

MEETING:	PLANNING COMMITTEE
DATE:	24 SEPTEMBER 2014
TITLE OF REPORT:	P140910/O - OUTLINE APPLICATION FOR THE PART DEMOLITION OF EXISTING BUILDINGS AND STRUCTURES AND DEVELOPMENT OF THE SITE TO PROVIDE A RETAIL STORE (USE CLASS A1) AND ASSOCIATED WORKS AND IMPROVEMENTS INCLUDING ACCESS. AMENDED PLANS AT LAND AND BUILDINGS AT MILL STREET, LEOMINSTER, HEREFORDSHIRE, HR6 8EF For: Frank H Dale Ltd per 7 Soho Square, London, W1D 3QB
WEBSITE LINK:	https://www.herefordshire.gov.uk/planning-and-building-control/development-control/planning-applications/details?id=140910&search=140910

Date Received: 25 March 2014

**Ward: Leominster
North**

Grid Ref: 349890,259579

Expiry Date: 24 June 2014

Local Members: Councillor Brig P Jones CBE, and Councillor F M Norman

1. Site Description and Proposal

- 1.1 The application site is located off the A44, known as Mill Street, which serves as the main east/west route through Leominster, and in turn connects directly with the A49(T) approximately 200 metres to the east of the application site.
- 1.2 The site amounts to 2.75 hectares of flat land, part of which is given over to commercial use and contains two large factory buildings, a two storey office building and associated parking which currently are the premises for Frank H Dale Ltd, a structural steel frame fabrication business. These buildings occupy a prominent position, set back but clearly visible from Mill Street. The remainder of the site is used as a service yard for the factory, with disused grassland further beyond.
- 1.3 The site is bounded to the north and west by residential properties on Porters Mill Close, Cheaton Close and Upper Marsh. The immediate boundary to the east is defined by a combination of the River Lugg and railway line. As referred to above, Mill Street forms the southern boundary. Notwithstanding the application site itself, the northern side of Mill Street is otherwise residential in its nature, and a Grade II listed building, known as The Poplands, immediately bounds the site at its south eastern corner. A B&Q retail outlet lies directly opposite on the southern side of Mill Street, with the Kenwater and precincts of The Priory Church further beyond.
- 1.4 The application is made in outline with all matters apart from access reserved for future consideration, and is for the partial demolition of the factory buildings and the erection of a food retail store and associated works.

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

- 1.5 Whilst the application is outline, the submission includes illustrative plans to show the layout of the site and the size of the store. These show a building with a gross floor area of 3,545 square metres with an associated car park providing 242 parking spaces. The proposal indicates that the retail floor space will be split 80/20 between convenience and comparison goods, and would also contain an ancillary customer café. Part of the factory building within the south western quadrant of the site is to be retained and will continue to be operated by the land owner as part of their steel fabrication business. The office building that fronts onto Mill Street is also to be retained, along with its parking area, and will also be used by Dales.
- 1.6 Access to the site is to be established through the creation of a roundabout junction on Mill Street. This will also provide a revised access to B&Q opposite. A second roundabout is also proposed within the application site to disaggregate the movement of delivery vehicles from shoppers.
- 1.7 The application is accompanied by a series of supporting documents which are listed below:
- Design & Access Statement
 - Planning & Retail Statement (incorporating a statement on economic benefits)
 - Transport Assessment
 - Travel Plan
 - Flood Risk Assessment & Drainage Strategy
 - Ecological Assessment
 - Utility Statement
 - Assessment of Indirect Impacts on Listed Buildings
 - Contaminated Land Report
 - Desk-based Archaeology Assessment
 - Statement of Community Involvement
 - Draft Heads of Terms Agreement
- 1.8 A Screening Opinion has also been completed in accordance with the Town & Country Planning (Environmental Impact Assessment) Regulations 2011 and it has been concluded that the proposed scheme does not constitute EIA development, and therefore an Environmental Statement is not required.

2. Policies

2.1 National Planning Policy Framework

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

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

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

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

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

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

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

2.2 Herefordshire Unitary Development Plan (HUDP)

S1	-	Sustainable development
S4	-	Employment
S5	-	Town centres and retail
S6	-	Transport
S7	-	Natural and historic heritage
DR1	-	Design
DR2	-	Land use and activity
DR3	-	Movement
DR4	-	Environment
DR5	-	Planning obligations
DR7	-	Flood risk
DR9	-	Air quality
DR10	-	Contaminated land
DR13	-	Noise
E5	-	Safeguarding employment land and buildings
TCR1	-	Central shopping and commercial areas
TCR2	-	Vitality and viability
TCR3	-	Primary shopping frontages
TCR9	-	Large scale retail and leisure development outside central shopping and commercial areas
T6	-	Walking
T8	-	Road hierarchy
T11	-	Parking provision
NC1	-	Biodiversity and development

NC3	-	Sites of national importance
NC4	-	Sites of local importance
NC7	-	Compensation for loss of biodiversity
NC8	-	Habitat creation, restoration and enhancement
HBA4	-	Setting of listed buildings
HBA6	-	Conservation Areas

2.3 Herefordshire Local Plan Core Strategy – Deposit Draft

SS1	-	Presumption in favour of sustainable development
SS4	-	Movement and transportation
SS6	-	Addressing climate change
LO1	-	Development in Leominster
RA6	-	Rural economy
OS2	-	Meeting open space, sports and recreation needs
MT1	-	Traffic management, highway safety and promoting active travel
E2	-	Re-development of existing employment land and buildings
E5	-	Town centres
LD3	-	Biodiversity and geodiversity
LD4	-	Green infrastructure
LD5	-	Historic environment and heritage assets
ID1	-	Infrastructure delivery

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

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

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

3. **Planning History**

- 3.1 130616/F - Hybrid planning application (part detailed/part outline) for the part demolition of existing buildings and structures and mixed use development of the site to provide a retail store, petrol filling station, residential and associated works.

The application was reported to Committee on 8 January 2014 and was refused for the following reasons:

1. The applicant has failed to demonstrate that the proposal would not have a significant adverse impact upon the viability and vitality of Leominster Town Centre contrary to paragraph 26 of the National Planning Policy Framework and Policies S5, TCR1, TCR2 and TCR9 of the Herefordshire Unitary Development Plan 2007.
2. Given reason for refusal 1 above, the Local Planning Authority consider that the proposed development would be likely to adversely affect the character of the Leominster Conservation Area contrary to paragraphs 128 to 133 of the National Planning Policy Framework and policy S7 of the Herefordshire Unitary Development Plan 2007.
3. The proposal is considered to be in an unsustainable location that would increase reliance upon the private motor vehicle, contrary to paragraph 29 of the National Planning Policy Framework and policies S1, S5, S6, DR2 and DR3 of the Herefordshire Unitary

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Development Plan 2007.

4. The site is located within a Secondary Aquifer and a groundwater Source Protection Zone 2 and the applicant has not demonstrated that there are overriding reasons to justify its siting in this location. Furthermore it has not been demonstrated that the proposed petrol filling station and its associated underground storage tanks can be accommodated on the site without detriment to water supplies and therefore the proposal is contrary to Policy DR4 of the Herefordshire Unitary Development Plan.
5. The proposal is likely to result in traffic movements that increase the frequency of queuing traffic along Mill Street to the detriment of highway safety, contrary to Policies S1, S2, S6, DR3 and T8 of the Herefordshire Unitary Development Plan.

