

Agenda

Planning and regulatory committee

Date: Wednesday 17 January 2018

Time: 2.00 pm (or on the conclusion of the Committee's meeting held in the morning, if later).

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

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

For any further information please contact:

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If you would like help to understand this document, or would like it in another format, please call Tim Brown, Democratic Services Officer on 01432 260239 or e-mail tbrown@herefordshire.gov.uk in advance of the meeting.

Agenda for the meeting of the Planning and regulatory committee

Membership

Chairman	Councillor PGH Cutter
Vice-Chairman	Councillor J Hardwick
	Councillor BA Baker
	Councillor CR Butler
	Councillor PJ Edwards
	Councillor DW Greenow
	Councillor KS Guthrie
	Councillor EL Holton
	Councillor TM James
	Councillor JLV Kenyon
	Councillor FM Norman
	Councillor AJW Powers
	Councillor A Seldon
	Councillor WC Skelton
	Councillor EJ Swinglehurst

Agenda

		Pages
1.	<p>APOLOGIES FOR ABSENCE</p> <p>To receive apologies for absence.</p>	
2.	<p>NAMED SUBSTITUTES (IF ANY)</p> <p>To receive details of any Member nominated to attend the meeting in place of a Member of the Committee.</p>	
3.	<p>DECLARATIONS OF INTEREST</p> <p>To receive any declarations of interest by Members in respect of items on the Agenda.</p>	
4.	<p>CHAIRMAN'S ANNOUNCEMENTS</p> <p>To receive any announcements from the Chairman.</p>	
5.	<p>172552 - ASHGROVE CROFT, MARDEN, HEREFORD, HR1 3HA</p> <p>Proposed two additional mobile homes, two touring caravans and the construction of a day room, associated hard standing drainage and re-aligned access track.</p>	9 - 58
6.	<p>172756 - UNIT 3, 109-111 BELMONT ROAD, HEREFORD, HEREFORDSHIRE, HR2 7JR</p> <p>Proposed variation of condition 7 of planning permission dccw2003/3853/f (variation of condition 7 to allow trading to 23.00, 7 days a week (application no. Cw2002/3803/f)) to allow trading to be until 01:00 hours on Sunday to Thursdays and until 02:00 on Friday and Saturday. With customer delivery only sales and no sales counter sales.</p>	59 - 72
7.	<p>174094 - LAND AT OFFAS DENE, PROSPECT LANE, DINEDOR, HEREFORDSHIRE.</p> <p>Erection of one four-bedroom family house with a garage.</p>	73 - 80
8.	<p>DATE OF NEXT MEETING</p> <p>Date of next site inspection – 30 January 2018</p> <p>Date of next meeting – 31 January 2018</p>	

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YOU HAVE A RIGHT TO: -

- 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).
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- The Shire Hall is a few minutes walking distance from both bus stations located in the town centre of Hereford.

RECORDING OF THIS MEETING

Please note that filming, photography and recording of this meeting is permitted provided that it does not disrupt the business of the meeting.

Members of the public are advised that if you do not wish to be filmed or photographed you should let the governance services team know before the meeting starts so that anyone who intends filming or photographing the meeting can be made aware.

The reporting of meetings is subject to the law and it is the responsibility of those doing the reporting to ensure that they comply.

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In the event of a fire or emergency the alarm bell will ring continuously.

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Please do not allow any items of clothing, etc. to obstruct any of the exits.

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

The Chairman or an attendee at the meeting must take the signing in sheet so it can be checked when everyone is at the assembly point.

Guide to Planning and Regulatory Committee

The Planning and Regulatory Committee consists of 15 Councillors. The membership reflects the balance of political groups on the council.

Councillor PGH Cutter (Chairman)	Conservative
Councillor J Hardwick (Vice-Chairman)	Herefordshire Independents
Councillor BA Baker	Conservative
Councillor CR Butler	Conservative
Councillor PJ Edwards	Herefordshire Independents
Councillor DW Greenow	Conservative
Councillor KS Guthrie	Conservative
Councillor EL Holton	Conservative
Councillor TM James	Liberal Democrat
Councillor JLV Kenyon	It's Our County
Councillor FM Norman	Green
Councillor AJW Powers	It's Our County
Councillor A Seldon	It's Our County
Councillor WC Skelton	Conservative
Councillor EJ Swinglehurst	Conservative

The Committee determines applications for planning permission and listed building consent in those cases where:

- (a) the application has been called in for committee determination by the relevant ward member in accordance with the redirection procedure
- (b) the application is submitted by the council, by others on council land or by or on behalf of an organisation or other partnership of which the council is a member or has a material interest, and where objections on material planning considerations have been received, or where the proposal is contrary to adopted planning policy
- (c) the application is submitted by a council member or a close family member such that a council member has a material interest in the application
- (d) the application is submitted by a council officer who is employed in the planning service or works closely with it, or is a senior manager as defined in the council's pay policy statement, or by a close family member such that the council officer has a material interest in the application
- (e) the application, in the view of the assistant director environment and place, raises issues around the consistency of the proposal, if approved, with the adopted development plan
- (f) the application, in the reasonable opinion of the assistant director environment and place, raises issues of a significant and/or strategic nature that a planning committee determination of the matter would represent the most appropriate course of action, or
- (g) in any other circumstances where the assistant director environment and place believes the application is such that it requires a decision by the planning and regulatory committee.

The regulatory functions of the authority as a licensing authority are undertaken by the Committee's licensing sub-committee.

Who attends planning and regulatory committee meetings?

Coloured nameplates are used which indicate the role of those attending the committee:

Pale pink	Members of the committee, including the chairman and vice chairman.
Orange	Officers of the council – attend to present reports and give technical advice to the committee
White	Ward members – The Constitution provides that the ward member will have the right to start and close the member debate on an application. In attendance - Other councillors may also attend as observers but are only entitled to speak at the discretion of the chairman.

Public Speaking

The public will be permitted to speak at meetings of the Committee when the following criteria are met:

- a) the application on which they wish to speak is for decision at the planning and regulatory committee
- b) the person wishing to speak has already submitted written representations within the time allowed for comment
- c) once an item is on an agenda for planning and regulatory committee all those who have submitted representations will be notified and any person wishing to speak must then register that intention with the monitoring officer at least 48 hours before the meeting of the planning and regulatory committee
- d) if consideration of the application is deferred at the meeting, only those who registered to speak at the meeting will be permitted to do so when the deferred item is considered at a subsequent or later meeting
- e) at the meeting a maximum of three minutes (at the chairman's discretion) will be allocated to each speaker from a parish council, objectors and supporters and only nine minutes will be allowed for public speaking
- f) speakers may not distribute any written or other material of any kind at the meeting
- g) speakers' comments must be restricted to the application under consideration and must relate to planning issues
- h) on completion of public speaking, councillors will proceed to determine the application
- i) the chairman will in exceptional circumstances allow additional speakers and/or time for public speaking for major applications and may hold special meetings at local venues if appropriate.

MEETING:	PLANNING AND REGULATORY COMMITTEE
DATE:	17 JANUARY 2018
TITLE OF REPORT:	172552 - PROPOSED TWO ADDITIONAL MOBILE HOMES, TWO TOURING CARAVANS AND THE CONSTRUCTION OF A DAY ROOM, ASSOCIATED HARD STANDING DRAINAGE AND RE - ALIGNED ACCESS TRACK. AT ASHGROVE CROFT, MARDEN, HEREFORD, HR1 3HA For: Mr Harry Smith, Ashgrove Croft, Marden, Hereford, Herefordshire, HR1 3HA
WEBSITE LINK:	https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=172552&search=172552
Reason Application submitted to Committee – Ward Member Redirection Request	

Date Received: 6 July 2017

Ward: Sutton Walls

Grid Ref: 354018,249366

Expiry Date: 24 January 2018

Local Member: Councillor KS Guthrie

1. Site Description and Proposal

- 1.1 The application site, known as Ashgrove Croft, is located on the northern side of an unclassified road which leads to the hamlet known as The Vault, some 740 metres distant to the west. It is approximately 1.5 kilometres to the southwest of the village of Bodenham and 2 kilometres to the northeast of Marden. It is located within the Parish of Marden, but is in close proximity to the boundary with Bodenham Parish, which includes land to the south of the site on the opposite side of the lane. To the west of the site lies a detached bungalow, known as Greenfields, which is set back some 90 metres from the lane and to the north of that development has commenced in respect of an agricultural building conversion scheme for one dwelling (under Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015). To the northeast there is a solar farm extending to some 8.61 hectares. The prevailing land use is agricultural.
- 1.2 Levels rise within the site, from the lane to the north, although the area immediately adjacent to the existing vehicular access in the southeast corner and along the southern boundary is relatively flat. There is a mature hedgerow to the roadside boundary and also to the east and west boundaries. Presently the site is occupied as a gypsy site, with one static caravan, two touring caravans and various outbuildings. These are located towards the western side of the site.
- 1.3 The application seeks planning permission for the siting of two additional statics, two touring caravans and a day room. The caravans would be sited to the south of the existing static caravan and the dayroom would be sited to the north of it. Amended plans have been received,

Further information on the subject of this report is available from Mrs Charlotte Atkins on 01432 260536

which reduce the size of the proposed day room to an external floor area of 7 metres by 4 metres, 2.5 metres to roof eaves and 4 metres to roof ridge (as originally proposed it was 8 metres by 5 metres, with a pitched roof of 2.5 metres to eaves and 4.25 metres to the ridge. It would contain a bathroom and kitchen area and externally has been amended to timber clad blockwork under an onduline roof rather than the originally proposed brick and artificial slates. The application also proposes the modification of the existing access track and parking area. Plans have been provided indicating that visibility splays of 100 metres and 170 metres are achievable towards Bodenham (the C1125) and The Vault, respectively.

- 1.4 Supporting information, in a Design and Access Statement, has been provided and supplemented during the consideration of the application. It is stated that one of the additional static caravans is required to provide more room for the applicant's elder dependant children, to create room in the existing static for the applicant's mother in law, who it is advised has medical needs such that she is a dependant relative, and the other for his son and his partner and dependants. These details are summarised in paragraphs 5.5 and 5.6 of this Report.
- 1.5 Scaled amended plans clarify the extent of the application site and indicate a proposed new native species hedgerow to be planted along its northern boundary, with a gateway included to gain access to the land beyond, which is also in the same ownership. The application site, as outlined in red on the submitted plans, is the same area of land as that approved as a one family gypsy site in 2005 and subsequently amended by the planning permission in 2006.

2. Policies

2.1 Herefordshire Local Plan Core Strategy

SS1	-	Presumption in Favour of Sustainable Development
SS4	-	Movement and Transportation
SS6	-	Environmental Quality and Local Distinctiveness
SS7	-	Addressing Climate Change
RA3	-	Herefordshire's Countryside
H4	-	Traveller Sites
LD1	-	Landscapes and Townscapes
LD2	-	Biodiversity and Geodiversity
SD1	-	Sustainable Design and Energy Efficiency
SD4	-	Wastewater Treatment and River Water Quality

2.2 Neighbourhood Development Plan

Marden Neighbourhood Development Plan was made on 6th October 2016 and forms part of the Development Plan.

M1	-	Scale and Type of New Housing Development in Marden village
M2	-	Scale and Type of New Housing Development in designated hamlets
M3	-	General Design Principles
M10	-	Landscape Character

https://www.herefordshire.gov.uk/directory_record/3086/marden_neighbourhood_development_plan_made_6_october_2016

2.3 NPPF

The following sections are considered to be of particular relevance:

Introduction - Achieving Sustainable Development
Core Planning Principles
Section 3 - Supporting a Prosperous Rural Economy
Section 4 - Promoting Sustainable Transport

Further information on the subject of this report is available from Mrs Charlotte Atkins on 01432 260536

Section 7 - Requiring Good Design
Section 8 - Promoting Healthy Communities
Section 11 - Conserving and Enhancing the Natural Environment
Decision Making

2.4 Planning Practice Guidance (PPG)

2.5 Other Material Considerations:

Planning Policy for Traveller Sites August 2015 (PPTS)

Manual for Streets 2

Herefordshire Gypsy Travellers and Travelling Showperson Accommodation Assessment update Final report July 2017

Travellers' Sites Document pre-submission draft consultation (consultation 6.11.2017-18.12.2017)

Written Ministerial Statement (12 December 2016)

2.6 The Core Strategy 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/info/200185/local_plan/137/adopted_core_strategy

3. Planning History

3.1 DCCW2005/2579/F - Change of use from agricultural to a one family gypsy caravan site, permission for 2 caravans and stable block – approved 16.11.2005.

3.2 DCCW2006/0573/F - Variation of condition 2 of application CW2005/2579/F – approved 5.4.2006

3.3 150871/F - Variation of Condition 2 of Permission DCCW/2006/0573/F - to allow for the siting of an additional 4 static and 4 touring caravans (AMENDED APPLICATION) – withdrawn 19.11.2015

3.4 160494/F - Proposed change of use of land from a one pitch travellers site to a 5 pitch travellers site, including stationing of 4 additional mobile homes, 4 touring caravans, ablution block and hardstanding, parking, sheds and access track – withdrawn 21.6.2016

4. Consultation Summary

Statutory Consultations

4.1 Natural England

SUMMARY OF NATURAL ENGLAND'S ADVICE

NO OBJECTION - SUBJECT TO APPROPRIATE MITIGATION BEING SECURED

We consider that without appropriate mitigation the application would:

- have an adverse effect on the integrity of River Wye Special Area of Conservation
- damage or destroy the interest features for which River Lugg Site of Special Scientific Interest has been notified.

In order to mitigate these adverse effects and make the development acceptable, the following mitigation measures are required / or the following mitigation options should be secured:

Further information on the subject of this report is available from Mrs Charlotte Atkins on 01432 260536

- Foul sewage to be disposed in line with Policy SD4 of the adopted Herefordshire Core Strategy. Where a package treatment plant is used for foul sewage, this should discharge to a soakaway or a suitable alternative if a soakaway is not possible due to soil/geology.
- Surface water should be disposed of in line with Policy SD3 of the adopted Herefordshire Core Strategy and the CIRIA SuDS Manual (2015) C753.

We advise that an appropriate planning condition or obligation is attached to any planning permission to secure these measures. Subject to the above appropriate mitigation being secured, we advise that the proposal can therefore be screened out from further stages in the Habitats Regulations Assessment process, as set out under Regulation 61 of the Habitats Regulations 2010, as amended.

Further advice on mitigation

To avoid impacting the water quality of the designated sites waste and surface water must be disposed in accordance with the policies SD3 and 4 in of the adopted Herefordshire Core Strategy.

Foul sewage

We would advise that package treatment plants should discharge to an appropriate soakaway which will help to remove some of the phosphate (see NE report below). Package Treatment Plants and Septic Tanks will discharge phosphate and we are therefore concerned about the risk to the protected site in receiving this. We therefore propose that the package treatment plant/septic tanks and soakaway should be sited 50m or more from any hydrological source. Natural England research indicates that sufficient distance from watercourses is required to allow soil to remove phosphate before reaching the receiving waterbody. (Development of a Risk Assessment Tool to Evaluate the Significance of Septic Tanks Around Freshwater SSSIs) Where this approach is not possible, secondary treatment to remove phosphate should be proposed. Bespoke discharge methods such as borehole disposal should only be proposed where hydrogeological reports support such methods and no other alternative is available. Any disposal infrastructure should comply with the current Building Regulations 2010.

Surface water

Guidance on sustainable drainage systems, including the design criteria, can be found in the CIRIA SuDS Manual (2015) C753. The expectation is that the level of provision will be as described for the highest level of environmental protection outlined within the guidance. For discharge to any waterbody within the River Wye SAC catchment the 'high' waterbody sensitivity should be selected. Most housing developments should include at least 3 treatment trains which are designed to improve water quality. The number of treatment trains will be higher for industrial developments.

An appropriate surface water drainage system should be secured by condition or legal agreement.

Please note that if your authority is minded to grant planning permission contrary to the advice in this letter, you are required under Section 28I (6) of the Wildlife and Countryside Act 1981 (as amended) to notify Natural England of the permission, the terms on which it is proposed to grant it and how, if at all, your authority has taken account of Natural England's advice. You must also allow a further period of 21 days before the operation can commence.

Other advice

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

Should the developer wish to discuss the detail of measures to mitigate the effects described above with Natural England, we recommend that they seek advice through our Discretionary Advice Service.

4.2 Welsh Water

As the applicant intends utilising a private treatment works we would advise that the applicant contacts Natural Resources Wales who may have an input in the regulation of this method of drainage disposal.

However, should circumstances change and a connection to the public sewerage system/public sewerage treatment works is preferred we must be re-consulted on this application.

Internal Council Consultations

4.3 Transportation

Due to concerns of intensification of the existing access we require more information in regards to traffic movements currently on the site and proposed. This needs to be done under a transport statement.

Due to the route to the site we would need to condition any approvals on no commercial use at the site under this current application.

Once we receive a suitable Transport statement covering all vehicle pedestrian movements from the site on a daily basis now and as proposed, we will be able to better understand the intensity issues of the site.

Until then we will hold any additional comments on this application.

Accessibility by other modes of transport:-

The site is remote for all other modes of transport and is lacking in connectivity. Whilst lack of connectivity was a factor in the original planning approval the sites remoteness off single track lanes is still to be noted.

Access:-

Speed limit:- 60mph

Existing visibility splays in both directions:- not supplied

Required visibility splays in both directions (quote both Herefordshire Highways Design Guide 2006 based on DMRB and MfS & Mfs2):-

An on site observation concluded that vehicle movements past the existing access are very low with 3 vehicles in 20 minutes just after 9am and max speeds were @30 mph. This is an existing access and as long as any approval is conditioned limiting the numbers proposed then we would be happy with the proposed access with some removal of the hedge line to improve visibility as much as possible. See photo below of lack of visibility out of the access.



Further information on the subject of this report is available from Mrs Charlotte Atkins on 01432 260536

The applicant has suggested a 90 degree to the highway access to improve the existing acute arrangement. This would be a big improvement over the current layout. (current layout below)



It should be noted that gates will need to be relocated 5 metres back from the edge of the carriageway

COMMENTS:-

Proposal acceptable, subject to the following conditions and / or informatives:-

The maximum numbers of static caravans and tourers are conditioned as per the number in the application.

Visibility splay is created by removal / pulling back of the existing hedge to maximise visibility.

Gate relocated 5 metres back of the carriageway to suit new 90 degrees to the road access re-alignment.

4.3.1 Transportation – amended/additional plans

Mitigation of the outstanding conditions.

The maximum numbers of static caravans and tourers are conditioned as per the number in the application.

Any approval will be related to the supplied drawings and statements regarding usage of the site supplied in this application.

Visibility splay is created by removal / pulling back of the existing hedge to maximise visibility.

"Sightlines from an X distance of 2.4 metres at the access have been measured at 100 metres to the east and 170 metres to the west along the highway" (as offered by the applicant's transport statement 3 document) This will be conditioned in any approval given.

Gate relocated 5 metres back of the carriageway to suit new 90 degrees to the road access re-alignment.

The recent resubmission of plans shows a gate 10m back with the access road joining the highway at 90 degrees. We will condition approval based on the new submission plan AQC3.

LATEST COMMENTS:

Proposal acceptable, subject to the following conditions and / or informatives:-

IN LINE WITH THE NEW ACCESS ALIGNMENT: the surfacing must be a sealed surface and no drainage to the Highway from the site.

We ask that no intensification above the transport statement supplied and plan AQC3 without a new application.

CAB - H03 Visibility splays :

East (2.4 metres (“X” distance) x 100 metres (“Y” distance)

West (2.4 metres (“X” distance) x 170 metres (“Y” distance)

CAC - H04 Visibility over frontage

CAD - H05 Access gates as per Dwg ref AQC3

CAE - H06 Vehicular access construction

CAH - H09 Driveway gradient

4.4 Conservation Manager (Ecology)

No objection. Subject to confirmation through Building Regulations that the current Package Treatment Plant and soakaway field has sufficient capacity to handle the increased volumes of foul water and still have legally required ‘headroom’ I can not see any unmitigated ‘Likely Significant Effects’ on the River Lugg SAC/SSSI.

If any upgraded PTP is required then final outfall MUST be through a soakaway field with no direct final outfall in to any watercourse, ditch or culvert – in order to ensure there is no detrimental impacts on local ecology and the River Lugg SAC/SSSI from Phosphorous (phosphates) residual nitrogen or suspended solids in the outfall discharge water. (Habitat Regulations, NERC Act, Core Strategy LD2 and SD4).

No additional external lighting should illuminate any boundary feature or the adjacent highway above existing night time illumination levels to ensure there are no impacts on local commuting and foraging wildlife.

4.4.1 Conservation Manager (Ecology) – amended plans/additional information

There is no detailed information supplied by the applicant on the actual capacity of the existing Package Treatment Plant or the existing soakaway field. I am aware that this type of site may not be subject to Building Regulations and so under the Council’s Duty of Care to the River Lugg/Wye SAC and SSSI and in line with Habitat Regulations, Core Strategy (SD4 and LD2), NERC Act and NPPF this planning authority needs to be able to ensure there are NO unmitigated ‘Likely Significant Effects’ from this proposed development. To reach this conclusion, before determination a professional report confirming the type of current installation and capacity of the PTP and the soakaway field as well as a confirmation of operational condition is required to clearly demonstrate that the existing system has sufficient capacity (with required ‘headroom’) to cope with the maximum proposed occupancy of the site at any time. This stated maximum occupancy should also be subject to Condition.

