

**Minutes of the meeting of Planning and regulatory committee held at Council Chamber, The Shire Hall, St Peter's Square, Hereford, HR1 2HX on Wednesday 21 February 2018 at 10.00 am**

**Present:** Councillor PGH Cutter (Chairman)  
Councillor J Hardwick (Vice-Chairman)

**Councillors:** BA Baker, PJ Edwards, DW Greenow, TM James, MT McEvelly, FM Norman, AJW Powers, A Seldon and SD Williams

**In attendance:** Councillors H Bramer, DG Harlow and PP Marsh

**133. APOLOGIES FOR ABSENCE**

Apologies were received from Councillors CR Butler, KS Guthrie, EL Holton, EJ Swinglehurst and WC Skelton.

**134. NAMED SUBSTITUTES**

Councillor MT McEvelly substituted for Councillor EJ Swinglehurst and Councillor SD Williams for Councillor WC Skelton.

**135. DECLARATIONS OF INTEREST**

**Agenda item 9: 163324 – Land to the West of A40 Weston Under Penyard**

Councillor H Bramer declared a non-pecuniary interest because some years ago in a personal capacity he had commissioned work from the applicants.

**Agenda item 10: 173082 – Land at Parkgate, Ivington**

Councillor J Hardwick declared a non-pecuniary interest because he knew the applicant.

**136. MINUTES**

**RESOLVED:** That the Minutes of the meeting held on 31 January 2018 be approved as a correct record and signed by the Chairman.

**137. CHAIRMAN'S ANNOUNCEMENTS**

None.

**138. APPEALS**

The Planning Committee noted the report.

*(Councillor J Hardwick in the chair)*

**139. 173600 - MODEL FARM COTTAGE, HILDERSLEY, ROSS-ON-WYE, HR9 7NN**

*(Hybrid planning application proposed for the development of employment uses including b1, b2 and b8, including full details of the access, internal road infrastructure and circulation routes, and landscaping within a landscape buffer zone providing surface water attenuation and planting.)*

*(Councillor Cutter fulfilled the role of local ward member and accordingly had no vote on this application.)*

The Principal Planning Officer gave a presentation on the application.

In accordance with the Planning Code, Councillor DG Harlow – Cabinet Member (economy and communications) spoke on the application. He commented on the importance of the project to the Herefordshire economy and encouraged the Committee to support it, expressing the view that the scheme was well designed, flexible to the needs of a range of occupiers and provided mitigation to address any impacts associated with the scheme.

In accordance with the Council's Constitution, the local ward member, Councillor PGH Cutter, spoke on the application.

He made the following principal comments:

- He endorsed the comments of the cabinet member on the economic value of the project.
- He expressed sympathy towards the tenants who were vacating smallholdings currently on the site and expressed the hope that the council would provide such assistance to them as it could.
- Issues relating to highways and transportation had been satisfactorily addressed as set out in the report to the Committee.
- His principal concern was to ensure that the housing estate neighbouring the site was well screened from the development, with a buffer zone in place before development commenced.
- It would be important that sub-contractors provided infrastructure of the appropriate quality to support the development.

In the Committee's discussion of the application the following principal points were made:

- It would be important to ensure that the landscaping was good.
- It was to be hoped that drainage costs could be contained.
- It was important to ensure the provision of walking and cycling routes.
- The economic benefits of the scheme should be welcomed.
- The geographical location was suited to the development.
- One of the positive aspects of the development was the prospect that people living on the neighbouring residential development would secure employment on the economic development site, so minimising travel and reducing congestion. A concern was expressed that if the phasing of the two developments was not managed this aim would not be achieved.
- Clarification was sought on the buffer zone between the employment uses and the neighbouring residential areas and whether it would be preferable to provide more trees around the perimeter of the development.

The Lead Development Manager commented that the delivery of the site was in accordance with the Core Strategy policies to provide housing and employment. It was to be hoped that provision made in the capital programme would enable the economic development site to be delivered in a similar timespan to the neighbouring housing development. With reference to concerns expressed by Weston under Penyard Parish Council he observed that significant funding had been provided for highway works as part of the planning permissions granted for housing development within the Parish and it was to be hoped that this should address the Parish Council's concerns. The landscape buffer would be maintained and managed by Herefordshire Council.

The local ward member was given the opportunity to close the debate. He reiterated his support for the scheme.

Councillor Edwards proposed and Councillor Greenow seconded a motion that the application be approved in accordance with the printed recommendation. The motion was carried with 10 votes in favour, none against and no abstentions.

**RESOLVED: That officers named in the Scheme of Delegation to Officers are authorised to grant outline planning permission, subject to the conditions below and any further conditions considered necessary by officers named in the scheme of delegation to officers:-**

1. **Application for approval of the reserved matters shall be made to the local planning authority before the expiration of eight years from the date of this permission.**

**Reason: Required to be imposed by Section 92 of the Town and Country Planning Act 1990.**

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

**Reason: Required to be imposed by Section 92 of the Town and Country Planning Act 1990.**

3. **Prior to or concurrently with the submission of the first of the reserved matters application(s), a Site Wide Phasing Plan shall be submitted to the local planning authority for approval. The Phasing Plan shall include the sequence of providing the following elements for each identified phase or part thereof:**

- a) **Development Parcels and Associated Access Off the Internal Spine Road**
- b) **Foul Surface Water Features and Sustainable Urban Drainage**
- c) **Landscaping as per the Approved Drawings**
- d) **Other Environmental Mitigation Measures**

**No development shall commence apart from works agreed in writing with the LPA until such time as the phasing plan has been approved in writing by the LPA. The development shall be carried out in accordance with the approved phasing contained within the Phasing Plan unless otherwise agreed in writing by the Local Planning Authority.**

**Reason:** In order to ensure that the development is undertaken in conjunction with the requisite mitigation and to comply with Policies SD1 and LD1 of the Herefordshire Local Plan – Core Strategy.