4. Consultation Summary

- 4.1 Highways Agency – Note that the application is effectively an amendment to the previous application submitted in April 2013. Their comments are as follows:

A review of the current Transport Assessment (TA) and application documents has indicated that the applicant now wishes to significantly reduce the development quantum, removing the Petrol Filling Station and residential element and significantly reducing the foodstore to reduce the subsequent traffic generation from the development.

It is noted that the analysis contained within the current TA now provides an assessment of the A49/Mill Street junction in 2024, which is in line with the Highway Agency guidance. The analysis shows that the junction will continue to operate well within capacity during the Saturday peak with the introduction of the significantly reduced development in 2024.

Based on the analysis contained in the current TA showing that the A49/Mill Street junction will operate well within capacity following the introduction of the proposed development in 2024, and following a significant reduction in the development proposals, it is considered that this proposal is unlikely to prove detrimental to the operation of the Strategic Road Network. Accordingly our response is one of no objection.

- 4.2 English Heritage – No objection

- 4.3 Natural England – Given the nature and scale of this proposal, Natural England is satisfied that there is not likely to be an adverse effect on the River Lugg SSSI as a result of the proposal being carried out in strict accordance with the details of the application as submitted. We therefore advise your authority that this SSSI does not represent a constraint in determining this application. They also comment that the proposal may provide opportunities within its detailed design for biodiversity and landscape enhancement and that these should be considered in accordance with the National Planning Policy Framework.

- 4.4 Welsh Water - No objection subject to the imposition of conditions to ensure that foul and surface water are drained separately from the site.

- 4.5 Environment Agency – No objection subject to the imposition of conditions and comment as follows:

We note that Less Vulnerable development is now proposed for the site in the form of a retail unit. We have commented previously on this site when a larger development was proposed including residential development and a petrol filling station. As part of the previous application, the applicant was proposing to improve the standard of protection of the Lugg flood defences to a 1% plus climate change standard which would have benefitted both the site itself and existing adjacent residential areas which also appear in Flood Zone 3. These

flood defence improvements do not form part of this new application although developer contributions towards the maintenance of the current defence are being sought.

The applicants Flood Risk Assessment (FRA) confirms that the finished floor level of the store is now to be set at 70.99mAOD and the car park at 70.84mAOD. JBA have confirmed that the store would still flood to 500mm in a breach scenario, based on their latest modelling analysis, but it is a Less Vulnerable use so we would not object to this with the incorporation of appropriate flood resistant and resilient techniques.

Developer Contribution: We have had early discussions with the applicant's consultants regarding seeking a developer contribution to help maintain the existing flood defences which currently protect the site to a 1 in 50 year standard. In addition, we are investigating the potential to further increase the standard of the Lugg defences at this location which will benefit the proposed development along with the adjacent properties, the majority of which are also shown as being within Flood Zone 3 (High Probability) albeit in an area benefitting from defences. As the proposed Flood Management and Evacuation Plan will be informed by our flood warning service we would also seek a contribution toward this in addition to the presence and cost of maintaining the flood defences. Early discussions confirmed a figure of £20K and would seek agreement on the sum of the contribution in the form of a Section 106 agreement or unilateral understanding prior to planning permission being granted. We will be happy to provide some detailed maintenance/future scheme costings upon request.

- 4.6 Network Rail – No objection to the application subject to the imposition of a condition to the effect that the proposed development will not open until the planned works to install full barriers to the level crossing by Network Rail have taken place (due to be implemented in 2015).

Internal Council Consultations

- 4.7 Transportation Manager – No objection subject to the imposition of conditions
- 4.8 Environmental Health and Trading Standards – No objection subject to the imposition of conditions to require further assessment of the potential contaminants associated with previous uses of the site.

- 4.9 Conservation Manager

(Ecology) – A screening report has been completed to determine the effects of the development on water quality within the River Wye Special Area of Conservation (SAC). It has been concluded that the proposal has no likely significant effects on the River Wye SAC.

With regard to the ecological reports submitted with the application, it is noted that there are issues to be resolved regarding the translocation of reptiles and biodiversity enhancement, but no objection is raised subject to the imposition of conditions to address these matters.

(Archaeology) – No objection subject to the completion of a field evaluation report.

- 4.10 Emergency Planning Officer – Notes that the site is susceptible to flooding but on the basis of the Flood Evacuation Plan submitted as part of the application does not object to the proposal.
- 4.11 Land Drainage Engineer - There are no objections on flooding or drainage grounds, subject to the submission of a detailed drainage design, including pollution prevention measures and full drainage design calculations, prior to construction. It is also recommended that the applicant gives consideration to incorporating flood resilience measures into the design of the new building.

- 4.12 Public Rights of Way Manager – The plans have been amended in order that the public right of way, footpath ZC143, now falls outside the site boundary. On this basis no objection is raised to the proposal, but it is recommended that the footpath is clearly marked on the ground prior to commencement to avoid any confusion.

5. Representations

- 5.1 Leominster Town Council – Comment as follows:

This application had been deferred to this meeting awaiting the final statutory consultees comments, accordingly no evidence was taken from either the applicant or any objectors. The letters from The Highways Agency of 22 April, the email from Network Rail to Herefordshire Council dated 30 April and letter from the Environment Agency to Herefordshire Council dated 26 May 2014 were read and considered in detail.

There followed a debate by councillors first as to whether if the conditions from the consultees were applied then that should satisfy the planning process. Also debated was the local knowledge concerning flooding and traffic issues at the location and its immediate neighbourhood. Likewise the effect on town centre businesses and jobs was debated with regard to the potential jobs coming from the proposed development. It was debated whether the sequential test had been applied with regards to the site and the Core Strategy's suggested retail development site at the foot of Broad Street. Points of view were expressed both in favour and against the application. A resolution to object to the development was made and in the first instance was a balanced vote with the Chair then using her casting vote to object.

Resolved: That the Town Council objects to the application on the grounds of local knowledge concerning flooding, traffic and the impact upon jobs and businesses in the town.

- 5.2 River Lugg Internal Drainage Board – Raise no objection to the proposal but recommend that storm water run-off from the site should be at Greenfield run-off rates.

- 5.3 Leominster Civic Society – Note that an earlier application was rejected and express the view that there is little in the revised documentation that substantively changes this decision. Objects to the application on the following grounds:

- The proposal for a smaller superstore would still have a detrimental impact on the town centre. Any trade diversion could be critical to the viability of small businesses.
- The heart of Leominster, together with the character of the conservation area, will be damaged because less money is will be available to maintain buildings.
- Environmental concerns relating to flood risk, reduced air quality due to increased traffic movements along Mill Street, and impacts on local residents during construction and from increased lighting of the site.
- Question the findings of the Transport Assessment and suggests that the proposed traffic movements are an underestimation.
- Objections previously raised about traffic problems along Mill Street are based on resident's long term experiences rather than on a short traffic census.
- There appears to be a mismatch between parking provision to store size. Morrisons is marginally bigger and has twice the parking capacity. Inadequate parking provision is likely to cause traffic tail-backs.
- The need for a supermarket should be challenged. The submission is based on increased housing provision through the Core Strategy, but there is no indication at this stage that it will actually be adopted.

- 5.4 The Town Centre Action Group – Object to the application and note that, with the exception of the fourth reason for refusal relating to the petrol filling station and underground tanks, all of

the reason given to refuse an earlier application still apply. The group's overriding concern is retail impact and it predicts a substantial trade draw from town centre shops. It considers that the claim that people will walk from Mill Street to the town centre is not credible.