If the professional report indicates the system is not capable of supporting the proposed maximum occupancy (with required headroom) then full details of the proposed upgraded foul water treatment system MUST be supplied PRIOR to determination of any Planning Application for consideration. If any upgraded or new PTP is required then final outfall MUST be through a soakaway field (percolation tests to establish this is practical and required length MUST be undertaken and supplied) with no direct final outfall in to any watercourse, ditch or culvert – in order to ensure there is no detrimental impacts on local ecology and the River Lugg SAC/SSSI from Phosphorous (phosphates) residual nitrogen or suspended solids in the outfall discharge water. (Habitat Regulations, NERC Act, Core Strategy LD2 and SD4). I note the plans supplied indicate a borehole and there are specific Building Regulations with regard to proximity of any

soakaway to boreholes and the applicant should demonstrate that these distances are achievable.

I note that biodiversity enhancements through a soft landscaping scheme have already been included and will be commented upon by my colleagues in Landscape.

4.4.2 Conservation Manager (Ecology) – further amended plans/additional information

I note the applicant's information. The existing system is obviously capable of managing the existing static occupancy and coping with occasional additional touring use of the site. The applicant has acknowledged that with an increase in static occupancy as proposed the existing system is unlikely to have ongoing capacity and that an additional or one new enlarged treatment system with any relevant increase in soakaway size will be required. From an HRA perspective (Likely Significant Effect on River Lugg (River Wye) SAC/SSSI) it is a requirement that we can suitably Condition all required mitigation. Given the issue is static occupancy levels, to fulfil our Duty of Care we will need to ensure that the required additional capacity has been approved and will be in place prior to the additional occupancy taking place. To ensure this I would request a relevant pre-occupancy - pre-commencement condition requiring the submission of an updated Foul Water management plan with relevant detailed plans and specifications is included – this plan should be implemented PRIOR to any occupation or use of the proposed day room.

Suggested condition below:

Foul Water and Nature Conservation

Prior to the commencement of the development full details of the proposed additional or replacement foul water drainage arrangements must be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented prior to either the first occupation of the caravans hereby approved or the dayroom first use.

Reason: In order to ensure that satisfactory drainage arrangements are provided and to comply with Policies SD3, SD4, LD2 and LD3 of the Herefordshire Local Plan – Core Strategy [and the National Planning Policy Framework]; Habitat Regulations and NERC Act.

Informative: Discharge of final outfall through an appropriately sized soakaway-spreader field is required. No direct discharge of any final outfall from the proposed treatment system to any swale, watercourse, stream or culvert is acceptable unless it can be clearly demonstrated that residual Phosphorous (phosphates) have been removed from the discharge water.

I note that biodiversity enhancements through a soft landscaping scheme have already been included and will be commented upon by my colleagues in Landscape

4.5 Conservation Manager (Landscape)

Approve with conditions

1. Planning Context

1.1 National Planning Policy Framework

- 11. 109 Conserving and enhancing the natural environment
- 11. 112 Economic and other benefits of versatile agricultural land

1.2 Herefordshire Local Plan Core Strategy 2011 – 2031 (October 2015)

- SS6. Environmental quality and local distinctiveness
- LD1. Landscape and Townscape
- LD3. Green infrastructure

Further information on the subject of this report is available from Mrs Charlotte Atkins on 01432 260536

1.3 Designations/Constraints

- Unregistered Parks and Gardens – Vennwood – no impact on setting envisaged
- Agricultural Land Classification – Grade 2 - Good agricultural soil
- Footpaths/Bridleways – MR5 and BM28

1.4 Herefordshire Landscape Character Assessment

Principal Settled Farmlands – Main Characteristics are: ‘hedgerows used for field boundaries’. Secondary characteristics are ‘mixed farming land use, notably of domestic character, defined chiefly by the scale of its field pattern the nature and density of its settlement and its traditional land use’.

2. Landscape and Visual effects

I have read the Design and Access Statement and seen the Block Plan showing two additional mobile homes, two touring caravans and the construction of a day room, associated hard standing drainage and re- aligned access track, Dated June 2017.

I have visited the site and the surrounding areas on Thursday 10th March 2016.

These are my landscape comments which reference to this application relating to the following above planning policy statements:

2.1 The National Planning Policy Framework, Item 11, 109 states: ‘The planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes and soils’

The Landscape Character of this area is that of ‘Principal Settled Farmlands’ with mixed farming land use and native hedgerows as field boundaries. These rural fields have a domestic character and traditional land use. Without substantial landscape mitigation and landscape enhancement proposals the proposed caravans and associated facilities would not contribute or enhance this landscape when seen from local footpaths MR5 approx. 140m to the west and from BM28 a local bridleway to the east. This is due to the fact that the caravans are not in materially character with this landscape.

2.2 The National Planning Policy Framework, Item 11, 112 states: ‘Local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land. Where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality’

The Agricultural Land Classification of this proposed site is classified as Grade 2, Good Agricultural Soil. The development is not a significant in size but there would be a loss of Grade 2 agricultural soil. This does not demonstrate that poorer quality land has been sought for this proposed development.

2.3 The Herefordshire Local Plan Core Strategy 2011 – 2031, Dated October 2015, following policies state:

2.4 SS6. Environmental quality and local distinctiveness: ‘Development proposals should conserve and enhance those environmental assets that contribute towards the county’s distinctiveness, in particular its settlement pattern, landscape, biodiversity and heritage assets and especially those with specific environmental designations’.

The environmental quality and local distinctiveness of this area is a traditional rural land use with dispersed scattered farms, small villages and hamlets. This proposed development does not use local materials and local design which is characteristic to this landscape. This proposed development based on the present Block Plan without substantial landscape mitigation and enhancement proposals would not enhance or contribute to the counties distinctiveness in this landscape.

2.5 LD1. Landscape and townscape: 'Development proposals should'

- Demonstrate that character of the landscape and townscape has positively influenced the design, scale, nature and site selection, protection and enhancement of the setting of settlements and designated areas;
- Conserve and enhance the natural, historic and scenic beauty of important landscapes and features, including Areas of Outstanding Natural Beauty, nationally and locally designated parks and gardens and conservation areas; through the protection of the area's character and by enabling appropriate uses, design and management;
- Incorporate new landscape schemes and their management to ensure development integrates appropriately into its surroundings; and
- Maintain and extend tree cover where important to amenity, through the retention of important trees, appropriate replacement to trees lost through development and new planting to support green infrastructure.

There has already been a loss of local distinctiveness and character in this area with the existing electric pylons crossing the site and a nearby solar farm to the north east of the proposed site.

2.6 LD3. Green Infrastructure: 'Development proposals should protect, manage and plan for the preservation of existing and delivery of new green infrastructure'

The applicants Block Plan, Dated June 2017 shows some proposals for new native hedgerows and tree planting on the SE part of the proposed site. The Block Plan however does not show mitigation hedgerow screening on the northern boundary. The Western boundary also requires further native tree enhancement and hedgerow restoration where appropriate.

3. Recommendations

3.1 With reference to the applicants Block Plan, Dated 17 and to my above landscape impact comments I would approve this application with further substantial appropriate landscape mitigation and enhancement proposals for the site.

3.2 I would recommend appropriate landscape mitigation and enhancement measures to include a native hedgerow and native trees on the Northern boundary. Further native tree planting adjacent to the Western boundary and landscape enhancement proposals such as making the whole remaining grass area of the site an orchard (of a variety of fruit trees) with appropriate biodiverse native ground cover.

3.3 To achieve the above recommended landscape mitigation and enhancement proposals I would recommend the following landscape conditions:

With the exception of any site clearance and groundwork (excluding any works to retained features), no further development shall commence on site until a landscape design has been submitted to and approved in writing by the Local Planning Authority. The details submitted should include:

Soft landscaping

- a) An appropriately coloured landscape plan at scale 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) An appropriately coloured landscape plan at a scale of 1:200 or 1:500 showing the layout of proposed native trees, orchard trees, native hedges and appropriate orchard tree native ground cover 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 wild flower establishment.
- d) A Landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas. These are to be submitted to and approved in writing by the Local Planning Authority prior to the occupation of the development. The landscape management plan shall be carried out as approved.
- e) The appointed Landscape Contractor shall maintain the proposed landscaping for a minimum period post Practical Completion for five years. Maintenance thereafter shall be by the occupants of the site through the use of the Landscape management plan.

Hard landscaping

- a) Existing and proposed finished levels.
- b) The position, design and materials of all site enclosure features.
- c) Vehicular layout and pedestrian areas
- d) Hard surfacing materials and their colours. These hard surfaces should be permeable.
- e) Minor structures (e.g. lighting, refuse areas, etc.)
- f) Location of proposed functional services above and below ground

4.5.1 Conservation Manager (Landscape) - amended/additional plans

With reference to my previous landscape comments of the 27th September 2017, I have now seen the latest amended Landscape Plan showing additional planting, plus a perforated concrete chamber rings soakaway.

This latest Landscape drawing has no Date or Revision number and has no bar scale to indicate scale. It does have a North point however. The plan shows further proposed tree planting in green graphics that of:

- Three proposed oak trees on the northern boundary adjacent to the existing native hedgerow.
- Two proposed oak trees on the western boundary adjacent to the existing native hedgerow and
- Seven extra proposed fruit trees near to the site entrance area.

These are my comments relating to this latest amended Landscape Plan.

1. My previous landscape comments dated 27th September 2017, Section Recommendations, Item 3.1 said 'With reference to the applicants Block Plan, Dated 17 and to my above landscape comments, I would approve this application with further substantial appropriate landscape mitigation and enhancement proposals for the site'.

The latest landscape proposal still does not have substantial landscape mitigation and enhancement proposals for the site.

To clarify substantial landscape mitigation and enhancement proposals. The whole site north of the Day Room to the existing northern boundary hedgerow should become a native woodland planted with oak *Quercus robur*. An appropriate native ground flora should be seeded or plug planted in this proposed woodland area.

2. The woodland proposal should take consideration of existing pylon wires.

When the applicant amends his latest landscape proposal with a native woodland and ground flora proposal, the following information should be provided.

Soft landscaping

- a) An appropriately coloured landscape plan at scale 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) An appropriately coloured landscape plan at a scale of 1:200 or 1:500 showing the layout of proposed native trees, orchard trees, native hedges and appropriate orchard tree native ground cover 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 wild flower establishment.
- d) A Landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas. These are to be submitted to and approved in writing by the Local Planning Authority prior to the occupation of the development. The landscape management plan shall be carried out as approved.
- e) The appointed Landscape Contractor shall maintain the proposed landscaping for a minimum period of five years post Practical Completion. Maintenance thereafter shall be by the occupants of the site through the use of the Landscape management plan.

Hard landscaping

- a) Existing and proposed finished levels.
- b) The position, design and materials of all site enclosure features.
- c) Vehicular layout and pedestrian areas
- d) Hard surfacing materials and their colours. These hard surfaces should be permeable.
- e) Minor structures (e.g. lighting, refuse areas, etc.)
- f) Location of proposed functional services above and below ground.

Further information:

1. I can recommend three local chartered Landscape Architects who can provide an appropriate and professional Landscape Plan relating to the above Soft and Hard landscape requirements for this application.
2. To achieve appropriate and substantial landscape mitigation and enhancement, I would recommend that the applicant research the following documents:
 - BS3998:2010 Recommendations for Tree Works
 - Research Report : Woodland actions for biodiversity and their role in water management. March 2008, Woodland Trust
 - Traditional (standard) Orchard Technical Information Notes (TIN 012-020) Natural England 2010
 - Tree planting and aftercare, Elizabeth Agate (ed) 2004 BTCV and the following web link
 - www.conservationhandbooks.com/how-plant-trees

4.6 Environmental Health – Licensing and Gypsy Traveller Section

No objections, however, the applicant should be advised that the site may be subject to a caravan site licence as required under the Caravan site and control of Development act 1960. This licence will include conditions such as the distance between units and the boundary, number of facilities, electricity provision etc. Further details and an application form for a caravan site licence can be found from the council's website or from the licensing team on (01432) 261761.

4.7 Manager of Social Inclusion and Equalities

Herefordshire Traveller Education Service has known Mr and Mrs Smith and their children, currently at Ashgrove Croft, Marden, for decades. The family are Romany Gypsies and have travel patterns and family connections across the Midlands, but primarily in Herefordshire and Shropshire. The family still travel for employment purposes from their home at Ashgrove Croft.

Mrs Smith, in common with many Romany Gypsy women, has taken on full-time care of her elderly and dependent mother. The family accommodation is somewhat crowded as a result of this.

I have known Mr and Mrs Smith's eldest son, Hamby, since childhood. Hamby lives in a caravan with his wife and two children. To my knowledge they have no fixed address and are often resident in Shropshire. Hamby Smith and his wife would welcome a permanent base at Ashgrove Croft, from where they can access education and health services for their children and support Mrs Smith snr in her caring responsibilities. Hamby Smith is a reputable landscape gardener/tree-worker and frequently travels for employment.

The family epitomises the hard-working, flexible and nomadic approach to employment and living of traditional Romany Gypsy families. The extension of the existing family site to allow access to education and services and the better care of elderly relatives would be humane and sensible.

4.8 Strategic Planning Manager

Herefordshire Local Plan - Travellers Site DPD November 2017

Policy H4, Traveller Sites, of the adopted Herefordshire Core Strategy includes criteria for assessing applications for traveller sites in the absence of an adopted Traveller Sites Development Plan Document (DPD). Policy RA3, Herefordshire's Countryside, of the adopted Core Strategy includes the development of sites for gypsies or other travellers as a use that is acceptable outside of settlements subject to meeting the requirements of Policy H4.

As stated in policy H4 the Council is preparing a Travellers Sites DPD which was published for pre-submission publication on 6th November 2017. The closing date for representations is 18th December 17. This supported by Gypsy and Traveller Accommodation Assessment (GTAA) that was updated in July 2017. The documents can be found here: https://www.herefordshire.gov.uk/info/200185/local_plan/149/travellers_sites_document/5

Both the DPD and the evidence base including the GTAA will be scrutinised as part of the Examination Process. The degree of weight that can be attached to an emerging development plan document varies according to what stage in the plan preparation has been reached. Given that the DPD is currently the subject of consultation, and we do not know the level of objections to the proposals and policies, little weight can be attached to it at this stage.

Therefore it is agreed that in the absence of an adopted DPD that there is no requirement for need to be taken into account for planning applications.

However for your information, the findings of the latest GTAA are as below. This GTAA identified the requirement for pitches based on two approaches – firstly by applying a cultural definition of travellers and secondly applying the definition that is included in the 2015 Planning Policy for Traveller Sites guidance.

The GTAA Update 2017 has found evidence of Gypsy and Traveller pitch need over the next five years (2017/18 to 2021/22) equating to 48 pitches under a cultural definition, and as a subset of this number, 17 pitches under the PPTS 2015 definition of Gypsy/Traveller (those who still travel and/or intend to travel).

For the full Local Plan Period (2011/12 to 2030/31) the GTAA has identified a cultural need for 91 pitches and, as a subset of this number a PPTS need for 33 pitches.

The GTAA takes in to account an anticipated annual turnover of 6 pitches on local authority sites during the remainder of the plan period (2017/18 to 2030/31), this equates to 84 pitches becoming available. Therefore, it concludes that both the cultural and PPTS shortfalls are likely to be addressed.

However the GTAA recognises that not all traveller families will want to live on local authority sites and therefore it recommends that the Council should continue to consider applications for appropriate small sites to address the needs of local Gypsy and Traveller families should they be forthcoming over the plan period.

4.8.1 Strategic Planning Manager – update

The pre-submission consultation on the DPD and the GTAA is now complete. We have received objections to both the GTAA and the DPD and therefore in our opinion no greater weight can be afforded to them. We are currently processing all the representations received with a view to submitting the documentation to the inspectorate for examination in mid-February.

5. Representations

5.1 Marden Parish Council – original comments

Introduction

1. This document sets out the objection by Marden Parish Council to planning application P172552/F for the change of use of land from a one pitch travellers site with one mobile home and one touring caravan at Ashgrove Croft, Marden to a 3 pitch travellers site, with the proposed siting of 2 additional mobile homes, 2 additional touring caravans, construction of a Day Room, associated hard standing, drainage and re-aligned access track.

2. The page numbers in the application Design and Access Statement are shown in parenthesis as an aid to cross-referencing.

Marden

3. Marden is one of the largest parishes in Herefordshire and covers 1,396 hectares. The village of Marden is the main settlement in the parish.

4. The village of Marden has a compact triangular form, with two areas of ribbon development to the east and west. The village services are located at the southern side of the village. There are 3 other designated settlements within the parish, Litmarsh, Burmarsh and The Vault.

5. Marden Parish Council (hereinafter 'the PC') has an adopted Neighbourhood Development Plan (NDP) which is part of the local Development Plan for Herefordshire. Whilst the NDP does not address gypsy and traveller sites, it does identify settlement boundaries for Marden, Burmarsh, Litmarsh and The Vault in accordance with Policy RA2 of the Herefordshire Core Strategy.

National Planning Policy - Planning Policy for Travellers Sites (August 2015)

6. Policy C of the above document states at Paragraph 14

When assessing the suitability of sites in rural or semi-rural settings, local planning authorities should ensure that the scale of such sites does not dominate the nearest settled community.

7. The closest settled community is The Vault at a distance of 0.8 km, with approximately 10 houses, and over 1.6 km from Bodenham Moor (outside the parish) which has 270 dwellings.

8. Policy D of the above documents states at Paragraph 15

If there is a lack of affordable land to meet local traveller needs, local planning authorities in rural areas, where viable and practical, should consider allocating and releasing sites solely for affordable traveller sites. This may include using a rural exception site policy for traveller sites that should also be used to manage applications. A rural exception site policy enables small sites to be used, specifically for affordable traveller sites, in small rural communities, that would not normally be used for traveller sites.^ Rural exception sites should only be used for affordable traveller sites in perpetuity. A rural exception site policy should seek to address the needs of the local community by accommodating households who are either current residents or have an existing family or employment connection, whilst also ensuring that rural areas continue to develop as sustainable, mixed, inclusive communities.

9. With regard to determining planning applications for travellers' sites, the guidance is as follows (Paras 22-26):

22. Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise.

23. Applications should be assessed and determined in accordance with the presumption in favour of sustainable development and the application of specific policies in the National Planning Policy Framework and this planning policy for traveller sites.

24. Local planning authorities should consider the following issues amongst other relevant matters when considering planning applications for traveller sites:

- a) the existing level of local provision and need for sites
- b) the availability (or lack) of alternative accommodation for the applicants
- c) other personal circumstances of the applicant
- d) that the locally specific criteria used to guide the allocation of sites in plans or which form the policy where there is no identified need for pitches/plots should be used to assess applications that may come forward on unallocated sites
- e) that they should determine applications for sites from any travellers and not just those with local connections.

However, as paragraph 16 makes clear, subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances.

25. Local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. Local planning authorities should ensure that sites in rural areas respect the scale of, and do not dominate, the nearest settled community, and avoid placing an undue pressure on the local infrastructure.

26. When considering applications, local planning authorities should attach weight to the following matters:

- a) effective use of previously developed (brownfield), untidy or derelict land

- b) sites being well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness
- c) promoting opportunities for healthy lifestyles, such as ensuring adequate landscaping and play areas for children
- d) not enclosing a site with so much hard landscaping, high walls or fences, that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community.

(Annex 1):

For the purposes of this planning policy "gypsies and travellers" means:

Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.

In determining whether persons are "gypsies and travellers" for the purposes of this planning policy, consideration should be given to the following issues amongst other relevant matters:

- a) whether they previously led a nomadic habit of life
- b) the reasons for ceasing their nomadic habit of life
- c) whether there is an intention of living a nomadic habit of life in the future, and if so, how soon and in what circumstances.

10 Local Planning Policy

Core Strategy

Existing local planning policy is contained in the Herefordshire Core Strategy (2011-2031). The relevant Core Strategy Policies are as follows:

SSI - Presumption in Favour of Sustainable Development SS4 - Movement and Transportation

SS6 - Environmental Quality and Local Distinctiveness

SS7 - Addressing Climate Change RA3 - Herefordshire's Countryside H4 - Traveller Sites

LD1 - Landscapes and Townscapes

LD2 - Biodiversity and Geodiversity

SD1 - Sustainable Design and Energy Efficiency

SD4 - Wastewater Treatment and River Water Quality

11. Herefordshire Council's Travellers' Sites Document Preferred Options was consulted on in 2016. The final document for submission to Examination is awaited. Until the Travellers' Sites Development Plan Document is adopted. Policy H4 of the Core Strategy applies.

Marden Neighbourhood Development Plan

12. The Marden Neighbourhood Development Plan was made (adopted) by Herefordshire Council on 6 October 2016 and now forms part of the Development Plan for Herefordshire.

13. Marden NDP identifies settlement boundaries for Marden village, Burmarsh, Litmarsh and The Vault, which is the nearest settlement to the application site.

14. The Ministerial Statement of 12 December 2016 'Neighbourhood Planning: Written Statement - HCWS346' included the following:

I am today making clear that where communities plan for housing in their area in a neighbourhood plan, those plans should not be deemed to be out-of-date unless there is a significant lack of land supply for housing in the wider local authority area. We are also offering those communities who brought forward their plans in advance of this statement time to review their plans.

This means that relevant policies for the supply of housing in a neighbourhood plan, that is part of the development plan, should not be deemed to be 'out-of-date' under paragraph 49 of the

National Planning Policy Framework where all of the following circumstances arise at the time the decision is made:

'This written ministerial statement is less than 2 years old, or the neighbourhood plan has been part of the development plan for 2 years or less;
'the neighbourhood plan allocates sites for housing: and
'the local planning authority can demonstrate a three-year supply of deliverable housing sites. (PC's emphasis)

16. Marden NDP allocates sites for housing and Herefordshire Council can demonstrate a 4.39-year supply of deliverable housing sites. Therefore, as Marden NDP is part of the development plan for Herefordshire, its policies are should be used to decide this application.

