W1850/A/13/2192461)

### **Flooding**

The village of Hampton Bishop is subject to continual surface water flooding. The main road (B4224), Rectory Road, Church Lane and Whitehall Road are all periodically impassable. When the River Wye and /or River Lugg are in spate, much of the village road and ditch system is below river level, protected only by the flood banks. It follows that the surface water has nowhere to go until the river levels drop.

Most of the surface water originates from the Hampton Park/Tupsley area of the City, and follows the natural gradient down the B4224 into the village.

As the applicant's Flood Risk and Drainage report indicates the application site drains naturally to the east and south east towards the Lugg Valley and then the village of Hampton Bishop. Run-off from the site will only increase with creation of such a large built development. This will exacerbate the already severe flooding problem in Hampton Bishop. The applicant's Flood Risk and Drainage report makes no assessment of the increased flood risk this will create elsewhere, i.e. Hampton Bishop. This is clearly contrary to national planning policy contained in para.103 of the NPPF, and policies S2, particularly paragraph 2; and DR4 of the Unitary Development Plan.

### **Character and Appearance of the Area**

The development will have a significant impact on the character and appearance of the area. The steep ridge between the edge of the City and the River Lugg is a key element in the setting of Hereford when approaching from the east. This means the landscape to the east of the city has retained a relatively rural and tranquil character.

The view from the East (Lugwardine area) across the Lugg Valley towards Hereford has a unique, rural, and very special character. Although the application includes some screening measures they would not be sufficient to prevent a significant change in the setting of the City and a significant interruption in to the rural and tranquil quality of this area. The site is identified as being High Sensitivity in the Council's Urban Fringe Sensitivity Analysis (2010). Site is prominent within the above views and is seen as a modern intrusion into open countryside.

There are several important views from high level public points within the Wye Valley AONB west/northwest into Hereford. This development will have a detrimental effect on these views and planting which require many years to grow to a level to screen these views. Planting in itself will be a visual intrusion into the views which is out of character and inappropriate in the landscape.

Map 3.1 of the Urban Fringe Landscape Sensitivity Analysis shows the Gladman site within an area of High Landscape Sensitivity which indicates no potential for housing in the SHLAA.

Hampton Bishop Parish Council therefore opposes the application because it is contrary to policies S1; S7; DR4; LA2; and LA3 of the Unitary Development Plan.

- 5.2 Hereford City Council: Whilst we appreciate the need for more housing we feel that building down the Hereford ridge line and towards the Lugg floodplains is not desirable.
- 5.3 Neighbour/notice: 7 letters of objection have been received from local residents. The content is summarised as follows:-
- The peak traffic on Hampton Dene Road coincides with school drop-off and pick-up, during which times the road becomes heavily congested;
  - Vehicles often park on both sides of the carriageway leaving little room for cars to pass;
  - Pavements and driveways are also frequently blocked by waiting parents;
  - Emergency access during these provisions is compromised;
  - Adding more vehicles onto Hampton Dene Road will result in increased potential for accidents; there has been a fatality locally involving a cyclist since the original scheme went before Members;
  - Parents of children within easy walking distance of the school will still use cars;
  - The site is a wildlife habitat and should be preserved as such;
  - Great Crested Newts have been found locally and the site's potential as habitat/refuge for larger populations should be considered.
  - The local schools are at capacity. New development should be directed to areas where capacity in catchment schools exists;
  - The development will bring additional pressure to bear on the doctor's surgery.
- 5.4 The applicants have provided a response to the landscape comments reported at 4.4 above. The content is summarised as follows:-
- The Council agrees that the development will not have an adverse effect on the AONB;
  - The assertion that Holywell Gutter Lane constitutes a logical boundary to development is errant. It is an ancient landscape boundary that has been breached in the relatively recent past by residential development at Copsewood Drive and elsewhere;
  - Existing residential development is, to varying degrees, visible in the wider landscape when viewed from the east;
  - A high quality landscaping scheme will significantly reduce any localised effects on views towards Hereford in the medium to long term;
  - The scheme promotes a low-density edge to the eastern boundary, set behind enhanced buffer planting. The proposed tree planting *is* in keeping with the local landscape character;
  - Particular care has been taken to retain and enhance key landscape features as an integral part of the scheme;
  - Meaningful buffers have been located in relation to the setting of Meadow Cottage and Hampton Dene House;
  - There are relatively few visual receptors in the landscape in the east and these are at a significant distance from the site.
- 5.5 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-etails/?q=contact%20centre&type=suggestedpage](http://www.herefordshire.gov.uk/government-citizens-and-rights/complaints-and-compliments/contact-etails/?q=contact%20centre&type=suggestedpage)
- 6. Officer's Appraisal**
- 6.1 The application is made in outline with all matters reserved except for access and involves the erection of up to 110 dwellings on land south of Hampton Dene Road. The site is outside but adjacent to the settlement boundary for Hereford City as defined by the Unitary Development Plan, but falls within the parish of Hampton Bishop. The application is an amended resubmission of application S132851/O and proposes 10 fewer dwellings, the provision of

allotments as part of the public open space provision and enhanced landscaping along the site's north-eastern boundary towards open countryside beyond. The key issues are considered to be:-

- An assessment of the principle of development at this location in the context of 'saved' UDP policies, the NPPF and other material guidance; and
- An assessment of the sustainability of the scheme having regard to the scheme's impact on the existing settlement in terms of landscape character and amenity and surface water drainage.

***The Principle of Development in the context of 'saved' UDP policies the NPPF and other material guidance***

6.2 S38 (6) of the Planning and Compulsory Purchase Act 2004 states as follows:

*"If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."*

6.3 In this instance the Development Plan for the area is the Herefordshire Unitary Development Plan 2007(UDP). The plan is time-expired, but relevant policies have been 'saved' pending the adoption of the Herefordshire Local Plan - Core Strategy. UDP policies can only be attributed weight according to their consistency with the NPPF; the greater the degree of consistency, the greater the weight that can be attached.

6.4 The two-stage process set out at S38 (6) requires, for the purpose of any determination under the Act, assessment of material considerations. In this instance, and in the context of the housing land supply deficit, the NPPF is the most significant material consideration. Paragraph 215 recognises the primacy of the Development Plan but, as above, only where saved policies are consistent with the NPPF:-

*"In other cases and following this 12-month period, due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)."*

6.5 The effect of this paragraph is to supersede the UDP with the NPPF where there is inconsistency in approach and objectives. As such, and in the light of the housing land supply deficit, the housing policies of the NPPF must take precedence and the presumption in favour of approval as set out at paragraph 14 is engaged if development can be shown to be *sustainable*.

6.6 Paragraph 14 of the NPPF states that for decision making, the presumption in favour of sustainable development means:

- *"Approving development proposals that accord with the development plan without delay; and*
- *Where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:*

*any adverse impact of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or specific policies in this Framework indicate development should be restricted."*

It is the second bullet point that is relevant in this case.

- 6.7 The NPPF approach to Housing Delivery is set out in Chapter 6 – Delivering a wide choice of high quality homes. Paragraph 47 requires that local authorities allocate sufficient housing land to meet 5 years' worth of their requirement with an additional 5% buffer. Deliverable sites should also be identified for years 6-10 and 11-15. Paragraph 47 underlines that UDP housing supply policies should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites.

### ***The Council's Housing Land Supply***

- 6.8 The Council's published position is that it cannot demonstrate a five year supply of housing land. *This was the published position in April 2012 and again in July 2012 and has been reaffirmed* by the recently published Housing Land Supply Interim Position Statement – May 2014. This, in conjunction with recent appeal decisions, confirms that the Council does not have a five year supply of deliverable housing land, is significantly short of being able to do so, and persistent under-delivery over the last 5 years renders the authority liable to inclusion in the 20% buffer bracket.
- 6.9 In this context, therefore, the proposed erection of 110 dwellings, including 35% affordable, on a deliverable and available site is a significant material consideration telling in favour of the development to which substantial weight should be attached.
- 6.10 Taking all of the above into account, officers conclude that in the absence of a five-year housing land supply and advice set down in paragraphs 47 & 49 of the NPPF, the presumption in favour of sustainable development expressed at Paragraph 14 of the NPPF is applicable if it should be concluded that the development proposal is sustainable. As such, the principle of development cannot be rejected on the basis of its location outside the UDP settlement boundary. Furthermore, if the Core Strategy housing growth target for Hereford is to be achieved, greenfield sites on the edge of the existing settlement will have to be released.

### ***Hereford Local Plan – Draft Core Strategy 2013-2031***

- 6.11 The pre-submission consultation on the Draft Local Plan – Core Strategy closed on 3 July. At the time of writing the Core Strategy Policies, which have not been examined in public, attract only very limited weight for the purposes of decision making. It is the case, however, that within the draft Local Plan Hereford, as the main population centre, remains the principal focus for housing and related growth over the plan period (2011-2031).

