

MEETING:	PLANNING COMMITTEE
DATE:	14 June 2017
TITLE OF REPORT:	170677 - APPLICATION FOR UP TO 10 NEW RESIDENTIAL PROPERTIES, VEHICLE TURNING, MANOEUVRING AND LANDSCAPING AT LAND AT CASTLE END, LEA, ROSS-ON-WYE. For: Mr Grindon per Mr John Kendrick, Procuero, St Owens Cross, Hereford, Herefordshire HR2 8LG
WEBSITE LINK:	https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=170677&search=170677
Reason Application submitted to Committee – Previous application determined by Committee	

Date Received: 27 February 2017

Ward: Penyard

Grid Ref: 365470,221832

Expiry Date: 24 April 2017

Local Members: Councillor H Bramer

1. Site Description and Proposal

- 1.1 The application site is located on the western side of the A40 Ross-on-Wye to Gloucester Road at Lea, a settlement identified under Core Strategy policy RA2 as an appropriate location for new development. The site is located adjacent to the main built form of one of the cores that comprises Lea village. The site comprises a rectangular parcel of land slightly raised above road level and laid to grass. Castle End Farm is located to the north with residential dwellings to the south (The Lodge) and a housing estate called The Brambles. Opposite the site to the east is a parcel of land which originally formed part of this application; this is also laid to grass. A vehicular access to the rear of Lea Primary School is located immediately to the south of this land. Castle End a Grade 2* listed dwelling is located to the north of the site on the opposite side of the road.
- 1.2 The proposal is an outline planning application for the erection of up to ten dwellings with vehicle turning, manoeuvring and landscaping detailed. Along with the principle of development, access, landscaping and scale are matters under consideration. Appearance and layout are held as reserved matters.
- 1.3 The applicant has appealed against non determination.

2. Policies

2.1 The following sections of the National Planning Policy Framework (NPPF) are particularly relevant:

Ministerial foreword
Introduction
Achieving Sustainable Development
Delivering Sustainable Development
Section 6 - Delivering a Wide Choice of High Quality Homes
Section 7 - Requiring Good Design
Section 8 - Promoting Healthy Communities
Section 10 - Meeting the Challenge of Climate Change
Section 11 - Conserving and Enhancing the Natural Environment
Section 12 - Conserving and Enhancing the Historic Environment

2.2 Herefordshire Core Strategy

SS1 - Presumption in Favour of Sustainable Development
SS2 - Delivering New Homes
SS3 - Releasing Land for Residential Development
SS4 - Movement and Transportation
SS7 - Addressing Climate Change
RA1 - Rural Housing Strategy
RA2 - Herefordshire's Villages
H3 - Ensuring an Appropriate Range and Mix of Housing
OS1 - Requirement for Open Space, Sports and Recreation Facilities
OS2 - Meeting Open Space, Sports and Recreation Needs
MT1 - Traffic Management, Highway Safety and Promoting Active Travel
LD1 - Local Distinctiveness
LD2 - Landscape and Townscape
LD3 - Biodiversity and Geodiversity
LD4 - Historic Environment and Heritage Assets
SD1 - Sustainable Design and Energy Efficiency
SD3 - Sustainable Water Management and Water Resources

2.3 Lea Parish Council designated a Neighbourhood Area on 13 May 2014 but the NDP has not progressed to a stage where it can be afforded any weight in decision making

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 162383/O – Outline application for 14 new residential properties, vehicle turning, manoeuvring and landscaping – Withdrawn

141368/O – Proposed site for 14 new residential properties, vehicle turning and landscaping – Refused 25 March 2015
Appeal dismissed 1st Dec 2015

132004/O – Erection of 30 new residential homes including 11 affordable properties, landscaping, vehicular access, egress and turning and manoeuvring areas – Withdrawn

Further information on the subject of this report is available from Mr C Brace on 01432 261947

120447 - Outline application for a four bedroom dwelling. Refused 30 May 2012.
Appeal Dismissed 13th March 2103

3.2 132004 - Erection of 30 dwellings including 11 affordable.
Withdrawn 27 March 2014

4. Consultation Summary

Statutory Consultations

4.1 Historic England comments and directs the Council to Historic England's guidance contained in 'The Setting of Heritage Assets - Historic Environment Good Practice Advice Note in Planning:3' and also suggest that the views of the Council's specialist conservation and archaeological advisers, as relevant are considered.