17. Herefordshire Council states an indicative figure of 104 new houses required in Marden parish by 2031. The latest position shows that completions between 2011 -2017 and commitments as at 1 April 2017 already leads to 48 more dwellings than the minimum 104.

18. The policies in Marden NDP that are relevant to the application are: Policy M2 - Scale and Type of New Housing in Designated Hamlets Policy M3 - General Design Principles Policy M10 - Landscape Character

The Application

19. The site was previously granted permission in 2005 (DCW/2005/02579 and renumbered as DC0524472) as a personal permission for one static and one touring caravan. The application was considered to be of a limited scale in terms of its effect upon the character and visual amenity of the area and the personal circumstances of the applicant set out a genuine need.

20. A further application was granted in 2006 (DCW/2006/0573 and renumbered as DCC060581) with the same usage clause as in the previous ownership, that the benefit was for Mr Harry Smith and Mrs Shirley Smith only and not for the benefit of the land or any other person interested in the land.

21. A further application (160494) to increase the number of on-site caravans by 4 additional mobile homes, 4 touring caravans, ablution block, hardstanding, parking, sheds and access track, was submitted but withdrawn.

22. This application (172552) seeks to increase the number of mobile home pitches to 3, by siting 2 additional mobile homes, increase the number of touring caravans from 1 to 3, adding a Day Room and associated hard standing, drainage and a re-aligned access track.

23. Although the current permission is only for 1 touring caravan on the site, 2 touring caravans are frequently seen on the site, of which 1 is not authorised under existing approvals. The PC is concerned that further breaches in numbers of touring caravans on site will be seen if the application is permitted to allow 3 touring caravans in total.

24. This application site is located on a site in the countryside, outside the settlement boundary for The Vauld. Policies RA3, Herefordshire's Countryside, and H4, Traveller Sites, of the adopted Core Strategy and Policy M2 of the Marden NDP are relevant.

25. Policy RA3 limits development outside a settlement in rural areas to certain criteria including sites providing for the needs of gypsies or other travellers in accordance with Policy H4.

26. A possible extension to the site could have been submitted to the Call for Sites process undertaken for Herefordshire Council's Travellers' Sites Document Preferred Options consultation, or indeed to the Call for Sites for development for the Marden NDP. However, the site was not submitted.

27. Policy H4 - Traveller Sites sets out a number of criteria where sites are proposed on non-allocated land in the absence of an adopted Travellers' Sites DPD, as in this case. These are considered as follows:

Sustainable Location

28. Criteria 1 states sites afford reasonable access to services and facilities, including health and schools.

29. The site is located in open countryside, 0.9 km from The Vault and 1.2 km from Bodenham Moor. It is over 1.2 km to the nearest shop in Bodenham and 3.4 km to the nearest services in Marden. With regard to schools, the distances to primary schools are as follows:

St Michaels Church of England Primary School in Bodenham - 3.4 km Marden Primary School - 3.4 km Sutton Primary School - 4.2 km.

The age of the children occupying the site (p 2 of Design and Access Statement) is such that only one child is still of primary school age and therefore the other children still within education are travelling much longer distances.

30. Given the distances to relevant services and facilities, the site does not afford reasonable access to services and facilities. For this reason, the PC considers the application is contrary to National Planning Guidance and the presumption in favour of sustainable development and Policy SSI and H4 of the Herefordshire Core Strategy.

31. The applicant states (p 7) that Marden NDP earmarked the hamlet of The Vault ... as sustainable for some further housing ...the argument put forward on behalf of the Parish Council in the Objection to the previous application that the latter is unsustainable, is now even more difficult to maintain. The PC strongly disputes this as the applicant's understanding of the NDP is incorrect. The NDP Policy M2 states that new housing development is only Within the settlement boundary as shown on the Policies maps.

32. The application is both outside the settlement boundary for The Vault and is unsustainable because of the distance to local amenities and must, therefore, be refused.

33. The applicant states (p 8) that The road to the village [of Bodenham Moor] starts on the C1125 and joins the Bodenham-Withington road. Neither is heavily trafficked... In reality, the C1125 is narrow, twisting and has a 60-mph speed limit, from just outside Bodenham Moor to Sutton St Nicholas. It is known to be dangerous for car traffic, let alone bicycles or pedestrians (p 8). The PC believes that there have been at least 10 accidents in the last few years at or close by the junction of the U72620 and the C1125.

34. The U72620 which runs past the site is single carriageway, with a passing place. The road is used by heavy agricultural traffic, traffic to the solar farm and other more usual traffic. The addition of extra vehicles on the site, and touring caravans being manoeuvred on- and off-site, will merely increase the dangers of the roads in the locality. The realigned access appears likely to be as difficult to manoeuvre round when towing as is the current access and is therefore unsustainable.

Screening and landscaping

35. Criterion 2 states appropriate screening and landscaping is included within the proposal to protect local amenity and the environment.

36. Paragraph 58 of the NPPF states Local and Neighbourhood Plans should develop robust and comprehensive policies that set out the quality of development that will be expected for the area. Such policies should be based on stated objectives for the future of the area and an understanding and evaluation of its defining characteristics. This is defined in the SPG

Herefordshire Landscape Character Assessment and in Policy LDI of the Core Strategy, and Policy M10 of the Marden Neighbourhood Development Plan.

37. The existing site is visible from the C1125 which runs to the east of the site from Sutton St Nicholas to Bodenham Moor. As part of this application, the applicant is proposing a landscaping scheme to incorporate a new hedge and planting of fruit trees on the eastern side of the site to screen the pitches from the surrounding area (p 4). Given the height of the road in relation to the site, visibility will continue to be an issue, particularly in relation to the proposed Day Room near the top of the site (p 3).

38. The intensification of the use of the site and the concentration of caravans in this location, outside the settlement boundary for The Vault, would have a detrimental effect on the landscape character of the area by urbanisation of the countryside; the proposed Day Room at 4.5m high would exacerbate the situation. In addition, the introduction of high hedges would have a detrimental effect on the landscape character which has predominantly low hedgerows interspersed by trees. The landscaping scheme would neither protect nor enhance the character of the area.

39. In addition, the density of the addition of 2 static caravans, 2 more touring caravans together with the proposed Day Room on the site would not be in keeping with the surrounding low density, historic character of the area.

40. For the above reasons, the PC considers that the screening/landscaping, the density and effect on the character of the landscape/environment are contrary to Policies H4 and LD1 of the Herefordshire Core Strategy and Policies M2 and M10 of the Marden NDP.

Integrated existence

41. Criterion 3 states they promote peaceful and integrated co-existence between the site and the local community.

42. Due to the lack of services and facilities in the immediate surrounding area, there are no opportunities for integration with the local community. The site is an isolated site in open countryside.

43. For this reason, the PC considers that the application is contrary to Policies SS1 and H4 of the Herefordshire Core Strategy.

Mixed use

44. Criterion 4 states they enable mixed business and residential accommodation (providing for the live-work lifestyle of travellers).

45. The application states that The businesses the site residents engage in are largely off site, but there is space for the storage of equipment as necessary (p 10). However, it also states that the area to the north of the existing static would be cleared of the sheds and other assorted outbuildings to improve the appearance of the site (p 3). It is difficult to see how these statements are compatible, particularly with the later statement that the site is spacious enough to accommodate storage provision (p 11).

Pressure on services

46. Criterion 5 states they avoid undue pressure on local infrastructure and services.

47. The addition of more families and family members, assessed as a total of 12 individuals, together with the extra caravans and Day Room will put undue pressure on local infrastructure and services. Moreover, it will increase the traffic to and from the site, due to the unsustainable location of the site which is a significant distance from facilities and services.

Dominate communities

48. Criterion 6 states in rural areas, the size of the site does not dominate nearby settled communities.

49. The closest settled community is The Vault at a distance of 0.8 km, with approximately 10 houses, and over 1.6 km from Bodenham Moor which has 270 dwellings.

50. The PC considers that the intensification of the site's population will impact the nearby community of the Vault and will be contrary to Policy H4 of the Herefordshire Core Strategy; the proposal should be refused.

On-site facilities

51. Criterion 7 states they are capable of accommodating on-site facilities that meet best practice for modern traveller site requirements, including play areas, storage, provision for recycling and waste management.

52. This application proposes the inclusion of a Day Room but, as previously noted, the removal of storage sheds, which is incompatible with criterion 7.

53. The PC has considerable concerns that the proposed Day Room, with full facilities as well as space for a sitting area, could in future be used as extra living accommodation, possibly for the older children. This would be in non-conformity with not only any possible approval but with planning law generally. In addition, the permitting of a Day Room could be used in future as an argument for further expansion to the site as the older children start their own relationships and families.

54. The application states that the Day Room and the two additional statics could be connected up to the existing treatment plant.... The existing treatment plant is thought to be of an adequate size for this small increase in population (p 4). However, the PC considers that the potential increase in the number of adults and children on the site is likely to exceed the capabilities of the existing sewerage treatment system. There is also concern that the proposed new mobile homes will require the pumping of raw sewage up to the existing system without any holding tanks being identified. In addition, the PC has concerns that the planned soakaways for grey and surface water will be unable to sustain the required drainage from the Day Room and extra units.

Exception

55. Policy H4 also states in rural areas, where there is a case of local need for an affordable traveller site, but criterion 1 above cannot be fulfilled, then an exception may be made and proposals permitted, provided such sites can be retained for that purpose in perpetuity.

56. With regard to this criterion, the site was originally granted permission on the personal circumstances of the applicant and is restricted as such.

57. This proposal is to enable the following:

The housing of the older children in a unit separately from their parents, allowing the applicant's mother to remain in the current mobile home with the applicants.

The housing of the applicant's younger son (from a previous marriage) and his family in the third mobile home.

58. Whilst it may be a wish of the applicant to expand the site to accommodate family members, there is not sufficient evidence submitted to demonstrate any need for the additional family members to be accommodated on this site.

59. The draft Travellers' Sites DPD, as above, included a potential residential site for 5 pitches at Sutton St Nicholas. This would allow Hamby Smith and his family a permanent site within

easy reach of his parents, in a much more suitable and sustainable location, as the proposed site is close the services and facilities of Sutton St Nicholas.

60. The applicant states that he has retained a strong commitment to the traditional travelling way of life and doing business and once all the children have finished their education, the family intends to do more of it (p 5). This is disingenuous given the current age of the youngest child, a travelling way of life is extremely unlikely for at least 7 years. Therefore, this would be permanent development if permitted.

Conclusion

61. The Parish Council does not consider that there is a demonstrated need for additional pitches at this site, located in open countryside, and a significant distance from services and facilities. For this reason, the application is considered to be unsustainable and contrary to Policies RA3 and H4 of the Herefordshire Core Strategy, the NPPF and Marden NDP. Consequently, Marden Parish Council recommends refusal of this planning application.

5.1.1 Marden Parish Council – comments on amended/additional plans and information

Resolved to continue its objection to this application and make the following comments:

1. The PC considers there has been no improvement or change in the application resulting from the latest submissions.
2. The proposed units can be considered as permanent dwellings and as the application is outside the settlement boundary of The Vault it does not comply with the adopted Marden Neighbourhood Development Plan.
3. The PC does not consider the recent letter from the applicant provides sufficient evidence to support 'traveller' status.
4. The original application was permitted on the basis of the applicants' child being of school age and requiring a permanent base. This is no longer true.

Please note all the points made in the previously submitted response.

5.2 Bodenham Parish Council - original comments

The subject site lies in Marden Parish very close to the Bodenham Parish Boundary.

Planning History

Consent for a one-family traveller site to include 2 caravans & stable block at this location was given in 2005 (code 2579) taking account of the exceptional needs of the then occupiers. Consent was varied in 2006 (0573) to allow the "personal condition" to be transferred another traveller family with the stipulation that one mobile home and one touring caravan only were permitted. Significantly it was stated by the Case Officer at the time that "the nature of the development is such that it is only considered acceptable in this location having regard to the applicant's special circumstances". There have subsequently been two unsuccessful attempts through the planning system to increase the number of accommodation units etc. notably applications 150871 & 160494. In both cases the applications were mainly predicated on the personal needs of, what is described in the Design and Access Statement submitted with the current application, as the "intergenerational family network".

The current application is again largely based on such (changing) needs. It is also stated in the current Design & Access Statement that "The current proposal is a more modest (sic) to introduce an additional 2 pitches for easier accommodation of the growing family and Mrs. Smith's ailing mother, and the construction of a Day Room to improve facilities available".

Likely Planning Policy Considerations

National Planning Policy -Planning for Travellers Sites (Aug 2015) policy C - When assessing the suitability of sites in rural settings LPAs should ensure that the scale of such sites does not dominate the nearest settled community. Apart from Greenfields, an adjacent bungalow and Ashgrove Farm immediately to the north of the subject site, the Vault hamlet lies to the west and comprises 10 dwellings. Parish Councillors concluded that the proposal to multiply the use and development of the site would have adverse visual and amenity impacts affecting local residents. The principal relevant Core Strategy Policies are:

- SS1 - Presumption in favour of sustainable development,
- SS6 - Environmental Quality and Local Distinctiveness,
- RA3- Herefordshire's countryside,
- H4 Traveller sites,
- LD1-Landscapes and townscapes,
- LD2- Biodiversity and Geodiversity and
- SD4 - Wastewater treatment and river water quality.

The Marden Neighbourhood Development Plan was adopted in Oct 2016 and the following Plan policies are of relevance when determining this application:-

- M3 -Scale and type of new housing development in the countryside,
- M4-General Design principles and
- MI 1 - Landscape character.

Summary and Recommendation

Having considered the abovementioned matters Bodenham Parish Councillors unanimously resolved to object to this application and wished to reiterate the points raised in their earlier response relating to application 150871. A copy of these representations is attached below.

Comments in respect of 150871

Bodenham Parish Councillors raised concerns about the adverse impact development of the scale envisaged by the proposal would have. In particular they considered that the number of pitches would not "reflect the surrounding population size and density" and as such would be in conflict with Core Strategy Policy H4 criteria 5, and UDP policy H11. Criteria 2 of the latter policy states that "sites for settled occupation should be small" and criteria 3 requires proposals "not to have an adverse impact on the character and amenity of the landscape". In this context councillors noted the reference made in decision notice code DCCW2006/0573/F to the fact that the then consent was limited the siting of one mobile home and one touring caravan for the sole benefit of Mr Harry and Mrs Shirley Smith only in the light of "their special circumstances". It was also made clear that the nature of the development was only considered acceptable in this location because of these special circumstances with the implication that no increase in density of accommodation units would be acceptable.

Bodenham Parish Councillors consider that the current proposal fails the tests of acceptability mentioned above and would additionally have a detrimental impact on the residential amenity of the occupants of the adjacent property. They also expressed further concerns about the adequacy of the existing unspecified foul water treatment plant to cope with the considerably increased number of occupants although it is claimed in the applicant's supporting statement that there is sufficient capacity for up to 10 persons. It is thought that there is a need to examine this aspect further.

If, notwithstanding the above-mentioned comments, the LPA is minded to approve the application, it is requested and that consent be suitably conditioned to:-

- i] ensure that the existing foul and surface water treatment plant is adequate and

ii] occupancy of any additional residential units be limited to the individuals named in the statement accompanying the application.

5.2.1 Bodenham Parish Council – no further comments received on the amended/additional plans and information.

5.3 The applicant submitted information in support of the proposal. In summary the main points raised are:

- 0.4 hectare site in larger 1.6 hectare holding of Class 2 agricultural land with crop from the grassland being taken by a local farmer
- Existing development comprises one mobile home, one caravan, oil tank and assorted sheds and parking/access
- Improved facilities proposed are for needs of extended family
- Two statics and two tourers are required for the applicant's elder dependant children and his son (Hamby Smith) from an earlier relationship and his family
- Foul drainage to existing PTP, including macerator pump, which can be conditioned
- Dayroom are equivalent to utility blocks, which are an accepted feature of Local Authority sites.
- Brick skin to dayroom with artificial slate roof and upvc fenestration, to provide kitchen, bathroom and washing/drying area (*subsequently amended*)
- Existing sheds and outbuildings would be removed
- Access to be realigned and gates set back 10.5m to allow a towed caravan to clear the road and improve visibility
- Supplementary landscaping, native hedgerow and fruit tree planting, to reduce views into the site
- Applicant is a traveller and the family travel as part of Mrs Smith's business – horse fairs
- Hamby Smith travels between the application site and his partner's parents' pitch, stopping on the roadside where possible
- Significant restrictions imposed now to travelling life
- Shortage of stopping places – no transit sites in the County (Council closed and sold off its only site in Madley without replacing it – contrary to its own policy) – other proposed sites have been sold off (Ross and others in the Draft Travellers DPD)
- Decline in seasonal work and enhanced police and local authority powers mean itinerant life is extremely problematic – acknowledged in European Court in the Chapman case
- In assessing if Mrs Smith's mother has given up her travelling life issues of Human Rights need to be considered – strong personal circumstances for her to receive care from her daughter
- MNDP – draft attempted to exclude gypsy and traveller sites from benefiting under the exceptions set out in CS policy RA3 – Government Inspector confirmed this was not in conformity and excised draft policy M3.
- MNDP includes the hamlet of The Vault for further housing development, so undermines the argument that the application site is not sustainable
- Reference to appeal where it was accepted that whilst caravans may be conspicuous in design and appearance they are not uncommon in rural areas
- Site is near to services in Bodenham (listed 27th out of 215 villages in the county in terms of services available), Marden (listed 7th out of 215 villages in the county in terms of services available) and public transport – access to Hereford and Leominster
- Sustainability should be assessed in economic and social terms as well as environmental terms
- Low hedges claimed in the MNDP are aspirational rather than fact – tall hedges are evident in the area
- Criteria requiring gypsy applicants to seek land of lower agricultural classification is '*ethnic cleansing by the back door*'
- Use of land can revert to former use, unlike a house

- Recent developments include the solar farm and adjoining new house and 5 berth holiday caravan park – to argue no further development should be allowed is prejudiced
- Established site, small and proposal would not dominate the settled community
- Would not generate much extra traffic
- Government's revised definition of gypsies and travellers, excluding those who have ceased to travel permanently is subject to legal challenge in the courts
- Government's overarching aim is to ensure fair and equal treatment of travellers in a manner to facilitate their traditional and nomadic life, whilst respecting the interests of settled community
- Until adoption of the DPD the Inspector determined there is no longer a requirement to prove need.
- Re-assessment of numbers is being carried out – previous figures have shown a need for 19 additional pitches before 2019, with possibility of further 18 for those currently in houses – no 5 year supply of deliverable sites, this is a material planning consideration
- Lack of available alternatives is highly material – no such sites on the market
- Council failure to heed the CS inspector's remarks that adoption of a Traveller sites DPD should be a key priority to plan effectively for their needs
- No realistic alternatives, as dependant children get older with the withdrawal of housing benefit for young people they could be homeless
- Limited landscape harm does not amount to a 'pressing social need' when carrying out the proportional balance under Article 8
- Proposal has been significantly scaled back and landscaping now provides better mitigation
- Personal circumstances weigh strongly for the development

5.3.1 Additional supporting information has been provided by the applicant. In summary this advises that:

- Existing static caravan has three small bedrooms, one with a serious problem in the floor
- Mrs Smith's mother requires a room of her own due to health and mobility problems
- Mr Hamby Smith shared a nomadic life with his parents until they settled at the application site and is now developing his skills for a successful business that is compatible with a travelling life
- Mr Hamby Smith travels between Shropshire and the application site, stopping on roadsides and suitable stopping places and over the summer is travelling further afield looking for work (including Derby, Oxfordshire, Stoke on Trent and Brynmawr)
- New employment patterns that are compatible with travelling lifestyles are slowly developing
- Revised PPTS definition is subject to legal challenge and needs to be applied realistically
- Recent approvals for dayrooms on other sites (Wellington, Bodenham and Bosbury) are of brick/block construction and are of similar dimensions to that proposed and this is not excessive (*subsequently amended*)
- Dayroom needs to be near to the applicant's static to enable satisfactory supervision and caring and as proposed would be partially obscured by the static and tree by the gate
- Design and size could be amended to reduce it to 4 metres in height, 7 metres in length and remove the porch canopy. Roof materials could be substituted to onduline
- Herefordshire Council passed a proposal to create an Open Framework for the delivery of home care services, which included working with the Planning Department to support the building of annexes or adaptations to dwellings to facilitate individuals home care needs – this is what the applicant is trying to achieve
- Evidence provided of the installed PTP, which is emptied once a year by a local contractor – accepted that this would need to be more frequent if permission is granted
- Septic tank in the photograph reproduced by objectors belonged to the previous owner and was never installed
- Site is in Flood Zone 1, little flood risk – few impermeable surfaces so run off is limited

Further information on the subject of this report is available from Mrs Charlotte Atkins on 01432 260536

- Rainwater butts can be provided for each static, with any surplus directed to a better designed soakaway – sited in the corner of the parking area subject to infiltration tests
- With regards landscape comments the CS should be read as a whole and RA3 accepts the principle of traveller sites with caravans
- Hedgerows have grown considerably since the Landscape Officer's visit of March 2016 and is better screened.
- In response to the specific suggestions
 - Hedge to northern boundary - there is already a northern boundary hedge, in the field beyond the red line and separates the applicant's land from the house under construction at Windy Top and the solar farm
 - Orchard – happy to plant additional fruit trees by the access, but not turn the rest of the field into an orchard. Mrs Smith is highly allergic to bee stings (she has been hospitalised before) so fruit tree planting near to the statics is not acceptable
- Additional tree planting in the north and west hedgerows, particularly oak trees, is accepted and the site plan has been amended
- Transport Statement has been provided to address the Transportation Manager's comments

5.3.2 Along with the amended plans, the Design and Access Statement has been modified to reflect the revisions made. In summary this states:

Drainage

- existing foul drainage package treatment plant is a Klargestor BA type twin tank Bio Disc system with 2,600 litre capacity
- the PTP has a primary settlement tank designed to accept high flows over a short period, a Managed Flow system to allow liquid levels to fluctuate to accommodate this and a separate final settlement tank prior to discharge to a drainage field.
- The PTP has a Control Panel which has a number of indicator codes for different types of failure
- The PTP is intended to serve a population of one house, 4 bedrooms and 6 people and should be desludged at a recommended maximum period of 12 months
- The annual emptying is expected to be done before Christmas (the firm which undertakes this has already been contacted).
- The PTP and the drainage field seem to be functioning adequately – the tank has been desludged as per the guidelines, there is no indication of water backing up, no sogginess in the ground to indicate water was coming to the surface; there is no lingering smell, an established indicator that the plant or the field is overloaded or not working correctly.
- The colour and condition of the bio mass in the tank can be used to determine if it is functioning correctly. (Excessively thick growth and a predominantly grey colour throughout, for example, are indicators of an overload.)
- Following this inspection the makers of the equipment, Klargestor Environmental Ltd were contacted and supplied the following information:
 - This particular model of a PTP is robust and has been around for some time, in some cases operating successfully for more than 40 years.
 - It is more often the case that the drainage field fails before the plant itself.
 - PTP's generally make fewer demands on drainage fields (not being required for secondary treatment), and consequently the fields in general last longer than those serving a conventional septic tank.
 - It is not possible to link an additional tank to a PTP to extend capacity.
 - It is designed for 6 people and the level of daily per head water usage, (accepted as considerably lower in caravans than in houses), is not a significant factor; it is the amount of sewerage produced that is critical. Use by significantly more than 6 people over a period of time is likely to result in failure. This can be anticipated by the aforementioned smell or by examining the biomass.