4. No development within a phase (or part thereof) shall commence until approval of the details of the layout, scale and appearance relating to that phase (hereinafter called “the reserved matters”) has been obtained from the local planning authority in writing and carried out as approved.

**Reason:** To enable the local planning authority to exercise proper control over these aspects of the development and to secure compliance with Policy SD1 of the Herefordshire Local Plan – Core Strategy.

5. The development hereby approved shall be limited to the following combined gross external floor areas for Class B uses as defined by the Town and Country Planning (use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification:

- B1 – 16,500 square metres gross floor area
- B2 – 8,900 square metres gross floor area
- B8 – 4,000 square metres gross floor area

**Reason:** To define the terms of the permission in accordance with Policies SD1 and MT1 of the Herefordshire Local Plan – Core Strategy.

6. No future phase of the development shall commence until a detailed scheme of landscaping for that phase has been submitted to and approved in writing by the Local Planning Authority. The details submitted should include:

#### **Soft landscaping**

- a) A plan(s) showing details of all existing trees and hedges on the application site. The plan should include, for each tree/hedge, the accurate position, species and canopy spread, together with an indication of which are to be retained and which are to be removed.
- b) A plan(s) at a scale of 1:200 or 1:500 showing the layout of proposed tree, hedge and shrub planting and grass areas.
- c) A written specification clearly describing the species, sizes, densities and planting numbers and giving details of cultivation and other operations associated with plant and grass establishment.

#### **Hard landscaping**

- a) Existing and proposed finished levels or contours
- b) The position, design and materials of all site enclosures (e.g. fences, walls)
- c) Car parking layout and other vehicular and pedestrian areas
- d) Hard surfacing materials
- e) Minor structures (e.g. street furniture, lighting, refuse areas, signs etc.)

**Reason:** In order to maintain the visual amenities of the area and to conform to Policy LD1 of the Herefordshire Local Plan – Core Strategy.

7. **The soft landscaping scheme approved for each phase under condition 6 shall be carried out concurrently with the works to provide vehicular and pedestrian access to that phase of the development and shall be completed no later than the first planting season following the completion of that phase of the development. The landscaping shall be maintained for a period of 5 years. During this time, any trees, shrubs or other plants which are removed, die or are seriously retarded shall be replaced during the next planting season with others of similar sizes and species unless the Local Planning Authority gives written consent to any variation.**

**If any plants fail more than once they shall continue to be replaced on an annual basis until the end of the 5-year maintenance period. The hard landscaping shall also be completed upon the completion of the works to provide vehicular and pedestrian access.**

**Reason: In order to maintain the visual amenities of the area and to conform to Policy LD1 of the Herefordshire Local Plan – Core Strategy.**

8. **A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas shall be submitted to and approved in writing by the Local Planning Authority prior to the occupation of the development or any phase of the development, whichever is the sooner, for its permitted use. The landscape management plan shall be carried out as approved.**

**Reason: In order to maintain the visual amenities of the area and to conform to Policy LD1 of the Herefordshire Local Plan – Core Strategy.**

9. **The visibility splays of 4.5m x 215m as per drawing CH-051 (Appendix G of the Transport Assessment) shall be provided from a point 0.6 meters above ground level at the centre of the access to the application site. Nothing shall be planted, erected and/or allowed to grow on the triangular area of land so formed which would obstruct the visibility described above.**

**Reason: In the interests of highway safety and to conform to the requirements of Policy MT1 of the Herefordshire Local Plan – Core Strategy.**

10. **As part of the Site Wide Phasing Plan (condition 3) details of works required at Overross Roundabout shall be submitted to and approved in writing by the Local Planning Authority. The Phasing Plan shall include details in relation to the point at which improvement works are required and work shall be completed in advance of the relevant phase of development or otherwise in accordance with a timetable to be agreed in writing with the Local Planning Authority.**

**Reason: In the interests of highway safety and to ensure sufficient capacity on the highway network so as to conform to Policy MT1 of the Herefordshire Local Plan – Core Strategy.**

11. **Before any other works hereby approved are commenced, the construction of the vehicular access from the A40 shall be carried out in accordance with approved drawing CH-050 (attached as Appendix H of the TA) at a gradient not steeper than 1 in 12. This shall include the provision of the ghost right turning lane on the A40 westbound approach, which shall be completed prior to the first occupation of the development.**

**Reason: In the interest of highway safety and to conform to the requirements of Policy MT1 of Herefordshire Local Plan – Core Strategy.**

- 12. The Reserved Matters submission for each phase or part thereof shall be accompanied by details demonstrating that an area has been properly laid out, consolidated, surfaced and drained and the spaces demarked on the ground within the application site for the parking of cars and the loading and unloading of commercial vehicles and for all vehicles to turn so that they may enter and leave the site in a forward gear. These areas shall thereafter be retained and kept available for those uses at all times.**

**Reason: To minimise the likelihood of indiscriminate parking in the interests of highway safety and to confirm to the requirements of Policy MT1 of the Herefordshire Local Plan – Core Strategy.**

- 13. The sustainable transport measures as shown on approved plans CH-050 Proposed Junction Works and CH051 A40 bus stops and pedestrian crossing and the pedestrian/cycle ways, shall be constructed in accordance with a timetable to be agreed in writing with the local planning authority. The sustainable transport measures comprise:-**

- Eastbound and Westbound Bus Stops on the A40 – Drawing CH-051**
- Controlled Pedestrian Crossing of the A40 – Drawing CH-051**
- Shared Footway/Cycleway Across the Site Frontage; &**
- Shared Footway/Cycleways within the Application Site.**

