

MEETING:	PLANNING COMMITTEE
DATE:	15 MARCH 2017
TITLE OF REPORT:	162891 - (RETROSPECTIVE) CHANGE OF USE OF LAND TO RESIDENTIAL CURTILAGE. RETENTION OF GARDEN ROOM, DECKING, TIMBER STAIRS AND STEPS AT 11 HARTLAND CLOSE, BELMONT, HEREFORD, HR2 7SL For: Mr Woodcock per Mr Paul Smith, First Floor, 41 Bridge Street, Hereford, Herefordshire, HR4 9DG
WEBSITE LINK:	https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=162891&search=162891
Reason Application submitted to Committee - Redirection	

Date Received: 5 September 2016 Ward: Belmont Rural Grid Ref: 349093,238859

Expiry Date: 7 March 2017

Local Member: Councillor TL Bowes

1. Site Description and Proposal

- 1.1 The application relates to a detached dwelling positioned at the head of the cul-de-sac known as Hartland Close, which is located on the northern edge of the Belmont housing estate. The property has a small foregarden and parking area and an enclosed rear garden.
- 1.2 Retrospective permission is sought to regularise the change of use of land immediately to the north of the original garden to also form part of the residential curtilage and for the erection of two decked platforms, erection of a 'garden room' and steps. The rectangular area of land subject to this application extends some 26.4 metres from the original rear garden and is 10.8 metres wide. It slopes steeply down from the original rear garden to the southern bank of the River Wye.
- 1.3 A timber decked platform has been constructed immediately adjacent to the original northern boundary of the rear garden with a set of timber stairs to a lower timber platform on which the 'garden room' is sited on part. The 'garden room', also of timber construction with a felt roof, has a footprint of 3.6 metres by 2.7 metres, with a mono-pitched roof which oversails the footprint to the north by some 0.7 metres and has a ridge and eaves height of 2.53 metres and 1.96 metres, respectively. The decked platform on which the garden room is sited projects some 1.8 metres from its north elevation, whereupon a set of timber stairs, some 7.6 metres in length, extend down the slope. There is one external electric light on the northern elevation of the garden room. A 0.9 metre height timber, picket fence demarks the northern boundary of the created garden area. Beyond that, to the river bank, the land is in the applicants' ownership, but no change of use is sought for this area.

- 1.4 The sloping land, to which this application relates, is part of a Special Wildlife Site (SWS), described as the 'Belmont wood and Hunderton rough'. The most northerly section of the application site is also within the Site of Special Scientific Interest (SSSI) Impact Risk Zone, which extends down to the river. The lower section of the site is within Flood Zones 2 and 3, but the decking and garden room are outside of these. It is understood that the land to the north of the Belmont development was previously in single, private ownership, but was however subdivided into individual parcels and a number of dwellings on the edge of the estate adjoining this land exercised an option to purchase the individual parcels which tie in with their existing plot widths.
- 1.5 The applicants' agent provided a covering letter with the submission, setting out the background to the works and providing an assessment of the effect of the development and review of the relevant planning policies. This confirms that the applicants have cleared the steep bank of undergrowth and coppiced five trees, but have not felled any. It states that two oaks continue to stand on the site, with a further tree at the bottom of the bank. It states that the applicants were incorrectly advised that they did not require planning permission to clear the bank, use it as part of their garden and undertake development normally associated with a private garden. The agent's assessment is that the development is rather stark, when viewed from the floodplain and a section of the public footpath on the other side of the river, but considers that views are limited and planting, that has already commenced, will provide effective screening. It is acknowledged that development encroaches into the attractive, natural, linear feature of the treed bank, but the applicants' agent considers the impact on the integrity of the bank as a whole to be modest. It is further contended that this impact would reduce over time.
- 1.6 The application was accompanied by a Flood Risk Assessment (FRA), which states that only a section of picket fence has been erected in Flood Zones 2 and 3. The FRA suggests that no development is proposed in Zones 2 and 3 and this could be controlled by the Council if permission were granted for the change of use.
- 1.7 During the consideration of the application the agent has provided an Ecological Assessment and an indicative planting scheme and plan. The Ecological Assessment advises that only ground clearance and coppicing has taken place, with the oak trees either side of the site left intact. It states that the staircase from the lower deck was elevated to avoid the oaks' roots. The assessment acknowledges that the site lies outside of the boundaries of the River Wye SSSI/SAC, but is within their identified impact zones and within local wildlife site known as the Belmont Wood and Hunderton Rough. The assessment concludes that the works have not prejudiced the SSSI or SAC. It recommends that the external lighting is removed, a film applied to the garden room glazing to reduce light spill, a 'fedge' and additional planting is provided to improve biodiversity and bat and bird boxes are provided.