Further information on the subject of this report is available from Mrs Charlotte Atkins on 01432 260536

- The implications of this for the proposed development would seem to be that the existing PTP is coping with the fluctuating population at present but there is little spare capacity. The Applicant's proposal to address an increasing population by desludging more frequently, can only be seen as a short term expedient. In the longer term therefore if and when the Day Room, with its attached bathroom, is constructed, additional treatment capacity will be required. This could be in the way of one new system with a larger capacity PTP (and additional drainage field) to replace the existing or leaving the existing system to service the existing Static and constructing a new one from scratch to serve the Day Room. Both of these would require an application for building regulations.
- It is suggested that a Condition could be attached to any planning permission to the effect that before any Day Room is brought into operation agreed additional sewerage capacity should be installed.
- In relation to Ecological concerns regarding the Lugg Valley SAC and SSSI, it should be born in mind that PTP such as the BA (when properly functioning) is designed 'to produce an effluent of suitable quality to discharge to a watercourse subject to the approval of the appropriate regulatory authority'.

Day room

The D & A Statement (page 3) is amended as per the revised drawings, revising the dimensions and materials, as follows:

- Amended size: 7 metres by 5 metres by 4 metres
- Inner skin of blocks and an outer skin of timber cladding. The cavity filled with insulation and there would need to be metal grill at ground level to prevent an ingress of rats into the cavity.
- The roof would be onduline
- It would be serviced by a new drainage system independent of the existing PTP for the disposal of foul drainage while surface water would go to a soakaway to the east of the existing static.

- 5.4 30 objections (one anonymous), 2 objections from Marches Planning on behalf of The Vault Community Group and 2 letters of support were received in respect of the original plans and information. In summary the main points raised were:

Objection:

Principle

- Original permission was granted in extenuating circumstances – are these limits now meaningless?
- Original permission states no further applications – consideration of this application is a waste of tax payers money
- Original permission was personal, effectively for the lifetime of the applicant and his wife and therefore does not run with the land – it does not amount to a change of use of land
- Asserted need has changed from previously withdrawn applications
- Unclear who the occupants of mobile homes would be, so cannot condition as per the original permission for the applicant
- Permission could not control number of caravans, as per case law – Reed – v- SoSCLG and Anor (2014)
- Should move to a more suitable area if circumstances have changed
- Insufficient information regarding the size of caravans and number of occupants
- Over development – original scheme was for one to minimise impact
- Unsustainable site – no reasonable access to services, public transport etc.
- Will result in a full blown camp if approved

- No evidence that any of the intended occupants, or applicant and wife, meet the PPTS/CS/MNDP definition of a gypsy/traveller
- Contrary to development plan
- Application does not demonstrate a need for an 'affordable' site, due to applicant's affluence
- How can applicants lead a nomadic lifestyle when they are carers?
- If only travelling in the holidays, how is this different to the settlement community in holiday time?
- If travelling between two known family sites is unsuitable and difficult, how can they be proven travellers that enjoy and need that way of life
- Draft DPD out to consultation in October 2017, Council expects to be able to deliver housing needs of travellers by next year
- Application seeks a permanent site, so Council's inability to demonstrate supply of adequate sites is not a material consideration

Landscape

- Site is visible from various PROW, roads and properties in the local area
- Existing site is an eyesore
- Elevated site, existing caravans are very visible
- Harm to green belt, open countryside and area of natural beauty, including many listed buildings (Grade II* The Vault Farmhouse and Listed Buildings in Venn's Green)
- Urbanising impact, density is out of character with the rural area and disproportionate to the local community
- Adverse landscape impact would result from increased density
- Impact of the solar farm is different – they are sympathetically arranged in contour with the land, dark in colour, low to the ground and will not change
- Solar farm has caused harm to the landscape, but this means it is more important to protect it from further harm
- White caravans and unknown appearance of the site, which will change, is harmful
- Previous landscaping requirements were not carried out
- No details of brick for dayroom, appearance of caravans or lighting plan
- Dayroom would be visible at the highest point of the site and would be too large
- Screening is not effective and hedges are only high because they are not tended to

Highways

- Junction of Bodenham-Hereford Road and road to The Vault has poor visibility, with many accidents – unsuitable for increased use by touring caravans
- Roads are unsuitable for increased traffic, which would be dangerous
- If allowed there is a need for passing bays
- Proposal would increase traffic, parking provision is stated to increase from 3 to 8 cars/vans
- Caravan club site application was turned down on highway safety grounds
- Re-alignment of access track includes an almost 90 degree bend, how is this suitable for towing caravans?

Drainage

- Sewerage facilities are inadequate and details are vague
- Area floods, with waste seepage in to ditches
- No evidence of the PTP with capacity
- Evidence of septic tank on site
- In 2005 Environment Agency advised that porosity test had shown ground was not suitable for septic tank and requested a PTP
- 3,800 Klargest septic tank is only suitable for 5-10 people – inadequate for increasing population of the site
- CS policy SD4 requires full foul drainage details to be provided

Others

- Two touring caravans are on site, in breach of original permission (50% increase of permitted two) – no enforcement action taken
- Potential to breach future permissions if granted – would council enforce?
- Dayroom could become living accommodation for other family members, linked to the static caravan or extended to provide a bungalow
- Future applications for additional family members
- Cannot restrict number of occupants and even maybe number of caravans
- Culmination of harm – case law allows refusal if evidence other development could be accumulation of potential harm
- Detrimental to small rural community, which relies on tourism
- Potential to ‘spread’ into the northern section of the site, which is not separated
- Clever timing of application to when the trees are in full bloom
- Roadside hedgerow cut for this first time in years just before submission of the application
- Harm caused would be distressful and bring heartache to local residents
- Settled community are being discriminated against by planning policies not allowing new dwellings
- Applicant’s children should apply for affordable housing to provide stability and better facilities
- Regular fires at the site – result in pollution
- Sets a precedent for other greenfield sites
- Unfair to those who struggle to find affordable rural housing and are not allowed to build new dwellings to remain in the village they grew up in
- Lack of detail about the size of the caravans is unfair, as for a proposed dwelling scaled drawings are required.
- Applications 170623 and 163958 for a residential mobile home were refused and enforcement action taken – this is relevant to this case
- Sheds and outbuildings should be conditioned to be removed – but where will the contents go?
- Tourers should only be used to pursue nomadic lifestyle, not occupied as they are currently
- Larger oil tank may be required – no details of this. Should not contaminate the class 2 agricultural land
- Other options available for providing stability for Mr Smith’s son and family and Mrs Smith’s mother, in social housing and care home – this would allow applicants to continue their nomadic lifestyle
- Potential for lamping for rabbits to increase – which is scary
- Objector’s address not provided for fear of repercussions
- Already 6-8 family (sic) living on site, with more visitors and those wanting to live there
- If screened with high fencing there would be no way of monitoring expansion
- Dispute that seasonal and temporary work is in decline, as post Brexit vote news reports stated that farmers are having difficulties in recruiting seasonal workers and zero hours contracts and temporary work are more prevalent than any time in recent history
- Reference to allowed appeals are not relevant, due to different circumstances
- Conditions to mitigate impact would not work due to previous non-compliance with conditions
- Permanent dayroom structure is unacceptable on the site, which only has a temporary, lifetime permission – to grant permission for a permanent building would amount to a new dwelling in an unsustainable location
- Highly likely that the dayroom would be used as independent residential accommodation
- Not developed land – Grade 2 agricultural
- Human rights – no suggestion that applicant’s children would be homeless – right under Article 8 is qualified and is to be balanced against the rights of the wider community
- Photographs provided of views of the site from PROW and aerial images of increasing use of the site over the permitted number of caravans

- If amendments are sought by the case officer this should be a revised submission and not reported to committee at this stage
- If dayroom would cause landscape harm, as per Officer's letter to applicant (dated 3.10.2017) will it be deleted?
- Do not understand why application is being considered for approval
- Even if traveller status is proven it would be contrary to PPTS
- Number of dependant children will reduce, so no need for further accommodation
- Extra space could be provided in a twin unit mobile that meets the definition of a caravan
- Lack of 5 year supply of housing is not relevant for a permanent permission

Support:

- Visited the site and discussed the proposal with the applicant and his wife – none of the objectors have done this
- Objections lack merit, should not be considered as fact
- Have lived in the area for 10 years and have not encountered any problems, disputes or anti-social behaviour from the applicant or his family
- Applicant deserves peaceful enjoyment of their property – Council's Equality and Human Rights Charter
- Currently facilities are inadequate for their needs
- Many objections are overstated (I know the applicant and the site)
- Solar farm is more obvious in the landscape
- Solar farm creates more traffic
- Applicant and family are pleasant and careful of their civic obligations
- If they do not integrate this is largely due to latent and widespread prejudice against them
- Personal needs should prevail
- Safeguards are available against the 'where will it all end' argument
- Opportunity to show flexibility

5.4.1 Following publicity of amended/additional plans and information three objections have been received (2 x individuals and 1 from The Vauld Community Group). In summary the individuals raise the following additional points:

- No proof of applicant's or Hamby Smith's traveller status - legal requirement for them to be leading a nomadic life at the time of determination of an application
- Social Inclusion and Equalities Manager has never commented before, but state they have known the family for decades – statement from one person without proof should not be taken into account
- What availability is there on Council run sites? Hamby Smith could occupy a pitch on one of these
- Landscaping not previously adhered to, so details should be provided prior to determination
- Fear the reason that the applicant does not want to provide planting is so it leaves space for further expansion of the site
- Insufficient drainage details, which could result in contamination
- How can the number of occupants be enforced?
- Siting of soakaways would require water to flow up hill – levels should be investigated and proof supplied that they have sufficient fall
- Does the application have a site licence at present?
- Should licence requirements be checked before determination of the application?
- Inaccuracies/deficiencies in the Transport Statement
- Expansion of the site on such a scale would dominate The Vauld – area has few houses some distance apart
- Application is for a change of use, additional caravans would not be for the benefit of Mr and Mrs Smith
- Draft DPD shows the Council has met its five year supply
- At time of the application there were seven vacancies on Council owned sites

- Travel survey shows heavy reliance on car - Hamby Smith's wife cannot drive so not a suitable location for her to live as she cannot walk to facilities
- Mr and Mrs Smith's older children will look to bring partners to live at the site and have families. This would dominate the local community by being the largest population in the area.
- Large majority of local residents are against the application; to approve would not promote integrated and co-existence

5.4.2 The additional comments from The Vault Community Group, referring to the December 2017 Committee Report, are as follows:

The committee report contains a number of significant errors as set out below, which should be addressed before the case is considered by the planning committee.

The errors are as follows:

1. The PPTS is a material consideration regardless of any current legal challenge, which may or may not succeed
2. Herefordshire's DPD is also a material consideration.
3. The site is not currently a one-family traveller site. It is subject to a temporary, restricted permission. This is not invalidated by the breach of conditions
4. This permission would change the use of the entire field to a traveller's site, making it difficult for the Council to control the number of caravans
5. The applicant and his family do not meet the PPTS definition of travellers
6. Application plans do not comply with legal planning requirements
7. Some of the recommended conditions are inappropriate or unachievable

These points are expanded upon below.

1) The report asserts at 6.6, 6.11 and 6.24 that an ongoing legal challenge to the definition of a traveller in the national Planning Policy for Traveller Sites (PPTS) overrides that policy. There are no grounds for this assertion. The policy has been in place since 2015 and until and unless the courts determine otherwise, it is a material consideration.

It is not known whether there is any merit to the legal challenge or on what basis the challenge has been made. It was launched in 2015 and has not yet been considered by the courts. Planning Inspectors continue to apply the definition in the PPTS regardless of this challenge.

Consequently, there is no legal or policy justification to resort to definitions which preceded the 2015 PPTS as the committee report has done. Any decision which relied on these superseded definitions would be unsafe.

2) Paragraph 6.6 of the report is in error to say that Herefordshire Council's Traveller Sites Development Plan Document (DPD) "cannot be afforded weight due to its consultation status."

Development plan documents are given weight according to their state of advancement. Paragraph 216 of the NPPF gives the following guidance on the weight that may be given to emerging policies:

216. From the day of publication, decision-takers may also give weight to relevant policies in emerging plans according to:

- the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);
- the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and

- the degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).

Both the DPD and the GTAA are published documents approved by the Council for submission to the Secretary of State for approval. They are, therefore, material considerations. The GTAA provides an evidence base that demonstrates Herefordshire Council can deliver sufficient sites to meet the needs of Gypsies and Travellers. It also shows there are currently seven vacant pitches in the county.

The Development Plan document has been subject to a series of consultations between June 2014 and September 2016 and it has addressed objections raised. The pre-submission draft is now in its final round of consultation, in which comments are invited as to whether the documents meets legal requirements and the government's 'tests of soundness'. The consultation will end on 18th December 2017 when the comments will be forwarded to the Planning Inspectorate.

The consultation statement can be accessed here:

https://www.herefordshire.gov.uk/downloads/file/11863/consultation_statement

As a consequence, significant weight should be attached to the HC Traveller Sites Development Plan Document.

The committee report is wrong to assert at 6.45 that there is a shortfall in traveller's pitches. The evidence of the GTAA published In July 2017 is that the identified needs will be met and that there are vacant pitches.

3) At 6.1, the committee report suggests that the breach of planning conditions altered the status of the 2006 planning permission to allow a lawful use of the land as a one family gypsy site.

This is a misinterpretation of The Whitley Principle, which applies only to conditions precedent (pre-commencement conditions). The principle arises from the appeal court case of Whitley & Sons v. Secretary of State for Wales and Clwyd County Council (1992) 64 P. & C.R. 296, which established that where a pre-commencement condition was not complied with, the permission may be invalidated and the development unlawful. It also depends on the extent to which the condition precedent controls or directs the development ("goes to the heart of" the permission as the Court of Appeal expressed it.)

Whitley does not apply to this case because there were no conditions precedent. The conditions referred to were required to be implemented after the commencement of development. The original 2005 permission was in any case retrospective.

So the officer report is incorrect to say that there is an existing lawful use as a one-family traveller site, for the following reasons:

- There were no conditions precedent.
 - The planning status of the application site is unchanged from the 2006 permission, which allows the residential use of the site in a mobile home and the storage of a touring caravan for the benefit of Mr and Mrs Smith only.
 - There is no reference in the decision notice to a traveller or gypsy site

When Mr and Mrs Smith no longer have a use for the site, the permission will lapse. Condition 1 of the 2006 decision notice restricting the benefit of the permission only to Mr and Mrs Smith is not invalidated by the breach of other conditions.

Consequently 6.20 of the committee report is wrong to assert that this “is not a new gypsy site.” The 2006 permission did not create a gypsy or traveller site. There is no such description in the decision notice or in any of the conditions. The permission is for the siting of one mobile home and one touring caravan for the benefit only of Mr and Mrs Smith, whose status was not defined.

If this application were approved, it would create a new traveller/gypsy site with a different planning status to what was previously permitted.

Because it was for the benefit only of Mr and Mrs Smith, the 2006 permission was by definition a temporary permission granted only for their lifetimes because of their special status (which at that time did not have to be established and which is not anyway defined by the permission).

4) Granting this permission would permit a change of use of the land to a travellers site across the whole of the one acre field: the planning authority may by default allow a much larger number of pitches.

Whereas the current permission is controlled by restricting the permission to Mr and Mrs Smith, the effect of approving this application would be to change the use of the land to a travellers’ site.

Notwithstanding that there are conditions seeking to restrict the number of caravans and their location, the permission creates a use over the whole application site, which would presume that the land may be put to this use.

Planning appeals and case law are littered with cases in which councils have been unable to enforce against breaches of conditions seeking to control the number of mobile homes on a site because the effect of a larger number of mobile homes has not altered the permitted use.

See for example *Reed v Secretary of State for Communities and Local Government & Anor* (2014) in which the Appeal Court ruled that a gypsy caravan site with four caravans did not amount to intensification such as to change the permitted use, despite a condition on the planning permission seeking to restrict the number of caravans to two.

5) The report relies on an uncorroborated statement from the Manager of Social Inclusion and Equalities, asserting that the applicants and their family “still travel for employment purposes from their home at Ashgrove Croft”

The statement contradicts evidence supplied by the applicants themselves, which says that the family’s business interests are local, that the Smiths’ eldest son John William travels to work each day, leaving the application site at 0900, and that Mrs Smith also has a local job (see traffic survey). These jobs are indicative of a settled lifestyle.

The evidence provided about Hamby Smith is that he spent a few months of the past summer “trying to develop the skills he needs to establish a travelling life.” This shows an aspiration to a travelling life, not that he has or has ever had a nomadic lifestyle in accordance with the PPTS.

Dismissing an appeal in 2016 against a refusal by Herefordshire Council of an application for a one family traveller site at Ridgehill, Inspector Ghafoor said:

“A mere aspiration to follow a gypsy way of life or nomadic habit of life is not sufficient to make a person a gypsy or traveller for planning purposes.” (Appeal Ref. APP/W1850/W/15/3007927)

Several other appeals have set out the level of evidence required to demonstrate that applicants meet the PPTS definition (see for example appeal refs APP/G6935/A/15/3119170 and APP/L1765/A/14/2224363).

In appeal ref. APP/E2205/C/15/3137477 decided last month (November 2017), Inspector Stephen Brown set out what was required to demonstrate a nomadic habit of life in accordance with the PPTS as follows:

“Regarding evidence of Mr Wood’s nomadic habit of life, in the case of the landscaping/building work I concur with the Council that there would very likely be quotations, invoices or receipts relating to work undertaken. Furthermore, I would expect submission of examples of the leaflets Mr Wood distributes.”

“I also consider Mr Wood’s account of his travelling was remarkably vague, amounting to little more than his seeking work in south coast towns and as far as north Wales, with little reference to periods spent away from his base, or where he set up his caravan when away. Given that Mr Wood claims to have operated on this basis for some 10 or more years, I consider the lack of evidence about the nature of his work and extent of travelling to be telling matters that count against the likelihood of his leading a nomadic existence. While neither of these occupations would be inconsistent with leading a nomadic habit of life, they could equally well be carried out from a fixed base, with short trips away.”

In this case, the applicants have not supplied any information whatsoever to suggest they lead or have ever led nomadic lives. The committee report makes reference to Mr and Mrs Smith having aspired in 2006 to resume a travelling lifestyle “when circumstances allow greater travel to horse fairs”. Nearly 12 years later, they have not done so and nor have they kept horses on the land for several years, suggesting that they no longer have any connection with horse fairs. There are no stables, paddocks or fenced off areas on the site to facilitate the keeping of horses.

The application documents advise that Mrs Smith wishes to care for her unnamed elderly mother on site. In the application withdrawn last year, Mrs Smith’s mother was not mentioned and at that time it was said to be Mr Smith’s mother, Mrs Esmerelda Smith, who needed to live on site to receive care from her daughter in law. Mrs Esmerelda Smith (who owns the land) is not now mentioned in the application. The officer report at 6.22 also seems confused as to whether it is the applicant’s mother or his mother-in-law who would be accommodated.

6) Plans - The block plan is not drawn to scale and thus fails to comply with the requirements of the Town and Country Planning (Development Management Procedure) (England) Order 2015 s.7 (2).

As a consequence, it is not possible to ascertain whether the six caravans and the day room would fit into the site identified or that they could be spaced so as to comply with the licensing requirements for residential caravan sites. These require 5m or 6m of space between caravans, depending on the construction material.

Nor do the plans show any access to the day room or the most northerly caravan. The plans are not clearly marked, but they suggest that the entire area will be covered with hardstanding, which would have substantial visual, ecological and drainage impacts.

Without accurate plans, it is not possible to assess the visual impact of the proposals.

The landscape officer drew attention to the inadequacy of the plans and noted in his response on 16th November that the applicant has not complied with his request for plans showing substantial (his emphasis) landscape mitigation and enhancement proposals.