4.2 Welsh Water comments the proposed development would overload the existing Waste Water Treatment Works. However, improvements are planned for completion by 31st March 2020. As such Welsh Water offers the following condition to safeguard their security of service to customers and the protection of the environment:

No buildings on the application site shall be brought into beneficial use earlier than 31/03/2020, unless the upgrading of the Waste Water Treatment Works, into which the development shall drain, has been completed and written confirmation of this has been issued by the Local Planning Authority. A number of other conditions are also requested.

No problems are envisaged with the provision of water supply for this development.

Internal Council Consultations

4.3 The Council's Conservation Manager (Ecology) confirms [he has] read the ecological reports based upon the surveys of the site going back to 2012. The biodiversity of the site remains unchanged with little to indicate that the conservation status protected species will be impacted upon. If this is to be given approval it is recommended a condition for biodiversity enhancement is added. These are set out within the recommendation.

4.4 The Council's Conservation Manager (Heritage) has not returned comment at the time of writing and as such comments will be provided as an update.

4.5 The Council's Transportation Manager has no objection. Numerous requested conditions and informatives are attached to the recommendation, below.

5. Representations

5.1 Lea Parish Council objects to the proposal for the following reasons:

1. Sustainability

Herefordshire Council's Core Strategy's indicative target figure for the growth in the number of dwellings to 2031 is 14 per cent for the Ross-on-Wye Housing Market Area. In Lea's case that equates to approximately 43 new homes. Either outline or full planning permission has already been granted for 100 new dwellings however. If approved, the Castle End development would bring the total to 110 - more than 2.5 times the Core Strategy's projected total.

2. Site Access

The applicant states there is unrestricted vehicular access to the site but has failed to produce proof that this is the case.

3. Sewage Disposal

The applicant also states that sewage from the proposed development would be disposed of by connecting to a public sewer near to the staff access road to Lea Primary School. The feasibility of this is questioned, it being understood locally that the sewer was provided with a capacity to cater for no more than the then planned development.

4. 'Urbanisation'

Being sited on an elevated position close to and parallel to the highway, some of the proposed dwellings would strike a discordant note as one approaches Lea along the A40 from the direction of Ross-on-Wye, creating an urban feel to the approach to the village. Earlier development further towards the village centre is set well back from the main road and is unobtrusive.

5. Highway Matters

The installation of a pedestrian crossing to cater for the size of a planned development is considered to be totally unnecessary and only adds to the 'urbanisation' of the approach to the village. Any children living within the proposed development and attending the local Primary School would be required to travel quite a distance along the busy A40 road in order to gain access. (Note that the access nearest to the proposed development is for staff only.)

6. Core Strategy Policy RA2 Issues

The applicant has not consulted locally about his proposals to develop this site. Had he done so he would have realised that there is far more interest in bungalows and accessible homes given the local demographic than in the type of properties planned. The emerging Lea Neighbourhood Development Plan is approaching Reg 14 stage. It is understood that the NDP cannot be taken into consideration until it reaches Reg 16 stage, however, facts obtained as a result of public consultation are important. In this regard Policy RA2 is not satisfactorily dealt with, in particular in that it states that proposed dwellings are required to meet the following rules:

- *"Their design and layout should reflect the size, role and function of each settlement and be located within or adjacent to the main built-up area."*
- *"They result in the development of high quality, sustainable schemes which are appropriate to their context and make a positive contribution to the surrounding environment and its landscape setting."*
- *"They result in the delivery of schemes that generate the size, type, tenure and range of housing that is required in particular settlements, reflecting local demand."*

7. Industrial Use Conflict

The buildings immediately adjacent to the site are authorised for and used as light industrial premises. Noise and other pollution would be foreseeable circumstances creating a clear conflict of interest.

8. Planning Application History

The Planning Inspector dealing with an appeal against refusal of planning application P162383 considered that at that time development of the site for housing development would not be inappropriate, however, the situation has changed significantly and the Parish Council considers that it is now inappropriate.