2. Policies

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

SS1	-	Presumption in Favour of Sustainable Development
SS6	-	Environmental Quality and Local Distinctiveness
LD1	-	Landscape and Townscape
LD2	-	Biodiversity and Geodiversity
SD1	-	Sustainable Development and Energy Efficiency

2.2 NPPF

Introduction

Achieving Sustainable Development

Chapter 7 - Requiring good design

Chapter 11 - Conserving and enhancing the natural environment

Decision-taking

2.3 NPPG

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

<https://www.herefordshire.gov.uk/planning-and-building-control/planning-policy/core-strategy/adopted-core-strategy>

3. Planning History

- 3.1 None on this site

- 3.2 A similar application on land further along the banks of the River Wye towards Hereford was refused in 2004 and dismissed at Appeal in 2005 for change of use of land to residential and construction of decking area. (DCCW2004/2278/F)

4. Consultation Summary

Statutory Consultations

Natural England

- 4.1 Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.
- 4.2 The Wildlife and Countryside Act 1981 (as amended) The Conservation of Habitats and Species Regulations 2010 (as amended)
- Objection - Further information required.
- 4.3 Natural England advises that potential impacts on otters and the riparian habitat which form part of the designation of the River Wye Special Area of Conservation (SAC)/ Site of Special Scientific Interest (SSSI) have not been considered, and therefore currently there is insufficient information for you to undertake a Habitats Regulation Assessment of the proposed development.
- 4.4 It should be noted that the SSSI boundary includes the channel and banks of the river, areas of riparian habitat and land essential for securing water quality up to a maximum of 10 metres; a boundary which is subject to change due to channel movement.

Internationally and nationally designated sites:

- 4.5 The application site is partly within a European designated site (also commonly referred to as Natura 2000 sites), and therefore has the potential to affect its interest features. European sites are afforded protection under the Conservation of Habitats and Species Regulations 2010, as amended (the 'Habitats Regulations'). The application site is in close proximity to the River Wye Special Area of Conservation (SAC) which is a European site. The site is also notified at a national level as River Wye Site of Special Scientific Interest (SSSI). Please see the subsequent sections of this letter for our advice relating to SSSI features.
- 4.6 In considering the European site interest, Natural England advises that you, as a competent authority under the provisions of the Habitats Regulations, should have regard for any potential impacts that a plan or project may have. The Conservation objectives for each European site explain how the site should be restored and/or maintained and may be helpful in assessing what, if any, potential impacts a plan or project may have.

Further information required:

- 4.7 The consultation documents provided by your authority do not include information to demonstrate that the requirements of Regulations 61 and 62 of the Habitats Regulations have been considered by your authority, i.e. the consultation does not include a Habitats Regulations Assessment. In advising your authority on the requirements relating to Habitats Regulations Assessment, it is Natural England's advice that the proposal is not necessary for the management of the European site. Your authority should therefore determine whether the proposal is likely to have a significant effect on any European site, proceeding to the Appropriate Assessment stage where significant effects cannot be ruled out. Natural England advises that there is currently not enough information to determine whether the likelihood of significant effects can be ruled out. We recommend you obtain the following information to help undertake a Habitats Regulations Assessment:
- Details of how impacts on riparian habitat will be avoided and how the riparian habitat will be managed. Part of the proposed curtilage is within the SAC/SSSI boundary and this should remain as riparian habitat. It should be noted that removing vegetation from the river banks can destabilise the bank and increase erosion.
 - Details of the planting scheme.
 - Details should be provided on how impacts on otters will be avoided. Otters are known to use this stretch of the River Wye SAC and are a notified feature of the SAC and SSSI. Further information on the consideration of otters in the planning process can be found in Natural England's standing advice on otters.
 - Details of the lighting. Information should include but not be limited to, location of lighting, lux levels and light spill.

River Wye SSSI – further information required.

- 4.8 This application is partly within the River Wye SSSI. The details set out in the SAC section apply equally to the SSSI notified features.
- 4.9 Should the application change, or if the applicant submits further information relating to the impact of this proposal on the SSSI aimed at reducing the damage likely to be caused, Natural England will be happy to consider it, and amend our position as appropriate.

- 4.10 If your Authority is minded to grant consent for this application contrary to the advice relating to the River Wye SSSI contained in this letter, we refer you to Section 281 (6) of the Wildlife and Countryside Act 1981 (as amended), specifically the duty placed upon your authority, requiring that your Authority:
- Provide notice to Natural England of the permission, and of its terms, the notice to include a statement of how (if at all) your authority has taken account of Natural England's advice, and
 - Shall not grant a permission which would allow the operations to start before the end of a period of 21 days beginning with the date of that notice.