5.5 North Herefordshire Constituency Green Party – Object to the application on the following grounds:

- Although smaller than previously applied for, the proposal still represents a large retail development outside the designated town centre for Leominster and is contrary to policy.
- There is no evidence to suggest that customers would walk to town from Mill Street.
- There will be a loss of footfall to the town centre, the retail impact will be substantial and will lead to a loss of trade.
- The proposal will result in increased traffic congestion in Mill Street and immediate surroundings. The traffic assessment carried out does not fully take into account the levels of traffic on Mill Street at peak times such as Friday afternoons and holiday periods.
- The addition of a roundabout and the changes proposed for the level crossing will only exacerbate existing problems.

5.6 Forty eight surveys completed by independent traders in the town centre have been received. The survey asks a number of questions of those completing it, including whether they consider the proposal would have an impact on their business. Thirty nine of the respondents considered that the proposal would have an impact on their business, and these impacts are summarised as follows:

- Less people will visit the town centre, causing businesses to close.
- Knock on effect to local producers who supply businesses.
- Unable to compete with supermarket prices.
- A supermarket will sell the same products that are available in town centre in direct competition.
- Free parking at a supermarket will stop people using the town where they have to pay.
- Tourists will be diverted out of the town with a loss of new customers, particularly if the store has a coffee shop.
- The proposal would have a positive impact as it would encourage more people to shop locally.

5.7 Thirty two letters of objection have been received in response to the Council's statutory consultation period. In summary the points raised are as follows:

Retail and Economic Impact

- Leominster has sufficient supermarket retail premises already.
- The proposal is contrary to Policy TCR9 of the Herefordshire UDP as projections show that additional retail space is not required in the next 10 years.
- The proposal will have a detrimental effect on the vitality of the town centre, contrary to Policies TCR1, TCR13 and S5 of the Herefordshire UDP and paragraphs 23-27 of the National Planning Policy Framework.
- The proposal is contrary to recent Government guidance on town centre vitality following the Portas Review.
- Independent shops do not have the resilience to withstand a further loss of business as suggested by the retail assessment.
- The jobs created by the proposal will be outweighed by those lost as independent shops close, and the subsequent knock-on effects to other local suppliers and service providers.
- Supermarket customers will not walk to town due to its distance away.

- The provision of free parking represents an unfair trading advantage which shops in the town centre cannot offer.
- The proposal will detrimentally impact upon the town's tourist trade.
- The proposed retail store is still far too large for a market town the size of Leominster.

Impact on Heritage Assets

- Lack of repair of listed buildings in the town centre will impact detrimentally upon its status as a conservation area.

Flood Risk and Water Quality

- Concerns about the increased risk of flooding, both as a consequence of ground levels being raised within the site, and from additional surface water run-off.
- The proposal will impact upon water quality within the River Lugg Special Area of Conservation (SAC) and SSSI. Increased run-off will add to phosphate levels in the watercourse.

Highway Matters

- Concerns about highway safety, particularly due to the proximity of the proposed junction to the level crossing and the possibility of traffic backing up.
- The more frequent closure of the level crossing combined with this proposal will cause further congestion and compromise highway safety.
- Increase in traffic congestion along Mill Street and also at the junctions with the A49 and B4361.

Environmental Concerns

- Increase in noise in the local area associated with traffic and with night-time deliveries to the store
- Will pollution be monitored?

Other Issues

- This application for a smaller store is simply a stepping stone to the larger scheme previously refused which included a petrol filling station. It would be very difficult for the Council to resist such a proposal if it approves this one.
- The transfer of the existing business on the site to the Enterprise Park should not be used to justify this proposal.
- What guarantee is there that Dales will expand and relocate?

5.8 An objection has also been lodged by England & Lyle Planning Consultants, acting on behalf of the Co-Operative Group. In summary the points raised are as follows:

- The assumption in the retail statement supporting the application that the Co-Operative is overtrading is incorrect.
- The role that the Co-Operative plays as a main food destination has been underestimated in the applicant's retail study.
- The majority of the respective stores' trade will consequently be drawn from the same catchment area and consequently there will be greater competition between the two than is suggested by the applicant's retail study.
- The Co-Operative is currently rolling out a programme of refurbishment across the country. If planning permission is granted for this proposal it may cause them to re-consider plans for their Leominster store.

- The proposal would have a significant impact upon the Co-Operative and would reduce the amount of linked trips between it and other retailers in the town centre.
- The amount of linked trips suggested in the retail study is unrealistic given the distance of the application site from the town centre.
- The assessed impact on Leominster town centre would have a significant impact on the overall vitality and viability of the centre, contrary to the NPPF.

5.9 An objection has also been lodged by Peacock & Smith Planning Consultants, acting on behalf of Wm Morrison Supermarkets Plc. In summary the points raised are as follows:

- The Council's 2012 Town Centre Study identifies limited capacity for convenience expenditure (up to 1,938 square metres at 2021). The proposal exceeds this and it is considered that there is insufficient capacity to support the application.
- The site is in an out-of-centre location. The distance of the proposal from the Primary Shopping Frontage has been calculated by measuring from the periphery of the site, and not to the store entrance. The distance of 350 metres quoted in the retail assessment is therefore inaccurate.
- Additional food store development should be provided for at an in-centre location in accordance with local and national policy.
- The loss of employment land is contrary to Policy E5 of the Herefordshire Unitary Development Plan. There is no evidence to suggest that the site has been marketed for alternative employment use.
- The Council should satisfy itself that the site comprising Broad Street car park does not represent a sequentially preferable site that is neither suitable, available or viable for retail use.
- Wm Morrison is not overtrading to the extent suggested by the applicant's retail study.
- The proposal is likely to have a significant adverse impact on existing convenience retail facilities in Leominster, including the in-centre Morrisons store at Barons Cross Road.
- The development is in an unsustainable location which is likely to increase reliance on the private car, and should be refused on highway safety grounds.

5.10 An objection has also been lodged by Morbaine Limited, the applicant for the site for a supermarket on Southern Avenue. In summary the points raised are as follows:

- The revised proposal simply removes the petrol filling station and residential elements and reduces the size of the store. It is a 'red herring' to improve the prospects of securing consent with a view to re-visiting the original proposal and re-introducing those elements that were previously considered to be unacceptable.
- The provision of 242 parking spaces, well in excess of the 163 that would be required by the Council's own design guide is a further indication of an intention to increase the size of the store at a future date.
- The removal of the petrol filling station directly impacts upon the commercial viability of the proposal. The scheme is unlikely to be delivered without a petrol filling station and the fact that Sainsburys are no longer indicated as an end user is further evidence of this.
- The distance of the site from the town centre, the physical barrier of the main road, indirect walking route and poor legibility lead to the conclusion that the site is not well connected to the town centre and that the proposal would not generate linked trips.
- There is no evidence to suggest that the proposal will generate significantly more linked trips than the proposal for Southern Avenue.
- The level crossing will be closed for nearly 17 minutes per hour once Network Rail have implemented their planned improvements in 2015.
- Any increase in traffic movements will worsen the problem of traffic queuing over the level crossing.

- The Flood Risk Assessment does not demonstrate that the risk of flooding at the site and to surrounding properties can be adequately managed, given that the site is within a Flood Zone 3a.
- The site at Southern Avenue is a sequential preferable site with respect to flood risk. The proposal does not consider any other sequentially preferable sites in this regard.

