

<b>MEETING:</b>	<b>PLANNING COMMITTEE</b>
<b>DATE:</b>	<b>16 JUNE 2016</b>
<b>TITLE OF REPORT:</b>	<p><b>151165 - VARIATION OF CONDITION TO CONVERT COTTAGE ANNEXE TO PROVIDE ONE BEDROOM HOLIDAY COTTAGE. REMOVE CONDITION 4 AT FODDER STORE ADJACENT TO THE OLD RECTORY, CHURCH ROAD, WHITBOURNE, HEREFORDSHIRE, WR6 5RS</b></p> <p><b>For: Mr &amp; Mrs Poultney per Mr Paul Smith, First Floor, 41 Bridge Street, Hereford, Herefordshire, HR4 9DG</b></p>
<b>WEBSITE LINK:</b>	<a href="https://www.herefordshire.gov.uk/planning-and-building-control/development-control/planning-applications/details?id=151165&amp;search=151165">https://www.herefordshire.gov.uk/planning-and-building-control/development-control/planning-applications/details?id=151165&amp;search=151165</a>
<b>Reason Application submitted to Committee – Re-direction</b>	

**Date Received: 14 April 2015**

**Ward: Bromyard  
Bringsty**

**Grid Ref: 372477,256995**

**Expiry Date: 9 June 2015**

Local Member: Councillor NE Shaw

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

- 1.1 The Fodder store is physically attached to The Olde Rectory a grade II listed building in Boat Lane, within the Whitbourne Conservation Area. The application seeks removal of condition 4 in order to permit its use as an unrestricted dwelling.
- 1.2 This application is a re-submission of that refused at Planning Committee on 4 March 2015. That decision is the subject of a current appeal.

## **2. Policies**

### **2.1 National Planning Policy Framework (NPPF)**

The following sections are of particular relevance

Section 12 Conserving and Enhancing the Historic Environment

### **2.2 Herefordshire Unitary Development Plan**

S1	-	Sustainable Development
S2	-	Development Requirements
S7	-	Natural and Historic Heritage
DR2	-	Land Use and Activity
HBA4	-	Setting of Listed Buildings

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Further information on the subject of this report is available from Mr M Tansley on 01432 261815

- HBA3 - Change of Use of Listed Buildings
- HBA13 - Re-use of Rural Buildings for Residential Purposes
- H17 - Sub-Dvision of Existing House

### 2.3 Core Strategy

- LD4 - Historic Environment and Heritage Assets

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

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

## 3. **Planning History**

- 3.1 142356 - Proposed removal of condition 4 of planning permission DCNC2004/2013/F (Conversion of cottage annexe to provide one bedroom holiday cottage) to allow 'Fodder Store' to be used as a dwelling. Refused 11 March 2015.
- 3.2 131973/F - Replacement of extant planning permission DMNC/101265/F (see below) Approved 2 September 2013.
- 3.3 DMNC/101265/F - Removal of condition 4 of planning permission DCNC2004/2013/F. To allow use as annex accommodation to The Olde Rectory. Approved 19 July 2010, subject to condition that it be used as annex to the Olde Rectory.
- 3.4 DCNC2004/2013/F - Conversion of cottage annexe to provide one bedroom holiday cottage. Approved 29 July 2004, subject to holiday use condition (subject of this application).
- 3.5 DCNC/2004/2014/L - Listed building consent for above works, also 29 July 2014. These works included an extension to provide the kitchen and new entrance, the bricking up of a door in what was a yard wall, a number of replacement windows and new glazed openings, a replacement staircase and an opening from the original element to the kitchen addition.

## 4. **Consultation Summary**

### Statutory Consultations

- 4.1 Welsh Water: No comment.

### Internal Council Advice

- 4.2 Conservation Manager (Historic Buildings): I've reviewed this case and confirm that there is nothing further to add to the Senior Building Conservation Officer's previously submitted comments. (see 6.10).
- 4.3 Transportation Manager: No objection may wish to include condition re secure cycle parking.