It is relevant that the Council has historically failed to enforce against larger numbers of caravans on this site or against the breaches of conditions intended to mitigate identified landscape harm.

7) Planning Conditions

How will condition 8 will be enforced unless by the use of a S106 agreement?

Condition 9 requires the removal of the caravan this dependant relative would occupy, but not of any hardstanding or any other development associated with this caravan. Why does this apparently infirm relative require a tourer?

There is no condition preventing full residential use of the day room.

There is no condition restricting the amount of hardstanding on the site. Although a hard landscaping plan is required, there is no condition requiring compliance with this plan.

The landscape officer has recommended planting outside the red line area. While it is possible to impose planning conditions outside the red line, has assurance been sought that the applicant has control over this land? He does not own it and says it is farmed by a local farmer and so may, be the subject of an agricultural tenancy.

Condition 7 is contrary to CS Policy H4 (5) and the PPTS, which seek to facilitate the live-work lifestyle of travellers.

I would be grateful if you would confirm receipt of this email and that the points raised will be addressed in the update to the committee report.

- 5.5 The consultation responses can be viewed on the Council's website by using the following link:-

https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=172552&search=172552

Internet access is available at the Council's Customer Service Centres:-

<https://www.herefordshire.gov.uk/government-citizens-and-rights/customer-services-enquiries/contact-details?q=customer&type=suggestedpage>

6. Officer's Appraisal

Background – planning history

- 6.1 Planning permission was originally granted, retrospectively, to Mr Jones for the change of use from agricultural land to a one family gypsy caravan site (reference CW2005/2579/F). This was subject to a condition (no.2) that stated it was for the benefit of Mr Jones and his wife. The reason given for the imposition of this condition was that the development was acceptable having regard to the applicant's special circumstances. Subsequently planning permission was granted, under a section 73 application (Reference: CW2006/0573/F), to amend condition 2 of CW2005/2579/F, which specified the personal restriction to Mr and Mrs Jones, to change this to Mr Smith, the applicant for this submission, and his wife. Although the proposal description was for the change of use from agricultural land to a one family gypsy site neither the original planning permission (CW2005/2579/F) nor the subsequent amendment (CW2006/0573/F) imposed a condition that restricted the site or caravans' occupation to gypsies or travellers. The restriction imposed on occupancy of the site related to the permissions being for the applicants only, with the reason for this being their 'special circumstances'. On the basis of the Officers' Reports for the previous permissions it is considered that these 'special circumstances' were solely the applicants' gypsy status, as no additional 'special circumstances' beyond this status were proffered.
- 6.2 As established in case law where planning permission is granted for a certain use, any limitation on the way that use is exercised must be imposed by express condition, not just in the description of the development (I'm Your Man Ltd v Secretary of State for the Environment, Transport and the Regions [1999] 77 P & CR 251). However, even where there is an absence of conditions clarifying the limitations of the use, the permission does give consent for the use as stated in the proposal description, which is included on the decision notice. As clarified in

Further information on the subject of this report is available from Mrs Charlotte Atkins on 01432 260536

more recent case law (Winchester City Council v Secretary of State for Communities and Local Government and others [2015] EWCA Civ 563) the 'I'm Your Man' principles are concerned with restrictions on the manner in which the same use is exercised, not a change of use. In the Winchester case the Court of Appeal established that there is a clear difference between (1) a case involving a restriction on the extent of use and (2) a case where the restriction relates to the way the use is exercised. The Court of Appeal held that the correct approach is to ask: 1) what use has been granted by the permission, by interpreting the permission's wording; and then (2) whether the use being carried out is within this permitted use. In the case of the application site, permission was granted for the change of use from agricultural land to a one family gypsy site and the proposal also falls within this use. On this basis it is reasonable to conclude that the use of the site is for a one family gypsy site for the area of land outlined in red on the original application, which is the same extent of land subject to this application. The extant permission is subject to a restriction that the change of use is for the applicant's benefit and limits the number of caravans to two (one static and one touring caravan).

- 6.3 Permission is now sought to site two additional static caravans, two additional touring caravans, erect a dayroom building, modify the existing vehicular access and provide additional associated hard and soft landscaping. The static caravans are proposed to be positioned in the southwestern part of the site. One would be aligned along the western boundary and the other along the southern, with a tourer in between and one to the south of the existing, retained static. The dayroom would be sited to the north of the existing static caravan. The additional static caravans are proposed to be occupied by the applicant's older children, to provide more space in the existing static caravan for Mrs Smith's dependant mother and the other for his son, wife and their dependants. The modification to the access provide for a greater set back of the gates facilitated by a longer section of driveway perpendicular to the road before its alignment would take a westerly line to access the caravans and parking area.

Policy and Guidance

- 6.4 It is a legal requirement that applications are determined in accordance with the Development Plan, unless material planning considerations indicate otherwise (Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990). This requirement is reconfirmed in paragraphs 11 to 13 of the National Planning Policy Framework (NPPF). These paragraphs state that the NPPF is guidance and does not change the statutory status of the Development Plan, but that it is highly desirable for local planning authorities to have an up-to-date local plan. In this instance the Development Plan consists of the Herefordshire Local Plan – Core Strategy (hereon referred to as the CS), which was adopted on 16th October 2015 and the Marden Neighbourhood Development Plan (hereon referred to as the MNDP), which was made on 6th October 2016.
- 6.5 The NPPF, Planning Policy for Traveller Sites August 2015 (hereon referred to as the PPTS), and Planning Policy Guidance (hereon referred to as PPG) are important material planning considerations.
- 6.6 In cases where there is a lack of 5 year housing land supply, paragraph 49 of the NPPF states that policies relevant to the supply of housing cannot be considered to be up to date and as a result the 'tilted' planning balance set out in paragraph 14 applies. This requires permission to be granted '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.'

6.7 At the present time the Council has a shortfall in housing land supply, with the published position being 4.54 years, but this figure does not include gypsy and traveller site provision, as these are recorded and analysed separately. With specific reference to gypsy pitch supply, as confirmed by the Strategic Planning Officer, the GTAA (July 2017 update) has found evidence of a Gypsy and Traveller pitch need over the next five years (2017/18 to 2021/22) equating to 48 pitches under a cultural definition and 17 pitches under the revised PPTS (August 2015) definition of Gypsy/Traveller. For the full Local Plan Period (2011/12 to 2030/31) the GTAA has identified a cultural need for 91 pitches and a need for 33 pitches for the revised PPTS definition. Under the employed GTAA methodology of anticipated annual turnover (6 pitches on local authority sites during the remainder of the plan period) (2017/18 to 2030/31), it is calculated that 84 pitches would become available. As a result the assessment concludes that both the cultural and PPTS shortfalls are likely to be addressed. As set out in paragraph 216 of the NPPF the degree of weight that can be attached to an emerging development plan document varies according to:

- *the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);*
- *the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and*
- *the degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).*

In this instance the development plan, which is a material planning consideration, has been approved by the Council so can be afforded some weight, but as the publication period has only recently ended and the nature of the objections to the proposals and policies have not been fully appraised it is considered that it should only be given limited weight at this time. On this basis, at the present time the Council has not established that it has a five year supply of sites.

6.8 Permission is sought for additional caravans on a lawful private gypsy site, with the asserted need for these being derived from a dependant elderly relative and to provide a pitch for the applicant's son and his family. In assessing this, and to qualify for the exception to the normal approach to limit residential accommodation outside of settlements, the occupier has not only to be a gypsy or traveller ethnically, but also must meet the amended, and more stringent definition of a gypsy or traveller, as revised in the Government's revised PPTS (31 August 2015). This states that 'For the purposes of this planning policy "gypsies and travellers" means:

'Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.'

6.9 The previous definition (23 March 2012) included provision for those ceasing travel permanently for their own or their family's or dependants' educational or health needs or old age.

6.10 In assessing whether persons are 'gypsies and travellers' under the revised planning policy it is stated that consideration should be given to the following issues amongst other relevant matters:

- a) whether they previously led a nomadic habit of life
- b) the reasons for ceasing their nomadic habit of life
- c) whether there is an intention of living a nomadic habit of life in the future, and if so, how soon and in what circumstances.

- 6.11 It is established that travelling does not have to be a major or primary source of family income, but should be more than a hobby.
- 6.12 The CS, at paragraph 5.1.21 states that the definition of “travellers” means “gypsies and travellers” as defined in PPTS, CLG 2015, however the Glossary of Terms is more lenient and states that Gypsies and Travellers when used in combination means persons of a nomadic habit of life whatever their race or origin, including such persons who, on the grounds only of their own or their family’s or dependents’ educational or health needs or old age, have ceased to travel temporarily or permanently. The MNDP repeats the same definition as the CS. This inclusion of the ability to remain a gypsy or traveller for planning policy purposes even when travelling has ceased permanently for health and education needs, in the CS and MNDP, remain as per the Government’s original PPTS (March 2012) and in both cases post-date the amendment to the PPTS (August 2015), having being adopted in October 2015 and October 2016, respectively. It should be noted that the revised definition in the PPTS (August 2015) is the subject of legal challenge. Notwithstanding the CS Glossary of Terms and MNDP’s reference to a superseded definition and the pending legal challenge of the PPTS revised definition, the following assessment of this proposal is carried out under the current PPTS’s definition (August 2015).
- 6.13 Policy RA3 of the CS limits new residential development in rural locations outside of settlements, as to be defined in either Neighbourhood Development Plans or the Rural Areas Site Allocation Development Plan Document. The MNDP is made and forms part of the Development Plan. The site is not within a designated settlement in the MNDP, the nearest being The Vault (figure 4.15 of CS policy RA2), approximately 740 metres to the west of the site. There are no specific policies in the MNDP regarding any development to be permitted outside of the settlements, or indeed gypsy sites and as a result, whether the principle of the development proposed is acceptable falls to be considered under CS policies RA3 and H4 initially. The site is not adjacent to a settlement or facilities, such as shops, education or health facilities. It is considered that the site is in a rural location where RA3 of the CS, M1 of the MNDP and paragraph 55 of the NPPF would seek to limit new residential development. Policy RA3 of the CS states that residential development in such locations will be limited to proposals that satisfy one or more of the specified criteria. Criterion 7 provides for proposals for a site that would provide for the needs of gypsies or other travellers in accordance with policy H4 – Traveller Sites. This policy provides more detailed considerations for assessing such applications. It should be noted that the site is already a lawful private gypsy site and the proposal is for additional units within the established site.
- 6.14 CS policy H4 states that the accommodation needs of travellers will be provided for through the preparation of a Travellers’ Sites Document (DPD) which will include site specific allocations. Currently this is being prepared, and the pre-submission publication was published for comments last month, with an end consultation date of 18th December 2017. In this instance, in the absence of an adopted DPD and where proposals for sites are brought forward on non-allocated land, policy H4 states that proposals will be supported where:
1. *Sites afford reasonable access to services and facilities, including health and schools.*
 2. *Appropriate screening and landscaping is included within the proposal to protect local amenity and the environment.*
 3. *They promote peaceful and integrated co-existence between the site and the local community.*
 4. *They enable mixed business and residential accommodation (providing for the live-work lifestyle of travellers).*
 5. *They avoid undue pressure on local infrastructure and services.*
 6. *In rural areas, the size of the site does not dominate nearby settled communities and;*
 7. *They are capable of accommodating on-site facilities that meet best practice for modern traveller site requirements, including play areas, storage, provision for recycling and waste management.*

In rural areas, where there is a case of local need for an affordable traveller site, but criterion 1 above cannot be fulfilled, then an exception may be made and proposals permitted, provided such sites can be retained for that purpose in perpetuity.

- 6.15 The supporting text to CS policy H4 (at 5.1.26) acknowledges that until the Traveller's Sites DPD is adopted the private sector may need to provide sites and policy H4 sets out the basis upon which applications will be determined. The Strategic Planning Manager has confirmed that in the absence of an adopted DPD that there is no requirement for need to be taken into account for planning applications. It should also be noted that the proposed 5 pitch site at Sutton St Nicholas referred to by Marden Parish Council (paragraph 5.1, point 59), which they state would provide alternative accommodation for the family negating their need for this proposal, is no longer included in the latest DPD. Furthermore, as noted in the Strategic Planning Manager's response (paragraph 4.13) the GTAA recommends that applications for appropriate small, private gypsy sites to address the needs of local families should continue to be considered over the Plan period.
- 6.16 The introduction to the NPPF states that it should be read in conjunction with the PPTS and in decision taking on such sites regard should be had to the NPPF so far as is relevant. The PPTS was revised in August 2015. It provides the most recent national guidance for such forms of development and is an important material planning consideration. It states that the Government intends to review this policy when 'fair and representative practical results of its implementation are clear' and whether planning policy for traveller sites should be incorporated in the wider NPPF. The PPTS states that applications should be assessed and determined in accordance with the presumption in favour of development and application of the NPPF policies and those in the PPTS. It confirms that the Government's overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates their traditional and nomadic way of life whilst respecting the interests of the settled community. When assessing the suitability of sites in rural or semi-rural settings, Local Planning Authorities should ensure that the scale of such sites would not dominate the nearest settled community.
- 6.17 In the determination of planning applications paragraph 22 of the PPTS sets out criteria (a-e) which are issues that the LPA should consider. These are as follows:
- a) The existing level of local provision and need for sites.
 - b) The availability (or lack) of alternative accommodation for the applicants.
 - c) Other personal circumstances of the applicant.
 - d) That the locally specific criteria used to guide the allocation of sites in plans or which form the policy where there is no identified need for pitches/plots should be used to assess applications that may come forward on unallocated sites.
 - e) That they should determine applications for sites from any travellers and not just those with local connections.
- 6.18 The revised PPTS has amended paragraph 25 to advise that '*Local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. Local planning authorities should ensure that sites in rural areas respect the scale of, and do not dominate, the nearest settled community, and avoid placing an undue pressure on the local infrastructure.*' (amendment underlined).
- 6.19 The PPTS guidance advises that weight should be attached to the following (paragraph 26):
- a) Effective use of previously developed (brownfield), untidy or derelict land.
 - b) Sites being well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness.

- c) Promoting opportunities for healthy lifestyles, such as ensuring adequate landscaping and play areas for children.
- d) Not enclosing a site with so much hard landscaping, high walls or fences, that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community.

6.20 The PPTS advises that if a local planning authority cannot demonstrate an up-to-date five-year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission. Exceptions to this are where the site is within the Green Belt (designated as such), sites protected under the Birds and Habitats Directive and/or Sites of Special Scientific Interest, Local Green Space, an Area of Outstanding Natural Beauty, a National Park or the Broads. The site does not fall within any of these designations. A temporary permission is not sought.

6.21 Firstly, this is an application for additional caravans, a dayroom and modifications to the access and parking area and is not for a new gypsy site as set out in paragraphs 6.1 and 6.2. The planning permissions in 2005 and 2006 granted a change of use of land to a one family gypsy site, as per their proposal descriptions. The absence of conditions limiting the occupation of the site to those that meet the definition of a gypsy (or traveller) only affects the way the permissions are exercised and not the extent of the use that has been granted. This application does not seek a change of use, but rather permission is sought for additional caravans, a dayroom and modifications to the access along with associated hard and soft landscaping, which together amount to development requiring planning permission. In terms of assessment the key issues are whether the proposed occupiers of the caravans meet the definition of gypsies, highway impact, landscape and ecological impacts, affect on amenity and drainage.

Status of intended occupiers of the proposed caravans

6.22 The applicant and his wife's compliance with the revised definition of a gypsy or traveller in the PPTS have been questioned in the objections. It should be noted that the permission granted in 2006 for the applicant did not impose a condition restricting occupation to gypsies or travellers, but rather only limited it to the applicant and his wife as a personal permission. This restriction was however imposed due to their 'special circumstances', which as set out previously was derived from their gypsy status. The site continues to be occupied by the applicant, his wife and their dependant family in accordance with the planning permission granted in 2006. The applicant and his family are ethnically Romany Gypsies and as set out in the Social Inclusion and Equalities Manager's representation they continue to travel for Mrs Smith's work. Mrs Smith's travel has reduced and could be reasonably described as ceasing temporarily whilst she cares for dependant relatives. It is noted that Mrs Smith has also been employed as a carer. The caring for elderly dependant relatives is temporary and there is an intention to resume travel and a nomadic habit when circumstances permit. The more stringent August 2015 PPTS definition of gypsies and travellers, for planning purposes, permits temporary cessation and it was accepted in 2006 that the applicant and his wife were gypsies and they intend to continue living a nomadic habit of life in the future when the circumstances allow greater travel to horse fairs. The Council's Social Inclusion and Equalities Manager has corroborated this.

6.23 One of the additional static caravans is proposed to enable the applicant's elderly mother in law, who has significant health problems, to occupy their existing static caravan with them, by providing extra bedrooms for some of their older dependent children. Mr Smith's mother-in-law no longer travels due to health reasons and old age and on the basis of the information provided this situation is unlikely to reverse. Consequently, it is considered reasonable to conclude that Mr Smith's mother-in-law has ceased to travel permanently and under the revised PPTS definition can no longer be classed as a gypsy for the purposes of applying planning policy. This does not question Mr Smith's mother-in-law's ethnicity. Alternatively, Mr Smith's mother-in-law is considered to be a dependant relative. Similarly to many situations in the settled community, Mrs Smith wishes to care for her mother and more room is required to

facilitate this. An additional static caravan is proposed to achieve this. In principle this is acceptable, provided that this is properly controlled, with a condition requiring removal of the additional static should Mrs Smith's mother no longer live on site with the applicants.

- 6.24 The second static caravan proposed is sought for the applicant's adult son (Hamby Smith), his wife and their dependent children. Hamby Smith previously lived on the site as a dependent child and now travels between the site and his parents in law's pitch in Shropshire. Some of the objections received have questioned whether Hamby Smith's travel patterns meet the definition of a gypsy or traveller for planning purposes and suggest that it is not dissimilar to those that travel during the holidays for pleasure. On this basis it is contended that Hamby Smith should not benefit from the exception of permitting gypsy sites outside of settlements, because to do so would be inequitable to the settled community. Further information has been provided by the applicant outlining how Hamby Smith travels for employment and is building up a business that meets his nomadic life. The difficulties in achieving this are also highlighted in the applicant's submission and are a reason for his nomadic life being curtailed to some degree. The Council's Social Inclusion and Equalities Manager has corroborated that Hamby Smith, and indeed the family as a whole, travel for employment purposes. The travel patterns are employment, rather than hobby or recreational based. In light of the additional information and this representation it is considered that Hamby Smith meets the revised definition in the PPTS.
- 6.25 Turning to the County's provision of gypsy and traveller sites, and the question of whether the proposal must demonstrate a need for an additional caravan on site, the Strategic Planning Manager has advised that in the absence of an adopted DPD that there is no requirement for need to be taken into account for planning applications. The Council is producing a Travellers' Sites Document as part of the CS, to focus on the accommodation needs of the Traveller community (Gypsies, Travellers and Travelling Show People) up to 2031. The updated Gypsy and Traveller Accommodation Needs Assessment (GTAA) November 2015 sets out the requirements for the number of pitches and plots up to 2031. The Travellers' Sites Document has recently completed the pre-submission draft consultation stage (the consultation period ran from 6th November to 18th December 2017). This has made changes to the DPD and the consultation sought views on the soundness of the draft DPD and the assessment of accommodation need that has informed it. The latest GTAA methodology was based on the revised definition in the PPTS and identifies a pitch requirement on this basis, but also looked at the requirement for pitches based on 'cultural need'. Thus the identified pitch requirement excludes those considered to have permanently ceased to travel on the grounds of their health or educational needs, or those of dependants, or due to old age. The current status of the DPD means that limited weight can be attached to it at this stage, as the level of objections are unknown and its 'soundness' has not been confirmed. Given that the definition of a gypsy and traveller, which has informed the methodology for calculating the required number of sites is that of the revised PPTS which is subject to legal challenge, it is not unreasonable to conclude that some objections will be robust and allied to this challenge.
- 6.26 In considering new sites CS policy H4, at criterion 1, states that sites should afford reasonable access to services and facilities and paragraph 24 of the PPTS sets out the relevant matters to be considered for applications for traveller sites, which include the existing level of local provision and need, availability of alternative sites, personal circumstances and locally specific criteria. It is accepted that the site is not adjacent to a settlement, but it is some 740 metres from a CS policy RA2 figure 4.15 settlement (The Vault), which has been included in the made MNDP for proportionate growth. Furthermore, PPTS advised at paragraph 25 that new traveller sites should be very ('very' was added in the revised August 2015 version) strictly limited in open countryside that is away from existing settlements or outside of allocated area in the Development Plan.
- 6.27 Although there is no requirement to demonstrate need, it should be noted that providing an additional static caravan and provision for the siting of a touring caravan for Hamby Smith, on an established site without expansion of its area accommodates another gypsy family without

the need for an additional site, which in planning policy might otherwise be steered to a site closer or adjacent to a settlement. The nearest settlement is The Vault, where proportionate growth is appropriate, as per CS policy RA2 and MNDP policy M2 and with Bodenham being the nearest figure 4.14 settlement with its range of services, such as a school, public house, parish hall, GP surgery and dispensary, church, chapel, post office/general store, garage/shop, café (at the Golf Course and hairdressers), as listed in their draft NDP (paragraph 7.5).

- 6.28 Taking into account that Hamby Smith is considered to meet the more stringent definition of a gypsy and traveller under the revised PPTS and the limited weight to be afforded to the Draft DPD at this time it is considered that in principle the provision of an additional static caravan and siting for a tourer for him, his wife and dependent children is acceptable.
- 6.29 For the reasons set out above the provision of two static caravans to enable the applicant's mother-in-law and his son and family to live on site is acceptable in principle. The proposed details are appraised below.