5.11 Forty three letters of support have been received. In summary the points raised are as follows:

- The site is within walking distance of the town centre.
- The development would lessen the amount of vehicles on the A44 (Bargates).
- Increased competition for existing supermarkets in the town.
- There are limited shopping opportunities in Leominster and a development that would increase footfall would help to improve the town centre.
- Failure of the town to attract custom is due to a lack of understanding of what customers want.
- Must allow Leominster to develop and grow, just as the re-development of the Old Market site in Hereford has. Concerns about the impact on Hereford town centre have not come to fruition and the same will be the case for Leominster.
- The scheme will meet extra demand likely to arise from further housing development.
- The scheme will bring new jobs to the area.
- The re-development of the Mill Street site will help Dales in their plans to re-locate and grow their business.
- A large number of people travel to supermarkets in Hereford. A new supermarket in Leominster will reduce this trend and would be more sustainable.

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

<http://news.herefordshire.gov.uk/housing/planning/searchplanningapplications.aspx>

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

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

6. Officer's Appraisal

6.1 As outlined in the site history above, this proposal is a resubmission following the refusal of a hybrid application for a retail food store and petrol filling station, and outline proposals for residential development on 8 January 2014. The current scheme is significantly different, now simply being a proposal in outline for a food retail store. Although outline, the proposal indicates that the gross floor area would be 3,545 square metres, with a net retail floor area of 2,323 square metres. This represents a halving of the net retail floor area previously proposed. The petrol filling station is no longer included in the scheme. The outcome of this proposal will logically depend on whether the reasons previously given in the refusal of the first application are addressed by the changes made to the scheme.

6.2 For the sake of consistency, the Council has again commissioned Deloitte to provide independent advice in respect of the retail impact assessment submitted by the applicant. They have previously been engaged by the Council to complete the Town Centre Study Update which forms part of the evidence base for the Core Strategy. Their advice covers the following matters:

- The impact of the proposal on the vitality and viability of Leominster town centre;
- Whether there are sequentially preferable sites that could meet the identified need for additional retail floorspace within Leominster;
- The likelihood or otherwise of linked trips to the town centre;

- Whether the development is otherwise compliant with Central Government advice and Development Plan policy.

The report will consider each of these matters in turn, as well as other matters that are material to the determination of the application.

Impact Upon the Vitality and Viability of the Existing Town Centre

- 6.3 The quantitative assessment of convenience goods floorspace needs in Leominster town centre in the Town Centres Study update indicates that there will be a demand for additional floorspace over the Core Strategy plan period as follows:

Year	Floor space capacity (net sq m)
2012	+1,483 to +3,412
2016	+1,670 to +3,842
2021	+1,938 to +4,458
2026	+2,242 to +5,157
2031	+2,571 to +5,912

- 6.4 Although the application is made in outline, the submission gives a clear indication that the retail store would have a net floor area of 2,323 square metres, of which 1,858 square metres will be dedicated to the sale of convenience goods. This falls well within the capacity identified for the next 10 years and is considered to represent proportionate growth within the retail sector for Leominster when compared with projected population growth within the same catchment area.
- 6.5 Deloitte's advice to the Council accepts the methodology used by the applicant's retail consultant. There is agreement that Morrisons, Aldi and the Co-Op are all trading above company benchmarks and that Leominster town centre is in a good state of health. The key indicator for this is the fact that the town centre has a low vacancy rate below the national average.
- 6.6 The Town Centres Study update demonstrates that Leominster has capacity for additional convenience goods floor space and the report from Deloitte confirms this to be the case. The situation regarding the need for comparison goods floor space is less positive with a net reduction of 318 square metres perceived at 2016 and a modest increase of 252 square metres anticipated by 2021.
- 6.7 Deloitte's advice concludes that in the context of surplus expenditure capacity and the existing food stores trading well, the consequences of any trading impact from a new food store would be less than it would otherwise have been. They advise that the quantitative trade impact findings of the applicant's retail study must be treated with caution but, even allowing for some margins of error, it is clear that the trade diversions and impacts on town centre shops are likely to be relatively modest in quantitative terms.
- 6.8 It is therefore your officer's view that, in isolation, the town centre quantitative impacts need not necessarily be of major concern and that capacity for a new food store of the size proposed by this application is justified. The impacts are however, of a scale that requires consideration of related qualitative matters and these will be assessed in the following sections of this report.

Sequential Testing

- 6.9 The application of a sequential approach and impact tests to non-central retail proposals (and other town centre uses) remains a key policy requirement of the NPPF and the Government's more recent Planning Practice Guidance, published earlier this year. Both maintain a 'town centre first approach' as the Government is committed to promote the vitality and viability of

town centres and in this respect Policy TCR9 of the HUDP is consistent with the NPPF. In addition, town centre sites tend to be in sustainable locations that reduce the need to travel, especially by car. Sites should be selected using the sequential process in the following order:-

- a) sites in the town centre;
- b) sites on the edge-of centre; and
- c) sites out-of centre.

In this case it has been agreed by all parties that the application site is in an out-of-centre location.

6.10 In accordance with the NPPF the applicant's retail impact assessment includes a sequential test to identify possible alternative sites within the Leominster area. It has identified three alternative sites and these are listed below:

- Burgess Street Car Park – approximately 0.4 hectares in a town centre location and also within Leominster Conservation Area. Surrounded by mixed use types including retail, offices and residential.
- Land to the west of Dishley Street – a car park of approximately 0.2 hectares in an edge of centre location and also surrounded by a mix of uses including a car repair garage, car showroom, dental centre and Spa shop.
- Broad Street Car Park – a 1.2 hectare Council owned surface car park, fire station and retail outlet in an edge of centre location.

6.11 The sites are all, at least in part, within the ownership of the Council. The applicant's retail study comments that the sites at Burgess Street and Dishley Street are of insufficient size to accommodate the development proposed. Although the feasibility of developing these sites does not appear to have been tested, the constraints of each of them are considered to be prohibitive to a development comparable to that proposed, a view confirmed by Deloitte in their advice and previously accepted by officers.

6.12 The site at Broad Street is identified in the Council's Town Centres Study update as one that may be appropriate for development to meet future floor area capacity. Its re-development would require the relocation of the fire station and an agreement with the owners of the retail unit that fronts onto Broad Street to purchase their building and land. It would also require an agreement from the Council to sell the land. However, the Council's Property Services Manager has confirmed that there is no intention to sell the land. Whilst a detailed feasibility study may well demonstrate that the site is capable of development and providing a store with a comparable retail floor area to the development proposed, it is clear that the site is not currently available. A further prohibitive factor to its development would be the need to relocate the fire station.

6.13 In the absence of sites that are either in or on the edge of the town centre a judgement must be made as to whether the application site is the 'next best' sequentially. The previous application did raise technical objections that ultimately led to the inclusion of specific reasons for refusal based on highway safety and potential impact of the petrol filling station on a Secondary Aquifer. In accordance with advice contained within Planning Practice Guidance the applicants have taken a flexible approach to the format and scale of the proposed development. It is now half the size and no longer includes a petrol filling station. If such technical objections can be met then the site may be sequentially preferable. These matters will be considered later in this report.

- 6.14 It is accepted that the Mill Street site is out-of-centre. However, further investigation has led officers to conclude that there are no other sites in closer proximity to the town centre that are available, or of a size that could feasibly accommodate further retail development of a similar scale to that proposed and it is therefore concluded that it is the most sequentially preferable site for a development of the scale proposed.

