

Minutes of the meeting of Planning and regulatory committee held as online only meeting on Wednesday 15 July 2020 at 10.30 am

Present: Councillor John Hardwick (chairperson)
Councillor Alan Seldon (vice-chairperson)

Councillors: Graham Andrews, Paul Andrews, Polly Andrews, Toni Fagan, Elizabeth Foxton, Bernard Hunt, Tony Johnson, Mark Millmore, Jeremy Milln, Paul Rone, John Stone and Yolande Watson

In attendance: Councillor Jennie Hewitt

129. APOLOGIES FOR ABSENCE

Apologies were received from Councillor James.

130. NAMED SUBSTITUTES

None.

131. DECLARATIONS OF INTEREST

None.

132. MINUTES

RESOLVED: That the minutes of the meeting held on 15 July 2020 be approved as a correct record and signed by the Chairperson.

133. CHAIRPERSON'S ANNOUNCEMENTS

None.

134. 191449 - NEW HOUSE, CUSOP, HAY-ON-WYE, HR3 5TG

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

The update proposed an amendment to condition 4 as it was set out in the report

In accordance with the criteria for public speaking for virtual meetings, Cusop Parish Council had submitted a written submission in objection to the application. This was read to the meeting by the legal adviser to the Committee. Mr M Wordley, a local resident, spoke in opposition to the scheme as a virtual attendee. Mr B Rose, the applicant, had submitted a written submission in support of the scheme. This was read to the meeting by the legal adviser to the Committee.

In accordance with the Council's Constitution, the local ward member, Councillor Jennie Hewitt, spoke on the application. She opposed the application. In summary she considered that it would cause significant harm to biodiversity contrary to the National Planning Policy Framework and should therefore be refused.

The Committee discussed the application.

It was proposed that in addition to the amendment to condition 4 referred to in the committee update a condition should be added in relation to planting.

The Lead Development Manager commented on the principal aspects of the application. He considered the application was compliant with the Neighbourhood Development Plan.

The local ward member was given the opportunity to close the debate. She reiterated her objection to the scheme suggesting that the submission of an application more sensitive to the setting could be considered.

RESOLVED: That planning permission be granted subject to the following conditions, including an amended condition 4 in the report (as amended below) and an additional condition relating to planting, and any further conditions considered necessary by officers named in the scheme of delegation to officers:

1. **C01 - Time limit for commencement (full permission)**
2. **C07 - Development in accordance with approved plans and materials**
3. **No external surface of the shepherds hut hereby approved shall be of a colour and finish other than one which has previously been approved in writing by the local planning authority for that purpose.**

Reason: To conform to Policy LD1 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework and to clarify the terms of the permission and minimise visual intrusion.

4. **All foul water shall discharge through connection to the proposed package treatment plant and onsite soakaway; and any additional surface water shall discharge to appropriate soakaway-infiltration features; unless otherwise agreed in writing by the Local Planning Authority.**

Reason: In order to comply with Conservation of Habitats and Species Regulations (2018), National Planning Policy Framework, NERC Act (2006), NPPF (2019) and Herefordshire Council Core Strategy (2015) policies LD2, SD3 and SD4.

5. **The translocated length of hedgerow and all new planting shall be gapped up, dead plants replaced like for like and the planting managed and maintained in line with all best practice guidance for a minimum of 10 years from completion of works and planting on the site – unless otherwise approved in writing by the Local Planning Authority.**

Reason: To conform to Policy LD1 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework and to clarify the terms of the permission and minimise visual intrusion.

6. **No retained tree shall be cut down, uprooted, destroyed, pruned, cut or damaged in any manner during the construction phase and thereafter for 5**

years from the date of first use of the shepherds hut, other than in accordance with the approved plans and particulars.

Reason: To safeguard the character and amenity of the area and to ensure that the development conforms with Policies LD1 and LD3 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

7. CAB - Visibility Splays : - 2m x 48m eastbound, 2m x 49.6m westbound
8. CAD - Access gates
9. CAE - Vehicular access construction
10. CAH - Driveway gradient
11. CAI - Parking
12. CAT - Construction Management Plan
13. CB2 - Secure covered cycle parking provision
14. C81 Use as holiday accommodation
15. Within six months of any of the shepherds hut hereby permitted becoming redundant, inoperative or permanently unused, it and all associated infrastructure shall be removed and the land reinstated to its former condition.

Reason: To conform to Policy LD1 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework and to clarify the terms of the permission and minimise visual intrusion.

16. C64 - Restriction on separate sale (from New House)
17. Details of any external lighting proposed to illuminate the shepherds hut shall be submitted to and approved in writing by the local planning authority before the use hereby permitted commences. Development shall be carried out in accordance with the approved details and there shall be no other external illumination of the development.