Other advice:

- 4.11 We would expect the Local Planning Authority (LPA) to assess and consider the other possible impacts resulting from this proposal on the following when determining this application:
- local sites (biodiversity and geodiversity)
 - local landscape character
 - local or national biodiversity priority habitats and species.

- 4.12 Natural England does not hold locally specific information relating to the above. These remain material considerations in the determination of this planning application and we recommend that you seek further information from the appropriate bodies (which may include the local records centre, your local wildlife trust, local geoconservation group or other recording society and a local landscape characterisation documents) in order to ensure the LPA has sufficient information to fully understand the impact of the proposal before it determines the application. A more comprehensive list of local groups can be found at [Wildlife and Countryside link](#).

Protected Species:

- 4.13 Natural England has published Standing Advice on protected species.

You should apply our Standing Advice to this application as it is a material consideration in the determination of applications in the same way as any individual response received from Natural England following consultation.

- 4.14 The Standing Advice should not be treated as giving any indication or providing any assurance in respect of European Protected Species (EPS) that the proposed development is unlikely to affect the EPS present on the site; nor should it be interpreted as meaning that Natural England has reached any views as to whether a licence is needed (which is the developer's responsibility) or may be granted.

- 4.15 If you have any specific questions on aspects that are not covered by our Standing Advice for European Protected Species or have difficulty in applying it to this application please contact us with details at consultations@naturalengland.org.uk.

Biodiversity enhancements:

- 4.16 This application may provide opportunities to incorporate features into the design which are beneficial to wildlife, such as the incorporation of roosting opportunities for bats or the installation of bird nest boxes. The authority should consider securing measures to enhance the biodiversity of the site from the applicant, if it is minded to grant permission for this application. This is in accordance with Paragraph 118 of the NPPF. Additionally, we would draw your attention to Section 40 of the Natural Environment and Rural Communities Act (2006) which

states that 'Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity'. Section 40(3) of the same Act also states that 'conserving biodiversity includes, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat'.

Internal Council Consultations

4.17 Conservation Manager (Landscape) - Object.

I have read the documents and seen the photographs submitted as part of the application.

Having walked a length of the Wye Valley Walk, and viewed the proposal from the public right of way BT1, I agree with the planning consultant's comments in respect of the stark appearance of the development. This is as a combined result of the introduction of an extensive quantity of hard landscaping, compounded by the clearance of all vegetation on site.

4.18 In terms of landscape character the sensitivity of the site is high; it represents a transition between the urban fringe and the surrounding natural landscape which includes the River Wye SSSI, SAC less than 40m from the development. This transition in the landscape is demonstrated by the change in landscape character types-which runs along the bank- from urban to Riverside Meadows; defined as essentially unsettled landscapes.

4.19 This sensitivity is further explained within the HC Urban Fringe Sensitivity Analysis 2004, supplementary planning guidance: *Within the river corridor, particularly at the eastern and western fringes of the city, key characteristics of Riverside Meadows are still apparent: unsettled landscape, pastoral land use and linear patterns of willow and alder.*

4.20 The integrity of the tree belt which runs along this section of the river bank known as Belmont Wood and Hunderton Rough, a Special Wildlife Site has until this point remained intact, performing the important function of a landscape buffer between the built and natural environment. The clearance of the site has therefore resulted in a break in vegetation exacerbated by the extensive use of hard landscaping the full effects of which can be appreciated due to the topography of the site from the public right of way.

4.21 Acknowledging that the application is retrospective, consideration has to be given to any potential mitigation of the effects. In this instance I am not convinced that replanting or repainting is an appropriate way forward because of the sensitivity of the site. Instead I would recommend the removal of the lower section of the terracing including the summerhouse and steps with balustrade to the river bank. The site should be replanted with the same species as were removed in order to reinstate the tree belt and a planting plan should be submitted to that effect – consideration should be given to the size of species planted in order to gain a reasonable amount of vegetative coverage.

Two final points in respect of this application are also set out below:

4.22 Any lighting as part of this proposal whilst not mentioned in the application would also be considered an intrusion into this natural landscape.

Vegetative cover such as this tree belt performs an additional important function on steep sites such as this, as the roots assist in retaining the soil and avoiding land slip.

4.23 Conservation Manager (Landscape) – amended details:

I have seen the indicative planting plan proposed as mitigation for the works carried out.