### ***An Assessment of the Sustainability of the Proposals***

- 6.12 The presumption in favour of the approval of sustainable development may only be engaged if a development proposal demonstrates that it is representative of sustainable development. Although not expressly defined, the NPPF refers to the three dimensions of sustainable development as being the economic, environmental and social dimensions. The NPPF thus establishes the need for the planning system to perform a number of roles including, *inter alia*, providing the supply of housing required to meet the needs of present and future generations and by creating a high quality built environment.
- 6.13 The economic dimension encompasses the need to ensure that sufficient land is available in the right places at the right time in order to deliver sustainable economic growth. This includes the supply of housing land. The social dimension also refers to the need to ensure an appropriate supply of housing to meet present and future needs and this scheme contributes towards this requirement with a mix of open market and affordable units of various sizes.
- 6.14 Although not allocated for housing development; it being the intention in Herefordshire that specific area and neighbourhood plans fulfil this function, the site has been assessed via the Strategic Housing Land Availability Assessment as having major constraints; although the

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Further information on the subject of this report is available from Mr E Thomas on 01432 260479

current application is testimony to the site's availability and deliverability. In the context of persistent under-delivery, officers consider the immediate deliverability of this site to be a material consideration.

- 6.15 The Council's Conservation Manager (Landscapes) has objected to the development on the basis that it represents a major incursion into the sensitive part of the urban fringe. The objection is made on the basis that large-scale residential development is uncharacteristic of the principal settled farmlands character type and likely to be highly visible from a range of middle-distance vantage points to the north-east, east and south-east. The significance of Holywell Gutter Lane as a surviving medieval marker of the city boundary is also noted. It is concluded that the proposal would be contrary to 'saved' UDP policies DR1 (3), LA2, which directs refusal of development that would adversely affect either the overall character of the landscape or its key features, and LA3. The loss of the remaining parkland setting to Hampton Dene House is also noted as contrary to LA4.
- 6.16 Paragraph 109 of the NPPF, which was cited in the earlier Committee resolution, says that the planning system should contribute to and enhance the local and natural environment by "protecting and enhancing valued landscapes".
- 6.17 Paragraph 113 recognises, however, that it is necessary to make distinctions between the hierarchies of landscape areas in terms of whether the designation is of international, national or local significance. This is in order that protection is "commensurate with their status and gives appropriate weight to their importance and the contribution that they make to wider ecological networks." As such, although the harm with adopted UDP policies is acknowledged, the site itself is not subject to any of the specific policies of the NPPF that indicate that development should be restricted as per footnote 9 to paragraph 14. To this extent, therefore, although conflict with the environmental role of sustainable development is identified, it is necessary to weigh this harm against the benefits of the proposal in conducting the 'planning balance'. Refusal should only ensue if the decision taker considers that the adverse impacts associated with approval "significantly and demonstrably outweigh the benefits when assessed against the policies of the NPPF when considered as a whole" – the paragraph 14 'test'.
- 6.18 In addressing the planning balance, decision-takers need to consider both benefits and adverse impacts.
- 6.19 Beyond the benefits associated with affordable housing provision and increased breadth of housing choice locally, the site is considered to represent a sustainable location for housing growth in terms of good access to amenities and employment. The Traffic Manager acknowledges the potential for non-car borne access to local shops, schools and employment opportunities and it is this potential that off-sets concerns in relation to the potential for increased pressure on the signalised junction at Ledbury Road / Folly Lane. The Development Framework Plan also identifies the potential for linkages to the local public footpaths, including Holywell Gutter Lane, whereas off-site highway works as specified will contribute towards improved pedestrian crossing facilities from the site to local schools and beyond, upgrades to the local public footpath network and the potential for an extension of the speed limit along Ledbury Road. In this respect, therefore, officers consider that the proposal would be consistent with the economic and social dimensions of sustainable development.
- 6.20 The Parish Council has expressed concern at the potential for the proposal to increase flood risk within the village of Hampton Bishop. The site occupies land that is elevated relative to the village and it is acknowledged that under existing conditions surface water drains from the site towards lower-lying ground to the east. At paragraph 103 the NPPF sets out the expectations that development should not increase flood risk elsewhere. Applications should be informed by a site specific Flood Risk Assessment, as is the case here, and opportunities offered by new development to reduce the causes and impacts of flooding should be taken (para.100).
- 6.21 The surface water drainage strategy envisaged by the applicant involves the use of underground storage of surface water, before it being pumped at an agreed rate into the mains

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Further information on the subject of this report is available from Mr E Thomas on 01432 260479

drain in Hampton Dene Road. The use of soakaways has already been discounted on account of the ground conditions and high water table. This scheme has been devised in response to the Welsh Water concerns in relation to the discharge of surface water to the mains via an attenuation basin under the previous application. There remains, however, no objection to the proposal subject to the imposition of conditions securing the appropriate management of surface water. Likewise neither the Council's drainage engineer (nor the Environment Agency in relation to the appeal proposal) has any objection in principle subject to the imposition of planning conditions. The conditions proposed in the recommendation would require the formulation of a fully integrated and comprehensive drainage solution prior to the commencement of development. The Council's engineer is confident that the drainage design can be robust enough to capture and attenuate runoff from all new hard paved surfaces up to and including the 1 on 100 year + climate event – therefore mitigating any increased flood risk elsewhere.

- 6.22 On this issue, officers are clearly mindful of the concerns expressed, but on the evidence available, specialist technical advice does not support the view that the development will increase the risk of flooding elsewhere and particularly in Hampton Bishop. Officers are content that there is the potential to deliver a solution that offers betterment against green-field run-off rates and a condition requiring the formal submission and written approval of a surface water drainage scheme is appropriate in this context. Officers are thus satisfied that an NPPF compliant drainage scheme is capable of being delivered in the event that planning permission is granted.
- 6.23 The application is made in outline and by definition all matters except access would be reserved for future consideration. Officers consider, however, that in terms of the economic and social dimensions of sustainable development, the development proposal is sustainable. The delivery of housing, including 35% affordable, in the context of a significant under-supply is a significant material consideration telling in favour of approval. Likewise the site is well related to a range of goods, services and amenities and well served by public transport provision. Positive impacts in relation to job creation within construction and related sectors and the new homes bonus are also material considerations.
- 6.24 It has been identified, however, that the development would be at odds within the prevailing landscape character and visible from a range of vantage points to the east and north-east. The development would breach the medieval marker that is Holywell Gutter Lane and redefine the relationship between city and countryside in the process.
- 6.25 Officers recognise this conflict and the aspiration that sustainable development should positively encompass the three dimensions as being mutually dependent. However, in the context of the housing supply deficit, officers do not consider that conflict with one of the dimensions should necessarily lead to refusal and in taking this view are mindful of the absence of an international or national landscape designation on site, whereas the unregistered historic park and garden associated with Hampton Dene House represents a local designation that has already been despoiled. On balance, therefore, officers conclude that the presumption in favour of sustainable development can be engaged and that a decision should be taken in the light of paragraph 14 of the NPPF.

### **Other Matters**

#### *Highway Safety*

- 6.26 The Traffic Manager has no objection to the proposal. The proposed junction is in accordance with the adopted Highways Design Guide and gives adequate visibility to the nearside of the carriageway in each direction. The impact of additional traffic on the network is not considered sufficient to cause concern in relation to the NPPF advice which confirms that "development should only be prevented or refused on transport grounds where the residual cumulative

impacts of development are severe.” On this matter the scheme is considered to comply with saved UDP Policy DR3 and the NPPF.

#### *Ecology*

- 6.27 The applicant has confirmed that prior to commencement of the development, a full working method statement will be submitted to the local planning authority for written approval, and the work shall be implemented as approved.
- 6.28 The working method statement will be prepared in respect of protected species potentially present including bats, great crested newts and nesting birds.
- 6.29 It has also been agreed that the erection of bat boxes on a number of the mature trees around the site boundaries to provide additional roosting opportunities will form part of the habitat protection and enhancement statement that will also be required via planning condition. Other than the removal of trees necessary to create the site access, no other trees are intended for removal and significant new planting would be undertaken as part of the comprehensive landscaping of the site.
- 6.30 In order to ensure there are no adverse effects on great crested newts and that no offences are committed in relation to this species the Working Method Statement will include detail of specific mitigation measures to be implemented. These will include:
- Details of methodology for trapping and removal of great crested newts from site under a licence from Natural England.
  - Protection and retention of suitable terrestrial habitat within the site.
  - Protection and retention of habitat connectivity between ponds.
  - Details of creation of suitable habitats within proposed green-space including rough grassland and scrub/ structure planting, two drainage ponds suitable to support great crested newts and refuges and hibernacula.
  - Enhancement of existing ponds.
  - Design prescriptions for a wildlife culvert to allow amphibians and small mammals to cross under the access road.

#### *Foul Drainage*

- 6.31 Welsh Water has confirmed that the existing mains system has capacity to accommodate the proposed development with no adverse effects on the River Lugg/ River Wye SAC.