Reason: To safeguard local amenities and biodiversity and to comply with Policies SD1 and 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. Negotiations in respect of matters of concern with the application (as originally submitted) have resulted in amendments to the proposal. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.
2. I11 – Mud on highway

3. I05 – No drainage to discharge to highway
4. I47 – Drainage other than via highway system
5. I35 – Highways Design Guide and Specification
6. The applicant's attention is drawn to the following comments provided by the Council's Environmental Health Service Manager (Water Quality):

The proposed development plans to use an existing spring water supply. The applicant is advised that the Private Water Supplies (England) Regulations 2016 (as amended) and the Water Supply (Water Quality) Regulation 2016 will apply. In accordance with these Regulations and the Building Regulations 1984 the water must be of a potable and safe standard.

If the supply is to be used for shared or commercial purposes including renting, the Private Water Supplies (England) Regulations 2016 specify that the water supply cannot be used until it has been risk assessed by the local authority's private water supplies team (01432 261761) and found compliant.

Applicants that are connecting to existing private water supplies or accessing sources of water on land over which they have no control are advised to give careful and specific attention to contractual/civil arrangements including rights of access, maintenance arrangements, provision of alternative water supply are agreed in writing at the outset.

7. The Authority would advise the applicant (and their contractors) that they have a legal Duty of Care as regards wildlife protection. The majority of UK wildlife is subject to some level of legal protection through the Wildlife & Countryside Act (1981 as amended), with enhanced protection for special "protected species" such as Great Crested Newts, all Bat species, Otters, Dormice, Crayfish and reptile species that are present and widespread across the County. All nesting birds are legally protected from disturbance at any time of the year. Care should be taken to plan work and at all times of the year undertake the necessary precautionary checks and develop relevant working methods prior to work commencing. If in any doubt it advised that advice from a local professional ecology consultant is obtained. Any external lighting shouldn't illuminate any 'natural' boundary feature or increase night time sky illumination (DEFRA/NPPF Dark Skies Guidance 2019/2013).

(The meeting adjourned between 10.45 and 10.55 am)

135. 200680 - THE HAY MEADOW, PRESTON WYNNE, HEREFORD, HR1 3PE

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

The Senior Planning Officer gave a presentation on the application.

He added that it had come to light that there was reference to the site on the Herefordshire Historic Environment Record. However, there were no designated heritage assets in the vicinity of the application. The application would not have a detrimental impact on the character or appearance of the landscape. The application

was in accordance with policy LD 4 of the Core Strategy and the Neighbourhood Development Plan.

In accordance with the criteria for public speaking for virtual meetings, Withington Group Parish Council had submitted a written submission in objection to the application. This was read to the meeting by the legal adviser to the Committee. Mr F O'Neill, a local resident, had submitted a written submission in objection to the application on behalf of himself and other residents. This was read to the meeting by the legal adviser to the Committee. Mr E Thomas, the applicant's agent, spoke in support of the application as a virtual attendee.

In accordance with the Council's Constitution, the local ward member, Councillor Paul Andrews, spoke on the application. He opposed the application, requesting a deferral and a site visit.

The Committee discussed the application.

The Lead Development Manager highlighted that the applicant could construct a similar building within the curtilage of the property without seeking planning permission.

The local ward member was given the opportunity to close the debate. He reiterated his objection to the application and support for a deferral and a site visit

RESOLVED: That consideration of the application be deferred pending a site visit.

136. 201209 - 3 AVOCET ROAD, HOLMER, HEREFORD, HR4 9WA

The Planning Officer gave a presentation on the application.

In accordance with the Council's Constitution, the local ward member, Councillor Millmore, spoke on the application. He reported that there had been no objections to the application and he supported its approval.

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

1. **CO1 – Time limit for commencement (full permission)**
2. **CO6 – Development in accordance with the approved plans (drawings 14B, 13B, 11C and 12C)**
3. **CBK - Restriction of hours during construction**
4. **The garage conversion shall be used solely for purposes incidental to the enjoyment of the dwelling house and not as a separate unit of accommodation**

Reason: To ensure that the development is used only for the purposes ancillary to the dwelling and to comply with Policy SD1 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

137. DATE OF NEXT MEETING

Noted.

Appendix - Schedule of Updates

The meeting ended at 12.50 pm

Chairperson

PLANNING AND REGULATORY COMMITTEE

Date: 15 July 2020

Schedule of Committee Updates/Additional Representations

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

SCHEDULE OF COMMITTEE UPDATES

191449 - SITING OF SHEPHERD HUT TO PROVIDE TOURIST ACCOMMODATION INCLUDING CONSTRUCTION OF NEW VEHICULAR ACCESS AND ASSOCIATED LANDSCAPING WORKS AT NEW HOUSE, CUSOP, HAY-ON-WYE, HR3 5TG

For: Mr Rose per Mr Barry Rose, New House, Hay-on-Wye, Hereford, Herefordshire HR3 5TG

ADDITIONAL REPRESENTATIONS

On the 14th July the following additional comment was submitted by Cusop Parish Council in response to the Officer's Committee Report.

I wish to express concern about the failure of the planning officer's report to address and apply the relevant policy of the Cusop NDP to this application.

The policy in question is Policy 11(c) which, outside the settlement boundary, permits employment-generating activities "such as farming or some types of tourism that can function effectively only if based within the countryside." The word "only" is the critical qualifier here. The policy was worded in this way specifically to limit development in remote countryside, such as the site of this application, to activities that needed to be there. Otherwise development was expected to be within the settlement boundary unless it re-used a redundant building in accordance with Core Strategy Policy RA5 or was a small-scale extension of an existing business.