- 4.24 The Special Wildlife Site Belmont Wood and Hunderton Rough is described as - *A mixed woodland with a dense understorey. Species present include oak, ash, yew and other conifers.*
- 4.25 I am not convinced that what is proposed is acceptable in terms of either species – several of which are ornamental or domestic varieties, or layout – which has a formal aspect to it with linear hedgerows marking boundaries.
- 4.26 As stated in my earlier response the wood formed an expansive tree belt which served an important function in terms of providing a landscape buffer between the built form and natural environment. The mitigation proposed will address the issue of bare earth and given time screen aspects of built form, but will not reinstate what has been lost and will therefore take on character of its own not in keeping with the natural environment.
- 4.27 Conservation Manager (Ecology) - Object.
- 4.28 Thank you for consulting me on this retrospective application. I am troubled by this development. The belt of woodland has wildlife site designation as the Belmont Wood and Hunderton Rough Special Wildlife Site. Clearly, the continuity of woodland here is broken by the substantial construction which has been erected. As a functional feature alongside the River Wye, the woodland performs a function creating a buffer of vegetation along the riverbank which clearance of trees erodes.
- 4.29 However, my gravest concern is the potential impact upon the River Wye which has international designation as a Special Area of Conservation (SAC) and is a Site of Special Scientific Interest (SSSI) – this development lies within the impact zone for the SAC/SSSI. Natural England have standing advice concerning developments in SSSI Impact Zones which includes residential development as potential impact. Unfortunately, with a retrospective development the local authority have had no opportunity to advise. Consequently what has resulted is the clearance of buffer vegetation near the River Wye with a commensurate removal of biodiversity on a site designated for its nature conservation interest. Under planning regulation this would be unacceptable and, with no pre-development ecological assessment of the site, the impacts of this remain unknown. Hence this development receives an objection.
- 4.30 Conservation Manager (Ecology) – amended details:
- You have my original comments regarding the development in which I raised an objection. The original brief description for this Special Wildlife Site is that of “*A mixed woodland with a dense understorey. Species present include oak, ash, yew and other conifers*”. I would agree that the two oaks may have caused lighter vegetation growth but the construction of the structure has clearly breached the continuity of the understorey referred to above. The ecological report which was welcome and helpful in assessing the situation seeks to redress this situation somewhat with suggestions for a ‘fedge’ and “an under storey of woodland habitats will be created by planting a mixture of Holly, Hazel and Field Maple ...”. (The ash recommended in the report in association with this should not be planted given the national problem with ash dieback disease).
- 4.31 I would agree that this is an acceptable way forward and a good ecological basis on which to proceed. If the application is to be approved and the structure to be retained the planted environment must be commensurate with existing/pre-existing vegetation. The planting plan submitted for approval is not in keeping with this where exotic trees and shrubs are included. Within this woodland designated for its native species, it is inappropriate to include *Salix X Chrysocoma*, *Ilex ‘Golden King’* or *Amelanchier lamarkii*. I welcome the planting of the other species but not these three exotics.

- 4.32 I have no objection to the amenity use of the woodland – indeed the woodland may have been planted or modified for its amenity value within the landscape of the nearby great house. However, formalising this woodland plot through planting non-native species is inappropriate for a designated wildlife site and is contrary to Herefordshire Council's Policies LD2 Biodiversity and Geodiversity and LD3 Green Infrastructure of the Herefordshire Local Plan Core Strategy 2013 – 2031.
- 4.33 The planting 'around the edge' of the plot should remain informal and not tightly hedged in order to delineate any boundary. Any ground cover/perennial planting should be of native species and not invasive exotics such as cotoneaster. I notice one of the photographs also shows a mown sward down to the river's edge which should really be left natural with occasional cuts.
- 4.34 If the application is to be approved and a change of use to residential curtilage adopted I would not object at this stage provided that the amendments above are made to the planting plan with suitable substitute planting to exclude and replace the exotic varieties named above.
- 4.35 Conservation Manager (Ecology) – additional comments:
- Thank you for passing on my comments to the applicants. My previous comments still stand. As a result of Natural England's concern that the LPA do not have enough information to carry out a Habitats Regulations Screening I have looked into the detail of this application. Since this response an ecological assessment has been conducted and protection measures for the SWS and R. Wye SSSI/SAC have been suggested to the applicant.
- 4.36 I note that the northern boundary of the development encroaches upon the SSSI impact zone for the R. Wye SAC by approximately 5 metres but never-the-less, the construction which falls within the impact zone comprises a portion of the steps from the decking and vegetation clearance of the woodland of the Special Wildlife Site. I was concerned in my first response that the (completed) development may impact upon the R. Wye through removal of woodland vegetation.
- 4.37 Exposure of the ground layer of the woodland could lead to soil transport to the R. Wye but I am less concerned that this will happen given that water butts to collect run-off from the buildings have been put in place. I would also expect that the existing root environment will act as a sponge to prevent any such surface flow in the short-term. In the medium to long term, the establishment of trees and shrubs should ameliorate the situation and return the ecological functioning to the area both from a watershed perspective and in biodiversity. I am assured that replanting of native species commensurate with the woodland will be done and that exotic species will not be used at the site (including removal of already planted willows).
- 4.38 The ecological assessment commissioned subsequent to the concerns raised by myself and Natural England, identifies measures for mitigation and avoidance of impact on the qualifying features of the R. Wye SAC. I believe the recommendations from the report together with the above proposals provide sufficient information to formulate mitigation measures. In order that there is no further impact on the R. Wye features such as otter, the applicant must not maintain the bank down to the river as mown strip. However, this area is not within the remit of planning and the applicant is advised to consult upon how best to maintain the 10 metre strip alongside the channel to avoid disturbance to otter and to avoid bank erosion.
- 4.39 I have one more concern that granting planning permission for such works as have been done will set a precedent. I am not enamoured of the thought that other land owners may see this application as acceptable; it is not. The cumulative impact of other development alongside this cannot be seen as easily mitigated and continuing removal of woodland vegetation from the SWS should be seen as degradation of a natural resource and against policy for such sites.