#### *S106 Contributions/Off site improvements*

- 6.32 Three off-site highway improvement projects have been identified as measures to increase the likelihood of non-car borne movements. The projects are as follows:
- A pedestrian crossing on Hampton Dene Road on or close to the emergence of the public footpath on the south side;
  - Re-surfacing and drainage of the stretch of Holywell Gutter Lane bordering the site; and
  - The extension of the 30 mph speed limit eastwards on Ledbury Road.
- 6.33 All three projects are within the extents of the public highway and can be dealt with via planning condition. The projects have been costed at in excess of £200,000, but the applicant has indicated a willingness to accept a planning condition requiring that they become responsible for design and implementation of the schemes. On the basis that the developer assumes responsibility for delivering these projects, a financial contribution is not necessary, but the identified projects will be included in the S106 agreement for clarity.
- 6.34 Negotiations are ongoing as regards a contribution towards addressing short-term capacity issues at the catchment primary and secondary schools arising from this development. This

may take the form of temporary classroom provision. The extent of the contribution is still being formulated.

- 6.35 The applicant is providing on-site children's play space, informal open space and allotments that exceed UDP policy requirements. An off-site public open space contribution towards sports pitch provision at Aylestone Park has also been agreed. This contribution is in the region of £68,460 (depending on the eventual housing mix) and would be pooled as necessary with other contributions with the overall aim of delivering Aylestone Park in phases. The recommendation reflects the necessity to complete the undertaking before planning permission is issued.

*Impact on the amenity of nearby property*

- 6.36 The indicative layout confirms the site is capable of accommodating the 110 dwellings proposed without undue impact on the living conditions associated with dwellings nearby. The density is equivalent to 23.5dw/ha, which is comparatively low, but appropriate within this zone of transition between town and country. In terms of impact upon adjoining land uses the scheme is considered to comply with saved UDP policies DR2 and H13.

*Affordable Housing*

- 6.37 The scheme makes provision for 35% affordable housing, which accords with policy. The developer has also indicated a willingness to examine the potential for the delivery of a modest proportion of bungalows across the development. This proposal has the support of the Housing Development Manager.

*Pre-Application Engagement*

- 6.38 The developer carried out pre-application consultation events in relation to the first application that is now at appeal. This included an open exhibition and leaflet drops to approximately 560 dwellings. The application is accompanied by a summary Statement of Community Involvement, which confirms that there were comments of support and objection.

*Conclusions*

- 6.39 In accordance with S38 (6) of the Planning and Compulsory Purchase Act 2004, the application should be determined in accordance with the development plan, unless material considerations indicate otherwise.
- 6.40 In the weighing of material considerations regard must be had to the provisions of the NPPF; especially in the context of a shortage of deliverable housing sites. It is acknowledged that the development places reliance upon the presumption in favour of sustainable development as set out at paragraph 14 of the NPPF in the context of a housing land supply deficit, but equally that the emerging policies of the Core Strategy and Neighbourhood Plan are not sufficiently advanced to attract weight in the decision-making process.
- 6.41 The contribution that the development would make in terms of jobs and associated activity in the construction sector and supporting businesses should also be acknowledged. S106 contributions are also noted (although a signed undertaking has not been completed).
- 6.42 When considering the three indivisible dimensions of sustainable development as set out in the NPPF, officers consider that the scheme when considered as a whole is representative of sustainable development and that the presumption in favour of approval is engaged. It is also the case that the examples cited at footnote 9 to paragraph 14 are not applicable to this site i.e. the site is not subject to any national or local designations that indicate that development ought to be restricted.
- 6.43 Officers consider that there are no highways, drainage or ecological related issues that should lead towards refusal of the application and that any adverse impacts associated with granting planning permission are not considered to significantly and demonstrably outweigh the



benefits. It is therefore recommended that planning permission be granted subject to the completion of a legal undertaking and planning conditions.

## **RECOMMENDATION**

Subject to the completion of a Section 106 Town & Country Planning Act 1990 obligation agreement in accordance with the Heads of Terms stated in the report, officers named in the Scheme of Delegation to Officers are authorised to grant outline planning permission, subject to the conditions below and any other further conditions considered necessary.

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

1. **A02 Time limit for submission of reserved matters (outline permission)**
2. **A03 Time limit for commencement (outline permission)**
3. **A04 Approval of reserved matters**
4. **C01 Samples of external materials**
5. **The submission of reserved matters in respect of layout, scale, appearance and landscaping and the implementation of the development shall be carried out in substantial accordance with the Development Framework Plan 5476-L-02 Revision E and the Design and Access Statement dated May 2014.**

**Reason: To define the terms of the permission and to conform to Herefordshire Unitary Development Plan Policies S1, DR1, HBA4 and LA4 and the National Planning Policy Framework.**

6. **The development shall include no more than 110 dwellings and no dwelling shall be more than two and a half storeys high.**

**Reason: To define the terms of the permission and to conform to Herefordshire Unitary Development Plan Policies S1, DR1, H13 and the National Planning Policy Framework.**

7. **H06 Vehicular access construction**
8. **H09 Driveway gradient**
9. **H11 Parking - estate development (more than one house)**
10. **H17 Junction improvement/off site works**
11. **H18 On site roads - submission of details**
12. **H19 On site roads - phasing**
13. **H20 Road completion in 2 years**
14. **H21 Wheel washing**
15. **H27 Parking for site operatives**
16. **H29 Secure covered cycle parking provision**

17. **E01 Site investigation - archaeology**
18. **L01 Foul/surface water drainage**
19. **L02 No surface water to connect to public system**
20. **G04 Protection of trees/hedgerows that are to be retained**
21. **G10 Landscaping scheme**
22. **G11 Landscaping scheme - implementation**
23. **The recommendations set out in the ecologist's report dated May 2014 should be followed in relation to the identified protected species. 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.**

**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.**

24. **The recommendations in relation to biodiversity enhancement set out in Section 4 of the ecologist's report dated May 2014 should be followed unless otherwise agreed in writing by the local planning authority. Prior to commencement of the development, a habitat protection and enhancement scheme should be submitted to and be approved in writing by the local planning authority, and the scheme 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 Herefordshire Unitary Development Plan.**

**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. **HN10 No drainage to discharge to highway**
3. **HN04 Private apparatus within highway**
4. **HN28 Highways Design Guide and Specification**
5. **HN13 Protection of visibility splays on private land**
6. **HN05 Works within the highway**

- 7. **HN07 Section 278 Agreement**
  
- 8. **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. **N11C Wildlife and Countryside Act 1981**

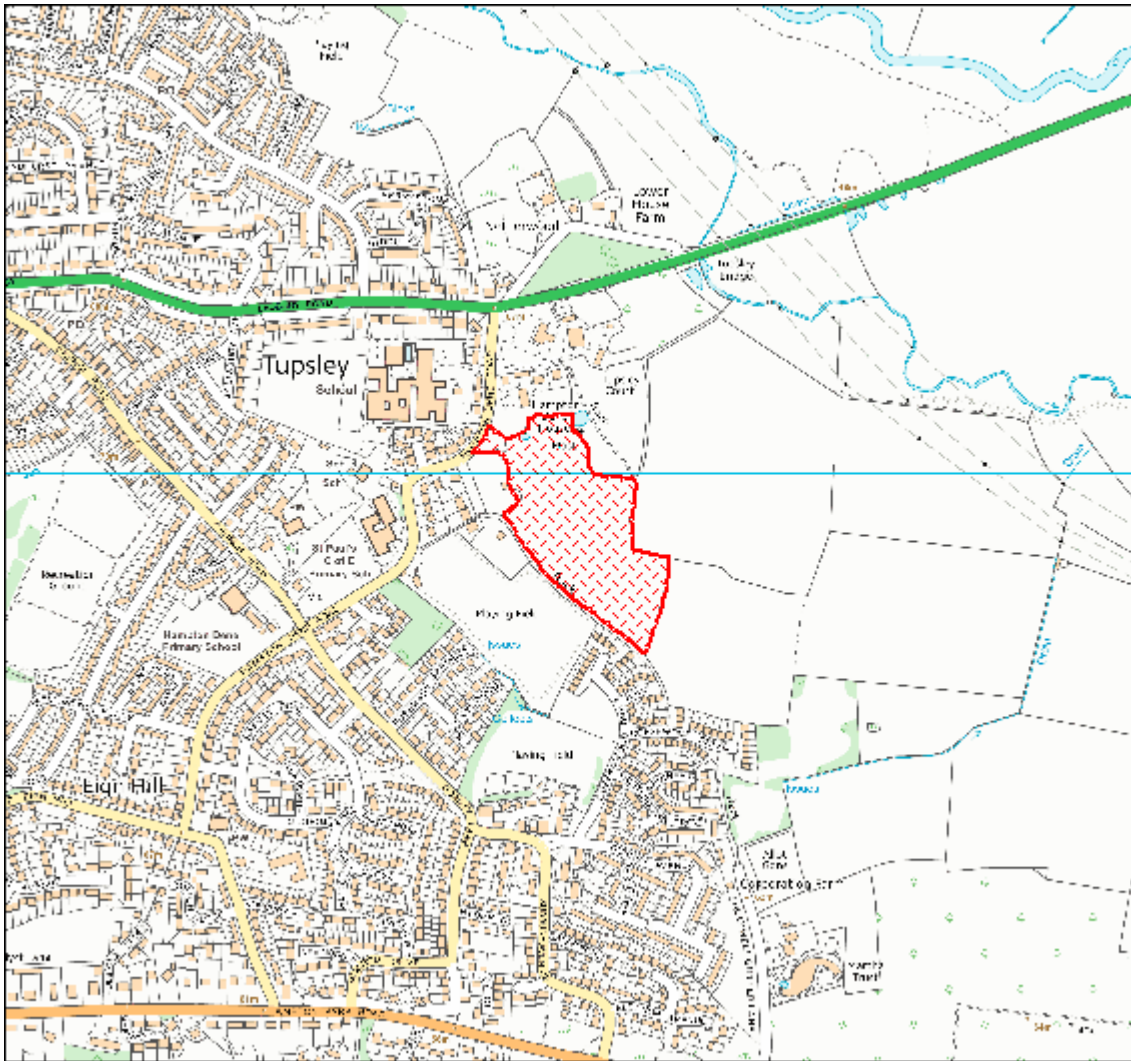
Decision: .....