**Reason: To ensure an adequate and acceptable means of access is available in accordance with a timetable to be agreed with the local planning authority so as to confirm to the requirements of Policy MT1 of the Herefordshire Local Plan – Core Strategy.**

- 14. The Reserved Matters submission for each phase or part thereof shall be accompanied by details demonstrating secure and covered on site cycle parking for employees and visitors. These areas shall thereafter be retained and kept available for those uses at all times.**

**Reason: To minimise the likelihood of indiscriminate parking in the interests of highway safety and to confirm to the requirements of Policy MT1 of the Herefordshire Local Plan – Core Strategy.**

- 15. A full workplace Travel Plan will be submitted to and agreed in writing by the Local Planning Authority in consultation with Highways England prior to the occupation of each phase of the development. This shall contain details of actions to be taken to encourage the use of sustainable transport alternatives to private car, targets for mode shift and timescales for their implementation. The actions detailed shall then be implemented and monitored in accordance with the Travel Plan.**

**Reason: To ensure the safe and free flow of traffic on the A40, A449 and M50 Motorway and that the A40, A449 and M50 Motorway continues to serve their purpose as part of the national system of routes for through traffic in accordance with Section 10 (2) of the Highways Act 1980 and to ensure that sustainable travel choices are available for occupants of the site.**

- 16. No development shall take place until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the Local**

**Planning Authority in consultation with the Highways Authority for the A40 and A449 trunk roads and the M50 motorway. The CTMP shall provide details of the access routes to the site to be used by construction traffic. The approved CTMP shall be adhered to throughout the construction period.**

**Reason: To ensure that the safety and efficient operation of the strategic road network is not compromised during the construction period.**

- 17. No phase of the development shall commence until full details of all external lighting to be installed for each phase have been submitted to and be approved in writing by the local planning authority. No external lighting shall be installed upon the site without the prior written consent of the local planning authority. The approved external lighting shall be installed in accordance with the approved details and thereafter maintained in accordance with those details.**

**Reason: In order to control the means of external illumination in the interests of protecting bio-diversity so as to comply with Policy LD2 of the Herefordshire Local Plan – Core Strategy.**

- 18. No phase of 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 shall be submitted in writing. The Remediation Scheme shall include consideration of and proposals to deal with situations where, during works on site, contamination is encountered which has not previously been identified. Any further contamination encountered shall be fully assessed and an appropriate remediation scheme submitted to the local planning authority for written approval.**

**Reason: In the interests of human health.**

- 19. The Remediation Scheme, as approved pursuant to condition no. (18) 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 the interests of human health.**

20. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted, and obtained written approval from the local planning authority for, an amendment to the Method Statement detailing how this unsuspected contamination shall be dealt with.

Reason: In the interests of human health.

21. No buildings on the application site shall be brought into beneficial use earlier than 31st March 2020, unless the upgrading of the Waste Water Treatment Works, into which the development shall drain, has been completed and written confirmation of this has been issued by the Local Planning Authority".

Reason: To prevent overloading of the Waste Water Treatment Works and pollution of the environment.

22. No phase of development shall be occupied until a drainage scheme for the related phase has been submitted to and approved in writing by the local planning authority. The scheme shall provide for the disposal of foul, surface and land water, and include an assessment of the potential to dispose of surface and land water by sustainable means. Thereafter the scheme shall be implemented in accordance with the approved details prior to the occupation of the development and no further foul water, surface water and land drainage shall be allowed to connect directly or indirectly with the public sewerage system.

Reason: To prevent hydraulic overloading of the public sewerage system, to protect the health and safety of existing residents and ensure no pollution of or detriment to the environment.

23. Prior to the commencement of the development hereby approved a detailed survey of the existing culvert under the former railway embankment shall be completed. The survey should establish whether the culvert is blocked or damaged and that it has sufficient capacity to accommodate the outflows from the proposed attenuation ponds. The report shall be submitted to and approved in writing by the local planning authority. If the report concludes that the culvert has insufficient capacity the report should also recommend a range of measures to be implemented to ensure that sufficient capacity is available. The development shall not be occupied until the measures identified have, if required, been completed.

Reason: To ensure satisfactory arrangements are in place for the attenuation and managed discharge of surface water run-off so as to ensure that the development does not exacerbate the potential for flooding downstream, so as to comply with Policy SD3 of the Herefordshire Local Plan – Core Strategy 2011-2031.

24. The recommendations for species and habitat enhancements set out in the ecologist's report from ARUP dated September 2017 should be followed unless otherwise agreed in writing by the local planning authority. A working method statement for all protected species present, together with a 10 year ecological management plan integrated with the landscape plan should be submitted to the local planning authority in writing with each of the Reserved Matters submissions pursuant to this outline planning permission. The plan shall be implemented as approved.

To ensure that all species are protected having regard to the Wildlife and Countryside Act 1981 (with amendments and as supplemented by the Countryside and Rights of Way Act 2000), the Natural Environment and Rural Communities Act 2006 and the Conservation of Habitats and Species Regulations 2010 (and 2012 amendment).

To comply Herefordshire Council's Policies LD2 Biodiversity and Geodiversity, LD3 Green Infrastructure of the Herefordshire Local Plan Core Strategy 2013 – 2031 and to meet the requirements of the National Planning Policy Framework (NPPF).