## 5. **Representations**

- 5.1 Whitbourne Parish Council – unanimously oppose, this was previously refused on basis of privacy and amenity issues, these considerations remain decisive. Also oppose anything which would damage the physical integrity of The Olde Rectory.
- 5.2 Mr and Mrs Wood the new owners of the Olde Rectory summarise their 16 page objection as follows:

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Further information on the subject of this report is available from Mr M Tansley on 01432 261815

1. The application is misconceived. Even if condition 4 were removed, planning permission (and listed building consent) would still be required to create an independent dwelling.
2. The evidence submitted as to non-implementation of the 2013 permission is weak and contradictory. The evidence in support of implementation reflects the true position. The applicants, by their representations and acts and omissions have made it quite clear that there has been a change of use of the property from “holiday let to residential”. Their arguments to the contrary are not tenable.
3. The applicants should be required to make an application for LBC before progressing this application. The application is contrary to HBA3 in that unauthorised works have been carried out in order to facilitate the application and which are not compatible with the preservation of the existing building, its features and setting. These works are also not in keeping with the fact that the property is in a conservation area.
4. The planning history overwhelmingly supports the importance of conditions to protect the privacy and amenity of those living on the site. They should not be relaxed and (subject to 1, 2 and 3 above and 7 and 8 below) the previous decision of the Council should be upheld.
5. The external amenity area neither has planning permission nor listed building consent. The surrounding trellis fencing should be removed (as the Senior Conservation Officer has stated) as it also doesn't have listed building consent. The amenity area has little or no privacy and is too small to meet the day to day requirements of a household. It is contrary to policies H17 and H18.
6. There is very significant potential overlooking from three windows and from the amenity area of the annex. The proposal is also contrary to policies H17 and H18. Further it is contrary to policy H14 as it does not protect the existing residential amenity – rather it exacerbates the likely degree of overlooking and traffic movements.
7. The proposal is contrary to the Human Rights Act as it is prejudicial to the quiet enjoyment of our home.
8. The application is contrary to paragraph 55 of the NPPF and policy H7 which prohibit development in the open countryside.

If a truly objective overview is taken of the facts and circumstances surrounding this application there are several important matters which are clear and which should guide and inform the proper consideration of this application.

In particular, the applicants' own approach in the use and development of the site is instructive.

Although the applicants had originally sought to sell the site as one going concern (the holiday let business), it became clear to them (post 2008) that a different strategy would have to be considered so that they could sell off the component parts of the estate. This led them to apply (in 2010) for residential status for the “Potting Shed”, “Coach House”, “Barn” and “Hooch Hall” and for the “Fodder Store” to revert to being an annex to the Old Rectory. A successful foray into the lucrative wedding function business caused them to delay the implementation of this strategy but when they lost the appeal against the subsequent enforcement proceedings in 2013, they obviously had to revert to their strategy of selling the component parts. Not surprisingly they had made sure that the 2010 permissions were extended – to all the properties. They put the properties on the market in October 2013 and wound down the remaining holiday let business. They obviously intended that there should be a change of use of the site and certainly as from April 2014, if not before, the site had reverted to being purely for residential occupation, with all the properties being marketed for sale in one form or another. Only one has been sold, but the “Coach House”, “Barn” and “Hooch Hall” remain for sale and/or on long lets. Taken overall, it seems obvious that the applicants have, by their actions, implemented a change of use for this site, including the “Fodder Store”.

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As an aside, we have noted that the applicants' agent previously questioned whether the 2013 "Fodder Store" ancillary accommodation permission is valid. This is a surprising contention given that if he were correct, the residential permissions for the other properties would also be invalid. We doubt whether this concern has been raised with any prospective purchasers.

During their tenure, the applicants have also amply demonstrated that they have little regard for the requirements of the planning and listed building legislation (nor to the concerns of those living in neighbouring properties). The Council should be slow to ignore and condone the unauthorised alterations to the property in the consideration of this application. As leading Counsel has made clear *"It is therefore essential to consider the implications for the listed building and its setting before any planning application is granted"*.

As has been described above, there is also a long history of conditions being imposed by the Council to control and/or protect the occupants of the Old Rectory and the site. It is highly significant that these were imposed when the site was under the entire control of one owner (the applicants) who could decide and dictate the extent of usage by third parties. This is no longer the case. In these circumstances, the Council should not disregard the relevant planning history but rather give it significant extra weight. Given the views expressed by Leading Counsel (as to the importance of consistency in the application of planning law and policy) and the fact that it was the applicants themselves who decided to split up the site, they should not now be permitted to disregard this history to the prospective prejudice of others.