Notes: .....

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**Background Papers**

Internal departmental consultation replies.



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**APPLICATION NO:** 141526/O

**SITE ADDRESS :** LAND SOUTH OF HAMPTON DENE ROAD, HEREFORD

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Further information on the subject of this report is available from Mr E Thomas on 01432 260479



<b>MEETING:</b>	<b>PLANNING COMMITTEE</b>
<b>DATE:</b>	<b>16 JULY 2014</b>
<b>TITLE OF REPORT:</b>	<p><b>P141155/F - PROPOSED SINGLE STOREY DWELLING WITH DETACHED DOUBLE GARAGE AT LAND ADJ STONE HOUSE, BROMYARD ROAD, RIDGEWAY CROSS, CRADLEY, WR13 5JN</b></p> <p><b>For: Mr &amp; Mrs Cross per The PageSwinford Partnership, Bodkin Hall, Edwyn Ralph, Bromyard, Herefordshire, HR7 4LU</b></p>
<b>WEBSITE LINK:</b>	<a href="https://www.herefordshire.gov.uk/planningapplicationsearch/details/?id=141155">https://www.herefordshire.gov.uk/planningapplicationsearch/details/?id=141155</a>

**Date Received: 10 April 2014**

**Ward: Hope End**

**Grid Ref: 371714,247650**

**Expiry Date: 9 July 2014**

Local Members: Councillors CHN Attwood and AW Johnson

## 1. Site Description and Proposal

- 1.1 The site is located in an open countryside location approximately 1 km to the north-west of the adopted settlement boundary for Cradley as defined within Policy H4 of the Herefordshire Unitary Development Plan. The site comprises land associated with Stone House, Bromyard Road, Ridgeway Cross, Cradley. It can be accessed by that property or from its own dedicated existing access north of Stone House. The site currently features polytunnels and other ancillary non residential development.
- 1.2 The proposal is planning permission for a single storey dwelling with detached double garage.

## 2. Policies

### 2.1 National Planning Policy Framework:

The following sections are of particular relevance:

Introduction - Achieving Sustainable Development  
 Section 4 – Promoting Sustainable Transport  
 Section 6 - Delivering a Wide Choice of High Quality Homes  
 Section 7 - Requiring Good Design  
 Section 8 - Promoting Healthy Communities  
 Section 11 - Conserving and Enhancing the Natural Environment

### 2.2 Herefordshire Unitary Development Plan:

S1 – Sustainable development

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Further information on the subject of this report is available from Mr C Brace on 01432 261947

- S2 – Development requirements
- DR1 – Design
- DR2 – Land use and activity
- DR3 – Movement
- H6 – Housing in the smaller settlements
- H7 – Housing in the open countryside outside settlements
- LA2 – Landscape character and areas least resilient to change
- NC1 – Biodiversity and development
- NC6 – Biodiversity Action Plan priority habitats and species
- NC7 – Compensation for loss of biodiversity
- NC8 – Habitat creation, restoration and enhancement
- NC9 – Management of features of the landscape important for fauna and flora

### 2.3 Draft Core Strategy:

- SS1 – Presumption in Favour of Sustainable Development
- SS4 – Movement and Transportation
- RA3 – Herefordshire Countryside
- MT1 – Traffic Management, Highway Safety and Promoting Active Travel
- LD1 – Landscape and Townscape
- LD2 – Biodiversity and Geodiversity
- SD1 – Sustainable Design and Energy Efficiency
- SD2 – Renewable and Low Carbon Energy
- SD3 – Sustainable Water Management and Water Resources

### 2.4 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:-

<https://www.herefordshire.gov.uk/planning-and-building-control/planning-policy/unitary-development-plan>

## 3. Planning History

None

## 4. Consultation Summary

### Statutory Consultees

None

### Internal Council Advice

### 4.1 Transportation Manager objects to the application. Visibility from the access is obstructed by hedges and is below standards. Because the road is well-used as a link between Bromyard and Malvern by commuters and others including HGVs, full-standard visibility splays are required. It is noted the road is narrow, with fast traffic, and unlikely to be an attractive route for pedestrians and cycles. This means that it will encourage private motor vehicles as the principal form of transport. This does not sit well with the need to encourage sustainable development. Accident records have been provided for the junction of the A4103 and B4220.

## 5. Representations

### 5.1 Cradley Parish Council comments awaited.

- 5.2 The Campaign to Protect Rural England objects to the proposal as 'the site is in open countryside, in an attractive rolling landscape. We consider it important to preserve this setting from development, and that giving planning permission would create an undesirable precedent'. In addition the CPRE note 'that pre-application advise has already been given pointing out that the site is outside any settlement area and unsustainable given that it is 1km from Cradley village, and is therefore contrary to Council policy'.
- 5.3 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 Planning Statement submitted with the planning application takes a very narrow interpretation of the NPPF and local plan policies, failing to acknowledge the aims and objectives of each which are to be taken as a whole and therefore provides a restrictive assessment and consideration of material planning issues.
- 6.2 It is acknowledged that the Council is currently failing to provide a 5 year Housing Land Supply, plus a 5% buffer, which must be met by all local authorities in accordance with paragraph 47 of the NPPF. Indeed in Herefordshire case the buffer is 20%. Paragraph 49 of the NPPF goes on to state that 'relevant policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites'.
- 6.3 Where the existence of a five year land supply cannot be demonstrated, there is presumption in favour of granting planning permission for new housing unless the development can be shown to cause demonstrable harm to other factors that outweigh the need for new housing.
- 6.4 Paragraph 14 of the NPPF states that there "is a presumption in favour of sustainable development and for decision taking this means... where the development plan is absent, silent or relevant policies are out of date, granting planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole... or specific policies in this Framework indicate development should be restricted."
- 6.5 The NPPF is therefore emphasising the importance of the presumption in favour of sustainable development. In reaching a decision upon new housing the housing land supply position will need to be balanced against other factors in the development plan and/or NPPF which could result in the refusal of planning permission.
- 6.6 There have been some recent appeal decisions relating to residential proposals in Herefordshire. The inspectors dealing with these appeals have considered the county's housing land supply in reaching a decision.
- 6.7 *Home Farm, Hereford: APP/W1850/A/13/2192461*, Decision date 10 January 2014.  
 The Inspector's decision provides a clear indication that the Council currently cannot demonstrate a 5 year housing supply position. In the Inspector's consideration of the housing land supply position it was recognised that the housing land supply is a matter to be determined as part of the forthcoming Examination of the Core Strategy. Therefore, no weight can be given to Core Strategy proposals at this stage. The Inspector did not provide an indication of the level of supply that he considered currently exists. The appeal was dismissed

because of the adverse environmental impacts and the harm to the setting of heritage assets as this significantly and demonstrably outweighed the economic and social dimensions/benefits of the scheme therefore failing to contribute to the achievement of sustainable development.

- 6.8 Sustainable development and sustainability are more than a matter of location. The NPPF states that good design is a key aspect of sustainable development and indivisible from good planning. It is not just a matter of aesthetics. Amongst other things, it says that decisions should aim to ensure that developments function well and add to the overall quality of the area and optimise the potential of the site to accommodate development. Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.
- 6.9 UDP Policy S1 defines sustainable development by reference to level, location, form and design, and lists a number of criteria whereby it will be promoted. Policy DR1 sets out design policy principles. Development which does not adequately address these or is of poor design, including schemes which are out of scale or character with their surroundings will not be permitted. Further criteria relating to residential design, landscape character and the setting of settlements are found respectively within policies DR2, LA1, LA3 and HBA9.
- 6.10 The site is located approximately 1 km to the north-west of the adopted settlement boundary for Cradley as defined within Policy H4 of the Herefordshire Unitary Development Plan. Subsequently, any application for residential development on this site would, in the first instance, be considered in terms of policies relating to development within the open countryside, particularly 'saved' Unitary Development Plan Policy H7. Policy H7 states that, other than for certain exceptions, housing outside of settlements will not be permitted. The current proposal does not appear to satisfy any of the exceptional criteria associated with policy H7 and therefore conflicts with it.