- 4.40 For this application, I believe the mitigation measures above along with minimising lighting of the structure is the best way forward should planning approval be given I would recommend the following conditions:
- 4.41 The recommendations set out in the ecologist's report from Tim Woodcock dated December 2016 should be followed unless otherwise agreed in writing by the local planning authority. A working method statement for establishing protected species mitigation and habitat enhancements should be submitted to the local planning authority in writing. The plan shall be implemented as approved.
- 4.42 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 (with amendments and as supplemented by the Countryside and Rights of Way Act 2000), the Natural Environment and Rural Communities Act 2006 and the Conservation of Habitats and Species Regulations 2010 (and 2012 amendment).

- 4.43 To comply Herefordshire Council's Policies LD2 Biodiversity and Geodiversity, LD3 Green Infrastructure of the Herefordshire Local Plan Core Strategy 2013 – 2031 and to meet the requirements of the National Planning Policy Framework (NPPF).
- 4.44 An Environmental Management Plan shall be submitted for approval in writing by the local planning authority and shall include details of vegetation management, means of lighting and measures to minimise potential for soil erosion from use of the development. The Plan shall be implemented as approved.

Reasons:

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

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

- 4.46 Transportation Manager:

Proposal acceptable (no conditions and/or informatives required).

- 4.47 Environmental Health Manager (Contamination):

I have reviewed our records and note that the proposal is to the east of a former landfill site in an area where precautionary gas protection measures were installed in buildings. These should be included in the garden room or a suitable assessment be carried out to consider risk from the landfill to the development.

4.48 Recommended Condition:

"Properties in this area include gas protection measures within their construction and as such it is recommended the same precautionary measures are installed within the garden room OR a suitable risk assessment be carried out to consider risk from the landfill to the development. Where applicable, suitable validation documentation will be required in due course to demonstrate that these works have been carried out."

5. Representations

5.1 Belmont Rural Parish Council - resolved not to support the application because:

- a) It was not in keeping with the landscape.
- b) There was no ecological report and the removal of trees would have an adverse impact on wildlife, particularly foraging badgers.
- c) The Ward Councillor was asked to request that the application be considered at the Planning Committee rather than determined by a Planning Officer.

5.2 Nineteen representations have been received, five objecting, thirteen supporting and one mixed. In summary the main points raised are as follows:

Support

- over the last 10 years sections of land along the riverbank have been purchased from Barwood House and incorporated into back gardens
- objection to harm to the Wye Valley are a little far fetched
- improvement to the appearance of the riverbank
- wooden structure would blend with vegetation and weather in time
- discreet siting amongst trees
- high quality development, has tidied up the area
- planting has taken place
- similar improvements along this stretch and none detract for the area
- would encourage wildlife rather than destroy it, animals can thrive in managed areas
- does set a precedent, but not many could afford such a design so unlikely to see rows of huts
- lots of the small trees and foliage were already rotten, site was a wilderness
- previously there was dense ivy on site, no oaks or yews found on other sites
- cleared vegetation is providing log pile and dead wood habitats
- some of the planting is non-native
- steps are needed to provide safe access to the riverside
- work does not encroach on the SSSI, as the protected area is the river and immediate bank – not the flood plain or area beyond where the development is
- no properties directly look at the development
- difficult to balance development on a housing estate on the urban-rural fringe
- no further loss of wildlife habitat or greater visual impact than any other Belmont property backing onto the Wye
- natural viewpoint of the river, look forward to spending time in this tranquil environment
- permission could be granted with conditions, such as concealing the fencing with plants, preferably wild
- feel more strongly about reduction of Himalayan Balsam and mess from dogs and litter
- more people should take pride in the area like this
- no impact on Hartland Close
- garden extension on the applicants' own land