Highway impact

- 6.30 The proposal would give rise to increased traffic generation from the site as set out in the applicant's Transport Statement. CS policy MT1 requires developments to provide safe access and MNDP policy M3, amongst other matters, states that all developments should ensure movement to and within development is satisfactory and does not have a detrimental effect on the safe and efficient operation of the existing transport and road infrastructure. The NPPF requires decision to take account of whether safe and suitable access can be achieved for all people. It states that development should only be refused on transport grounds where the residual cumulative impacts are severe.
- 6.31 The Transportation Manager has no objection on the basis of the submitted further information and revised plans, which clarify the achievable visibility splay and a set back of the gates (10 metres) to the access, and subject to conditions. The recommended conditions should be assessed against the 'six tests' set out in the NPPG, which specifically stipulate that they should be necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects. It is considered that the majority of the recommended conditions meet these tests, with the exception of those specifying that there should be no intensification above the Transport Statement and the duplication with regards the visibility splay requirements. A limitation of the number of caravans would reasonably control access usage, in a manner commensurate with the approach taken for the settled community.

Landscape

- 6.32 CS policy LD1 and MNDP policy M10 are relevant in the assessment of the impact of the additional caravans, dayroom and revised access on the landscape. Policy LD1 of the CS states that landscape should positively influence design, scale, and nature of proposals and policy M10 of the MNDP requires all developments to show regards to the distinctive landscape character of the Herefordshire Lowlands Character Area by retaining the development form of scattered hamlets and farmsteads within the wide setting of the area, using appropriate local building materials, retaining existing field patterns and boundaries, including low hedgerows and tree cove, protecting and enhancing areas of woodland and encouraging country stewardship and similar schemes to enhance the biodiversity and natural and historic environments.
- 6.33 When appraising the scheme and whether it complies with policy requirements, only the impact of the proposed development should be assessed and this should be carried out in the context of the lawful use of the site. The extent of the lawful site, and indeed the originally approved site, would not be enlarged by this proposal for additional caravans, dayroom and revised vehicular access, but rather they would all be situated within its confines. Other than the dayroom, the development would be located between the existing static and the unclassified

road to the southern boundary. Dayrooms are an accepted component of gypsy sites, to meet ethnic practices. Indeed the Council's pre-submission draft consultation Travellers' Sites Document includes a section on residential pitches (paragraph 4.5), which states that 'There will usually be a separate amenity block which will include toilet, washing and cooking facilities'.

- 6.34 Objections to the loss of Grade 2 agricultural land have been lodged and the Landscape Officer has also raised this issue, but given that the use is lawful and the current application would not encompass any additional land these are not material considerations for this proposal.
- 6.35 In landscape terms, the site falls outside of a settlement and is therefore in the countryside. The Herefordshire Landscape Character Assessment defines the site context as 'Principal Settled Farmlands' and the main characteristics are: 'hedgerows used for field boundaries', with secondary characteristics being 'mixed farming land use, notably of domestic character, defined chiefly by the scale of its field pattern the nature and density of its settlement and its traditional land use'. The site is bounded by hedgerows and the proposal would not extend beyond these. Supplementary planting has been proposed to aid filtering of views of the site and a new native species hedgerow to demark the northern site boundary. Caravans, being pre-manufactured, are not of local building materials and thus conflict with that element of MNDP policy M10, but this should be considered in light of the Development Plan as a whole and this sets out the principle for allowing gypsy and traveller sites, and indeed caravan sites for tourist purposes, in the countryside. As a consequence this element of MNDP policy M10, by itself, cannot outweigh those policies that permit the principle of developments, which by their very nature entail the stationing of caravans. Instead, the landscape policies must be considered alongside the other relevant policies and also the site's context and planning history. In this case, an established, lawful gypsy site, that includes caravans.
- 6.36 The Conservation Manager (Landscape) notes that there has already been a loss of local distinctiveness and character in this area by virtue of existing electric pylons crossing the site and the solar farm to the north east and originally advised that '*without substantial landscape mitigation and landscape enhancement proposals the proposed caravans and associated facilities would not contribute or enhance this landscape when seen from local footpaths MR5 approx. 140m to the west and from BM28 a local bridleway to the east. This is due to the fact that the caravans are not in materially character with this landscape.*' There was no objection in principle to the additional caravans, dayroom (size or siting) or modifications to the access.
- 6.37 The Conservation Manager (Landscape) has drawn attention to the inadequacies of the first set of revised drawings, in terms of lack of a scale bar, drawing number or date. This has since been rectified through the submission of further plans. The Conservation Manager (Landscape) considers that woodland planting and provision of a new northern boundary, just beyond the proposed siting of the day room, are necessary to mitigate impact and provide enhancement. The application has been amended to include the provision of a hedgerow to the northern site boundary, but not woodland planting outside of the site (within the land outlined in blue). On the basis of the proposal it is considered that the revised illustrative landscaping would mitigate the limited impact and is commensurate with the nature of the development proposed. This can be proportionately controlled by a condition requiring full landscaping details to be submitted, approved and implementation concurrently with the development and completion no later than the first planting season after completion of the development.
- 6.38 With regards the dayroom, although a potential resiting was suggested to the applicant so that it would occupy lower ground levels than the existing static, this has been declined on practicality grounds. The request for an alternative siting to be considered does not equate to an assessment of harm to the landscape. Amended plans have been submitted, which reduce the floor area of the structure and decrease the roof ridge height. The plans also revise the external materials to timber cladding and an onduline roof and have removed the canopy porch. Taking the Conservation Manager's (Landscape) into account along with the reduced size and modified

design, it is considered that in its context the dayroom would be acceptable. A condition can be reasonably imposed to require submission of details or samples of external materials.

- 6.39 Overall, it is accepted that the increased number of caravans on the site would be more obvious in the landscape and this is exacerbated by their colour, which does not naturally harmonise with the landscape or sporadic built form of development. However, views are filtered by existing hedgerows and the grouping of the caravans accords with the general pattern of the built form in the locality. Moreover, the siting of the additional caravans on the lower part of the site minimises the visual impact due to the levels and also by not encroaching further into the more open part of the parcel of land. Planting to the west of the revised access driveway would filter views of the caravans from lane. On landscape criteria alone there is a modest degree of harm. The proposed layout is considered to be the most satisfactory option for accommodating the additional units and can be further improved with appropriate planting.

Effect on amenity

- 6.40 CS policy SD1 states that developments should safeguard residential amenity for existing and proposed residents, in tune with one of the core planning principles of the NPPF that states that planning should seek to secure a good standard of amenity for all existing and future occupiers of land and buildings. Furthermore, CS policy H4 confirms that in the absence of an adopted DPD, as is the current position, or for proposals for sites brought forward on unallocated land, proposals will be supported where they meet the specified criteria, including promoting peaceful and integrated co-existence between the site and the local community and the size would not dominate the nearby settled community. Again, in assessing this it must be borne in mind that the site is lawful as a one family gypsy site for one static and one touring caravan. The proposed increase would result in three static caravans and three touring caravans. Objections have highlighted the potential number of occupants that could result from this and questioned the ability for the Local Planning Authority to control occupancy numbers. As proposed it is stated that one of the proposed static caravans would only result in one additional extended family member, Mrs Smiths' mother, living on site, although it is accepted that other family members could potentially occupy with an increased number of units. This is no different to occupation of a dwelling in the settled community, where the number of occupants is not restricted and conversion of outbuildings to provide ancillary living accommodation is either not development, is permitted development or permission is sought, without conditions limiting occupancy numbers. The second additional caravan would result in the applicant's extended family being on site, thus increasing the density of the site, but not its size. The nearest dwelling is some 120 metres distant to the northwest and the closest grouped community, The Vault, is some 740 metres to the west. Taking into account the cluster of dwellings at The Vault, along with the sporadic development in between and screening provided by the existing western site boundary, the distance separation from the majority of the settled community and the site, and that traffic movements from the site would predominantly not be through The Vault, it is considered that the proposal would not dominate nearby settled communities.
- 6.41 It has been asserted by objectors that there is no mechanism to control the number of caravans on the site and this would exacerbate the harm that would result and should be taken into account. The existing permission imposes a restriction on numbers and the applicant is now seeking permission for a greater number. The case law referred to questions if an increase in caravans amounts to a material change of use, and ultimately if planning permission is even required, rather than whether a breach of condition would occur if more caravans were proposed contrary to a restrictive condition. In this case, the scheme as a whole includes operational development, by virtue of the proposed dayroom and engineering operations to provide a modified access, driveway and parking. It is considered that as permission is being sought conditions can be lawfully imposed to control the number and sitings of caravans, together with their size as set out in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, as has been imposed on previous permissions by the Council and Government Inspectors. Such conditions would meet the NPPG's six tests. The definition

of a caravan for planning purposes relates to both its degree of mobility and its size. In summary a 'caravan' is a structure designed or adapted for human habitation which is capable of being moved from one place to another (whether being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted, which is composed of not more than two sections separately constructed and designed to be assembled on a site by means of bolts, clamps or other devices and when assembled is physically capable of being moved by road from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer). The maximum dimensions of a caravan is 20 metres in length (exclusive of any drawbar), 6.8 metres width and an overall height of living accommodation of 3.05 metres (measured internally from the floor at the lowest level to the ceiling at the highest level).

Drainage/Ecology

- 6.42 CS policy SD4 sets out the sequential preference for foul drainage. The applicant has confirmed that there is an existing PTP with soakaways on site which it is proposed to utilise. This is the second preference after a mains connection. Similarly to any intensification of use it may need to be emptied more frequently and as with any homeowner this obligation rests with the owner.
- 6.43 The site lies in the SSSI impact zone where the Local Planning Authority, as the competent authority, has a duty to undertake a Habitat Regulations Assessment (HRA) in terms of ensuring that there would be no likely significant effect on the water quality from increased nutrient levels. The Conservation Manager (Ecology) has advised that on the basis of the further information that either a new, larger capacity PTP or an additional PTP to serve the proposed development would be acceptable and reasonable allow it to be concluded that there would be no likely significant effect on the River Lugg (River Wye) SAC/SSSI. This matter can be reasonably controlled by way of a condition.
- 6.44 With regards surface water and flood risk, the site is in Flood Zone 1, where the NPPF steers new development towards. Although 'minor development' and 'changes of use' are exempt from the sequential test, those that include a change of use to a caravan site are not and the sequential test should be applied as appropriate. Again, whilst not negating the lawful use of the site, in respect of the additional caravans the sequential test steers new development to Flood Zone 1 in the first instance and the site falls within this zone and is therefore acceptable. There are no recorded surface water issues in the locality of the site. As amended the management of surface water from the statics is proposed to be to water butts and to permeable surfaces. Taking into account the site's area, the limited requirement for hardstanding and the lack of surface water issues in the vicinity it is considered that this can be reasonable conditioned.

Conclusion

- 6.45 The PPTS confirms that planning law requires that applications for planning permission must be determined in accordance with the Development Plan, unless material considerations indicate otherwise (paragraph 22). It continues in the subsequent paragraph by advising that applications should be assessed and determined in accordance with the presumption in favour of sustainable development and the application of specific policies in the NPPF and within the PPTS itself. In terms of the overriding principle of the NPPF, to achieve sustainable development, it is considered that the proposal would provide social benefits through the increased number of pitches on an existing lawful private gypsy site, which due to its size relative to the local settled community would enable and promote the facilitation of social interaction and creation of a healthy, inclusive community. Objectors consider that there would be social disbenefits if additional caravans were permitted, but in the absence of evidence of experiences to substantiate these assertions it is considered that this cannot be given weight. Turning to the environmental dimension of sustainable development, the site is capable of accommodating additional caravans without expanding beyond its defined boundaries and by

virtue of its relatively modest size and the density and scale of the proposal, improvements to the site's vehicular access and the potential for improvements to biodiversity the scheme would not overall have a materially adverse impact upon the landscape. It is recognised that occupiers of the site would be reliant on private vehicles to access day to day requirements. However, this would mainly relate to Hamby Smith, and his family, with travel patterns most likely reducing for care provision for Mrs Smith's mother if she lives on site. Given that 'The Vault' has been included in the CS and MDP for proportionate growth and is similarly distant from services and facilities (1.5 kilometres to Bodenham and 2 kilometres to Marden) it is considered that in terms of locational sustainability the proposal is acceptable.

6.46 Having regard to the requirements of the Development Plan, together with the aims of the NPPF and the PPTS, giving weight to the Council's shortfall in the provision of Gypsy and Traveller sites (due to the limited weight to be afforded to the emerging development plan document, as both the DPD and the evidence base including the GTAA have not as yet been scrutinised as part of the Examination Process) and accepting that the GTAA recommends that small, private sites continue to be considered under CS policies throughout the Plan period it is considered that any harm identified is limited and can be mitigated by conditions.

6.47 The site is considered to be acceptable to accommodate two additional static caravans and two touring caravans for gypsies and the occupation should be restricted to the definition for gypsies and travellers set out in Appendix 1 to the PPTS. There is no requirement to limit both of the static caravans' occupation solely to the applicant or Hamby Smith, by way of a personal permission, because in light of the shortfall in deliverable sites these personal circumstances have not been a determining factor. The NPPG advises on the appropriate use of conditions to limit the benefits of planning permission to a particular person or group of people (at paragraph 015 Reference ID: 21a-015-20140306) as follows:

Unless the permission otherwise provides, planning permission runs with the land and it is rarely appropriate to provide otherwise. There may be exceptional occasions where granting planning permission for development that would not normally be permitted on the site could be justified on planning grounds because of who would benefit from the permission. For example, conditions limiting benefits to a particular class of people, such as new residential accommodation in the open countryside for agricultural or forestry workers, may be justified on the grounds that an applicant has successfully demonstrated an exceptional need.

6.48 It is considered reasonable, necessary and relevant to planning and the development proposed to limit occupation of the additional caravans to gypsies and travellers, as the justification for this residential development outside of a settlement is derived from the specified exception, provided in CS policy RA3(7) and not any additional, specific special circumstances of the applicant's.

6.49 Turning to whether a personal permission meets the NPPG test for conditions, it is considered that the justification is provided by gypsy status rather than Hamby Smith's individual circumstances. As a result there is no need to stipulate that one static and one touring caravan are for Hamby Smith, but rather that they are for a person/persons meeting the definition of a gypsy or traveller, which Hamby Smith fulfils.

6.50 The situation is somewhat complicated by the proposed use of one pitch for the applicant's children, thereby providing a bedroom for his mother-in-law. Although the applicant's mother-in-law is ethnically a gypsy, she is not considered to meet the revised definition of gypsies and traveller for planning purposes, as set out in the PPTS, because no evidence has been provided to demonstrate that her cessation of travel has been temporary or is likely to be so. On this basis, as she is considered to be a dependant relative, a condition is considered to meet the NPPG's six tests to limit the retention of one static caravan for the duration of her occupation of the site and whilst it coincides with the applicant's occupation of the site.

RECOMMENDATION

That subject to there being no new material considerations arising following receipt of any further comments, planning permission be granted subject to the following conditions:

1. **A01 Time limit for commencement (full permission)**
2. **The development hereby approved shall be carried out strictly in accordance with the amended approved plans received on 4th December 2017 (O/S site Plan (scale 1:2500, Additional planting and soakaway (surface water) plan and Proposed day room (revised)) except where otherwise stipulated by conditions attached to this permission.**

Reason: To ensure the development is carried out in accordance with the approved plans and to comply with the requirements of Policy SD1 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

3. **Prior to the construction of the day room details (or samples) of the materials and finishes to be use externally on walls and roofs shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.**

Reason: To ensure that the materials harmonise with the surroundings so as to ensure that the development complies with the requirements of Policies SD1 and LD1 of the Herefordshire Local Plan – Core Strategy, policies 3 and 10 of the Marden Neighbourhood Development Plan and the National Planning Policy Framework.

4. **The caravans and dayroom hereby approved shall not be occupied or used by any persons other than gypsies and travellers as defined in Annex 1 of Planning Policy for Traveller Sites (August 2015) or any other subsequently amended definition.**

Reason: To accord with the requirements of Policies RA3 and H4 of the Herefordshire Local Plan – Core Strategy and the Planning Policy for Traveller Sites (DCLG – August 2015).

5. **No more than 6 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which no more than 3 shall be a static caravan) shall be stationed on the site at any time.**

Reason: To ensure adherence to the approved plans in the interests of a satisfactory form of development and to comply with Policies SD1 and LD1 of the Herefordshire Local Plan – Core Strategy, policies M3 and M10 of the Marden Neighbourhood Development Plan and the National Planning Policy Framework.

6. **No material change to the positioning of the static caravans on the site, or their replacement by other caravans, or their replacement by other caravans in a different location on the site, shall take place except in strict accordance with details, which shall have first been submitted to and approved in writing by the local planning authority.**

Reason: To ensure adherence to the approved plans in the interests of a satisfactory form of development and to comply with Policies SD1 and LD1 of the Herefordshire Local Plan – Core Strategy, policies M3 and M10 of the Marden

Neighbourhood Development Plan and the National Planning Policy Framework.

7. **The applicant's mother-in-law (name to be inserted) shall only be resident of the site whilst being a dependant relative of Mr and Mrs Smith and her occupation shall cease if at any time Mr and Mrs Smith permanently cease occupation of the site.**

Reason: It would be contrary to Policy RA3 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework to grant planning permission for caravans in this location except to meet the expressed personal circumstances of the applicant's mother-in-law or for a gypsy or traveller.

8. **On cessation of the residential occupation of the site by the applicant's mother-in-law (name to be inserted), the occupation of the static caravan marked 'X' on the approved site plan (received on 4th December 2017, scale: 1:500 and titled – Additional Planting + Soakaway (surface water) shall cease and that static caravan be permanently removed from site within three months.**

Reason: It would be contrary to Policy RA3 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework to grant planning permission for caravans in this location except to meet the expressed personal circumstances of the applicant's mother-in-law or for a gypsy or traveller.

9. **With the exception of any site clearance and groundwork (excluding any works to retained features), no further development shall commence on site until a revised landscape design 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 native trees, orchard trees, native hedges 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 wild flower establishment.**
- d) **A Landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas.**

Hard landscaping

- a) **The position, design and materials of all site enclosure (e.g. fences, walls)**
- b) **Car parking layout and other vehicular and pedestrian areas**
- c) **Hard surfacing materials**
- d) **Minor structures (e.g. play equipment, lighting, refuse areas etc.)**

The approved details shall be carried out concurrently with the development hereby permitted and shall be completed no later than the first planting season following the completion 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 be completed prior to the first occupation of the development hereby permitted.

Reason: In order to maintain the visual amenities of the area and to conform with Policy LD1 of the Herefordshire Local Plan – Core Strategy, policies M3 and M10 of the Marden Neighbourhood Development Plan and the National Planning Policy Framework.

10. Details of any external lighting proposed shall be submitted to and approved in writing by the local planning authority before being installed. Development shall be carried out in accordance with the approved details and there shall be no other external illumination of the development, unless further details have first been submitted to and approved by the local planning authority.

Reason: To safeguard local amenities and to comply with Policy SD1 of the Herefordshire Local Plan – Core Strategy, policies M3 and M10 of the Marden Neighbourhood Development Plan and the National Planning Policy Framework.

11. H03 Visibility splays

12. H05 Access gates as per site plan drawing received on 4th December 2017 (scale: 1:500 and titled – Additional Planting + Soakaway (surface water))

13. H06 Vehicular access construction

14. H09 Driveway gradient

15. With the exception of the alterations to the vehicular access as shown on the approved plans, no further development shall commence on site or additional caravans be brought onto the site until full details of the proposed additional or replacement foul water drainage arrangements (to include the manufacturer's details of the private treatment plant, size and siting of soakaways and infiltration test results) have been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented prior to either the first occupation of the caravans hereby approved or the first use of the dayroom, whichever occurs first.

Reason: In order to ensure that satisfactory drainage arrangements are provided and to comply with Policies SD3, SD4, LD2 and LD3 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework; Habitat Regulations and NERC Act.

16. Prior to the first occupation of the caravans or first use of the dayroom hereby approved a scheme for the provision of surface water drainage works shall be submitted to and approved in writing by the local planning authority. The submitted details shall include:

- Size and position of any new soakaways for surface water drainage
- Number, size and siting of any rainwater butts

The approved scheme shall be implemented before the first occupation/use of the

additional caravans or dayroom to which they relate.