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

With the exception of the formation of the means of access hereby approved 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:-

- a) Root Protection Areas for each hedgerow/tree/group of trees must be defined in accordance with BS5837:2012 – Trees in Relation to Design, Demolition and Construction Recommendations, shown on the site layout drawing and approved by the Local Planning Authority.
- b) 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.
- c) 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.
- d) 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.
- e) 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 to Policies SD1 and LD1 of the Herefordshire Local Plan – Core Strategy. The commencement of development in advance of these measures may cause irreparable damage to features of acknowledged amenity value

26. List of approved drawings

## 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. **I45 HN05 Works within the Highway**
3. **I05 HN10 No Drainage to Discharge to Highway**
4. **I38 N19 Avoidance of Doubt - Approved Plans**

*(The meeting adjourned between 10.42 and 10.52 am)*

*(Councillor PGH Cutter in the chair.)*

### **140. 173765/F AND 173766/L - LAND ASSOCIATED WITH PEMBRIDGE HOUSE, WELSH NEWTON, HEREFORDSHIRE**

*((Retrospective) construction of wall approx 2' 9" x 15' in local stone located adjacent to stable block in paddock. Sited where historical documents indicate a wall existed previously.)*

The Senior Planning Officer (SPO) gave a presentation on the application, and updates/additional representations received following the publication of the agenda were provided in the update sheet, as appended to these Minutes. He added that the Land Drainage Officer had advised that construction of the wall did not require land drainage consent because the watercourse had been successfully diverted. The culvert that created the diversion had been installed by a former landowner before the wall was built. Since then, improvements had been made by their riparian landowner to ensure that the diversion would work. This included an overflow from the pond. The land drainage officer therefore had no objection.

In accordance with the criteria for public speaking Ms P Fender, a local resident neighbouring the application site, spoke in objection to the scheme.

The local ward member was the applicant and the Councillor appointed to fulfil the role of local ward member on her behalf did not wish to speak on the application.

In the Committee's discussion of the application the following principal points were made:

- Assurance was sought that the construction of the wall had not increased the risk of flooding on the neighbouring property. The SPO reiterated the advice of the land drainage officer that there was no issue arising from the construction and no objection to it.
- The committee update made reference to a further letter of objection that stated amongst other things: *"In her Planning Application the Applicant states: "this is a reinstatement -- sited where historical documents indicate a wall existed previously -- reinstatement of wall that formed part of the curtilage at listing."* It was asked who had seen these historical documents, noting that they had not been provided to the objector.

- The SPO commented that the council did not hold the documents. The Lead Development Manager added that the council held maps but these did not identify whether a line on a plan was a wall or a fence, for example. An aerial photograph, undated, had been supplied by the neighbour. This did show a wall in the area where the development had now taken place. Another wall constructed by the applicant fronting onto the lane constituted permitted development. He outlined the watercourse on a slide and how it flowed into a pond and thence into a discharge pipe.
- Members reviewed the aerial photograph that had been included in the slides accompanying the officer presentation.
- It was noted that the neighbour maintained that there had been an adverse impact on the amenity of her property from flooding as a consequence of the development.

The Lead Development Manager commented that the reason the application was retrospective was that in constructing the two walls a question had arisen as to whether both were permitted development. On inspecting the site he had concluded that one wall was permitted development but the other required planning permission and listed building consent.

Councillor Edwards proposed and Councillor Seldon seconded a motion that the application be approved in accordance with the printed recommendation. The motion was carried with 9 votes in favour, none against and 2 abstentions.

**173765/F**

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

1. **B02 - Development in accordance with approved plans and materials**

**INFORMATIVE:**

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

**173766/L**

**RESOLVED: That Listed Building Consent be granted subject to the following condition:**

1. **D01 - Time limit for commencement (Listed Building Consent)**

**141. 163324 - LAND TO THE WEST OF A40, WESTON UNDER PENYARD HEREFORD**

*(Reserved matters application (layout, scale, appearance and landscaping) following outline approval 150888 - for the erection of 35 dwellings.)*

The Principal Planning Officer gave a presentation on the application.

In accordance with the criteria for public speaking, Mrs L Dunn of Weston Under Penyard Parish Council spoke in opposition to the Scheme. Mr D Moore, the applicant's agent, spoke in support.

In accordance with the Council's Constitution, the local ward member, Councillor H Bramer was invited to speak on the application. He indicated that he would comment following the debate.

The principal issue the Committee discussed was the proposal to reduce the number of affordable homes the scheme would deliver from 12 to 7 on the grounds that the approved outline scheme was unviable. It was noted that this was contrary to the wish of the Parish Council and that there was an adopted Neighbourhood Development Plan. It was suggested that it also raised a question as to whether the affordable housing targets in the Core Strategy were realistic and achievable or needed to be revisited. The housing officer had commented at paragraph 4.6 of the report that priority should be given to the delivery of affordable dwellings rather than the payment of a commuted sum.

A concern was expressed about the layout noting the Transportation Manager's comments that there could be some difficulties with the proposed parking arrangements.

In response to questions officers made the following points:

- If a commuted sum were to be accepted, although this was not what the Parish Council wanted, this would be available for allocation within the housing market area; it was unlikely that this would be spent in Weston Under Penyard. The revised scheme did still provide affordable housing for the parish.
- The District Valuer did take account of the purchase price developers paid for land and assess whether that price was reasonable. The price had to be realistic and reflect current land values. There were instances in which the District Valuer had rejected submissions by developers. The District Valuer also took into account the level of return on investment that a developer would make. Officers did consider the District Valuer's assumptions and challenge them when this was considered appropriate. At an appeal Planning Inspectors would give weight to the views of the District Valuer.
- It was confirmed that the provision of affordable housing formed part of the S106 agreement and it was appropriate for the Committee to consider whether this could be varied as part of the reserved matters application.
- Weight had been given to the Neighbourhood Development Plan. It was simply the case that regard also had to be had to other material considerations. It was to be noted that policy H3 of the Weston Under Penyard NDP did state proposals for development should meet local housing needs: *"and should provide a tenure mix of 40% of Affordable Homes unless viability considerations can be shown to necessitate an alternative percentage of provision."* This took account of paragraph 173 of the National Planning Policy Framework, as set out at paragraph 6.20 of the report, that provided guidance on financial viability of schemes. This included the following: *"To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable."*
- The Forward Planning Team would be informed of the concern about whether affordable housing targets were achievable for consideration as part of the review of the Core Strategy.