- 5.3 In addition 7 letters of objection have been received from local residents and the Rev Williams, summarised as follows:

The physical integrity of the Olde Rectory would be compromised;

Anything which affects the Olds Rectory also affects Ring O' Bells;

Support comments of Mr and Mrs Wood;

Committee should examine afresh the issues;

Council should investigate unauthorised work to listed building;

Agree with previous objection of the parish council.

- 5.4 The applicant's agent has submitted the following:

I enclose documents and plans submitted as part of an application to remove a planning condition to enable a one bedroom holiday cottage, known as the 'Fodder Store', to be used as a dwelling. In the absence of the need to make any physical changes to this structure as part of this proposal, listed building consent is not required.

#### Background

The Fodder Store lies amid a group of dwellings within the village. Its principal aspect faces away from The Old Rectory to which it is attached.

An identical planning application was refused last March by the Council for the following single reason:

'It is considered that the proposal is contrary to Policies H17 and H18 of the Herefordshire Unitary Development Plan in that there is inadequate open amenity space available for the property and it would have an adverse impact upon the privacy and amenity of the occupiers of The Olde Rectory.'

Therefore, in all other respects the Council has accepted the proposal including the

principle of development and that it does not entail any physical change to this listed building. The applicants' objective of submitting the current application is to respond to these specific objections to obtain planning permission.

### Planning History

Planning permission DCNC2004/2013/F was granted in 2004 to use the Fodder Store as a 'holiday cottage'. Condition 4 of this permission restricted the use of this building to this purpose although no other restrictions were imposed upon its occupation. Condition 4 allows the Fodder Store to be occupied in a range of ways from a series of short term holiday lets to a holiday home for those whose principal home is elsewhere.

Two planning permissions were granted after 2004 to use the Fodder Store as an annex to The Olde Rectory although these permissions have not been implemented. Therefore, the lawful planning use of the Fodder Store is that of an independent holiday cottage. The Council accepted this assertion when deciding upon the earlier planning application.

### Justification for the Proposal

The Council's only objections to the earlier planning application were that (i) there would be inadequate external space and (ii) the proposed dwelling would adversely affect the privacy and amenity of those occupying the Olde Rectory.

#### External space

The Fodder Store has its own external area of about 25 square metres and not 6 square metres as was assumed by the March Planning Committee whilst refusing planning permission for the earlier application. This area is large enough to accommodate an oil tank, bin store, a plant bed, a circular drier and outdoor table and chairs. Tall trellis fencing demarcates this area and provides privacy.

This external area is considerably larger than the external areas approved by the Council for the neighbouring dwellings on the same site: 'Potting Shed Cottage' and the 'Coach House' have exclusive courtyards of about 17 square metres each. Further, the Council raised no objection last July to the conversion of office units 5 and 6 at Moor Court, Bromyard Road, Whitbourne to dwellings one of which lacked any external area Council reference: 140094/U.

I am unaware of any planning justification why the Council should adopt a much stricter approach toward the residential occupation of the Fodder Store than it adopted with these nearby comparable properties. Further, there is no national or development plan policy requiring a minimum garden size for new dwellings although national policy guidance does advocate the creation of gardens that are private and large enough to meet the day to day requirements of a household. The external area to the Fodder Store would fully meet these requirements. Therefore, in absolute and relative terms the existing external space to the Fodder Store is sufficient to meet the reasonable requirements of occupants of the Fodder Store consistent with the Council's previous decisions relating to similar proposals on neighbouring buildings.

#### Privacy and Amenity of Occupants of The Olde Rectory

Most openings to The Fodder Store face away from The Olde Rectory. A rear-facing bathroom rooflight does face The Olde Rectory building although there is no direct line of sight between the roof light and windows of the neighbouring property.

There exist a ground floor, lounge window and a small, high sill bedroom window in the eastern gable end of the Fodder Store facing towards the large grounds of The Olde Rectory. Views out of these windows are very limited by the dense canopy of four evergreen Yew trees, other vegetation and a large oil tank. There is an oblique view from the bedroom window of a small part of The Olde Rectory grounds but that garden area is already overlooked from public and semi-public viewpoints and its owners enjoy little privacy using it.

Further, the Council approved these windows as part of the 2004 planning permission to use the Fodder Store as a holiday cottage independent of The Olde Rectory. I am unaware of any planning reason why the Council should now adopt a stricter approach toward the protection of privacy and amenity of occupants of The Olde Rectory than it did in 2004. I presume that in 2004 the Council was satisfied the degree of overlooking arising from these windows in their current form was acceptable.