Lea Parish Council unanimously recommends refusal of the application.

5.2 Nine letters of objection have been received from local residents. Comments are summarised as:

- A similar application for 14 dwellings on this site has already been rejected
- The reduction in numbers to 10 will still attract the same problems as before. The reduction in numbers means that the applicant will no longer have to pay Section 106 monies
- There is already planning approval for 100 new houses in Lea which far exceeds the minimum 43 suggested in the County's Core Strategy
- More 4+ bedroom houses are not what many villagers feel are needed or wanted.
- Reference is made to the Neighbourhood Plan
- Concern regarding highway safety on the A40
- On the basis of the previous Inspectors' conclusion, no s106 monies results in the proposal being unsustainable
- Concern over loss of and future of retained hedgerows
- Proposal is suburban in form and out of character with the location
- No affordable housing provided
- The site is located outside the recognised settlement area on the very fringe of the village
- A third party who owns land on which access to the proposal relies, will not allow such use or sell the land
- Welsh Water has made it very clear that there is no capacity in the existing pumping station for any further development and this is unlikely to change before 2020
- Impact on the setting of heritage assets
- Impact on the setting and appearance of Lea
- Concern regarding highways data provided
- The gross floor area of the proposal amounts to 1,811 sq m according to the applicant's own plans. As such a s106 providing financial contributions is required
- the applicant has no legal or equitable right over the land necessary to provide necessary visibility splays which is in the control of third parties
- The adjacent land owners have repeatedly stated that they will not provide the land necessary to make a safe access and there is no reasonable prospect of the applicant securing a safe access due to land ownership and other legal constraints
- The need for a Pelican or pedestrian crossing must be questioned

5.3 A general comment has been received, comments are summarised as:

- The proposed 2 storey houses style and height, positioned fairly close to the road, will produce a terraced urban effect
- If the front row was reduced to single storey or removed and buildings set back from the road as with the adjacent Brambles, together with tree planting, the development would fit comfortably into the setting
- The species of tree planting fronting the development would need to be carefully considered to be of significant bulk and to link in well with the surrounding tree species

- Appropriate tree planting would be desirable at the back of the development to soften views of houses from the surrounding countryside. This would allow the development to visually integrate into its setting.

5.4 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=170677&search=170677

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 Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 requires local planning authorities to determine applications in line with the provisions of the local development plan unless material circumstances dictate otherwise.

6.2 The application site was subject to a previous Appeal against the refusal by this Committee on 25 March 2015 of planning application reference 141368/O, which was for 14 dwellings. This appeal was assessed against both NPPF and Core Strategy policies. The Inspector appointed to that appeal determined the main issues in the assessment of development upon the site to be as follows:

- whether the setting of the listed building known as Castle End would be preserved
- whether the proposed development would cause unacceptable risk to highway safety on the main A40 road
- whether the proposal would represent a sustainable form of development having regard to local and national policies for the development of housing in rural settlements

6.3 Further to the above and given the passage of time, the impact on ecological interests is also considered to be an important additional material consideration. It is emphasised that the revised proposal has a reduced number of units and is described as a development for *up to ten dwellings*.

Setting of listed buildings

6.4 Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states "*In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.*"

6.5 NPPF section 12 sets out the position regarding conserving and enhancing the historic environment. Specific principles and policies relating to the historic environment and heritage assets and development are found in paragraphs 126 – 141.

6.6 The NPPF sets out in paragraph 126 that there should be a positive strategy for the conservation of the historic environment. It is recognised that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance taking account of:

- The desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation

- The wider social, cultural, economic and environmental benefits that conservation of the historic environment can bring
 - The desirability of new development making a positive contribution to local character and distinctiveness
 - Opportunities to draw on the contribution made by the historic environment to the character of a place.
- 6.7 Paragraphs 131 – 133 set out what LPAs should consider in determining planning applications featuring heritage assets. This includes:
- The desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
 - The positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
 - The desirability of new development making a positive contribution to local character and distinctiveness.
- 6.8 The Core Strategy sets out heritage policy under LD4. The historic environment is defined as all aspects of the environment resulting from the interaction between people and places through time, including all surviving physical remains of past human activity, whether visible, buried or submerged, and landscaped and planted or managed flora. Those elements of significance with statutory protection are referred to as designated heritage assets. Policy LD4 is applicable to heritage assets throughout Herefordshire whether formally designated e.g. listed buildings and conservation areas, or not.
- 6.9 Policy LD4 – *Historic environment and heritage assets* requires: development proposals affecting heritage assets and the wider historic environment should:
- Protect, conserve, and where possible enhance heritage assets and their settings in a manner appropriate to their significance through appropriate management, uses and sympathetic design, in particular emphasising the original form and function where possible;
 - The conservation and enhancement of heritage assets and their settings through appropriate management, uses and sympathetic design. Where opportunities exist, contribute to the character and local distinctiveness of the townscape or wider environment, especially within conservation areas;
 - Use the retention, repair and sustainable use of heritage assets to provide a focus for wider regeneration schemes;
 - Record and advance the understanding of the significance of any heritage assets to be lost (wholly or in part) and to make this evidence or archive generated publicly accessible and where appropriate, improve the understanding of and public access to the heritage asset.
- 6.10 In considering the previous appeal, the Inspector assessed the setting of Castle End, and had regard to current national guidance which has not materially changed since that decision (see paragraph below). The Council's Conservation Manager previously acknowledged with regards to the previous proposal for 14 units, that the "*more minor extent*" of change to the surroundings of Castle End would not alone justify refusal of the scheme. Furthermore, the Inspector of an earlier appeal for a proposal for a single dwelling on part of the application site, found that the site represented a visual distinction in the transition from settlement to open countryside but he did not expressly associate it with the setting of Castle End. On balance, therefore there is no strong evidence that the site plays more than a very minor role in the setting of Castle End.
- 6.11 The Inspector stated: *All in all, the proposed development would not be discordant or unduly further suburbanise or erode the character of this approach to the village or impair the setting or heritage significance of Castle End* and concluded that the proposed development would preserve the setting of the listed building, in accordance with the clear expectations of Section 66 Planning (Listed Buildings and Conservation Areas) Act 1990, which requires the decision

taker to have special regard to the matter. Nor would there be conflict with the NPPF which, at paragraph 132, requires great weight to be given to the conservation of heritage assets, recognising that, the more important the asset, the greater the weight should be. The proposal would also comply with the relevant CS Policy LD4, which seeks to protect, conserve and where possible enhance heritage assets and their settings.

- 6.12 On the above basis, reduced numbers proposed and no material change to local or national planning policies regarding the setting of heritage assets since the above decision, a similar conclusion must be reached. As such Core Strategy policies SS6 and LD4 are satisfied along with the relevant heritage aims and objectives of the NPPF and section 66 Planning (Listed Buildings and Conservation Areas) Act 1990.

Highways

- 6.13 The above referenced Inspector went on to assess the impact of the 14 unit proposal on highway safety grounds. The Inspector concluded that the proposed development would not create unacceptable risk of harm to highway safety on the A40. Accordingly, he found there would be no conflict with the relevant aspects of CS Policy MT1, which include the need to ensure that developments are designed to avoid adverse impacts on the safety and capacity of the highway network and achieve safe access and accommodate all users' needs. Nor would there be significant conflict with the NPPF's objectives of creating safe and suitable access and environments for pedestrians and other road users and facilitating social interaction, as referred to in paragraphs 32, 35 and 69.
- 6.14 This proposal reduces the number of units from 14 to 10 and would therefore have a lesser impact than the previous proposal which was found at that time to be acceptable on highway grounds. Notwithstanding that, given the passage of time and the potential for increased traffic movements on the A40 manifested from the number of new houses built or permitted at Ross on Wye, Weston under Penyard and Lea itself since the appeal, the Council must reassess anew the highways impact, if nothing else, from a duty of care. The previous Inspector noted the A40 is a busy road, as evidenced by the high peak hour flows recorded by the appellant's traffic survey.
- 6.15 Following detailed assessment by the Area Engineer and receipt of further plans and details, Officers are satisfied that the proposal does not represent an unacceptable risk to highway safety. Suitable visibility splays can be achieved, subject to adjoining land owners agreement, along the access/egress point onto the A40. Furthermore it is considered that the proposed crossing can also be achieved linking the development to the other side of the road and providing safe pedestrian access to the school and other parts of the village. The exact location of the crossing can be determined under the section 278 process and as outlined by conditions and informatives, below. Conditions also require the implementation of the approved access splays prior to any further development on site so to ensure highway safety.