The local ward member was given the opportunity to close the debate. He commented that there was a dilemma. He shared the Parish Council's disappointment at the reduction in the number of affordable homes. However, account had to be taken of the District Valuer's ruling. It would be regrettable if refusal of the scheme were to mean that

the other benefits that would be provided through the S106 agreement were lost. The revised scheme would also still provide some affordable housing and contribute to meeting the council's overall housing targets.

Councillor Seldon proposed and Councillor Baker seconded a motion that the application be approved in accordance with the printed recommendation. The motion was carried with 6 votes in favour, 1 against and 4 abstentions.

**RESOLVED: That subject to the completion of a Deed of Variation to the Section 106 Town & Country Planning Act 1990 obligation agreement to reduce Affordable Housing provision from twelve to seven units, officers named in the Scheme of Delegation to Officers are authorised to grant approval of reserved matters, subject to the conditions below and any other further conditions considered necessary.**

1. **B01 Development in accordance with approved plans and documents**
2. **C01 Samples of external materials**
3. **C06 Stonework laid on natural bed**
4. **With specific regard to Plots 23, 24, 35 and Plots 27 to 33 inclusive - Notwithstanding the provisions of article 3(1) and Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015,(or any order revoking or re-enacting that Order with or without modification), no development which would otherwise be permitted under Class A Part 2 and of Schedule 2, shall be carried out.**

**Reason: In order to protect the character and amenity of the locality; particularly as the existing hedgerow forms an important landscape and biodiversity feature, and to comply with Policies LD1 and SD1 of the Herefordshire Local Plan – Core Strategy, Policy SE1 of the Weston under Penyard Neighbourhood Development Plan and the National Planning Policy Framework.**

5. **With the exception of any site clearance and groundwork, no further development shall take place until details of a footpath from the site onto Seabrook Place are submitted to and approved in writing by the local planning authority. The footpath shall be constructed in accordance with the approved details and shall be capable of use not later than upon the occupation of the 19<sup>th</sup> dwelling.**

**Reason: In the interests of highway safety and convenience and a well co-ordinated development and to conform with the requirements of Policy MT1 of Herefordshire Local Plan – Core Strategy, Policy D2 of the Weston under Penyard Neighbourhood Development Plan and the National Planning Policy Framework.**

6. **F08 No conversion of garage to habitable accommodation**
7. **M17 Efficient use of water**

**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. The attention of the applicant is drawn to the conditions on the outline planning permission granted on 2 April 2015 (Reference No. P132924/O. This application for the approval of reserved matters is granted subject to these conditions.**

*(The meeting adjourned between 12.25 and 12.35 pm.)*

**142. 173082 - LAND AT PARKGATE, IVINGTON, LEOMINSTER, HEREFORDSHIRE, HR6 OJX**

*(Proposed erection of an agricultural workers' dwelling (part retrospective)).*

The Development Manager gave a presentation on the application, which had been withdrawn from the agenda at the previous meeting, and updates/additional representations received following the publication of the agenda were provided in the update sheet, as appended to these Minutes. He added with reference to paragraph 5.1 of the report that it had been confirmed that Leominster Town Council had had no objection to the application.

In accordance with the criteria for public speaking, Mr R Pendleton of Leominster Town Council spoke in support of the application. Mr J Hanson, the applicant, spoke in support.

In accordance with the Council's Constitution, the local ward member, Councillor PP Marsh, spoke on the application.

She made the following principal comments:

- The Council had by its actions demonstrated the importance of adhering to planning policies. The matter had been ongoing for some time and had been stressful for the applicant. It was not a situation anyone would willingly choose to be in.
- Sustainability underpinned the Core Strategy. Parkgate consisted of 3 cottages. It was not in open countryside it was in farmland. The cottages had been constructed to provide accommodation for farm workers. Two other small houses were immediately close by.
- The location was sustainable. The Council had placed tenants in the nearby houses for many years. A regular bus service to Leominster ran past the house.
- Only one dwelling currently had an agricultural tie. Approving the application for a further tied dwelling would contribute to the economic viability of the farm.
- The house had been constructed on the footprint of the former dwelling and to the same height. The frontage was the same and stones and tiles of the former building had been reused, providing an attractive result, matching the cottage next door.
- Leominster Neighbourhood Development Plan, approved since the appeal, could be afforded moderate weight. Policy LANP 5 permitted new housing development in the open countryside where it replaced an existing dwelling on the same site and was of a similar size and scale to the dwelling to be replaced.
- The applicants had fostered many children and contributed to the community.

- Having restored two cottages it was perhaps unsurprising that the applicant had not realised that the dwelling the subject of the application needed to be treated differently. Ideally advice would have been sought. However, they had not been well served by advice they had received from the council.
- Neighbours supported the application which restored what had been a dangerous structure to an attractive affordable house, enhancing its setting, located between two other homes.

In the Committee's discussion of the application the following principal points were made:

- A retrospective application was regrettable, but it was a confused situation involving several misunderstandings and did not appear to be an opportunistic application. The applicants had had mixed advice some of which was a matter of dispute.
- The proposal was sustainable development.
- A building had previously been on the site.
- The application had the support of the Town Council the local ward member and neighbours.
- The dwelling needed to be tied to the holding due to the labour intensive nature of the holding.

The Lead Development Manager commented that the Committee needed to consider the matter as an application for a new agricultural dwelling as though no building had taken place.

In response to questions he suggested that an agricultural tie would be best achieved through a condition and S106 agreement to tie the dwelling to the holding. A tie could apply to someone currently employed in agriculture or whose last employment had been in agriculture.