The text of the NDP provides the thinking behind this policy:

30. Where growing local businesses need dedicated employment land, existing and prospective employment land in Cusop and Hay should meet this need and developers will be guided towards this land. While some businesses may prefer to be located in the countryside, most can be based satisfactorily within existing settlements.

31. Nevertheless there are land-based businesses, mainly farming and some tourism enterprises, that need to be based in the countryside and these enterprises are important: as well as providing direct and indirect employment, they help maintain a landscape that is highly valued by residents and visitors. It is another priority of the Plan to enable such business to grow and diversify, while protecting the most sensitive locations from negative impact.

The officer's report (para. 6.10) notes the existence of NDP Policy 11, but completely omits to address whether the application actually meets this policy. Then (in para 6.13) the report concludes that "appreciating that both the NDP and CS, as well as National guidance, encourage small scale tourist accommodation, the proposal is found to be acceptable in principle." As far as the NDP is concerned this is inaccurate: the NDP does not identify accommodation separately from tourist development generally, but it does subject such development, accommodation or otherwise, to the qualification of functional need.

The report notes that the application is compatible with Core Strategy E4, but this is not a green light for the application unless it is also compliant with the NDP. Even if officers judged that there was a conflict with the Core Strategy, it would have to be resolved in favour of the Cusop NDP which is the more recent document to be adopted. In any event the NDP was

examined in 2017 and found to be in general conformity with both national policy and the Core Strategy.

So the question is: is the proposed shepherd's hut an activity that "can function effectively only if based within the countryside"? Our view is that it is not. Activities such as pony-trekking centres or bothies for long-distance walkers which by their nature need to be in the countryside are the sort of development that would qualify under this policy. Not accommodation for car-borne visitors which can equally well be located within the settlement or re-use existing buildings; and especially not accommodation in remote upland at the end of a narrow road up a steep hill with hairpin bends.

The report (para 6.11) also brushes aside the opportunity that consent would create for further development. One shepherd's hut is a poor return for the works proposed in this application, so it is likely that the applicant will return for more (indeed, the original application was for two huts). If the principle of development is established, what case could there be against two? And if two were permitted, what about three? or four?

OFFICER COMMENTS

The comments reference Policy 11(c) of the Cusop NDP but quote Policy 11(b), for reference the entire policy is included below.

Employment-generating proposals will be permitted outside the Settlement Boundary only where they:

- (a) re-use existing redundant buildings in accordance with Core Strategy Policy RA5, or*
- (b) are activities such as farming or some types of tourism that can function effectively only if based within the countryside, or*
- (c) are small-scale extensions or diversifications of existing businesses at their existing locations.*

In the case of proposals that would have a significant effect on any of Cusop's Locally Distinctive Assets (Policies 12, 13, and 14), their impact will be considered exceptionally carefully and applicants will be expected to provide evidence of why the proposal cannot be located elsewhere.

The Officer's Committee Report addresses Policy 11 at 6.3 and 6.4 before returning to it at 6.10.

Policy 11 of the NDP sets out exceptions to the locational strategy of employment provision, included as an exception at (b) is: '*some types of tourism that can function effectively only if based within the countryside*'. This does not preclude small scale tourist accommodation and neither does the preamble to the policy at paragraph 31 of the NDP. The wording of the policy seeks to segment the tourism industry into activities that could operate within the settlement and those that could not. As such it is reasonable to segment tourist accommodation by those that could and could not operate in the settlement. While it is acknowledged that some tourist accommodation could operate effectively within the settlement, this is not the case for all types of tourist accommodation. It is peripherally relevant that Policy E4 of the Core Strategy seeks to delineate the appropriateness of rural tourist accommodation based on scale.

It is considered that the specific nature of the current scheme is to operate a small scale countryside business that would not be suitable within a built up area. As such it remains Officer's assessment that the proposal does comply with Policy 11 of the NDP by meeting exception criteria (b), set out above.

A second issue was again raised in the comments, which relates to the setting of a precedent if the scheme is approved. As stated in the Officer's Committee Report, see paragraph 6.11, the application must be assessed on its own merits and does not propose further development. If future applications were submitted these would similarly have to be assessed on their own merits and against the policies relevant at the time.

AMENDEMENT TO RECOMMENDED CONDITION 4

It has come to Officer's attention that the recommended Condition 4 does not reflect the most up to date proposal and instead refers to the use of the existing septic tank. However, the proposal is now to install a new package treatment plant for the shepherd's hut. The revised recommended condition 4 is:

All foul water shall discharge through connection to the proposed package treatment plant and onsite soakaway; and any additional surface water shall discharge to appropriate soakaway-infiltration features; unless otherwise agreed in writing by the Local Planning Authority.

Reason: In order to comply with Conservation of Habitats and Species Regulations (2018), National Planning Policy Framework, NERC Act (2006), NPPF (2019) and Herefordshire Council Core Strategy (2015) policies LD2, SD3 and SD4.

NO CHANGE TO RECOMMENDATION