### **Assessment**

- 6.11 Similar applications have been refused and dismissed at appeal, including application reference 132448/O at land adjacent to 'Longlands', Lower Hardwick Lane, Bromyard, which was refused at Planning Committee on 11 December 2013. The Inspector at the appeal considered the main issue in such applications is whether having regard to the supply of housing land in Herefordshire, the proposal would give rise to any adverse impacts that would significantly and demonstrably outweigh the benefits of the scheme. Particular regard was had to the character and appearance of the countryside, and impact upon it. An even more recent appeal decision against the refusal of 131049/F at Munstone, near Hereford, was dismissed on 16 June 2014.
- 6.12 Inspectors have found that proposals of, in particular one dwelling, would make a modest contribution to housing need and also a modest economic contribution, insofar as they would support shops and services. However, they have concluded that notwithstanding the acknowledged shortfall in the housing land supply, the harm to the character and appearance of the countryside and the unsustainable nature of a dispersed pattern of development in the countryside would significantly and demonstrably outweigh the benefits of a scheme when assessed against the policies in the NPPF taken as a whole.
- 6.13 The application site is located approximately 1 km from the edge of the defined settlement of Cradley and is not adjacent to the settlement as required by the interim approach agreed by Council. Of course this does not necessarily preclude the site from being considered a sustainable location for residential development if there are sustainable means of accessing local goods and services.



- 6.14 The application site is physically divorced from and has no such spatial, architectural or visible relationship with the defined settlement area comprising Cradley, rather it is one of a number of isolated dwellings in a sporadic pattern of development on the B4220. The submitted Planning Statement describes the location being 'within the settlement of Ridgeway Cross'. This both demonstrates it is not part of Cradley and furthermore it is considered Ridgeway Cross can not be described as a 'settlement' given it is a loose sporadic collection of isolated houses.
- 6.15 As a village, Cradley provides a range of local services and facilities including a butchers, shop, social club, primary school and doctors, along with a decent bus service to more extensive amenities at Ledbury, Worcester and Hereford. However, to access the village facilities by foot one would be required to walk over 1 km along the narrow, unlit and winding B4220 and to cross the busy A4103 and then furthermore walk in many places along the highway without the benefit of a footpath. Pedestrian access to the village would thus be unlikely – and in the officer's opinion, extremely dangerous. There is no conceivable way one would walk from the application site to the primary school due to distance and danger.
- 6.16 Personal Injury Collision data for the Ridgeway Cross junction and Cradley junction for the most recent period 01/05/2004 to 30/04/2014 shows there were 5 and 8 injuries respectfully, including 3 classified as 'serious'. These figures only include incidents where there was physical injury to individuals; scrapes, knocks and near misses with no actual physical harm are not recorded.
- 6.17 On this basis, the application site is considered to be unsustainably located away from facilities and services contrary to the NPPF and as such it is not suitable for residential development. In order to reach services and facilities necessary for most day to day living, there would therefore be a strong likelihood of a significant reliance on the use of the car.
- 6.18 NPPF Paragraph 55 permits dwellings in the open countryside where the proposal is of exceptional quality or innovative nature of the design of the dwelling. Such a design is required to:
- be truly outstanding or innovative, helping to raise standards of design more generally in rural areas;
  - reflect the highest standards in architecture;
  - significantly enhance its immediate setting; and
  - be sensitive to the defining characteristics of the local area.
- 6.19 The proposal is described as a 'passivhaus' development. Passivhaus buildings provide a high level of occupant comfort while using very little energy for heating and cooling. They are built with meticulous attention to detail and rigorous design and construction according to principles developed by the Passivhaus Institute in Germany. The following is a functional definition of a Passivhaus –
- “A Passivhaus is a building, for which thermal comfort can be achieved solely by post-heating or post-cooling of the fresh air mass, which is required to achieve sufficient indoor air quality conditions – without the need for additional recirculation of air.”*
- 6.20 The new-build Passivhaus Standard requires:
- a maximum space heating and cooling demand of less than 15 kWh/m<sup>2</sup>.year or a maximum heating and cooling load of 10W/m<sup>2</sup>
  - a maximum total primary energy demand of 120 kWh/m<sup>2</sup>/year
  - an air change rate of no more than 0.6 air changes per hour @ 50 Pa

- 6.21 The Passivhaus Trust recommends that the best way to achieve quality assurance for a Passivhaus project is through certification by a registered Passivhaus Certifier. The Passivhaus Institute has developed a series of certification processes to ensure the quality of any official Passivhaus buildings and practitioners:
- The Passivhaus Planning Package (PHPP), used to inform the design process and to assess or verify compliance with the Passivhaus Standard.
  - Certification for designers who have the expertise to deliver Passivhaus buildings.
  - A certification process for Passivhaus buildings, which applies both to the proposed design and the completed building.
- 6.22 The application provides no evidence that it can or will meet these requirements and be a true passivhaus house as defined above. Even if the proposal was a true Passivhaus, that on its own would not make it compliant with paragraph 55. Done once, by definition, it cannot be replicated, and given Passivhaus is well established, on its own, this would not make the proposal paragraph 55 compliant.
- 6.23 The proposal is square in plan with a porch formed from the north elevation and has a utilitarian appearance with a feature roof lantern. The dwelling is proposed to be constructed of red facing brick and artificial slate, triple glazed metal windows and galvanised metal rainwater goods. In assessing the design and construction of the proposal, it is considered unremarkable, and architecturally is clearly not outstanding, and is neither innovative nor ground breaking. No evidence of it being assessed or discussed with a design panel or CABE has been provided setting out it is architecturally worthy.
- 6.24 Inextricably linked into the concept of accounting for the locality, as required by paragraph 55, is the landscape design. This must not and cannot be landscaping as an afterthought, rather landscape design is a fundamental aspect of the whole scheme. It is considered such a proposal should be presented on the basis of the whole site and its context rather than just the house. Whilst the proposal is advanced as a 'paragraph 55 house' there is no full landscape assessment accompanying the application and more importantly, influencing the location and design of the proposal.
- 6.25 Accordingly the proposal is not compliant with paragraph 55. The Innovation requirement requires a constant raising of the bar, whether in respect of design, construction techniques, materials or functionality. Done once, by definition, it cannot be replicated. It is considered no single element of this proposal meets this criteria.

#### Summary

- 6.26 The application is recommended for refusal as it represents unjustified unsustainable development in the open countryside, failing to satisfy exception criteria in the local plan or in paragraph 55 of the NPPF and furthermore represents an unacceptable risk to highway safety.

### RECOMMENDATION

**That planning permission be refused for the following reasons:**

- 1. The proposal represents unjustified unacceptable unsustainable residential development in an open countryside location contrary to Herefordshire Unitary Development Plan Policies S1 and H7 and the sustainable development aims and objectives of the National Planning Policy Framework.**
- 2. The proposal is not considered to be of sufficient outstanding merit to warrant a departure from Herefordshire Unitary Development Plan Policies S1 and H7 and fails to meet the criteria of paragraph 55 of the National Planning Policy Framework.**

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Further information on the subject of this report is available from Mr C Brace on 01432 261947

3. The proposal represents an unacceptable risk to highway safety and the free flow of traffic through having substandard visibility at its access onto the B Class road, contrary to Herefordshire Unitary Development Plan Policies DR1, DR2, DR3 and T8 and the relevant aims and objectives of the National Planning Policy Framework.

**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 and identifying matters of concern with the proposal and discussing those with the applicant. However, the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory way forward and due to the harm which have been clearly identified within the reasons for the refusal, approval has not been possible.