Reason: To prevent the increased risk of flooding by ensuring the provision of a satisfactory means of surface water disposal and to comply with Policy SD3 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

INFORMATIVES:

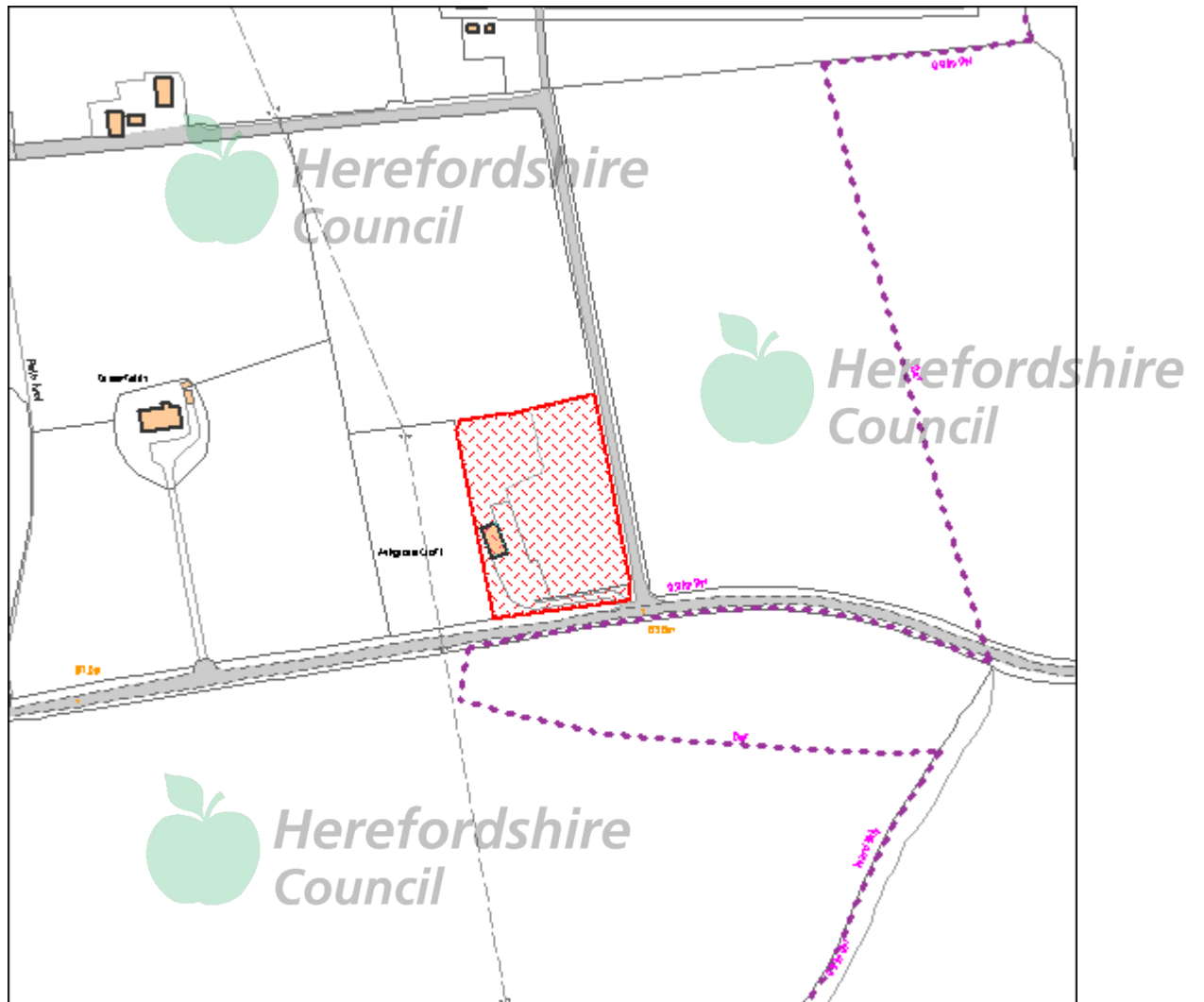
1. The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against planning policy and any other material considerations, including any representations that have been received. It has subsequently determined to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.
2. The proposed caravan site may require a site licence issued by the Licensing section of the Council’s Environmental Health and Trading Standards Division.
3. Discharge of final outfall through an appropriately sized soakaway-spreader field is required. No direct discharge of any final outfall from the proposed treatment system to any swale, watercourse, stream or culvert is acceptable unless it can be clearly demonstrated that residual Phosphorous (phosphates) have been removed from the discharge water.

Decision:

Notes:

Background Papers

Internal departmental consultation replies.



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APPLICATION NO: 172552

SITE ADDRESS : ASHGROVE CROFT, MARDEN, HEREFORD, HEREFORDSHIRE

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MEETING:	PLANNING AND REGULATORY COMMITTEE
DATE:	17 JANUARY 2018
TITLE OF REPORT:	<p>172756 - PROPOSED VARIATION OF CONDITION 7 OF PLANNING PERMISSION DCCW2003/3853/F (VARIATION OF CONDITION 7 TO ALLOW TRADING TO 23.00, 7 DAYS A WEEK (APPLICATION NO. CW2002/3803/F)) TO ALLOW TRADING TO BE UNTIL 01:00 HOURS ON SUNDAY TO THURSDAYS AND UNTIL 02:00 ON FRIDAY AND SATURDAY. WITH CUSTOMER DELIVERY ONLY SALES AND NO SALES COUNTER SALES AT UNIT 3, 109-111 BELMONT ROAD, HEREFORD, HEREFORDSHIRE, HR2 7JR</p> <p>For: Red Miracle Ltd per Seacourt Tower, West Way, Oxford, OX2 2JJ</p>
WEBSITE LINK:	https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=172756&search=172756
Reason Application submitted to Committee - Redirection	

Date Received: 25 July 2017
Expiry Date: 8 December 2017
 Local Member: Councillor P Rone

Ward: Red Hill

Grid Ref: 350422,238897

1. Site Description and Proposal

- 1.1 The application site is situated on the south-eastern side of Belmont Road within Hereford City. The site comprises a single commercial unit, part of a mixed use commercial complex with a dedicated car-parking area to the front. The unit itself is currently occupied by Dominos Pizza. In the immediate vicinity of this commercial parade are residential properties to the north and west, school playing fields to the south and Our Lady Queen of Martyrs Church to the east. The terrace of properties, known as 119-125 Belmont Road have a particularly close association, sharing a common brick boundary wall with the parking area and side access to the rear of the parade.
- 1.2 A variation of condition is sought to condition 7 of the original planning permission CW2002/3853/F. The proposed change seeks approval to extend the opening hours for pizza deliveries from the premises on Sunday to Thursday to 1am and on Friday and Saturday to 2am. In addition direct counter sales to visiting customers are proposed to be extended until midnight throughout the week.
- 1.3 The application is submitted following the expiry of a temporary planning permission (153000/F) which permitted the same extension of hours and which was allowed on appeal following its refusal by Planning Committee on 3 February 2016.

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

1.4 The Planning Committee previously refused permission on the following ground:

The extension of opening hours would give rise to increased disturbance to nearby residents such that acceptable levels of residential amenity would not be safeguarded, contrary to Policy SD1 of the Herefordshire Local Plan – Core Strategy.

1.5 Reference will be made to the Appeal Decision in the Appraisal below but for the sake of clarity, the Decision is attached at Appendix 1.

2. Policies

2.1 The Herefordshire Local Plan Core Strategy policies together with any relevant supplementary planning documentation can be viewed on the Council's website by using the following link:-

SD1 - Sustainable Design and Energy Efficiency

2.2 NPPF

Introduction - Achieving Sustainable Development

2.3 NPPG

2.4 Neighbourhood Plans

Work has commenced on the Hereford Action Plan but it is not at a stage where it can be afforded material weight in decision-making

2.5 The Core Strategy 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/info/200185/local_plan/137/adopted_core_strategy

3. Planning History

3.1 153000/F Variation of Condition 7 of Planning Permission CW2002/3803/F and Condition 1 of Planning Permission CW2003/3853/F. **Refused** 03.02.16. **Allowed on Appeal (12 month temporary period)** 24.05.16

3.2 151384/F Variation of condition 1 of CW2003/3853/F. **Refused** 01.09.15

3.3 DCC041324/F New shopfront, extract ventilation system and external compressors. **Approved** 14.04.04

3.4 DCC033580/F Variation of condition 6 of CW2002/3803/F to allow deliveries between 9am and 1pm on Sundays and Bank Holidays. **Approved** 16.01.04

3.5 DCC033383/F Variation of condition 7 of CW2002/3803/F to allow trading to 11pm, 7 days a week. **Approved** 13.02.04

3.6 DCC023952/F Local centre (Class A1 and A3) with car-parking and ancillary works. **Approved** 16.10.03

4. Consultation Summary

4.1 Statutory Consultations

None

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

4.2 Internal Council Consultations

Principal Environmental Health Officer - Environmental Health received no further noise complaints regarding Domino's over the last year and officer's observations have not identified any noise issues or concerns, therefore, Environmental Health have no objections to the application.

Transportation Manager – Proposal acceptable

5. Representations

5.1 Hereford City Council – No objection

Two separate submissions have been received setting out the objections on behalf of the residents of 119-125 Belmont Road (M Jones, S Marriott, S Eastwood and owner of 119 Belmont Road).

The written objection essentially reiterates the objections submitted to the previous application (153000/F)

In addition a schedule of alleged breaches of the conditions accompanied by photographs is provided

5.2 The consultation responses can be viewed on the Council's website by using the following link:-

https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=172756&search=172756

Internet access is available at the Council's Customer Service Centres:-

<https://www.herefordshire.gov.uk/government-citizens-and-rights/customer-services-enquiries/contact-details?q=customer&type=suggestedpage>

6. Officer's Appraisal

6.1 The principal consideration in the determination of this application is whether the detrimental impact to neighbouring amenity, which led to the previous refusal reason, has been suitably addressed, enabling a permanent extension of opening hours to be approved

6.2 The temporary permission was allowed on appeal, conditional upon sales of food to walk-in customers ceasing at midnight throughout the week, whilst the delivery service could continue until 1am from Sunday-Thursday and 2am on Friday and Saturday. In order to secure additional controls and minimise the impact upon residential amenity, conditions requiring the installation of roller blinds that would be shut at midnight and the deployment of a barrier across part of the parking court to prevent delivery vehicles from parking close to the common boundary with 119-125 Belmont Road.

6.3 In light of the appeal decision, it is accepted that ongoing compliance with the conditions of the temporary permission should satisfactorily address the amenity concerns raised by neighbouring residents. In reaching the decision to allow the appeal however, the Inspector was clearly cognisant of the potential risk of failing to properly implement the restrictive measures. To quote directly from the Inspectors decision letter:

The Council and the neighbouring residents have reservations that these measures would not stop customers arriving at the site trying to get served and that more noise may be generated by the arguments between staff and customers. The implementation of the proposal and the operational statement would be reliant on management practices and updated advertising in relation to the amended opening hours. Consequently, as the likelihood that disturbance would not occur has not been demonstrated I do not consider that a permanent permission can be granted.

- 6.4 Having regard to the operation of the premises under the terms of the temporary permission, it is advised that there have been no formal complaints to the Enforcement or Environmental Health team. Furthermore, by reference to the comments of the Principal Environmental Health Officer, there has been a limited amount of monitoring of the premises that has not identified any breaches of planning control. The absence of any evidenced breach of planning control since the appeal was allowed is a matter that should be afforded weight.
- 6.5 The above notwithstanding, and in support of a detailed objection, the residents of 119-125 Belmont Road have submitted a schedule of alleged breaches with accompanying photographs. In summary this sets out a total of 15 dates between 24 April and 9 September 2017 when breaches of condition are alleged. The allegations range from the premises door and blinds being open after midnight; barriers not being deployed allowing vehicles and what appear to be customers in varying numbers access to the restricted area; and also customers in the premises after midnight. It is unfortunate that these alleged breaches were not reported at the time as it may have resulted in verifiable evidence or more targeted monitoring by Council officers.
- 6.6 In response to the reported allegations, the applicant (with reference to the Store Manager and staff) has been afforded the opportunity to respond and has provided a rebuttal to all of the incidents allegedly involving customer activity. In respect of the alleged customer activity after midnight, the suggestion is that the premises were closed and any noise or disturbance was not as a result of a customer but rather members of the public. The applicant does acknowledge a number of issues associated with external cleaning contractors working on the premises in the early hours and a single driver using the restricted parking area after midnight (subsequently the company and driver were advised of the restrictions in place). In the response, reference is also made to a stock delivery in the small hours. This is not permitted by the original permission and is a matter that has been referred to the Enforcement team.
- 6.7 In addition to the rebuttal, the applicant has advised of refinements to the operation of the restrictions which include on-line orders being stopped at 11.30pm to enable walk-in customers the ability to collect before midnight; the emailing of pictures of the barriers and blinds in place to an internal email group and the inclusion of specific instructions during inductions. I consider that this does demonstrate a willingness to comply with the conditions that have been put in place following the appeal.
- 6.8 Further comments from the objectors have now also been received to the published rebuttal and these confirm that the photographic evidence provided is accurate; that there has been no attempt to engage with residents and that having put up with the temporary trial period, the 11pm closing time should be reinstated.
- 6.9 In summary, the polarised positions of the applicant and neighbouring objectors together with the absence of any verified contemporaneous reports of alleged breaches is such that I cannot recommend approval for a permanent continuation of the extended hours or conversely justify the refusal of this application. Rather, I consider that a further temporary permission aligned with the expiry of the previous temporary permission is appropriate, some slight refinements to other conditions and an additional condition requiring the applicant to provide a photographic record of compliance with conditions 2 and 3 below. This is accompanied by a commitment on behalf of the Council's Enforcement team to carry out routine random monitoring of the premises in order to independently verify any breaches and their impacts. This course of action has been discussed and agreed with the Enforcement Development Manager and will be appropriately resourced. In addition to this, it is also considered that the neighbours need to ensure that individual alleged breaches are notified to the Enforcement team as soon as practically possible in order to enable matters to be tackled with the applicant in a timely manner. It is also considered that the additional extension of time shall be used to discuss the potential for more permanent arrangements to be out in place. On the basis of this

recommendation it is expected that a definitive view as to the acceptability of the extended hours will be achievable upon submission of a further application made in a timely manner.

RECOMMENDATION

That planning permission be granted subject to the following conditions and any further conditions considered necessary by officers authorised under the scheme of delegation to officers:

1. **Until 30 June 2018, the permitted use in relation to the delivery of pizzas and associated products off the premises shall not be open to customers outside the hours of 0700 to 0100 Sundays to Thursdays and 0700 and 0200 Fridays and Saturdays. The walk-in counter service shall cease by midnight every day of the week.**

Reason: To ensure the potential for disruption to neighbouring amenity is minimised in compliance with policy SD1 of the Herefordshire Local Plan Core Strategy and the National Planning policy Framework.

2. **The approved and installed window/door blinds (as approved by letter dated 21 September 2016) shall be drawn shut at midnight or whenever the walk-in service is unavailable, whichever is the earlier.**

Reason: To ensure that the blinds would effectively screen the light emanating from the unit such that the potential for disruption to neighbouring amenity is minimised in compliance with policy SD1 of the Herefordshire Local Plan Core Strategy and the National Planning policy Framework.

3. **All delivery vehicles operating between 2400 and 0200 will be required to park within the defined area illustrated on a parking plan (as approved by letter dated 21 September 2016).**

Reason: To ensure the potential for disruption to neighbouring amenity is minimised in compliance with policy SD1 of the Herefordshire Local Plan Core Strategy and the National Planning Policy Framework.

4. **Until 30 June 2018, the applicant shall keep a daily timed and dated photographic record of the window/door blind and parking barrier in situ, which shall be made available to the local planning authority within 5 working days of any reasonable request.**

Reason: To ensure the potential for disruption to neighbouring amenity is minimised in compliance with policy SD1 of the Herefordshire Local Plan Core Strategy and the National Planning Policy Framework.

INFORMATIVES:

1. **The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against planning policy and any other material considerations, including any representations that have been received. It has subsequently determined to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.**
2. **With regard to the interpretation of condition 4, a reasonable request shall be made in writing (letter or email) and shall only be requested when the local planning**

authority has established beyond reasonable doubt that a breach of conditions 2 and 3 has occurred.

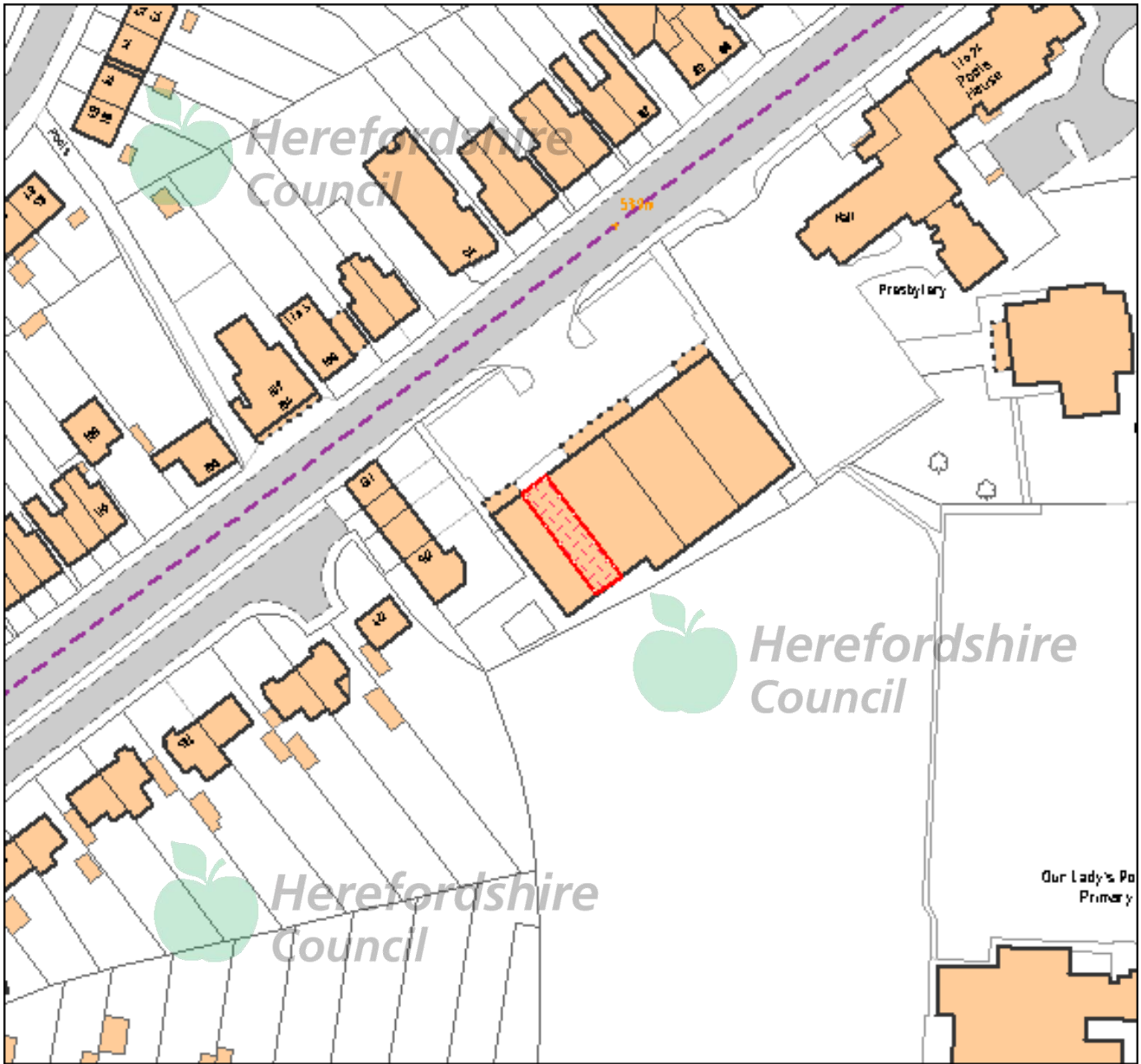
Decision:

Notes:

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Background Papers

Internal departmental consultation replies.



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APPLICATION NO: 172756

SITE ADDRESS : UNIT 3, 109-111 BELMONT ROAD, HEREFORD, HEREFORDSHIRE, HR2 7JR

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



Appeal Decision

Site visit made on 24 May 2016

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

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

Decision date: 30 June 2016

Appeal Ref: APP/W1850/W/16/3145601

Unit 3, 109-111 Belmont Road, Hereford, Herefordshire HR2 7JR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Red Miracle Ltd against the decision of Herefordshire Council.
 - The application Ref 153000, dated 7 October 2015, was refused by notice dated 3 February 2016.
 - The application sought planning permission for a local centre (Class A1 and A3) with car parking and ancillary works without complying with a condition attached to planning permission Ref CW2002/3803/F, dated 16 October 2003.
 - The condition in dispute is no 7 which states that: *The use hereby permitted shall not be open to customers between the hours of 10.00 pm and 7.00 am daily.*
 - The reason given for the condition is: *In the interests of the amenities of existing residential properties in the locality.*
-

Decision

1. The appeal is allowed and planning permission is granted for a local centre (Class A1 and A3, A4 and A5) with car parking and ancillary works at Unit 3, 109-111 Belmont Road, Hereford, Herefordshire HR2 7JR in accordance with the application Ref 153000 dated, 7 October 2015 without compliance with condition number 7 previously imposed on planning permission Ref CW2002/3803/F dated 16 October 2003 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect and subject to the following new conditions:
 - 1) For 12 months from the date of this decision, the premises shall not be in use except between the hours of 07.00 and 01.00 Sunday to Thursday the following morning and Fridays and Saturdays 07.00 and 02.00 on the following morning. After the expiry of the 12 month period from the date of this decision, the premises shall not be in use except between the hours of 07.00 and 23.00 on any day. The premises shall not be in use at any other time.
 - 2) The premises shall not be open for walk-in sales and no customer shall be permitted to be on the premises on any day outside the following times: 07.00 hours until 24.00 hours.
 - 3) Prior to the commencement of the extended opening hours hereby permitted, details of the blinds (or other similar mechanism) and their installation shall be submitted to and agreed with the local planning authority. The blinds (or other similar mechanism) shall be installed

within one month of the date that the details are approved in writing and once installed; these blinds shall be drawn shut/closed from 24.00 until 07.00 Monday to Sunday.

- 4) Prior to the commencement of the extended opening hours hereby permitted a plan showing a defined area for parking the delivery vehicles associated with the use shall be submitted to and agreed with the local planning authority. All delivery vehicles operating between 24.00 and 02.00 will be required to park within the defined area on the parking plan.