Linked Trips

- 6.15 Both the Town Centre Study update and Draft Herefordshire Local Plan refer to the possible opportunity for a new food store within Leominster town centre. The function of a town centre store would be to attract additional shopper footfall to the town centre and provide spin-off trade for some existing shops to offset the impact on others – the concept that shoppers would make one ‘linked’ trip to access a number of facilities.
- 6.16 The notion that customers will visit the proposed supermarket and, as part of the same trip visit other shops and/or use other services within the town centre is an important factor when determining the impact of a scheme on the vitality and viability of a town centre. This not only relates to the location of the proposed development, but also to the diversity of the goods and services that it seeks to provide
- 6.17 The report from Deloitte questions the measurements given in terms of the distance of the proposal from the town centre, suggesting that it should be taken between the entrance to the store and the closest point of the Primary Shopping Frontage. They consider that the proposal is 530 metres walking distance from the Primary Shopping Frontage, and not the 350 metres quoted in the applicant’s retail study.
- 6.18 The advice from Deloitte goes on to refer to the definition given in the NPPF of an edge-of-centre site, which considers a location of up to 300 metres from the primary shopping frontage to be well connected. Deloitte’s view is that this is a distance that is considered to be a reasonable walking distance. They note that, based on their assessment, the site is well in excess of this.
- 6.19 The report does go on to acknowledge that shoppers diverted from Morrisons would be more likely to make a visit to the town centre than is currently the case whilst shopping at Morrisons, it is assumed because the site is significantly closer to the town centre. However, the report concludes that the number of shoppers at the proposed store and walking to the town centre would be limited.
- 6.20 The previous section of this report concluded that there are no sites that are either feasible or available within or on the edge of the town centre, and therefore any future food retail development is likely to be located out-of-centre. The applicant’s agent has confirmed that they are willing to enter into a Section 106 Agreement and make contributions towards the improvement of pedestrian links between the site and town centre. They also point out a willingness to provide a controlled pedestrian crossing on Mill Street through a Section 278 Agreement.
- 6.21 Officers are of the opinion that the site is sufficiently close to the town centre such that measures employed to improve its connectivity will have a meaningful effect and will serve to provide some mitigation of the impacts of the development on the town centre. A condition could also reasonably be imposed to restrict certain non-food retail activities such as the provision of a pharmacy, dry cleaning services or postal services. A condition of this nature was most recently imposed on the planning permission for Aldi in Ross on Wye, the reason being specifically related to the protection of the vitality and viability of the town centre in accordance with policies TR1 and TCR2 of the HUDP.

- 6.22 Pedestrian routes to the town centre are logical and, subject to improvements that can reasonably be secured through Section 106 contributions, would be desirable. Subject also to the condition referred to above, the proposal could positively provide the opportunity for linked trips to be made and thus mitigate the impact upon the viability and vitality of the town centre. On this basis it is considered that the proposal accords to the NPPF and Policies TCR1, TCR2 and TCR9 of the HUDP.

Impact Upon Heritage Assets

- 6.23 Leominster's town centre is designated as a Conservation Area and contains many listed buildings. Intrinsic to its character are the retail uses. If retail uses are unacceptably impacted as trade is drawn away from them by 'one stop' retail developments, there is likely to be a consequential impact on the maintenance of premises to their detriment and that of the conservation area. Concerns were previously raised that the earlier scheme would result in such impacts and this formed a specific reason for refusal. In light of the fact that officers are now satisfied that the impact of this much reduced proposal on the vitality and viability of the town centre can be mitigated by improving connectivity and limiting the services to be provided through the imposition of a restrictive condition, they are consequently satisfied that the previous reason for refusal is met, and that the proposal now accords with the NPPF and Policy S7 of the HUDP.
- 6.24 The Poplands is a Grade II listed building that sits next to the site. It is a timber framed building which fronts onto Mill Street and is particularly prominent when passing along Mill Street in a westerly direction. Its existing setting is seen in the context of the large industrial building and areas of hard standing. The proposal would see development moved further away and, subject to the detailed design of the food store, its setting would be improved. It should be noted that the previous substantial scheme with petrol filling station raised no objections from the Conservation Manager (Historic Buildings) with the comment that improvement to the setting could be achieved. English Heritage also raise no objections. The proposal therefore is considered to accord with Policy HBA4 & 6 of the HUDP.

Highway Safety and Sustainability

- 6.25 The potential for the development to have a detrimental impact upon highway safety is one of the key issues arising from public consultations; and particularly the perceived likelihood of traffic queuing back along Mill Street and obstructing the level crossing. This was one of the reasons for the refusal of the previous application.
- 6.26 The application is accompanied by a Transport Assessment which has been amended since the first application to take account of the fact that the proposed retail food store has been reduced in size by half, that the petrol filling station has been removed from the scheme and also that it no longer includes residential development of the land to the rear. It also takes full account of the fact that changes are proposed to the barrier system for the level crossing which will see the frequency and length of time that the barriers are closed increased – up to 8 times an hour for a period of up to 2 minutes.
- 6.27 The proposal includes detailed plans for a new junction to access the site. A four arm roundabout serving B&Q and the proposed development on Mill Street would be constructed with a controlled pedestrian crossing to the west of the roundabout.
- 6.28 Traffic modelling is based on comparative developments elsewhere across the country from the TRICS database. Survey data is available for each hour of the day, and for supermarket developments the peak hour is commonly used, to reflect the time when the development will have the greatest effect on the local highway network. The trip rates are commonly expressed in trips per 100 m², which can be factored to give the actual trips. This in turn is used to model the network and junctions to estimate the effect of the development on the network.

6.29 The conclusion of the Transport Assessment is that the increases in traffic movements can be safely accommodated within the road network. This factors in the junction modifications proposed and the increased periods for the closure of the level crossing. Both Network Rail and the Highways Agency have been consulted and neither has raised any objection. Network Rail have requested the imposition of a condition requiring that the food store should not be opened until such time as the new barrier system has been installed. This is to be implemented during 2015 and the applicant's agent has confirmed that they would be content with the imposition of such a condition.

6.30 Paragraph 32 of the NPPF is key to the highway impact debate where it states:

Plans and decisions should take account of whether improvements can be undertaken within the transport network that cost effectively mitigate the significant impacts of the development. Development should only be presented or refused on transport grounds where the residual cumulative impacts of the development are severe.

6.31 On the basis of the revised Transport Assessment and the changes to the junction layout the Council's Transportation Manager is now content that the proposal is acceptable on highway safety grounds. The impacts of the proposal can be mitigated and the cumulative impacts are not deemed to be severe. The proposal therefore accords with the NPPF and Policies DR3 and T8 of the UDP.

6.32 The site is well related to existing residential areas to the north and west. Their proximity offers a real opportunity for residents to have ready access to the site by foot. The indicative layout shows the provision of a pedestrian link through to Ridgemoor Road and, should planning permission be granted, it is recommended that it is required through the imposition of an appropriately worded condition. On this basis the proposal offers an opportunity for vehicle movements to and from the site to be reduced and, although an out-of-centre, is a sustainable location in other respects. The proposal therefore accords with the NPPF and Policies S1, S2 and S6 of the UDP.

Loss of Employment Land

6.33 The site has a long established employment use where Policy E5 of the Unitary Development Plan is applicable. It advises that proposals that result in the loss of employment land will only be permitted where there are substantial benefits to residential or other amenity in allowing other forms of development and that the site concerned is unsuitable for other employment purposes.