- other properties have developed their gardens in similar ways – precedent set
- permitted development rights are met, as it is the applicants' property
- lighting does not disturb others
- transformed for the applicants to enjoy
- negatives should not over rule the profound job

Objection

- Works are not in keeping with the natural beauty of the area and totally change the appearance from the river bank
- Can be seen from the other side of the riverbank and are unsightly
- Very stark appearance which would not be restored by replanting
- Harmful to natural beauty of the area, wildlife and their habitat
- No mention in the application of the stair handrails or lighting which have been installed
- Pre-application advice was not sought
- Boundary fence is not post and rail
- Site is within 20 metres of the River Wye
- Incorrectly/incompletely filled application form
- All ground level planting has been removed and tree limbs removed and burnt
- Development will be more obvious in the Autumn
- Retrospective application suggests disregard for the natural beauty of the area
- If allowed would set a precedent for others along the bank to develop
- Unauthorised development should be removed as soon as possible and restored as far as possible
- Removal of trees and excavation give rise to concerns about subsistence
- Other residents who have purchased the land down to the river have developed in keeping with the environment, minimising impact
- Large construction in the middle of the land, large quantities of concrete needed

Other comments

- Was advised that similar works at my property would not be appropriate by the Council at pre-application advice stage
- Applicants had received poor legal advice, but were made aware that the works required planning permission but continued at their own risk. The Council should have enforced a stop of works
- Work carried out without architect's plans, structural engineer's report or compliance with Building Regulations
- Application should be considered on its own merits

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

https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=162891&search=162891

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 legal starting point for the consideration of this application is that set out in section 38 (6) of the Planning and Compulsory Purchase Act 2004. This states that:

"If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

- 6.2 The development plan is, for the purpose of this application, the Herefordshire Local Plan – Core Strategy 2011-2031 (CS). There are no specific policies contained within the CS relating to the change of use of land or the provision of new buildings and structures on such land. Consequently, the application falls to be considered against policies relating to the impacts of such developments. In this case the key issues are considered to be the landscape impact, the effect on biodiversity and the potential risk from contaminated land and the relevant CS policies pertaining to these issues are SS1, SS6, LD1, LD2 and SD1. These policies relate to sustainable development principles and environmental impacts on the landscape and biodiversity.
- 6.3 Setting out the overarching objective of the CS, the presumption in favour of sustainable development, policy SS1 promotes a positive approach reflective of the National Planning Policy Framework (NPPF). It states that solutions will be sought to facilitate approval of development that improves the social, economic and environmental conditions of the County.
- 6.4 CS policy SS6 states that ‘*Development proposals should conserve and enhance those environmental assets that contribute towards the county’s distinctiveness, in particular its settlement patterns, landscape, biodiversity and heritage assets and especially those with specific environmental designations.*’ The policy advocates an integrated approach, based on sufficient information from the outset to determine the effect on specified considerations, including amongst others, the landscape, biodiversity especially SACs and SSSIs, green infrastructure and local amenity.
- 6.5 Policy LD1 – Landscape and townscape, states that:
- Development proposals should:*
- *Demonstrate that the character of the landscape and townscape has positively influenced the design, scale, nature and site selection, protection and enhancement of the setting of settlements and designated areas;*
 - *Conserve and enhance the natural, historic and scenic beauty of important landscapes and features, including Areas of Outstanding Natural Beauty, nationally and locally designated parks and gardens and conservation areas; through the protection of the area’s character and by enabling appropriate uses, design and management;*
 - *Incorporate new landscape schemes and their management to ensure development integrates appropriately into its surroundings; and*
 - *Maintain and extend tree cover where important to amenity, through the retention of important trees, appropriate replacement of trees lost through development and new planting to support green infrastructure.*
- 6.6 Policy LD2 – Biodiversity and geodiversity states that proposals should conserve, restore and enhance the biodiversity and geodiversity assets of Herefordshire, through the retention and protection of nature conservation sites and habitats, and important species in accordance with their status. Development that is likely to harm sites and species of European Importance will not be permitted. Development that would be liable to harm SSSIs or nationally protected species will only be permitted if the conservation status of their habitat or important physical features can be protected by conditions or other material considerations are sufficient to outweigh nature conservation considerations. Development that would be liable to harm the nature conservation value of a site or species of local nature conservation interest will only be permitted if the importance of the development outweighs the local value of the site, habitat or physical feature that supports important species. Development that will potentially reduce the coherence and effectiveness of the ecological network of sites will only be permitted where adequate compensatory measures are brought forward. Proposals should provide for the restoration and enhancement of existing biodiversity and geodiversity features on site and

connectivity to wider ecological networks; and the creation of new biodiversity features and wildlife habitats.