Finally, the only policies the Council claims would be breached by the proposal are UDP Policies H17 and H18. These policies relate to the sub division of a dwelling and alterations and extensions of dwellings and residential outbuildings (as opposed to their change of use) respectively. Therefore, it cannot be claimed that these policies would be breached when they do not relate to a proposal which entails only the change of use of a holiday cottage to a dwelling.

## Conclusions

The Council's previous objections to the proposal related only to the size of the external area available to potential occupants of The Fodder Store and its effect upon the privacy and amenity of occupiers of The Olde Rectory. I firmly believe that if judged objectively, these concerns do not justify the refusal of planning permission.

The size of the existing external area exceeds those included in conversion schemes approved by the Council in the same village in recent times. The everyday needs of a household would be met by this external space in accordance with national policy guidance.

Those residing at the proposed dwelling would overlook The Olde Rectory and impinge upon the living conditions of its occupants to a very limited degree and then, no more than currently arises from the continued occupation of The Fodder Store as a holiday cottage.

Due to the foregoing I do not believe that it can be reasonably argued that the proposal would be contrary to the development plan or national planning policy. As such, planning permission should be granted for this proposal.

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

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

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

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

## 6. Officer's Appraisal

- 6.1 The matters raised by Mr Wood were also made during consideration of the previous application, including the submission on his behalf from Counsel, and were considered by the Committee on 4 March 2015. As previously reported the matter is effectively one of a change of use from holiday let to separate dwelling. Unauthorised work to the listed building undertaken is the subject of investigation and negotiation with the Council's Historic Buildings' Officer and is not a matter for consideration at this time.
- 6.2 The previous application was refused contrary to recommendation for the following reason
- It is considered that the proposal is contrary to Policies H17 and H18 of the Herefordshire Unitary Development Plan in that there is inadequate open amenity space available for the property and it would have an adverse impact upon the privacy and amenity of the occupiers of The Olde Rectory.*
- 6.3 Notwithstanding that Members have previously considered a number of the following matters and not found issue with them it is appropriate given the nature of the objections to go over them again. The main considerations to be considered in this matter are therefore:
- (i) evidence of implementation of the earlier permissions ref 101265 and 131973 respectively
  - (ii) listed building consent
  - (iii) amenity issues.
- 6.4 Evidence of implementation of the 2010 (renewed in 2013) planning permission. This is relevant because, should there be evidence that it has been implemented, on a balance of probabilities, then this particular application would be seeking relief from a condition which was no longer extant.
- 6.5 The applicants maintain that the annex use was not implemented, and that the existing use remains as holiday accommodation, additional evidence, as described above, has been submitted on that behalf.
- 6.6 Evidence to the contrary is that a car parking area has been created, thus implementing the annex permission, ref 131973, that the council tax banding is no longer business use, a reference to the Inspector dealing with the planning appeal in August 2013 and the law society form completed prior to sale referring to holiday change to residential.

In turn,

- 6.6.1 A car parking area has been created, prior to submission of the details required by condition 3 of that permission. The applicants advised that this was created in mid 2014 for the use generally of the adjacent properties. Mr Wood, the neighbour subsequently submitted details in September 2014 to retrospectively satisfy that condition. On the face of it this is further unauthorised development, however as it causes no harm there are no grounds to pursue this matter.
- 6.6.2 The Council tax section received details from the applicant that the holiday use had ceased, as a consequence, that section sought revaluation on the basis of residential use. The ceasing of operation for holiday use does not of itself mean that the holiday use is not still the authorised planning use.
- 6.6.3 The enforcement notice appeal decision, in relation to the larger site at the Olde Rectory has been referred to as evidence of use of the Fodder Store as ancillary accommodation to the Olde Rectory. In this regard it should be noted that the planning Inspector's decision letter states (inter alia): ' Then, the appellants ( the applicants in this case) started using the site for functions, nearly all of which have, so far, been weekend wedding receptions following a ceremony at the church across the lane. Anyone wishing to use the venue has to rent all the

holiday accommodation, along with the main house itself, which together provide about 47 bed spaces’.