Sustainable development and housing land supply

- 6.16 Again, the previous Inspector considered this issue, both at a local and countywide level. Since then the Supreme Court has considered the use of, implication and application of NPPF paragraphs 14 and 49 and the role and weight of the Local Development Plan and its policies.
- 6.17 Paragraph 14 of the NPPF clearly defines '*presumption in favour of sustainable development*' as the golden thread running through the NPPF. It goes on to state that for decision taking this means approving development proposals that accord with the development plan without delay 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 the NPPF indicate development should be restricted.

- 6.18 The local authority is currently failing to provide a 5 year Housing Land Supply, plus a 20% buffer, which must be met by all local authorities in accordance with paragraph 47 of the NPPF. Paragraph 49 of the NPPF states that '*relevant policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites*'.
- 6.19 Where the existence of a five year land supply cannot be demonstrated, there is presumption in favour of granting planning permission for new sustainable housing unless the development can be shown to cause demonstrable harm to other factors that outweigh the need for new housing.
- 6.20 Paragraph 14 of the NPPF states that there "*is a presumption in favour of sustainable development and for decision taking this means... where the development plan is absent, silent or relevant policies are out of date, granting planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole... or specific policies in this Framework indicate development should be restricted.*"
- 6.21 In reaching a decision upon new housing the housing land supply position will need to be balanced against other factors in the development plan and/or NPPF which could result in the refusal of planning permission. This site is therefore assessed and considered on its suitability as being sustainable in regards its location and material constraints and considerations.
- 6.22 This position has been crystalised following a recent Supreme Court Decision and the implications of this position following the *Suffolk Coastal DC v Hopkins Homes & SSCLG* and *Richborough Estates v Cheshire East BC* [2017] UKSC 37 *On appeals from: [2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and [2015] EWHC 410 (Admin)*.
- 6.23 The Supreme Court has delivered its verdict on the application and meaning concerning paragraphs 14 and 49 of the National Planning Policy Framework (NPPF), overturning the Court of Appeal's interpretation of the phrase "relevant policies for the supply of housing". The legal case brought the two together: *Hopkins Homes v Suffolk Coastal District Council* and *Richborough Estates v Cheshire East Borough Council*.
- 6.24 The Court of Appeal's judgment broadened the definition of the "relevant policies for the supply of housing" detail in paragraph 49 of the NPPF so that it can be taken to refer to all policies that create or constrain land for housing development, such as green belt designation. Therefore, where a local authority cannot demonstrate an up-to-date five-year land supply, these relevant policies were to be considered as not up to date.
- 6.25 The Supreme Court has considered and found that the Court of Appeal's interpretation of what "*relevant policies for the supply of housing*" means was wrong. It said that the "straightforward interpretation is that these words refer to the policies by which acceptable housing sites are to be identified and the five-years supply target is to be achieved. That is the narrow view".
- 6.26 The Supreme Court ruled "*In neither case is there any reason to treat the shortfall in the particular policies as rendering out of date other parts of the plan which serve a different purpose.*"
- 6.27 At practical level, as an example, if local plan policies on heritage or landscape direct the decision maker to refuse, then that assessment and decision is not contrary to the requirements of the NPPF if the harm and material considerations outweigh the benefits of the proposal.

6.28 According to the Supreme Court, the important question is not how to define individual policies, but whether the result is a five-year supply in accordance with the objectives set by paragraph 47:

“If there is a failure in that respect, it matters not whether the failure is because of the inadequacies of the policies specifically concerned with housing provision, or because of the over-restrictive nature of other non-housing policies. The shortfall is enough to trigger the operation of the second part of paragraph 14.”

6.29 Like the Court of Appeal, the Supreme Court said it is paragraph 14, not paragraph 49, that provides the *“substantive advice by reference to which the development plan policies and other material considerations relevant to the application are expected to be assessed”*.