- 6.7 The Environmental Health Manager has advised that the proposal lies to the east of a former landfill site in an area where precautionary gas protection measures were installed in buildings. CS policy SD1 states that where contaminated land is present it is required to undertake appropriate remediation and that development should safeguard the residential amenity of residents.
- 6.8 The NPPF is a material planning consideration in decision taking. It promotes sustainable development and recognises that there are three dimensions to this: economic, social and environmental. It states that these three roles are not to be undertaken in isolation, as they are mutually dependent. It is a core planning principle of the NPPF that planning should contribute to the conservation and enhancement of the natural environment. Chapter 11 of the NPPF provides more detailed guidance on the approach to conserving and enhancing the natural environment. This advises that planning should aim to conserve and enhance valued landscapes, recognise the wider benefits of the ecosystem, minimise impacts on biodiversity and provide net gains where possible. Development likely to have an adverse impact on a SSSI should not normally be permitted (paragraph 118 - NPPF). An exception only being made where the benefits clearly outweigh both the impacts on the specific features of the site that make it important and the broader impacts on the national network of SSSIs. Continuing the chapter advises that opportunities to incorporate biodiversity should be encouraged.
- 6.9 Turning to the contamination issue, the NPPF states that sites must be suitable for the new use taking into account, amongst other matters, pollution arising from previous uses. Furthermore, where a site is affected by contamination the responsibility for securing safe development rests with the developer/landowner. Amongst the core planning principles the NPPF lists the need for a good standard of amenity for all occupants of land/buildings. This is relevant as the garden room is used incidentally to the use of the dwellinghouse.
- 6.10 Finally, in planning policy guidance terms, the NPPF promotes good design, which promotes developments responding to local character and history, reflecting the identity of the surroundings and visually attractive schemes as a result of good architecture and appropriate landscaping.
- 6.11 As identified and detailed in the Conservation Manager's (Landscape) comments, the site is highly sensitive; representing a transition between the urban fringe and the surrounding natural landscape which includes the River Wye SSSI and SAC. Cumulatively, the works comprise the provision of two decked areas, the provision of stairs and steps and a garden room. As shown on the submitted cross section plan the lower of these decked areas, on which the garden room is located, is elevated by approximately 1.1 metre above the natural sloping land levels. The steps down to the river from this deck start at the same height and include a hand rail of some 1.3 metres in height. The upper deck, adjacent to the original rear garden, is some 0.3 metres above the lower ground level. None of these structures benefit from 'permitted development rights', because they are not within the curtilage of the dwellinghouse and the applicants now understand this.
- 6.12 Notwithstanding, the revised, indicative planting scheme, it is considered that the provision of the decking areas, garden room and associated steps/staircases have a harmful impact on the landscape. They represent an incursion of the built form, by way of the extension of a suburban character into this natural area. It appears incongruous with the attractive landscape of this part of the river corridor, which is prominent from the Wye Valley walk, on the opposite side of the river. The proposal for further planting has been carefully considered, but in this case, due to the siting, size and design of the structures and the land levels, Officers are not persuaded that this would satisfactorily overcome the identified harm in the short or long term. Conversely, to some limited degree, the planting would provide a delineation of the northern boundary of the

lower part of the embankment, which the Conservation Manager (Landscape) considers would create further harm. The development fails to respect its context and does not demonstrate that the landscape has positively influenced its site selection, scale or design. Therefore, the development fails to accord with CS policies SS6 and LD1 and the requirements of the NPPF.

- 6.13 With regards biodiversity the Conservation Manager (Ecology), has concluded on the basis of the submitted ecology report and illustrative planting (subject to some further modifications) that the identified adverse impacts could be suitably mitigated if controlled by suitably worded conditions. Whilst the Ecologist considers that in this specific case the adverse impacts can be ameliorated, due to the sensitivity of the site in its wider context and the potential for other owners of the strip of land from their rear garden to the riverbank to propose similar development, there is a potential that a cumulative impact could not be mitigated.
- 6.14 Turning to the potential for contamination, the Environmental Health Manager has recommended a condition to ensure that the use of the garden room is safe, if permission is granted. Given the site's location near to a landfill site this is considered to be a proportionate approach and a condition requiring this would meet the tests for the imposition of such, as set out in the National Planning Policy Guidance.
- 6.15 Assessing the scheme as a whole, in light of the three mutually dependent dimensions of sustainable development, namely economic, social and environmental roles, it is considered that there are only very limited economic benefits through the employment of trades and purchasing of materials and planting and no public social benefits. With regards the environmental role, harm has been identified to both landscape and biodiversity, although the latter is capable of satisfactory mitigation. When considered in the planning balance, the harm to the landscape is sufficient to warrant the development to be unsustainable and as such there is no presumption to approve. The development is considered to be contrary to both CS policies and the NPPF and in the absence of any material planning considerations indicating otherwise a decision should be made in accordance with the Development Plan.