The enforcement notice which resulted in the appeal was on the basis that a material change of use had occurred from a single dwelling house (the Old Rectory) to a mixed use for holiday accommodation and function venue. Consequently it is submitted that the Fodder Store could not have been used as an annex at this time, since, for planning purposes, the house was not being used as a dwelling.

- 6.6.4 It has also been submitted that the completion by the applicants, as sellers, of the Law Society sales enquiry is evidence that they understood that there had been a change of use of the Fodder store to ancillary accommodation for the Olde Rectory. Their planning agent advises that the applicants were under the misapprehension that the grant of the 2010 planning permission meant there was automatically a change of use and they had not realised that this was incorrect and actual use must be in evidence. It is the case officer’s opinion that the applicants could indeed have inadvertently misunderstood this area of planning law.
- 6.7 The applicants’ agent also considers that the renewal of the permission ref 131973 was invalid as the original permission had expired prior to its determination. There was no challenge to the validity of this decision at the time.
- 6.8 On balance therefore, it is considered that the weight of evidence suggests that the 2013 planning permission ref 131973 (being a renewal of the 2010 permission) has not been implemented and that the authorised use of the Fodder Store is as holiday accommodation. If members consider otherwise, and that the authorised use is as an annex, then the position is that there is a listed building, with a restriction on its use which cannot be complied with, since the main house is now in separate ownership.
- 6.9 The proposal, in seeking to remove the holiday occupancy condition would permit the Fodder Store to be used as a separate dwelling.
- 6.10 The Conservation Manager (Historic Buildings) previously advised that unauthorised works had been carried out to the Fodder Store including the blocking of an internal door, removal of external steps and covered lobby area. Originally those comments considered that the unauthorised works should be resolved before the planning application could be determined. This is no longer the opinion of the Conservation Manager (Historic Buildings), furthermore there is no intention to obscure glaze the windows. In this regard the provisions of S.66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires ‘In considering whether to grant planning permission special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses’
- 6.11 It is considered that the resolution of these matters, which is currently under discussion, do not significantly impact upon the use of the building as a dwelling and need not be an impediment to the determination of this application. Notwithstanding the comments about integrity, this building and the main house are already in separate ownership. It is considered therefore that the ‘special regard’ test, contained in S.66 is satisfied.

#### 6.12 Amenity Issues

The main consideration is whether the use as a dwelling compared to holiday use creates sufficient additional amenity issues to justify refusal. Policy HBA3 sets out the criteria for change of use, namely:

The change of use of part or the whole of a listed building will be permitted where it can be demonstrated that:



1. The building is structurally capable of accommodating the proposed use without requiring substantial rebuilding;
2. The proposed use is compatible with the preservation of the existing building, its features and setting and where relevant those of any immediately adjacent listed buildings;
3. The proposed use complements any other existing uses of the building which are to be retained;
4. The proposal assists the retention and beneficial use of a historic building; and
5. In relation to reuse and adaptation of traditional rural buildings, the use complies with policies HBA12 and HBA13.

6.13 Reference has been made to the reason for imposition of conditions on the previous annex applications to comply with policy H18 of the Unitary Development Plan, which relates to the alteration or extension to dwellings, not the creation of new dwellings as objections suggest, the relevant criteria being:

3. the proposal would not be cramped in its plot, including having regard to provision of suitable private open amenity space, and would not adversely impact on the privacy and amenity of occupiers of neighbouring residential property; and
4. The level of resulting off street parking provision is in accordance with policy H16.

6.14 Whilst the proposal would result in a small dwelling with limited amenity space of its own it is not considered that the occupation for this purpose would result in an unacceptable level of privacy and amenity either for its own purposes or those of the adjoining property. It is not considered that the use as a separate dwelling is incompatible with the adjoining listed building, nor the setting thereof or of the other adjacent properties. It is considered that the proposal complies with policy H17 of the Herefordshire Unitary Development Plan. In terms of sustainability Whitbourne is considered to be a sustainable location. Members of the previous committee will recall the recent resolution to grant planning permission for 20 houses on that basis, and that S55 of the NPPF is satisfied.

6.15 The Transportation Manager suggests a condition to require secure cycle parking may be considered. Given the setting such provision is not considered to be appropriate.

6.16 It is therefore considered that the proposal complies with relevant policies, in particular, HBA3 and H17 the principles of the NPPF, and notwithstanding the previous committee decision, is recommended for approval.