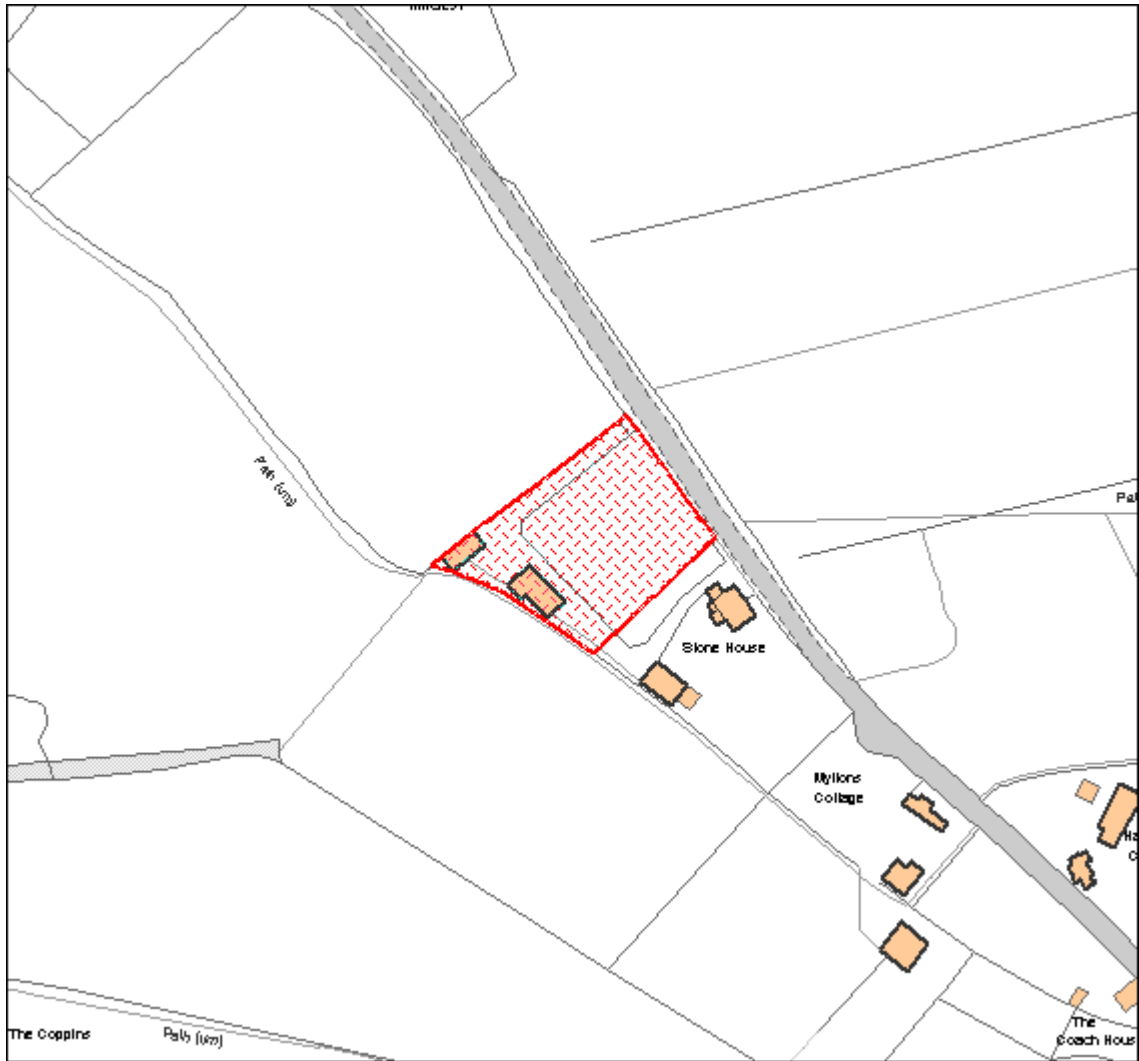
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**Background Papers**

Internal departmental consultation replies.



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**APPLICATION NO:** 141155/F

**SITE ADDRESS :** LAND ADJ STONE HOUSE, BROMYARD ROAD, RIDGEWAY CROSS, CRADLEY, NR MALVERN, WR13 5JN

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Further information on the subject of this report is available from Mr C Brace on 01432 261947



<b>MEETING:</b>	<b>PLANNING COMMITTEE</b>
<b>DATE:</b>	<b>16 JULY 2014</b>
<b>TITLE OF REPORT:</b>	<p><b>P141369/F - PROPOSED REMOVAL OF CONDITIONS 6 AND 7 AND VARIATION OF CONDITION 8 OF PLANNING PERMISSION DMS/110566/F (DEMOLITION OF EXISTING BUNGALOW AND ERECTION OF NEW BUNGALOW AND GARAGE BLOCK, CONSTRUCTION OF DRIVE AREA AND LANDSCAPING) AND S/112561/F (MINOR MATERIAL AMENDMENT TO APPROVAL NUMBER DMS/110566/F. ENLARGE GARAGE BLOCK TO PROVIDE AREA FOR GROUND SOURCE HEAT PUMP EQUIPMENT) TO ALLOW REMOVAL OF YEW TREE AND TO FACILITATE EXCAVATION, CONSOLIDATION, SURFACING, TARMAC AREA AND DRAINAGE OF THE LODGE BUNGALOW, LUGWARDINE, HEREFORDSHIRE, HR1 4AE</b></p> <p><b>For: Mr &amp; Mrs Mason Middle Court, Lugwardine, Hereford, Herefordshire HR1 4AE</b></p>
<b>WEBSITE LINK:</b>	<a href="https://www.herefordshire.gov.uk/planningapplicationsearch/details/?id=141369">https://www.herefordshire.gov.uk/planningapplicationsearch/details/?id=141369</a>

**Date Received: 12 May 2014**

**Ward: Hagley**

**Grid Ref: 354826,240982**

**Expiry Date: 8 July 2014**

Local Member: Councillor DW Greenow

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

- 1.1 Lodge Bungalow is located in a prominent and slightly elevated position on the south side of the A438 in Lugwardine. It lies opposite and adjacent to the junction with Cotts Lane and has a shared vehicular access with Lugwardine Court Orchard. The site is immediately adjacent but outside the Lugwardine Court Unregistered Park and Garden which runs along the western boundary of the site.
- 1.2 Planning permission was originally granted for the replacement of the former bungalow on the site pursuant to DMS/110566/F on 12 May 2011 and subsequently to a minor material amendment under reference S112561/F on 25 October 2011 to increase the size of the detached garage to house ground source heat equipment. Both permissions were granted subject to conditions and it is Conditions 6, 7 and 8 of these permissions to which this application refers. The applicant is applying to remove Conditions 6 and 7 and to vary condition 8 to enable the removal of a Yew tree in close proximity to the approved vehicular access to the property.

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Further information on the subject of this report is available from Mr S Withers on 01432 260612

1.3 The conditions read as follows:

- 6 *The vehicular access hereby approved shall be constructed in strict accordance with the revised access details shown on drawing reference Lodge 14, with open grade porous tarmac being used within the root protection area of the yew tree shown on this drawing.*

*Reason: To safeguard the yew tree so as to conform to Policy LA5 of the Herefordshire Unitary Development Plan.*

- 7 *Prior to the commencement of development a scheme detailing works to be undertaken to the yew tree as shown on drawing Lodge 14 shall be submitted to and approved in writing by the local planning authority. Unless otherwise agreed in writing the work shall be limited to lifting the canopy to a uniform height not exceeding 2.5 metres above the adjoining ground level and shall be carried out in accordance with BS3998:2010 Tree Work - Recommendations. Any further works to the yew tree shall be the subject of an application for prior consent to the local planning authority.*

*Reason: To ensure the proper care and maintenance of the tree and to conform to Policy LA5 of the Herefordshire Unitary Development Plan.*

- 8 *In this condition 'retained tree/hedgerow' means an existing tree/hedgerow that is to be retained in accordance with the approved plans and particulars.*

*No development, including demolition works shall be commenced on site or site huts, machinery or materials brought onto the site, before adequate measures have been taken to prevent damage to those trees/hedgerows that are to be retained. Measures to protect those trees/hedgerows must include:*

- b) Root Protection Areas for each hedgerow/tree/group of trees must be defined in accordance with BS5837: 2005 - Trees in relation to construction, shown on the site layout drawing and approved by the Local Planning Authority.*
- c) Temporary protective fencing, of a type and form agreed in writing with the Local Planning Authority must be erected around each hedgerow, tree or group of trees. The fencing must be at least 1.25 metres high and erected to encompass the whole of the Root Protection Areas for each hedgerow/tree/group of trees.*
- d) No excavations, site works or trenching shall take place, no soil, waste or deleterious materials shall be deposited and no site huts, vehicles, machinery, fuel, construction materials or equipment shall be sited within the Root Protection Areas for any hedgerow/tree/group of trees without the prior written consent of the Local Planning Authority.*
- e) No burning of any materials shall take place within 10 metres of the furthest extent of any hedgerow or the crown spread of any tree/group of trees to be retained.*
- f) There shall be no alteration of soil levels within the Root Protection Areas of any hedgerow/tree/group of trees to be retained.*

*Reason: To safeguard the amenity of the area and to ensure that the development conforms with Policies DR1 and LA5 of the Herefordshire Unitary Development Plan.*

- 1.4 The Yew tree is the subject of a Tree Preservation Order which was served on 9 December 2011. This was the subject of a separate appeal which was dismissed on 20 February 2012.

- 1.5 The application seeks to revisit the terms of the original planning permissions in the light of the near completion of the replacement bungalow and the application is supported by additional information which is set out in more detail below in the Representations section.

## **2. Policies**

### 2.1 National Planning Policy Framework (NPPF)

It is considered that the Chapters 7. Requiring good design and 11. Conserving and enhancing the natural environment are particularly relevant to the application

### 2.2 Herefordshire Unitary Development Plan (HUDP)

- DR1 - Design
- LA4 - Protection of Historic Parks and Gardens
- LA5 - Protection of Trees, Woodlands and Hedgerows

### 2.3 Herefordshire Local Plan – Draft Core Strategy

- LD1 - Landscape and Townscape
- LD3 - Green Infrastructure
- LD4 - Historic Environment and Heritage Assets

### 2.4 Planning Practice Guidance

Use of Conditions  
Tree Preservation Orders and trees in conservation areas

- 2.5 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:-

<https://www.herefordshire.gov.uk/planning-and-building-control/planning-policy/unitary-development-plan>

## **3. Planning History**

- 3.1 S121952/J - Fell 1 x Yew Tree. Refused 23 August 2012. Appeal dismissed 20 February 2013.

S112561/F - Minor material amendment to approval number DMS/110566/F. Enlarge garage block to provide area for ground source heat pump equipment. Approved 25 October 2011.