6.34 The current use of the site for steel fabrication has given rise to complaints about noise nuisance in the past from adjacent dwellings. The business has developed on an ad-hoc basis and is not ideally suited to its current location next to residential areas, and it is considered that its re-location would represent a benefit to residential amenity, one of the reasons outlined by Policy E5 of the Herefordshire Unitary Development Plan as justifying the loss of employment land. It is also considered that the potential improvements to the Leominster Flood Alleviation Scheme are material to this and also represent another improvement to amenity that may further justify the loss of employment land in accordance with Policy E5.

6.35 The proposal does retain an element of employment use on the site, including a reduced element of manufacturing and the office building that fronts onto Mill Street. The retention of these elements ensures a continued employment use and the applicants have secured planning permission to re-locate their business to the Enterprise Park. On balance it is considered that the loss of employment land is justified and the proposal accords with Policy E5 of the Herefordshire Unitary Development Plan.

Flood Risk

- 6.36 The Flood Risk Assessment (FRA) and Drainage Strategy accompanying the application acknowledges that the site lies within a Flood Zone 3 and that the northerly part of the site is prone to ponding during periods of prolonged and extreme rainfall events. This is also highlighted in a number of the letters of objection.
- 6.37 The FRA attributes the ponding of water on the site to a combination of a high groundwater table and ineffective soakaways. It accepts that the drainage by infiltration is not a viable option for the proposal and therefore discounts it as a practical solution, suggesting that surface water would be dealt with either by connection to the mains sewer, or by a new outfall to the River Lugg. In either circumstance the report advises that run off would be attenuated to a mean Greenfield rate through the inclusion of a storage tank for the retail element of the scheme, designed to accommodate a 1 in 100 year rainfall event plus a 30% climate change allowance. The increase in levels across the site is required in order that the required drainage falls can be achieved.
- 6.38 Some objections have questioned whether the applicant has properly applied a sequential test in respect of flooding. There are comparisons to be drawn between the sequential test required as part of the retail assessment. The NPPF is clear that the aim of the sequential test is to steer new development to areas with the lowest probability of flooding. Development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding.
- 6.39 The site at Broad Street that is identified in the Town Centre Study update is similarly in Flood Zone 3 and, were it available, would be the most sequentially preferable in terms of retail assessment. The only other site that has been identified is that at Southern Avenue, but it has previously been considered to be unsustainably located and would result in the loss of employment land. Therefore it is considered that there are no other sites available and that the application site meets the sequential test.
- 6.40 The Environment Agency has not raised an objection to the application in respect of flood risk. The use is one that is considered 'less vulnerable' in flood risk terms and can be accommodated on sites in Zone 3a. However, they do note that the existing flood defences only provide a 1 in 50 year standard of protection, a point that is also acknowledged in the applicant's FRA. The site, and the surrounding residential area, would benefit from increased levels of protection and therefore the response from the Environment Agency recommends that a financial contribution of £20,000 is sought to be put towards a scheme for the improvement of flood defences. This is considered to be reasonable, necessary and relevant to the application and is considered to accord with the NPPF as it will offer an opportunity to reduce the causes and impact of flooding. As a result the proposal is also considered to be compliant with Policy DR7 of the HUDP.

Other Issues

- 6.41 Some concerns have been raised that the application is simply a stepping stone and that, should planning permission be granted, the local planning authority can expect a further application for a larger retail store that it will find difficult to resist. This is not material to the determination of this proposal. It must be judged on its own merits, as should any future applications, either for this site or others.
- 6.42 The applicant has confirmed their agreement to the Heads of Terms, a copy of which is appended to this report. In summary, this covers the improvement of sustainable transport infrastructure amounting to £798,081, a contribution of £100,000 for public realm

improvements, £25,000 for CCTV improvements within the locality of the site and £20,000 for flood defence improvements. A full copy of the Heads of Terms is appended to this report.

Conclusion

- 6.43 In summary, officers are contented that there is quantitative capacity for additional retail floor space of the scale proposed within Leominster. This is demonstrated through the surplus expenditure capacity within the catchment area and by virtue of the fact that existing retail stores are all performing in excess of their company benchmarks.
- 6.44 Officers are satisfied that the site is sequentially preferable in terms of retail impact and that no other sites are available or feasibly capable of development within or on the edge of the town centre. It is accepted that the site is in an out-of-centre location, but the application demonstrates that improvements can be made to increase the possibility for linked trips to be made. This will serve to mitigate the impact of the development upon the vitality and viability of the town centre and in turn will also help to ensure that the value of the conservation area and its listed buildings are not eroded. The application also demonstrates through the completion of a Transport Assessment that there is sufficient capacity within the highway network to accommodate the development and, whilst there will inevitably be some impacts through increased traffic movements, these can be mitigated through improvement works and are not considered to be so severe to warrant the refusal of the application in their own right. The proposal also demonstrates that it will not give rise to increased flood risk but offers an opportunity to improve local flood defences to the benefit of the site and wider residential area.
- 6.45 It is therefore concluded that the proposal accords with the guiding principles of the NPPF and the relevant policies of the Herefordshire UDP. It represents a sustainable form of development and subject to detailed design represents an enhancement on heritage assets. In addition its impacts can be mitigated through the imposition of appropriately worded conditions. Subject to the completion of a Section 106 Agreement in accordance with the Draft Heads of Terms appended to this report, the application is recommended for approval.

RECOMMENDATION

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

1. **A02 Time limit for submission of reserved matters (outline permission)**
2. **A03 Time limit for commencement (outline permission)**
3. **A04 Approval of reserved matters**
4. **A05 Plans and particulars of reserved matters**
5. **The Class A1 food retail store shall be used for the retail sale of food within Class A1 of the Town and Country Planning (Use Classes) Order, 1987 only, except where the retail sale of non-food goods forms a minor and ancillary part of the operation of any of the retail activity but shall not include the following:**
 - i) a pharmacy and sale of pharmaceutical goods**
 - iii) reception of goods for dry cleaning**
 - iv) a post office**

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

Reason: To define the terms of the permission and to protect the vitality and viability of the town centre in accordance with Policy TCR2 of the Herefordshire Unitary Development Plan 2007.

- 6. The loading and unloading of service and delivery vehicles, together with their arrival and departure from the site shall not take place outside the hours of 0700 to 2100 hours Mondays to Saturdays and 0900 to 1800 hours on Sundays, Bank and Public Holidays.**

Reason: To protect the amenities of neighbours, so as to comply with Policy DR13 of the Herefordshire Unitary Development Plan 2007.

- 7. H17 Junction improvement/off site works**

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

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

- 9. No development shall take place until the following has been submitted to and approved in writing by the local planning authority:**

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

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

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

Reason: To ensure that potential contamination of the site is satisfactorily assessed and to comply with Policy DR10 of the Herefordshire Unitary Development Plan and the National Planning Policy Framework.

- 10. The Remediation Scheme, as approved pursuant to condition no. (1) above, shall be fully implemented before the development is first occupied. On completion of the remediation scheme the developer shall provide a validation report to confirm that all works were completed in accordance with the agreed details, which must be submitted before the development is first occupied. Any variation to the scheme**

including the validation reporting shall be agreed in writing with the Local Planning Authority in advance of works being undertaken.

Reason: To ensure that potential contamination of the site is satisfactorily assessed and to comply with Policy DR10 of the Herefordshire Unitary Development Plan and the National Planning Policy Framework.

11. Prior to the commencement of the development hereby approved the precise route of public footpath ZC143 shall be agreed in writing with the Council's Public Rights of Way Manager to the written satisfaction of the local planning authority.

Reason: To ensure that the public right of way is not obstructed and to conform with the requirements of Policy T6 of the Herefordshire Unitary Development Plan and the National Planning Policy Framework.