He added that in accordance with S38 of the Planning and Compulsory Purchase Act 2004 applications had to be determined in accordance with the development plan unless material considerations indicated otherwise. The application had been supported by limited information. No agricultural appraisal had been submitted. The building on the site was unauthorised and did not form part of the consideration. The Committee was required to consider the application as though it were for a new agricultural dwelling on the site.

In response to discussion of the application of policies that would support the application he commented that policies RA3, RA4 and LANP 5 (i) would be relevant.

Councillor Greenow proposed and Councillor James seconded a motion that the application be approved subject to a Section 106 agreement and conditions tying the property to the farm as an agricultural dwelling which members considered was in accordance with policies RA3, RA4 and LANP5 (i) The motion was carried with 10 votes in favour, none against and 1 abstention.

The local ward member was given the opportunity to close the debate. She reiterated her support for the scheme.

**RESOLVED: That planning permission be granted subject to a Section 106 agreement and conditions tying the property to the farm as an agricultural dwelling and officers named in the Scheme of Delegation be authorised to detail the conditions.**

**143. 174332 - 1 ARROWSMITH AVENUE, BARTESTREE, HEREFORD, HR1 4DW**

*(Councillor Norman had left the meeting and was not present during consideration of this application. Councillor Greenow fulfilled the role of local ward member and accordingly had no vote on this application.)*

The Planning Officer gave a presentation on the application.

In accordance with the criteria for public speaking, Mrs S Soilleux, of Bartestree and Lugwardine Group Parish Council spoke in opposition to the Scheme. Mr P Davies, a local resident and neighbour, spoke in objection.

In accordance with the Council's Constitution, the local ward member, Councillor DW Greenow spoke on the application.

He commented that the proposal, which would increase the size of the dwelling by some 60% was contrary to policy BL2 of the adopted Neighbourhood Development Plan. It would have a significant adverse effect on the amenity of several properties.

In the Committee's discussion of the application the parish council's objection was noted and concern was expressed about the scale of the development and its effect on the amenity of neighbouring residents.

A view was also expressed that there were other properties in the development that were closer to one another than neighbouring properties would be to the extended dwelling. This made it difficult to refuse the application.

The Lead Development Manager confirmed that there were no policies limiting the percentage by which a dwelling could be extended. Officers considered the design was acceptable and compatible with other properties in the area and to be in accordance with policy. Other properties nearby were closer to one another than neighbouring properties would be to the extended dwelling and weight would be given to that point by an inspector in the event of an appeal.

The local ward member was given the opportunity to close the debate. He reiterated his view that the development would be detrimental. The rear of the extended property would be close to the neighbouring property as opposed to being close to the side of the property as in the case of the distances between other properties in the area to which reference had been made.

Councillor Seldon proposed and Councillor Edwards seconded a motion that the application be refused on the grounds that it was contrary to policy SD1 of the Core Strategy and policy BL2 of the Neighbourhood Development Plan by reason of design and relationship with adjoining dwellings. The motion was carried with 5 votes in favour, 2 against and 2 abstentions.

**RESOLVED: That planning permission be refused on the grounds that the application was contrary to policy SD1 of the Core Strategy and policy BL2 of the Neighbourhood Development Plan and officers named in the Scheme of Delegation to Officers be authorised to detail these reasons.**

**144. DATE OF NEXT MEETING**

The Planning Committee noted the date of the next meeting.

**Appendix - Schedule of Updates**

The meeting ended at 1.48 pm

**Chairman**



# **PLANNING COMMITTEE**

**Date: 21 February 2018**

## **Schedule of Committee Updates/Additional Representations**

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

## SCHEDULE OF COMMITTEE UPDATES

**173765/F and 173766/L - (RETROSPECTIVE) CONSTRUCTION OF WALL APPROX 2' 9" X 15' IN LOCAL STONE LOCATED ADJACENT TO STABLE BLOCK IN PADDOCK. SITED WHERE HISTORICAL DOCUMENTS INDICATE A WALL EXISTED PREVIOUSLY, AT LAND ASSOCIATED WITH PEMBRIDGE HOUSE, WELSH NEWTON, HEREFORDSHIRE,**

**For: Miss Swinglehurst, Pembridge House, Welsh Newton, Monmouth, Herefordshire NP25 5RN**

### ADDITIONAL REPRESENTATIONS

A further representation has been received in relation to application from Ms Patti Fender. It has been submitted in the form of a Formal Complaint to the Chief Executive but contains the following abridged comments:

Planning Officers told me that I would be directly informed of the date that the above Planning Application, from an elected Councillor a member of the Planning Committee, would come before the Planning Regulatory Committee.

I was not informed, but it is now my understanding that the meeting is to take place on 21 February 2018 to decide upon this issue.

It is stated that, "You're legally entitled to look at the planning officer's report to the Councillors' planning committee at LEAST FIVE DAYS before they meet to make a decision. It's important to take this opportunity."

I have unlawfully been denied that opportunity.

In her Planning Application the Applicant states: "this is a reinstatement -- sited where historical documents indicate a wall existed previously -- reinstatement of wall that formed part of the curtilage at listing." But she did not provide a copy of the historical documents in evidence.

However, the Planning Officer has referred to the historical documents in his letters for the various consultations, as being of specific importance and central to this Application. I asked for a copy of these documents, but they weren't provided.

Consequently, on 14 February I made a Freedom of Information Request for a copy of these historical documents.

Immediately following my request, this Planning Application was unlawfully included in a Planning Regulatory Meeting. I was not informed. My legal entitlement to see the Planner's report at least five days prior to the meeting has been unlawfully denied to me.

The reply from the Building Conservation Manager to the case officer refers to, "the abutment of a new wall" which fails to relate to the Application. This states clearly that, "a

reinstatement--- sited where historical documents indicate a wall previously existed --- reinstatement of wall that formed part of the curtilage at listing".