6.30 This means permission should be granted unless adverse impacts would significantly and demonstrable outweigh the benefits when assessed against the NPPF’s policies taken as a whole. This would also apply where specific policies in the NPPF indicate development should be restricted.

6.31 Core Strategy Policy SS1 echoes the Framework’s presumption in favour of sustainable development. Setting out the strategy for delivery of new homes, CS Policy SS2 provides that in the rural areas housing will be acceptable within identified settlements where it helps to meet housing needs and requirements, supports the rural economy and local services and facilities and is responsive to the needs of the community.

6.32 CS Policy SS3 reinforces the importance of ensuring a plan-led supply of housing land. CS Policy RA1 identifies a minimum proportionate growth target for housing of 14% within the Ross on Wye Rural Housing Market Area, equating to a minimum number of 43 dwellings for Lea Parish. Permission has been granted for 38 dwellings on a largely greenfield site elsewhere in Lea, whilst two other schemes larger than the current appeal scheme have been refused permission. Third parties refer to varying numbers of new dwellings in the pipeline. In the context that the CS target for Lea is expressed as a minimum, with no numerical cap on housing growth per se, it was concluded there was no conflict with the CS strategy for housing land provision or, numerically, that this proposal represented a disproportionate addition to the size of the village.

6.34 The Neighbourhood Development Plan (NDP) for the Parish is still at an early stage in its preparation and has no weight with regards the assessment of this application. Consequently, there are no strong grounds to resist the appeal scheme on the basis that it is premature and would undermine an emerging NDP. Accordingly, there would be no conflict with CS Policy RA2, which confirms that adopted NDPs will allocate sites for housing, but in the interim applications will be assessed against their relationship to the built form of the settlement.

6.35 Overall therefore, with regard to the issue of sustainable development and housing land supply, the Inspector concluded that the proposal for 14 dwellings would represent a sustainable form of development having regard to local and national policies for the development of housing in rural settlements. At the time of that appeal, the Council was able to demonstrate it had a five year supply of housing land. That is not the current case or position as outlined above and accordingly adds greater weight to the requirement to grant planning permission where the adverse effects do not outweigh any harm identified

6.36 The Inspector noted with respect to assessing *‘sustainable development’* and housing land supply, the same findings would apply but with even greater emphasis if an under-supply had been identified at that time. Overall the Inspector found no fundamental conflict with the

proposal for 14 dwellings vis-à-vis the adopted development plan strategy for housing in the rural area, with any emerging Neighbourhood Development Plan or with the Framework's core principle that development should be plan-led, thereby empowering local people to shape their surroundings. On this basis the proposal for ten units is considered acceptable.

Ecological Issues

- 6.37 The ecology of the site and assessment is based upon the surveys going back to 2012. The biodiversity of the site remains unchanged with little to indicate that the conservation status of protected species will be impacted upon.
- 6.38 Measures to enhance the biodiversity of the site are secured in accordance with Core Strategy policies LD2 and LD3 and Paragraph 118 of the NPPF. Additionally, Section 40 of the Natural Environment and Rural Communities Act (2006) 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'*.

Other Matters

- 6.39 Welsh Water has acknowledged the proposed development would overload the existing Waste Water Treatment Works. However, it confirms improvements are planned for completion by 31st March 2020. Welsh Water do not object to the proposal providing the condition referenced in the consultation section above is attached to any permission to safeguard our security of service to customers and the protection of the environment. The applicant has confirmed they are happy to accept such a condition. It is further confirmed that there is no problem envisaged with the provision of water supply for this development.
- 6.40 Regarding the need for a Section 106 Agreement, based upon cumulative floor sizes of the dwellings, it is highlighted the application is for *up to ten dwellings* with layout a reserved matter for future consideration. A condition is recommended restricting the density of development to *no more than ten dwellings*. Should the applicant want to exceed this restriction a new application would be required along with a Section 106 Agreement for financial and/ or affordable housing contributions. As it stands on the basis of the application, this position and the Council's relevant policies and SPD, no section 106 contributions are required.