Preliminary Matters

2. For the reason of clarity I have based the address in the banner heading on that used on the decision notice.
3. The application was made on the basis that the proposal had not taken place, i.e. that the permitted opening hours were being adhered to. However, the Council had served a breach of condition notice on the 2 October 2015 and in its submissions it states that complaints had been received in relation to the hours of opening since October 2014. I have set out that the appeal is made in relation to section 73 of the Act rather than section 73(A) on the basis of how the application was made. In effect there is no difference for my consideration of the appeal. Moreover, the proposed extended hours would not equate to the alleged hours of opening. The proposal seeks to extend the counter sales part of the pizza takeaway from 23.00 to 00.00 on all days and to extend the opening hours to allow pizza deliveries on Sunday to Thursday until 01.00 and on Friday and Saturday to 02.00. In contrast the neighbouring residents and the Council state that the premise is open until 01.00 and 02.00 for counter sales and deliveries.
4. Section S73 applications are commonly said to be seeking to vary or remove conditions to which an existing permission is subject. However, that is not strictly the case. If such applications (or appeals against their refusal or non-determination) succeed, a completely new permission is created that stands alongside the original and the applicant or appellant is able to choose which is implemented. The 2004 permission¹ extended the opening hours, as controlled by condition 7 of the original consent², until 23.00. However, as the decision notice on the appeal scheme cites both I consider that my decision should relate to the original permission. As such, in this case, it is necessary for the new permission granted pursuant to this appeal to be for a different description of development than that utilised for the 2003 permission.
5. When the latter was granted, Class A3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 encompassed use for the sale of food or drink for consumption on the premises or hot food for consumption off the premises. However, amendments to the legislation that came into force in 2005 restricted Class A3 to use for the sale of food and drink for consumption on the premises. The other elements it formerly included are now covered by Class A4 (use as a public house, wine-bar or other drinking establishment) and Class A5 (use for the sale of hot food for consumption off the premises).

¹ DCCW2003/3853/F

² CW2003/3853/F

6. It would not be appropriate in allowing this appeal to grant permission for a more restricted use than originally permitted, particularly given the Class A5 nature of the appellants' business. Accordingly, I have used the alternative description of development set out above in the formal decision. There is no prejudice to the interests of any party in doing so.

Main Issue

7. The main issue is the effect of the proposal on the living conditions of the occupants of neighbouring properties, with particular regard to noise and disturbance.

Reasons

8. The appeal site is located on Belmont Road which, I noted at my site visit, is a busy road. The premises occupy a unit within a modern retail parade with a communal car park sited between the parade and Belmont Road. The surrounding area is predominantly residential in character. There is a convenience store/ off licence on the opposite side of Belmont Road and a sign within its shop front states that it is open until 23.00 each night. There is a row of four terraced dwellings adjacent to the parade of shops and their rear elevations face the car park and the side elevation of the parade.
9. The appeal site benefits from a Premises Licence that includes the sought extended opening hours. Whilst I concur with the Council that there is a clear distinction between licensing considerations and those of planning, the Premises Licence does however form a material planning consideration that weighs in favour of the proposal. However, for the avoidance of doubt, I have considered the proposal's effect on the living conditions of local residents on the individual merits of the case that are before me.
10. There were several objections to the application from the residents of the terraced dwellings. They indicate that the appellant has been opening in breach of the condition and that this has caused noise disturbance within the car park from car doors opening and closing, the playing of radios, people talking and the honking of car horns. The Council's statement of case includes the findings of a report by the Council's Principal Environmental Health Officer. There is no date associated with the report and it does state that the investigation did not identify a statutory nuisance but it did highlight concerns over the impact of noise generated by the business.
11. The appellant has submitted a noise assessment which took background noise readings from two positions, one adjacent to the boundary with the rear elevation of the terraced dwellings and the other to the side elevation of the parade. It was carried out on one evening and includes readings when there was no activity from the Dominos store. However, it only assesses the impact of extended opening hours between 01.00 and 02.00 and not from 23.00 until 02.00. It concludes that the additional vehicle movements are considered to be negligible in comparison with the existing noise climate and that the noise from the operational plant would be no different in the extended opening hours. The report does take into account noise from customers inside the building but it does not mention noise from customers outside of the building or the noise from any music from car radios or music systems.

12. For these reasons, therefore, while the report is of some value it is limited such that the information before me does not offer sufficient clarity and robustness to be able to conclude that the living conditions of neighbouring occupiers would not be unacceptably harmed by noise.
13. I consider that the issues raised by the occupiers of the terraced dwellings show that opening to counter customers until 02.00 daily has in the past caused an unacceptable level of noise and disturbance to these local residents, due to the associated level of comings and goings that it generated. However, the appellant has applied for counter sales to cease at 00.00 daily, with delivery sales only between the hours of 00.00 and 01.00 Sunday to Thursday and until 02.00 on Fridays and Saturdays. This would result in the premises opening to counter customers one hour later than the current permission allows and would reduce the possibility of disturbance from customers for the later hours between 24.00 and 02.00. The appellants have submitted an operational statement that they state would apply to this site and they have agreed to insert blinds on the shop window and door to screen the internal lights so that potential customers would not consider that they are open. Furthermore, they have also agreed to a condition to allocate an area for parking for delivery drivers to ensure they do not park in close proximity to the boundary with the terraced dwellings after 24.00.
14. The Council and the neighbouring residents have reservations that these measures would not stop customers arriving at the site trying to get served and that more noise may be generated by the arguments between staff and customers. The implementation of the proposal and the operational statement would be reliant on management practices and updated advertising in relation to the amended opening hours. Consequently, as the likelihood that disturbance would not occur has not been demonstrated I do not consider that a permanent permission can be granted.
15. However, I note that the appellant and the Council are prepared to accept a 12 month temporary period condition. This being so, I find a trial period during which the restrictions referred to above are in place and a proper assessment can be made by both main parties to be the most appropriate way forward.
16. In conclusion on this matter, I consider that with the imposition of necessary planning conditions, that there is a realistic probability that further assessment would demonstrate that there would not be adverse impacts from noise on the living conditions of the occupants of neighbouring properties as a result of the extended opening hours. However, to allow the Council to fully assess the effect of the proposal on the living conditions of local residents, I consider that it is necessary to restrict the extended opening hours to a temporary one year period. I consider that with these measures in place, the proposal complies with Policy SD1 of the Herefordshire Local Plan Core Strategy (the CS) which, amongst other things, requires development to ensure that it does not contribute to, or suffer from, adverse impacts arising from noise.

Other Matters

17. The appellant has cited a number of other appeal decisions for extended opening hours at various developments across the country. However, I do not have the full details of each case and as such I cannot be certain that they are comparable to this case. In any case I am required to determine the appeal on its merits.

Conditions

18. I have considered the conditions put forward by the Council against the requirements of the Planning Practice Guidance and the National Planning Policy Framework. In the interests of conciseness and enforceability the wording of some of the Council's suggested conditions have been amended.
19. I consider it necessary in the interests of the living conditions of local residents to impose conditions for the opening times 07.00 to 01.00 Sunday to Thursday and 07.00 to 02.00 on Fridays and Saturdays with counter sales to cease at 24.00 daily. Notwithstanding that the appellant submitted details of a blind with the appeal it does include sufficient site specific detail to ensure that the light emitted by the use of the store is screened to minimise disruption from potential customers at the store. Consequently, a condition is required to provide that additional detail. The parking area plan is required to define the parking area for delivery drivers to minimise disruption to the adjacent occupiers.
20. In addition, to allow the Council to fully assess the effect of the proposal on the living conditions of local residents condition 1 requires the extended opening hours to cease after one year from the date of this decision and to revert to the current arrangement thereafter.

Conclusion

21. For the reasons given above and having regard to all other matters raised but only in accordance with the terms explained above, I conclude that the appeal should succeed. I will therefore grant a new planning permission omitting the disputed condition 7 and imposing the necessary new conditions.

D. Boffin

INSPECTOR

MEETING:	PLANNING AND REGULATORY COMMITTEE
DATE:	17 January 2018
TITLE OF REPORT:	174094 - ERECTION OF ONE FOUR-BEDROOM FAMILY HOUSE WITH A GARAGE AT LAND AT OFFAS DENE, PROSPECT LANE, DINEDOR, HEREFORDSHIRE. For: Mr Smart per Mr Chris Smart, Offas Dene, Dinedor, Hereford, Herefordshire HR2 6LQ
WEBSITE LINK:	https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=174094&search=174094
Reason Application submitted to Committee - Officer Application	

Date Received: 31 October 2017 Ward: Dinedor Hill Grid Ref: 353399,236891

Expiry Date: 19 January 2018

Local Member: Councillor D Summers.

1. Site Description and Proposal

- 1.1 The site is part of the garden of Offas Dene to the west of an unclassified road on the northern edge of Dinedor south – east of Hereford City.
- 1.2 The proposal is for a detached dwelling in timber cladding and render to wing under a natural slate roof.
- 1.3 Access to the site would be via a new opening off the unclassified dead end road.
- 1.4 Some new tree planting is shown with a gabion retaining wall along the northern boundary with the host dwelling due to the changes in levels.
- 1.5 To the immediate south lies a plot of land presently under construction with new dwellings, with Spring Hill and Bodenham House to the east on the opposite side of the road. Spring Cottage lies to the north on the western side of the application site.

2. Policies

2.1 Herefordshire Local Plan: Core Strategy

- SS1 - Presumption in Favour of Sustainable Development
- SS2 - Delivering New Homes
- SS4 - Movement and Transportation
- SS6 - Environmental Quality and Local Distinctiveness

Further information on the subject of this report is available from Mr Fernando Barber-Martinez on 01432 383674

- RA2 - Housing settlement outside Hereford and the market towns
- MT1 - Traffic management, highway safety and promoting active travel
- LD1 - Landscape and townscape
- LD2 - Biodiversity and geodiversity
- LD3 - Green infrastructure
- SD1 - Sustainable Design and Energy Efficiency;
- SD3 - Sustainable water management and water resources
- SD4 - Waste Water Treatment and River Water Quality

2.2 Dinedor Parish Council submitted their draft Neighbourhood Development Plan to Herefordshire Council on 31 October 2017. The consultation runs from 31 October to 12 December 2017. This is at Regulation 14 draft plan stage and therefore whilst a material consideration has no weight in decision making process.

2.3 National Planning Policy Framework

Paragraphs 14, 47 and 49 (5 year housing land supply) are engaged. This is presently 4.54 years (published at April 2017).

2.4 The Core Strategy 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/info/200185/local_plan/137/adopted_core_strategy

3. Planning History

3.1 None to site.

4. Consultation Summary

Statutory Consultations

4.1 Welsh Water:

As the applicant intends utilising a private treatment works we would advise that the applicant contacts The Environment Agency / Herefordshire Council Land Drainage Department who may have an input in the regulation of this method of drainage disposal.

However, should circumstances change and a connection to the public sewerage system/public sewerage treatment works is preferred we must be re-consulted on this application.

Our response is based on the information provided by your application. Should the proposal alter during the course of the application process we kindly request that we are re-consulted and reserve the right to make new representation. If you have any queries please contact the undersigned on 0800 917 2652 or via email at **developer.services@dwrcymru.com**. Please quote our reference number in all communications and correspondence.

There is a potable water supply network in the road, our records shows that the nearest public sewer is over 600m away, due north in Rotherwas industrial estate.

4.2 Natural England: No objection subject to planning conditions.

We consider that without appropriate mitigation the application would:

- have an adverse effect on the integrity of River Wye Special Area of Conservation

- damage or destroy the interest features for which River Wye / Lugg Site of Special Scientific Interest has been notified.

In order to mitigate these adverse effects and make the development acceptable, the following mitigation measures are required / or the following mitigation options should be secured:

- Foul sewage to be disposed in line with Policy SD4 of the adopted Herefordshire Core Strategy. Where a package treatment plant is used for foul sewage, this should discharge to a soakaway or a suitable alternative if a soakaway is not possible due to soil/geology.

Internal Council Consultations

- 4.3 Transportation Manager (Highway Engineer): No objection. I have reviewed the above application and have concluded that the available visibility splay distance equates to 41m in a southern direction, this meet MfS2 2.0 sec reaction time for 25 mph, due to the rural nature and geometry of the lane, speeds will be low.

If likely to approve, please condition and informatives as follows: -

CAB – 2.4 X 41M (South) and 2.4 x 52m (north)
CAD, CAE, CAH, CAL, CAS, CAZ, CB2

I11, I09, I45, I05, I47, I35.

- 4.4 Conservation Manager (Trees Officer): No response received at the time of writing.
- 4.5 Conservation Manager (Ecologist): No objection subject foul drainage, ecological protection and mitigation, and nature enhancement planning conditions.

5. Representations

- 5.1 Dinedor Parish Council: Dinedor Parish Council has considered this application and notes that this development would fall outside the village envelope as identified within the draft Neighbourhood Development Plan which is currently at Regulation 14. However, it was agreed that there are no objections to this development although concerns were expressed at the impact of this development on traffic flows in this narrow country lane. Some concern was also expressed at historic issues with drainage on the proposed site.

- 5.2 The consultation responses can be viewed on the Council's website by using the following link:-
https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=174094&search=174094

Internet access is available at the Council's Customer Service Centres:-

<https://www.herefordshire.gov.uk/government-citizens-and-rights/customer-services-enquiries/contact-details?q=customer&type=suggestedpage>

6. Officer's Appraisal

- 6.1 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 the plan unless material considerations indicate otherwise."

- 6.2 The Core Strategy (CS) sets the overall strategic planning framework for the county, shaping future development. The Neighbourhood Development Plan (NDP) here has no material weight in decision making.

- 6.3 The strategic Policy SS1 sets out a presumption in favour of sustainable development as required by the National Planning Policy Framework (NPPF) and directs that proposals which accord with the policies of the CS shall be approved, unless material considerations indicate otherwise. One such consideration is the NPPF which advises at paragraph 47 that Local Authorities maintain a robust five year supply of housing land. At present, the Council cannot demonstrate a 5-year supply of housing land and as such the policies of the CS cannot be inherently relied upon, although they still retain weight dependent upon their consistency with the NPPF.
- 6.4 The delivery of sustainable housing development to meet objectively assessed needs is a central CS theme, reflecting the objectives of the NPPF. Policy SS2 'Delivering new homes' directs that Hereford and the market towns shall be the main focus for new housing development with proportionate growth of sustainable rural settlements, which are listed at figures 4.14 and 4.15, also supported.
- 6.5 Dinedor is identified as being suitable for new housing in the Core Strategy as a paragraph 4.15 settlement within the Hereford housing market.
- 6.6 In particular Dinedor is identified for new housing in policy RA2 of the Core Strategy as a Para 4.1.5 settlement and therefore the principle of development in or adjacent to the built form is acceptable. Whilst the Parish Council comments regarding the proposed settlement boundary within the emerging Neighbourhood Development Plan are noted, this is not yet at a stage where it can be afforded any weight. It is considered that given the presumption in favour of sustainable development and the relationship of the site to other residential development in the locality, the principle of residential development can be supported.

Design/Landscape/Amenity

- 6.7 The design of the proposed dwelling is considered to be modern but not of any particular architectural style. The design uses vertical timber cladding and render to the side wing which gives this an individual design appearance rather than the more established typology of brick and tile on the older buildings found dispersed in Dinedor. As this lies behind an established hedge with limited street scene implications, this on balance is considered acceptable in terms of 'street scene' implications.
- 6.8 Furthermore, this curtilage housing proposal raises no wider landscape implications due to the intervening built development (existing and under construction) on this side of the road within Dinedor.
- 6.9 This proposal does not give rise to any adverse neighbouring amenity concerns either for existing or future occupants at Offas Dene, Spring Hill, Spring Cottage, Bodenham House nor the new dwellings under construction on land to the south (which is on lower ground).

Accessibility

- 6.10 This Council's Highway Engineer raises no objection to this proposal. It is considered that the new access into the site from the unclassified road along with the additional vehicle movements would not give rise to adverse highway safety implications at this location due to the generally slow speeds anticipated along this dead end lane (which rises gently from south to north). It is considered acceptable to agree such detail at a future date by way of a planning condition (see conditions 9 and 10 below).

Ecology

- 6.11 Ecological protection during construction and enhancement of the field location can be secured by way of planning conditions. Matters relating to surface water drainage and discharge related matters can be dealt with by way of a planning condition.

Foul and Surface Water Disposal

- 6.12 There is potable water available to the site, however the nearest public sewerage network is 600m due north in Rotherwas industrial estate. There is sufficient undeveloped land within the application site to accommodate a bespoke package sewage treatment unit in what would be a garden area. This is considered acceptable, and a planning condition will secure that feature.

Conclusion

- 6.13 The proposal accords with the above identified planning policies in the Core Strategy. Furthermore in applying the planning balance under paragraph 47, 49 and 14 of the National Planning Policy Framework this proposal is considered to be in a sustainable location and there are no specific planning concerns of overriding material harm in respect of highway safety, neighbouring amenity, ecology or landscape which would lead to an alternative recommendation.
- 6.14 Consequently a recommendation of approval is put forward subject to planning conditions.

RECOMMENDATION

That planning permission be granted subject to the following conditions and any other conditions considered necessary by officers names in the scheme of delegation to officers:

1. **C01 (implementation);**
2. **C07 Drawings (Site Location Plan (untitled); OD03B; OD05B; OD06B);**
3. **C95 (boundary treatments);**
4. **C13 (materials);**
5. **C65 (remove PD rights –dwelling and curtilage);**
6. **CE6 (water resources);**
7. **CD2 (habitat enhancement);**
8. **CBK (controls during construction- amenity);**
9. **CAE (vehicle access construction);**
10. **CAL (access, turning and parking);**
11. **CB2 (cycle parking).**
12. **CBM (waste water treatment).**
13. **CAD (access gates set back)**

14 CAH (driveway gradient)

15. The ecological protection, mitigation and working methods scheme as recommended in the Ecological Report by Just Mammals Consultancy LLP dated September 2017 shall be implemented in full as stated unless otherwise approved in writing by the local planning authority.

Reason: To ensure that species are protected and habitats enhanced under Policy LD2 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

INFORMATIVES:

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

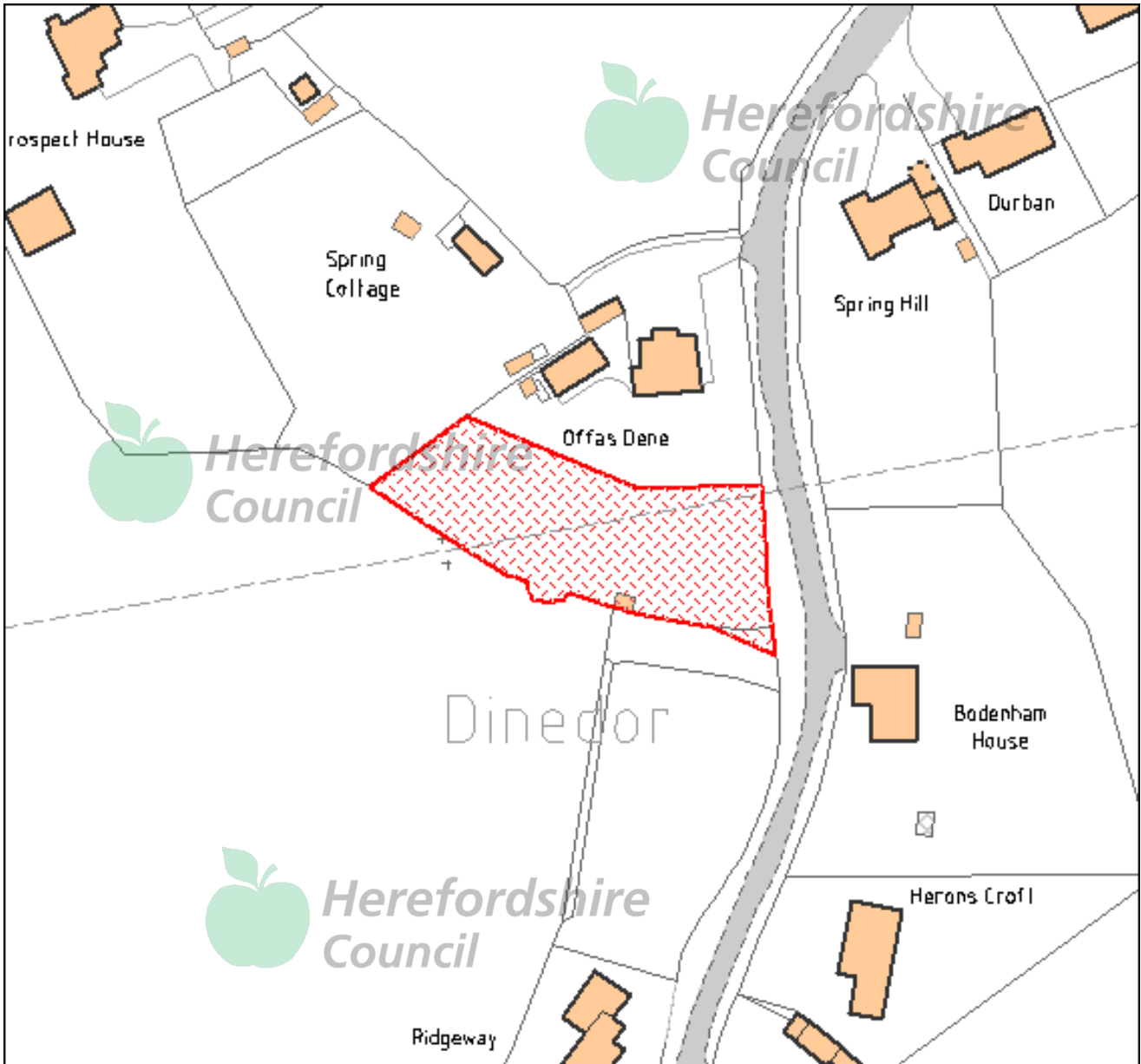
Decision:

Notes:

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Background Papers

Internal departmental consultation replies.



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APPLICATION NO: 174094

SITE ADDRESS : LAND AT OFFAS DENE, PROSPECT LANE, DINEDOR, HEREFORDSHIRE

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