The Manager made no reference whatsoever to evidence provided in my objections giving precisely the position of the listed curtilage historical wall. This was researched by a highly qualified expert for evidence on behalf of the Court. The wall is not in the position claimed by the Applicant as referred to in "historical documents". It is evident that the Manager's reply is lacking in integrity and clarity.

The numerous untruths by the Applicant in the Application were questioned in my Objection to the Application, but neither mentioned nor addressed by Planners.

It is claimed that there is no Planning history on this site. It is known that there is a current Section 106 legally binding Planning Obligation on that specific land made by Herefordshire Council, and that it should only be planted with trees, with no other use.

Pembridge House has been severely flooded on numerous occasions, but these never affected my neighbouring property.

A land owner is not permitted to divert (the owner stated purpose of the newly built walls) the downhill flow of water particularly onto another property. There are other land owner responsibilities with which Mr. Hodges, responsible Officer for the Flood Risk Strategy, is apparently doing his very best to override, necessitating in yet another Freedom of Information Request.

This flooding issue was brought to the attention of Herefordshire Council in 2015. It is a simple matter, the Applicant has agreed in legal documents that she built the walls to divert surface/flood water away from her property and onto my property, I provided much written and photographic factual evidence.

The remaining elements of the Formal Complaint refer to a previous Court case involving the applicant, criticism of failing to have regard to Made Neighbourhood Plans an a series of questions relating to the processing of the applications.

## **OFFICER COMMENTS**

The comments above are not material planning considerations and will be considered under the Council's Formal Complaints procedure.

The Council does not undertake to notify interested parties when an application is to be considered by the Planning and Regulatory Committee.

Agenda papers are published 5 clear days in advance of a meeting in accordance with the statutory requirement.

Under the public speaking procedure, on publication of the agenda papers, those who have made representations on an application are notified that the application is to be considered by the Committee and invited to register to speak in accordance with the scheme. A review has indicated that a Public Speaking letter to Ms Fender was generated and sent. However, it has transpired that unfortunately there was an error in the e-mail address. Ms Fender has taken up the opportunity to speak at the meeting as an objector.

## **NO CHANGE TO RECOMMENDATION**

**173082 - PROPOSED ERECTION OF AN AGRICULTURAL WORKERS' DWELLING (PART RETROSPECTIVE) AT LAND AT PARKGATE, IVINGTON, LEOMINSTER, HEREFORDSHIRE, HR6 0JX**

**For: Mr Hanson per Ms Sarah Hanson, The Old Watermill, Kingsland, Leominster, Herefordshire HR6 9SW**

**ADDITIONAL REPRESENTATIONS**

9 letters of support have been received.

The agent has submitted a further letter which is understood to have been sent to all members of the committee.

In the event that not everyone received it it is copied here.

173082 – Proposed erection of an agricultural worker’s dwelling (part retrospective) at land at Parkgate, Ivington, Leominster, HR6 0JX

With reference to the officer report for this application, which is on the agenda for 21<sup>st</sup> February, I would like to raise some points which are pertinent to this case and I am most grateful that you will take the time to read the following submission.

What is not made clear in the committee report is that refusal of this application means that the house should be demolished.

This would mean the loss of a viable house, which because of its size and small plot, would offer low cost accommodation, whether it is for an agricultural worker or not.

The officer report cites the enforcement appeal at some length as evidence that the site is not in a sustainable location - although the inspector did not say this, only that neither side had put forward evidence about the sustainability or otherwise of the location.

What has changed since the planning appeal is that it has been demonstrated that Herefordshire Council cannot show a five-year housing land supply. This means that its policies for the supply of housing are not up to date.

This was not the case at the time of the appeal and so the inspector gave full weight to the policies cited by the Council in its reasons for the enforcement notice (but as noted below, did not consider other relevant policies).

Because this is an application for an agricultural worker’s dwelling, I did not provide evidence about the sustainability of the location, but since this has been cited as a ground for refusal, I would like to point out that the house is well related to existing built development near the site. It is within walking distance of the local school and the church and that stop on request bus services to Hereford and Leominster pass the site several times daily. The site is exactly 2.6 miles from the centre of Leominster where there is an abundance of facilities and services, together with transport links to elsewhere. The road to Ivington is not particularly busy and consequently it would not be unattractive to use either on foot or on a bike. If a car was relied on, the closeness of the site to Leominster means that many of the journeys would be likely to be short, and therefore would result in only limited environmental harm.

The report refers (at 6.7) to the prospect of selling or letting three of the existing four dwellings on the farm to non-farm workers. Although it is a fact that as there are three dwellings not tied to the farm, they could in theory be disposed of, Mr Hanson has no intention of doing this.

- Lower Wintercott – farmhouse located on the farm and occupied by Mr John Hanson and his wife Shirley along with their foster children.
- Hop Kiln Cottage – located on the farm and occupied by one son and his family – *agricultural occupancy condition attached to this property*
- Parkgate Cottage – located adjacent to the site and occupied by other son and his family
- White House – located adjacent to the site and occupied by daughter and her family – no connection with the farming business

The report also refers (at 6.12) to imposing an agricultural occupancy condition not only on this dwelling, but on the three other dwellings not already tied, should the councillors be minded to approve this application.

It is possible to impose planning conditions on matters which are off site (Grampian), however, it's quite a stretch to impose an occupancy condition on a dwelling that is not part of the planning unit or used in conjunction with it, especially if that dwelling is currently occupied by someone not functionally linked to the business. It is likely such a condition would not withstand the normal tests of being reasonable and appropriate as a condition must be expedient for the purposes of, or in connection with, the development authorised by a permission.