Summary

- 6.41 The conclusion from the previous appeal was that a development of a greater density was deemed acceptable on the site in relation to highways, heritage and other material considerations with the appeal only dismissed on the basis of the lack of a unilateral undertaking or Section 106 to mitigate that proposal regarding impact on local infrastructure. It is noted that the proposal of ten units, in accordance with Core Strategy policies, is below the threshold to require such contributions. As such the reason for the appeal being dismissed is overcome. The reassessment of material considerations demonstrates that there are no sustainable grounds to refuse the application. On the basis of this and all the above approval is recommended as relevant Core Strategy and NPPF policies are satisfied.
- 6.42 Members will note that the applicants have appealed against non-determination. The report above does not identify any harm that would warrant a recommendation for refusal and therefore subject to the appeal being withdrawn it is recommended that planning permission be granted subject to the conditions listed below.

RECOMMENDATION

Subject to the appeal being withdrawn that planning permission be granted subject to the following conditions:

1. **C02 – Time limit for submission of reserved matters (outline permission)**
2. **C03 – Time limit for commencement (outline permission)**
3. **C04 – Approval of reserved matters**
4. **C06 – Development in accordance with the approved plans**
5. **No buildings on the application site shall be brought into beneficial use earlier than 31/03/2020, unless the upgrading of the Waste Water Treatment Works, into which the development shall drain, has been completed and written confirmation of this has been issued by the Local Planning Authority.**

Reason: To prevent overloading of the Waste Water Treatment Works and pollution of the environment and to comply with Herefordshire Core Strategy policies SS1, SD3, SD4 and ID1.

6. **No development shall commence until a drainage scheme for the site has been submitted to and approved in writing by the local planning authority. The scheme shall provide for the disposal of foul, surface and land water, and include an assessment of the potential to dispose of surface and land water by sustainable means. Thereafter the scheme shall be implemented in accordance with the approved details prior to the occupation of the development and no further foul water, surface water and land drainage shall be allowed to connect directly or indirectly with the public sewerage system.**

Reason: To prevent hydraulic overloading of the public sewerage system, to protect the health and safety of existing residents and ensure no pollution of or detriment to the environment and to comply with Herefordshire Core Strategy policies SS1, SD3, SD4 and ID1.

7. **The recommendations set out in the ecological reports from Penny Anderson Associates (April 2012) and NKM associates (July 2016) should be followed in relation to habitat enhancement unless otherwise agreed in writing by the local planning authority. Prior to commencement of the development, a habitat protection and enhancement scheme should be submitted to and be approved in writing by the local planning authority, and the scheme 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) and 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).

8. 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) and 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).

9. CAB 93MX2.4 Southbound – (running lane), 65.5m – Northbound – Visibility splays
10. CAE – Vehicular access construction
11. CAH – Driveway gradient
12. CAL – Access, turning area and parking
13. CAS – Road completion in 2 years
14. CAT – Wheel washing
15. CAZ – Site operatives parking
16. CB2 – Secure covered cycle parking
17. CAP – S278 works should be reviewed in accordance with the approved plans drawing number 2016 – W006-012
18. The planning permission hereby granted is for no more than ten dwellings. Should the cumulative floor of the resultant number of dwellings exceed 1,000 sq metres a section 106 agreement providing financial contributions inline with Herefordshire Council's Supplementary Planning Document and Herefordshire Council's Core Strategy shall be provided, signed and completed prior to the approval of any subsequent Full or Reserved Matters application.

Reason: To regulate the permission and define maximum density and to ensure planning obligations are secured should the threshold floor area be exceeded so to mitigate the development and comply with relevant policies of the Herefordshire Core Strategy

INFORMATIVES:

1. The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against planning policy and any other material considerations, including any representations that have been received. It has subsequently determined to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.
2. I11 - Mud on highway

- 3. I09 - Private apparatus within highway
- 4. I45 - Works within the highway
- 5. I08 - Section 278 Agreement
- 6. I07 - Section 38 Agreement & Drainage details
- 7. I05 - No drainage to discharge to highway
- 8. I49 - Design of street lighting for Section 278
- 9. I47 - Drainage other than via highway system
- 10. I35 - Highways Design Guide and Specification

Decision:

Notes:

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Background Papers

Internal departmental consultation replies.