12. Finished floor levels shall be set at 70.99mAOD and the car parking area at 70.84mAOD as confirmed in JBA's Addendum to Mill Street FRA (Ref: 2013s7475 dated 6 May 2014) unless otherwise agreed in writing by the LPA.

Reason: To help protect the development from flooding during breaches of the flood defences and ensure flood risk elsewhere is not increased over the lifetime of the development and to comply with Policy DR7 of the Herefordshire Unitary Development Plan and the National Planning Policy Framework.

13. Prior to the first occupation of the development hereby approved a Flood Evacuation Management Plan shall be submitted to and approved in writing by the local planning authority in consultation with the Council's Emergency Planning Officer. The Plan shall include full details of proposed procedure for evacuation of persons and property (including vehicles). It shall also include a commitment to retain and update the Plan and include a timescale for revision of the Plan.

Reason

14. No development, or phasing as agreed below, shall take place until the following components of a scheme to deal with the risks associated with contamination of the site are submitted to and approved, in writing, by the local planning authority:

1) A site investigation scheme, based on the submitted report (Ref: CC1189/SSII/REP07 Rev A) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.

2) The site investigation results and the detailed risk assessment and, based on these, an options appraisal and remediation strategy, if necessary, of the remediation measures required and how they are to be undertaken.

3) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in risk assessment are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action. This should include any proposed phasing of demolition or commencement of other works.

4) Prior to occupation of any part of the development (unless in accordance with agreed phasing under part 3 above) a verification (validation) report demonstrating completion of the works set out in the approved remediation strategy. The report shall include results of any sampling and monitoring. It shall also include any plan (a "long-term monitoring and maintenance plan") for longer term monitoring of

pollutant linkages, maintenance and arrangements for contingency action and for the reporting of this to the Local Planning Authority. Any changes to these components require the express written consent of the Local Planning Authority. The scheme shall be implemented as approved.

Reason: To protect ground and surface waters ('controlled waters' as defined under the Water Resources Act 1991) and to comply with Policy DR10 of the Herefordshire Unitary Development Plan and the National Planning Policy Framework.

- 15. If during development, contamination not previously identified, is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority, a Method Statement for remediation. The Method Statement must detail how this unsuspected contamination shall be dealt with. A verification (validation) report demonstrating completion of the works set out in the method statement shall be submitted to and approved in writing by the Local Planning Authority. The report shall include results of any sampling and monitoring. It shall also include any plan (a "long-term monitoring and maintenance plan") for longer term monitoring of pollutant linkages, maintenance and arrangements for contingency action and for the reporting of this to the Local Planning Authority.**

Reason: To ensure that any unexpected contamination is dealt with and the development complies with approved details in the interests of protection of ground and surface waters ('controlled waters' as defined under the Water Resources Act 1991) and to comply with Policy DR10 of the Herefordshire Unitary Development Plan and the National Planning Policy Framework .

- 16. No development shall take place until a monitoring scheme is submitted to and approved in writing by the Local Planning Authority, in consultation with the Environment Agency, having regard to the reports listed above. The scheme shall include:**

**frequency and location of monitoring;
method and nature of sampling including analysis suite (determinands). Thereafter monitoring shall be carried out pre, during and post development and reviewed in accordance with the approved scheme.**

Reason: To prevent any deterioration of ground or surface waters ('controlled waters' as defined under the Water Resources Act 1991) and to comply with Policy DR10 of the Herefordshire Unitary Development Plan and the National Planning Policy Framework.

- 17. If the monitoring scheme approved under condition 16above shows any adverse risk of deterioration to water features (groundwater and surface water quality) proposals:**

- 1. to investigate the cause of deterioration**
- 2. to remediate any such risks**
- 3. to monitor and amend any failures of the remediation undertaken;**

shall be submitted to the Local Planning Authority for their approval in consultation with the Environment Agency.

Reason: To prevent any deterioration of ground or surface waters ('controlled waters' as defined under the Water Resources Act 1991) and to comply with Policy

DR10 of the Herefordshire Unitary Development Plan and the National Planning Policy Framework.

- 18. The development hereby approved shall not be brought into use until the planned works by Network Rail to installed new barriers at the level crossing on Mill Street have been completed.**

Reason: In the interests of highway safety and to conform with the requirements of Policy DR3 of the Herefordshire Unitary Development Plan and the National Planning Policy Framework.

- 19. No external lighting shall be installed upon the site (including upon the external elevations of the building) without the prior written consent of the local planning authority. The approved external lighting shall be installed in accordance with the approved details and thereafter maintained in accordance with those details.**

Reason: To safeguard the character and amenities of the area and to comply with Policy DR14 of Herefordshire Unitary Development Plan and the National Planning Policy Framework.

- 20. Prior to the commencement of development a scheme of noise attenuating measures shall be submitted to and be approved in writing by the Local Planning Authority. The approved scheme shall be implemented before the first occupation of the development hereby approved and the measures shall be retained for the duration of the use. The scheme shall consider amongst other measures, the operation of any outdoor equipment or machinery, including extraction/ventilation systems, deliveries to site, opening hours and impact on customer traffic all at neighbouring properties.**

Reason: To safeguard the character and amenities of the area and to comply with Policy DR13 of Herefordshire Unitary Development Plan and the National Planning Policy Framework.

- 21. L01 Foul/surface water drainage**

- 22. L02 No surface water to connect to public system**

- 23. L03 No drainage run-off to public system**

- 24. The recommendations set out in Section 6 of the ecologist's report from Landscape Scientific dated March 2014 should be followed in relation to the identified protected species. Prior to commencement of the development, a full working method statement and habitat enhancement plan should be submitted to, and be approved in writing by, the local planning authority, and the work shall be implemented as approved.**

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

Reasons:

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

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

INFORMATIVES:

1. The Local Planning Authority has acted positively and proactively in determining this application by assessing this proposal against planning policy and other material considerations. 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 Applicant/future occupiers should contact 08708 506506 to be set up on our flood warning system. In preparing the evacuation plan the applicant should have note to the FRA. Contact with the Environment Agency would enable the provision of the most up to date, best available, flood information.
3. Under the terms of the Water Resources Act 1991 and the Land Drainage Byelaws, the prior written consent of the Environment Agency is required for any proposed works or structures in, under, over or within 7 metres of the top of the bank of the River Lugg, designated a Main River or within this distance of a formal flood defence structure.
4. Any waste produced as part of this development must be disposed of in accordance with all relevant waste management legislation. Where possible the production of waste from the development should be minimised and options for the reuse or recycling of any waste produced should be utilised.