## **RECOMMENDATION**

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

1. **A01 Time limit for commencement (full permission)**

### **Informative:**

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

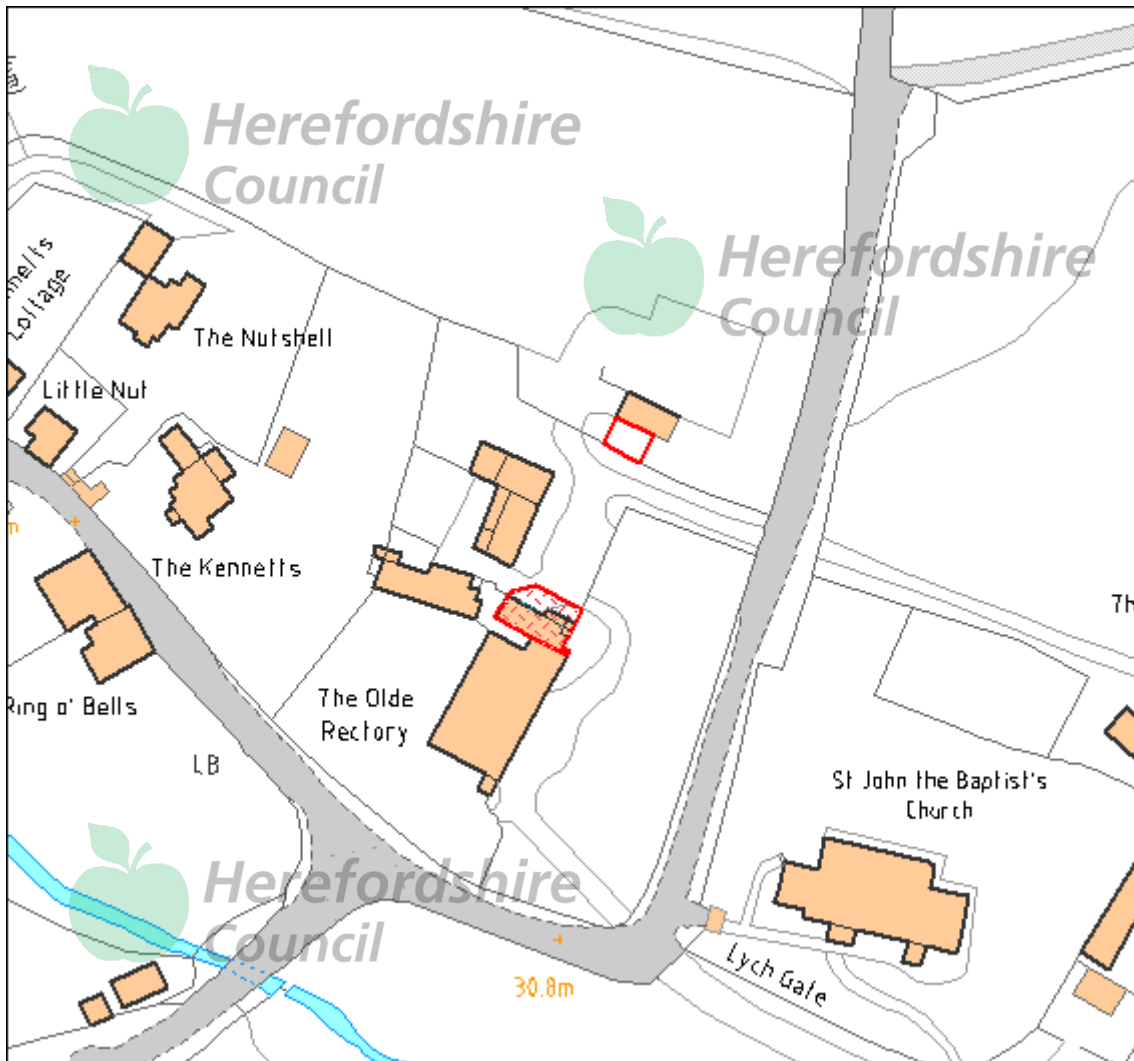
Decision: .....

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**Background Papers**

Internal departmental consultation replies.



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**APPLICATION NO:** 151165

**SITE ADDRESS :** FODDER STORE ADJACENT TO THE OLD RECTORY, CHURCH ROAD, WHITBOURNE, HEREFORDSHIRE, WR6 5RS

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