RECOMMENDATION

That planning permission be refused for the following reason:

- 1. By virtue of their siting, scale and design, the decking, garden room and associated staircases/steps appear as intrusive, prominent and incongruous structures on the bankside, adversely affecting the character and amenity of the landscape, contrary to policies SS6 and LD1 of the Herefordshire Local Plan – Core Strategy.**

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 and identifying matters of concern with the proposal. The applicants have been given the opportunity to address the issues raised where possible. However, the issue of landscape impact is fundamental and it is considered not to be possible to negotiate a satisfactory way forward due to the harm which has been clearly identified within the Committee Report and the reason for the refusal. Approval of the scheme is not possible.**

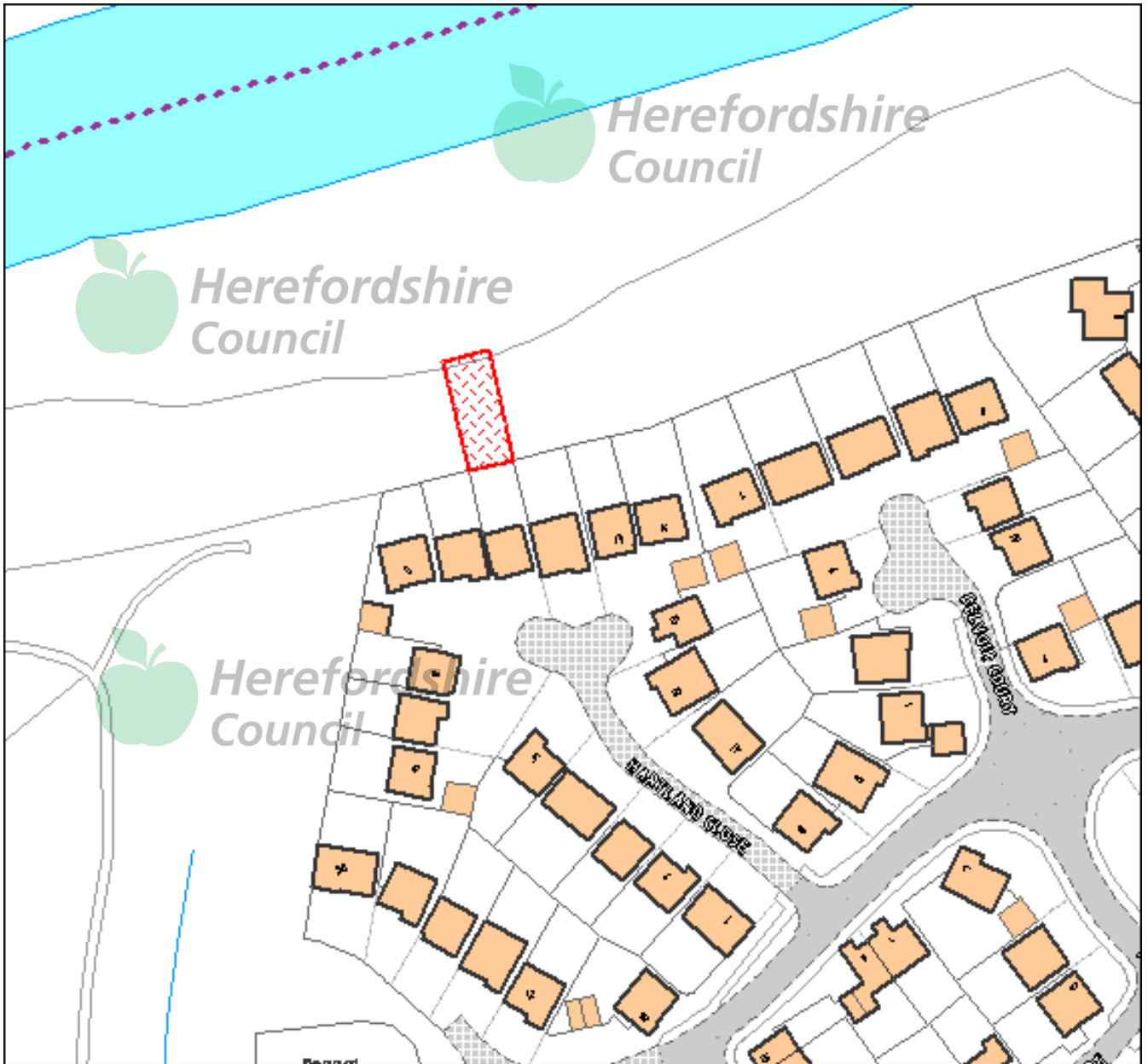
Decision:

Notes:

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Background Papers

Internal departmental consultation replies.



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APPLICATION NO: 162891

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