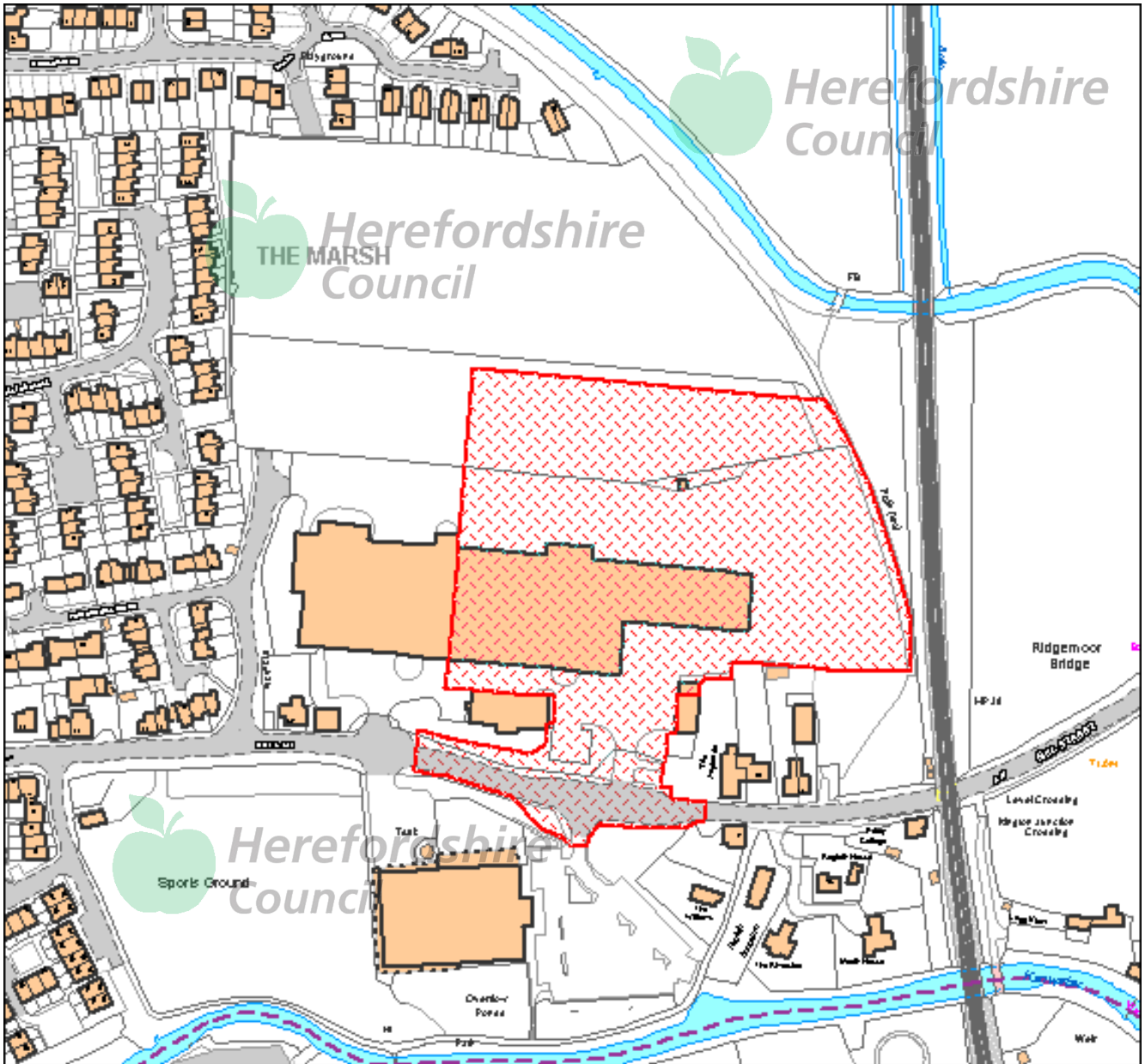
Decision:

Notes:

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Background Papers

Internal departmental consultation replies.



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APPLICATION NO: 140910/O

SITE ADDRESS : LAND AT MILL STREET, LEOMINSTER, HEREFORDSHIRE, HR6 8EF

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

This document has been prepared against the criteria set out in the Supplementary Planning Document on 'Planning Obligations' which was adopted in April 2008.

Application number: P140910/O

Proposal: Outline application for the part demolition of existing buildings and structures and development of the site to provide a retail store (Use Class A1) and associated works and improvements including access.

Site: Land at Mill Street Leominster Herefordshire HR6 8EF

1. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of **£798,081.00** to provide sustainable transport infrastructure to serve the development, which sum shall be paid on or before the commencement of the development, and may be pooled with other contributions if appropriate.

The monies shall be used by Herefordshire Council at its option for any or all of the following purposes:

Walking and cycling Infrastructure

- Improvements to pedestrian linkage routes 1, 2 and 3 identified in appendix C of the Cambria Constructive Thinking Highway Safety Report (CC1189/HSR/REP08/A) @ £40,000.00
- The provision of a cycle link from Mill Street to Broad Street car park with new bridge over the Kenwater (possibly between Paradise Court and Broad Street car park). This will provide a link via the Priory through to Pinsley Road and Leominster Station. This would also provide a contraflow route to Broad Street for the National Byway through the town @ £200,000.00 + footway links £15,000.00
- The extension of last section of the current shared use path on A49 from Kimbolton (A4112) through to Mill Street including crossings at the OK Diner roundabout @ Cost requested
- The provision of a cycle contraflow to Broad Street @ £35,000.00
- The provision of a shared use path along the line of the disused railway line (the site itself does include a section along the eastern boundary). This would link the level crossing with the residential area to the north (Upper Marsh) @ £500,000.00

Bus Infrastructure

- The provision of a dedicated bus service or a possible diversion of bus service 402 to serve the site @ £125,000.00 for 3 years
- The provision of new bus shelters and raised kerbs to be provided at Mill Street, Brook Hall and Ridgemoor @ £60,000.00

Note: The requirement for a pedestrian crossing on Mill Street and a pedestrian route to the Ridgemoor Estate will be a condition of any planning permission

2. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of **£100,000** to provide public realm improvements which sum shall be paid on or before the commencement of the development, and may be pooled with other contributions if appropriate. The monies shall be used by Herefordshire Council for improvements to the public realm to include physical improvements to the town centre such as street furniture, resurfacing, signage, improved shop frontages and the promotion of the town centre as a shopping and tourist destination. The sum shall be paid on or before the commencement of the development and may be pooled with other contributions as appropriate. The money will be administered by Herefordshire Council and/or another appropriate agency such as Leominster Area Regeneration Company (LARC).
3. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of **£25,000.00** to be used for provision of CCTV coverage in the vicinity improvements which sum shall be paid on or before the commencement of the development, and may be pooled with other contributions if appropriate.
4. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of **£20,000.00** to maintain the existing flood defences which currently protect the site to a 1 in 50 year standard; increase the standard of the Lugg defences at this location which will benefit the proposed development; contribution towards the Environment Agency flood warning system. The sum shall be paid on or before the commencement of the development, and may be pooled with other contributions if appropriate.
5. The developer covenants with Herefordshire Council to construct the development to BREEAM Retail Standard of Very Good that is applicable at the time of the commencement of construction. Independent certification shall be provided prior to the commencement of the development and prior to first use of the store confirming compliance with the required standard.
6. In the event that Herefordshire Council does not for any reason use the sum in paragraph 1, 2, 3 and 4 above for the purposes specified in the agreement within 10 years of the date of this agreement, the Council shall repay to the developer the said sum or such part thereof, which has not been used by Herefordshire Council.
7. The sum referred to in paragraph 1, 2, 3 and 4 above shall be linked to an appropriate index or indices selected by the Council with the intention that such sums will be adjusted according to any percentage increase in prices occurring between the date of the Section 106 Agreement and the date the sums are paid to the Council.
8. The developer covenants with Herefordshire Council to pay a surcharge of 2% of the total sum detailed in this Heads of Terms, as a contribution towards the cost of monitoring and enforcing the Section 106 Agreement. The sum shall be paid on or before the commencement of the development.

9. The developer shall pay to the Council on or before the completion of the Agreement, the reasonable legal costs incurred by Herefordshire Council in connection with the preparation and completion of the Agreement.

Yvonne Coleman – Planning Obligations Manager – 27 June 2014