The farmhouse will be lost from the farming business because Mr Hanson is retiring and it does not meet the affordability/size etc definitions of an agricultural worker's dwelling. In addition, Mr Hanson's daughter's house is not available for an agricultural worker. The only house that might pass the acceptability test is the one occupied by Mr Hanson's son, Jonathan (to the north of the application site) but there is no likelihood that this house would be lost to the use of an agricultural worker, which is the only acceptable ground for imposing such a condition.

The report refers (at 6.8) to my point about a delay in recognising the breach and taking action. Action was not taken swiftly. The first visit by a council enforcement officer was 24<sup>th</sup> November 2014 and the requisition for information was served in early May ahead of the serving of a temporary stop notice (TSN) on 15<sup>th</sup> May 2015. During this period of 5 months, work had continued as Mr Hanson had not been advised by the council enforcement officer that what he was doing was unauthorised.

All building work ceased upon the receipt of the TSN.

The enforcement notice followed 'swiftly' on 27<sup>th</sup> May 2015.

Mr Hanson contacted the council and asked them to explain the enforcement action, given his understanding from the council's enforcement officer's first visit in November that he was not in breach of planning control in restoring the house.

The written response from the council of 29<sup>th</sup> May 2015 advises: "*nobody from the Local Planning Authority will be visiting you at the site to discuss the matter as it is not required.*"

The council had taken the view that the only course of action was for the cottage to be demolished.

As highlighted previously in my letter to Councillors, in response to the first committee report, there were clearly alternative solutions that should have been offered.

The building had been used for storing agricultural implements prior to the renovation works. A building in agricultural use would qualify for conversion to residential use under Class Q of the **Town and Country Planning (General Permitted Development) Order 2015**.

Additionally, the National Planning Policy Framework (NPPF, adopted March 2012) at paragraph 55 *promotes sustainable development in rural areas and states that housing should be located where it will enhance or maintain the vitality of rural communities – with one of the criteria being where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting.*

The Core Strategy, which was adopted in October 2015, carried sufficient weight at the time of the enforcement action (especially where its policies complied with the NPPF). Policy RA5 adopts this national guidance at a local level and encourages the *sustainable re-use of individual and groups of redundant or disused buildings, including farmsteads in rural areas, which will make a positive contribution to rural businesses and enterprise and support the local*

economy (including live work units) or which otherwise contributes to residential development, or is essential to the social well-being of the countryside, will be permitted where:

1. design proposals respect the character and significance of any redundant or disused building and demonstrate that it represents the most viable option for the long term conservation and enhancement of any heritage asset affected, together with its setting;
2. design proposals make adequate provision for protected and priority species and associated habitats;
3. the proposal is compatible with neighbouring uses, including any continued agricultural operations and does not cause undue environmental impacts and;
4. the buildings are of permanent and substantial construction capable of conversion without major or complete reconstruction; and
5. the building is capable of accommodating the proposed new use without the need for substantial alteration or extension, ancillary buildings, areas of hard standing or development which individually or taken together would adversely affect the character or appearance of the building or have a detrimental impact on its surroundings and landscape setting.

The building could also have been utilized by the cottages either side in the form of ancillary accommodation, or for domestic or agricultural storage. It is also possible the building could have been used for holiday accommodation which would have provided an income for the farm – this being an appropriate form of diversification. However, none of the options above were presented to Mr Hanson as a possible solution.

The report refers (at 6.8) to the council not being responsible for advice that was given by Mr Hanson's former agents, which is accepted. But it is responsible for the advice given by its own officers and it is maintained that this advice was wholly inappropriate and is why building work continued at the site until the TSN was served.

The council's enforcement policy promotes '*negotiating with transgressors, giving them the opportunity to resolve breaches before formal action is taken, unless the breach is so serious it warrants immediate formal action or negotiation becomes protracted and / or is deemed unlikely to yield an acceptable outcome.*'

Clearly the breach was deemed serious and that is why, following the submission of an application for building regulations in March 2015, the enforcement team issued the TSN on 15<sup>th</sup> May 2015. But why was the 'seriousness' of the breach not followed up so swiftly by the enforcement team after the officer's initial visit in November 2014. Mr Hanson had no further contact from the enforcement team following the November 2014 visit until the requisition for information was received in May 2015 = 5 Months.

There appears internal inconsistency in the council's approach to Mr Hanson as para 6.8 of your officer's report says that when enforcement first looked at the case it was decided that an application to regularize the development was inappropriate. However, during court proceedings, the council put an offer on the table for Mr Hanson to submit an application for an agricultural worker's dwelling. It was the Council's insistence that the application took this form, to enable it to tie the dwelling to the farm and so prevent the applicant from profiting from the redevelopment of the cottage.

It should not be forgotten that the council had also offered to withdraw the requirement for the building to be demolished if Mr Hanson were to plead guilty and receive a criminal record (as recorded in the email from Dean Hulse, council's barrister – copy attached to previous letter to Cllrs). Mr Hanson rightly declined this offer.

## **OFFICER COMMENTS**

The Inspector did consider the sustainability of the development at paras 17- 20 before concluding at 21 that it was not sustainable.

The Council cannot demonstrate a 5 year housing land supply but RA3 and RA4 are not 'out of date' furthermore the council can demonstrate a 3 year supply so weight can be attributed to NDP's (depending on their individual progress). At the time of the appeal now weight could be attributed to the Leominster NDP, hence why it was not a reason for refusal at that time.

Reference is made to existing dwellings not meeting affordability/size or acceptability tests, but there is no reference to where this criterion exists.

There is again reference to matters of advice which were to be tested at court since the advice offered is contested.

By the time the notice was issued the rebuild was substantially complete to the extent that a conversion proposal would have not have complied with Policy RA5.

**NO CHANGE TO RECOMMENDATION**