DMS/110566/F - Demolition of existing bungalow and erection of new bungalow and garage block, construction of drive area and landscaping. Approved 12 May 2011.

## **4. Consultation Summary**

### Statutory Consultees

- 4.1 None

### Internal Council Advice

- 4.2 Conservation Manager objects:

"The site lies in the western part of Lugwardine and it is bounded to the north by the A438 and to the west by a cul-de-sac, Lugwardine Court Orchard. The Lodge Bungalow site is the former site of a thatched lodge at the entrance to the main driveway to Lugwardine Court. The associated historic parkland (unregistered) encompasses this driveway, which has been

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subsumed within the modern cul-de-sac. The tree which is the subject of conditions of 6,7 and 8 is a mature Yew tree (*Taxus baccata*) with a height of approximately 12 metres and a crown radius of approximately 8 metres. It is located on the western site boundary.

### Background

DMS/110566/F: Planning application for the demolition of existing bungalow and erection of new bungalow and garage block, construction of drive area and landscaping.

In the assessment of the above planning application, the amenity value of existing trees on the site was evaluated in accordance with standard practice. It was identified that the Yew tree was of high amenity value by virtue of its form, condition, existing and future contribution to the amenity of the area. Yew is a very long lived species; this specimen has a life expectancy in excess of one hundred years. It is considered that the tree is a feature of the vestigial parkland associated with Lugwardine Court and as such has historic landscape value. The tree is readily visible from public vantage points being visible from both from the A438 and from Lugwardine Orchard Court.

The above planning application proposed removing the Yew tree in order to widen the driveway. However, the council's Area Engineer identified that adequate visibility could be achieved without removing the yew tree. Officers were satisfied that the retention of this tree did not preclude re-development of the site, including all necessary construction operations.

The planning permission which was granted on 12<sup>th</sup> May 2011 reflected a key sustainable development policy principle: the retention of site features, in this case the yew tree, which contribute to the quality of the local environment. Conditions 6, 7 and 8 attached to the permission required the retention and protection of the Yew tree. Condition 7 permits the canopy of the yew tree to be lifted to 2.5 metres above ground level, to avoid any conflict between the tree canopy and vehicles accessing the site.

Government guidance is that if local planning authorities consider there is a need to safeguard trees in the long term, they should protect trees by serving tree preservation orders, not rely solely on planning conditions. Accordingly a tree preservation order (TPO) was served on the Yew tree. The TPO was confirmed on 19 June 2012.

S121952/J: Application for works to tree subject to a Tree Preservation Order

Following the grant of permission for re-development of the Lodge Bungalow site, an application was made to fell the yew tree. This was refused on 23<sup>rd</sup> August 2012. The reasons for refusal were: *'The Yew tree is a healthy specimen and the reasons submitted for its removal are insufficient to outweigh those for its retention. The reasons for placing the Tree Preservation Order on the tree are still relevant today. The Local Planning Authority considers that the Yew tree does not conflict with the redevelopment of the site granted under planning permission DMS/110566/F and this is reflected in conditions 6, 7 & 8 attached to this planning permission.'*

*It is the opinion of the Local Planning Authority that the Yew tree in question is of historic landscape importance and of significant visual importance and its loss would have a detrimental effect on the amenity of the area.'*

The appeal against the refusal of consent was dismissed. The Planning Inspector concluded that: *'The yew makes an important contribution to the amenity of the area and sufficient justification has not been demonstrated for its felling and replacement on the grounds of harm to living conditions and/or road safety. Its removal therefore would be contrary to saved UDP policy LA4'*.



## Assessment of the reasons put forward for the removal of conditions 6 and 7 and variation of condition 8:

Reason 1: the retention of the yew tree is preventing the construction of the driveway: this issue will be addressed by the Planning Officer.

Reason 2: that the change in ownership of the tree and the land on which it stands has a bearing on the conditions. This issue will be addressed by the Planning Officer. In respect of the tree preservation order, the change in land ownership does not affect the legal status of the TPO.

Reason 3: The '*Planning Practice Guidance*' referred to:

<http://planningguidance.planningportal.gov.uk/blog/guidance/tree-preservation-orders/>

is not relevant; this guidance relates to the varying or revoking of tree preservation orders, not to the removal and variation of planning conditions.

Reason 4: proposal to plant a replacement Yew tree.

It is proposed to plant a replacement Yew tree but a different variety - an Irish Yew/*Taxus baccata* 'Fastigiata Aurea'. The existing Yew is a Common Yew/*Taxus baccata*. The Irish Yew, when mature, has a height of approximately 3 metres and a canopy spread of 1 metre so this variety is significantly smaller than the Common Yew.

It is not considered that a replacement Yew tree would provide adequate mitigation. Even if a replacement Common Yew was planted, it would take several decades for a replacement tree to grow to the size of the existing tree with the consequent loss of amenity in the interim. This stance is consistent with the appeal decision, (ref: S121952/J) para 6, in which the Planning Inspector identified that '*a gap in the skyline*' would be created by the removal of the Yew tree which would be apparent from public vantage points and that it would be '*likely to take a considerable amount of time to fill the gap. In which case, the proposed tree felling would result in significant harm to the character and appearance of the area*'.

Should consent be granted for the removal of the protected Yew tree, then there should be a requirement to plant a replacement tree of the same species: Common Yew/*Taxus baccata*.

## Conclusion

It is recommended that permission is refused for the removal of conditions 6 and 7 and variation of condition 8 for the same reasons that consent was refused for felling the Yew tree. The Yew tree does not conflict with the redevelopment of the site granted under planning permission DMS/110566/F hence conditions 6, 7 & 8 are appropriate as is the protected status of the tree. As stated in the appeal decision, the Yew tree is of historic landscape importance and of significant visual importance and its loss would have a detrimental effect on the amenity of the area."

4.3 Transportation Manager raises no objection:

"I do not consider there to be any highway safety implications for either the currently permitted or originally submitted access proposal. Dropped kerbing as already installed will accommodate either proposal and all works within highway are already in place."

## **5. Representations**

5.1 Bartestree and Lugwardine Parish Council fully support the application

5.2 A total of 31 letters of support have been received from local residents and interested parties. The comments received can be summarised as follows:

- Building site is an eyesore and support the removal of the yew tree to enable completion of the development in accordance with the original plans.
- TPO placed after planning permission granted and now stopping completion of bungalow
- Unreasonable to serve TPO retrospectively.
- Approved entrance cannot accommodate vans, furniture lorries or emergency vehicles.
- Original plans included removal of yew tree and was supported by residents of Lugwardine Court Orchard.
- Yew trees not appropriate to domestic setting or close to schools due to their toxic nature.
- As an elderly resident of Lugwardine Court Orchard I am constantly struggling to remove the fine wood debris which regularly covers my drive, patio, car and soakaway drain.
- Yew tree spoils amenity of Lugwardine Court Orchard and its loss would have no impact on parkland.

5.3 The applicant has provided the following supporting comments:

- The building of the property subject of the planning permission is now complete, and we are unable to carry out the excavation, consolidation, surfacing and drainage of the driveway, with these conditions in place. Additionally we are unable to gain access to the site for the plant and machinery necessary to carry out this work.
- The conditions were imposed when there was a question over the ownership of the yew tree and the land on which it stands.
- Under the Planning Practice Guidance for varying or removing tree protection, reasons for such action include
  - a) The land has been developed and;
  - b) The map included in the original Tree Preservation Order is now unreliable.Clearly both these reasons are valid.
- We have always been willing to plant a replacement yew tree, and this remains our position.

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 key consideration in the determination of this application is essentially whether there are material considerations that warrant the felling of the protected Yew tree and specifically whether the 3 conditions attached to the planning permissions are necessary, relevant and reasonable in all other respects.

6.2 The chronology of events leading to the granting of planning permission and the subsequent serving of the Tree Preservation Order, whilst not specifically material to the consideration of the planning merits of this case, are nevertheless worthy of reporting since the applicants and indeed a number of the comments received from local residents raise such matters. In broad summary, prior to any planning submission, it had been the intention to fell the Yew tree and indeed the Council's contractor at the time was on site to carry out the works, when it was established that the land in question was not part of the highway. Work to fell the Yew tree was aborted and the applicants went about securing the ownership, which they ultimately did in the expectation that they would then fell the tree. However the timing of events was such that at that time, the Council was determining the first application (DMS/110566/F) for the

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replacement of the bungalow, and through this process the amenity value of the Yew tree was formally recognised. The original layout plan submitted with this application showed a wide bell mouth access (approximately 9 metres wide) into the site which would have necessitated the felling of the Yew tree. However through negotiation, a scheme to secure the retention of the Yew tree was developed and this became the subject to the conditions that are at issue with the current application. The revised access point is just over 4 metres wide with the distance from the rear boundary of the site to the trunk of the Yew tree measured at 5.4 metres.

- 6.3 Subsequently, a revised proposal was approved (S112561/F) with identical conditions attached.
- 6.4 In addition to the conditions, the Council also served a Tree Preservation Order in December 2011. This Order was the subject of an appeal, which was dismissed. This appeal decision is a material consideration in the determination of this application, since the arguments put forward by the applicant are similar.
- 6.5 Having regard to the events that preceded the determination of the first application when controls were put in place to protect the Yew tree, officers acknowledge the sense of frustration expressed by the applicant and the views of local residents who are aware that, but for the questioning of the ownership of the land upon which the Yew tree is located, it would have been felled before any planning applications were submitted. However the current application must be determined on its planning merits and the fact that the visual amenity value of the Yew tree has been considered in detail through an appeal process that supported the Council's decision to serve the Tree Preservation Order and concluded that '*The Yew makes an important contribution to the amenity of the area and sufficient justification has not been demonstrated for its felling and replacement on the grounds of harm to living conditions and/or road safety. Its removal therefore would be contrary to saved UDP policy LA4*'. is fundamental to this recommendation.
- 6.6 The applicants have put forward a case with four essential points under which your officers' comments are provided:

That they are unable to implement the permission in its current form because the Tree Preservation Order prevents them from excavating, consolidating, surfacing and draining the driveway

- 6.7 The approved plans for this development incorporated the provision of a porous surface within the canopy of the yew tree. This is controlled by Condition 6 of the permissions and the Conservation Manager has reiterated that there is no technical reason why this approach would not safeguard the long term health of the Yew tree. The application does not include any evidence from a suitably qualified consultant to substantiate the impact of construction of the access and driveway and in these circumstances, significant weight should be afforded to the advice provided by the Conservation Manager.

That the planning conditions were imposed when there was uncertainty about the ownership of the land

- 6.8 Guidance clearly advises that local planning authorities should not attach conditions to planning permissions where they do not relate to land within the control of the applicant. Such conditions would be regarded as unenforceable and would not pass the test set out in Planning Practice Guidance. In this case, the part of the site upon which the Yew tree stands was, through negotiation incorporated into the site and the applicant has acquired this land. As such it is considered that the conditions remain enforceable in this instance. It is also advised that the ownership status of the land does not affect the Tree Preservation Order that is in place.

Planning Practice Guidance for varying or removing tree protection suggests that where land has been developed or where the map included with the original Order are unreliable, there could be reasons for doing so

- 6.9 The guidance referred to here relates to the local planning authority's consideration of revoking or varying a Tree Preservation Order and not to planning conditions. Accordingly, it is not relevant to this particular application. That said it is not unreasonable to have regard to whether there are any grounds for reviewing the acceptability of conditions 6, 7 and 8. In this respect, your officers attach significant weight to the dismissed appeal, which clearly supports the Council's approach to serving the Tree Preservation Order and by extension that the conditions attached to the planning permissions are necessary, relevant and reasonable in all other respects. Having reviewed all of the responses to this particular application, your officers do not consider that any new or different material considerations have arisen that warrant the removal and variation of the conditions in question.

A replacement Yew tree would be planted

- 6.10 The advice from the Conservation Manager is clear that the selected species for replacing the existing yew is not appropriate and that it should be a "like for like" replacement. Whilst this matter could quite easily be resolved, the overlying factor is that it is not considered that a replacement plant would provide adequate mitigation since it would take several decades for it to provide equivalent amenity value and moreover the Inspector in dismissing the appeal against the removal of the Tree Preservation Order considered that the loss of the Yew tree in its current position would result in a harmful gap in the skyline.

Conclusion

- 6.11 The applicants frustration in relation to the chronology of events leading up to the submission of the planning applications is acknowledged and considerable regard has been given to the unusually high level of local support for the removal of the Yew tree. However having regard to material planning considerations it is not considered that there are any technical reasons or insurmountable constraints in this case to warrant the removal of Conditions 6 and 7 and the variation of Condition 8 of DMS/110566/F and S112561/F. Accordingly your officers recommend refusal of this planning application in order for the approved development of this site to continue to comply with policies DR1, LA4 and LA5 of the HUDP and the associated guidance in the NPPF and to underpin the Tree Preservation Order that has been defended on appeal.

## **RECOMMENDATION**

**That planning permission be refused for the following reason:**

- 1 Conditions 6,7 and 8 of planning permission DMS/110566/F and S112561/F are considered to be necessary, relevant, reasonable and in all other respects to meet the requirements of the tests set out in Planning Practice Guidance. No evidence has been provided that would suggest that the implementation of the planning permissions would necessitate the felling of the Yew tree. The removal and/or variation of the conditions in order to achieve this would cause harm to the character and appearance of the locality and the setting of the Lugwardine Court Unregistered Park and Garden resulting in an adverse impacts that would significantly and demonstrably outweigh any benefits. As such the proposal is contrary policies DR1, LA4 and LA5 of the Herefordshire Unitary Development Plan and the National Planning Policy Framework.**

**Informative:**

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Further information on the subject of this report is available from Mr S Withers on 01432 260612

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 and identifying matters of concern with the proposal and discussing those with the applicant. However, the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory way forward and due to the harm which has been clearly identified within the reason for the refusal, approval has not been possible.**

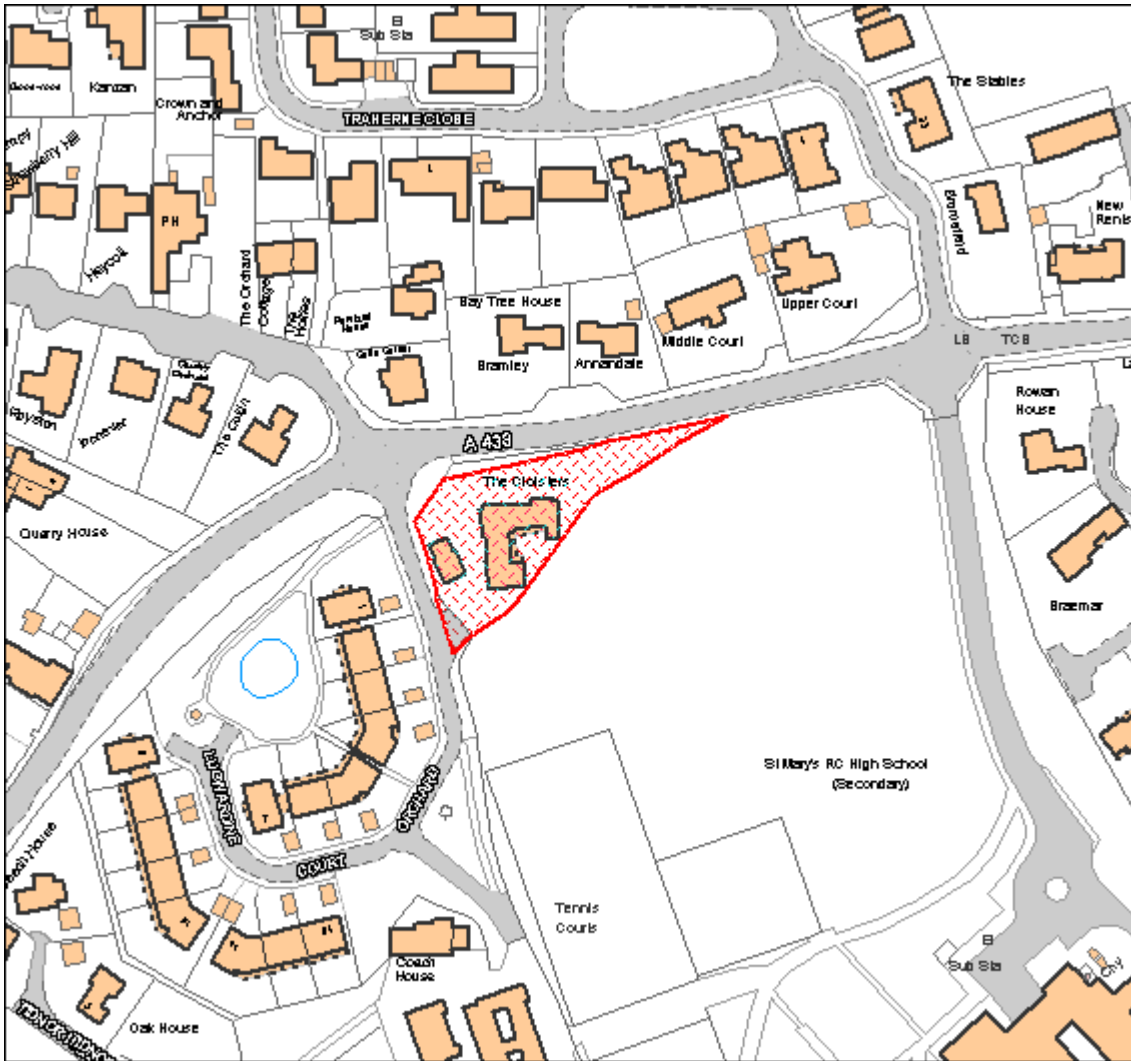
Decision: .....

Notes: .....

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**Background Papers**

Internal departmental consultation replies.



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**APPLICATION NO:** 141369/F

**SITE ADDRESS :** LODGE BUNGALOW, LUGWARDINE, HEREFORDSHIRE, HR1 4AE

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