

MEETING:	PLANNING AND REGULATORY COMMITTEE
DATE:	21 FEBRUARY 2018
TITLE OF REPORT:	173082 - PROPOSED ERECTION OF AN AGRICULTURAL WORKERS' DWELLING (PART RETROSPECTIVE) AT LAND AT PARKGATE, IVINGTON, LEOMINSTER, HEREFORDSHIRE, HR6 0JX For: Mr Hanson per Ms Sarah Hanson, The Old Watermill, Kingsland, Leominster, Herefordshire HR6 9SW
WEBSITE LINK:	https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=173082&search=173082
Reason Application submitted to Committee – Re-direction	

Date Received: 16 August 2017

**Ward: Leominster
South**

Grid Ref: 347644,255860

Expiry Date: 2 February 2018

Local Member: Councillor PP Marsh

1. Site Description and Proposal

- 1.1 The site lies on the southern side of the C1106, in open countryside approximately 800m south of the centre of Ivington. It lies between two dwellings also in the applicant's ownership.
- 1.2 The formerly derelict/abandoned property which was re-built without the benefit of planning permission and is subject of an enforcement notice to demolish. That notice was also the subject of a dismissed appeal. This application is to retain/complete it as an agricultural workers dwelling comes about following court action in June 2017 for non compliance with that notice, which was withdrawn to allow consideration of this proposal.
- 1.3 Confidential information was submitted re accounts for 2014 and 2015.
- 1.4 The original intention was for this item to be considered at the previous meeting, but late representation, which were sent separately to Members resulted in the item being withdrawn from the agenda.

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:-

- RA3 - Herefordshire's Countryside
- RA4 - Agricultural, Forestry and Rural Enterprise

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

- MT1 - Traffic Management, Highway Safety and Promoting Active Travel
- LD2 - Biodiversity and Geodiversity
- SD1 - Sustainable Design and Energy Efficiency

2.2 NPPF

2.3 Leominster NDP has now been sent for examination and can be afforded moderate weight.

Policy LANP 5

New housing development in the countryside (including settlements not covered in LANP4) will only be permitted when it satisfies one or more of the following:

- i) It is essential for an agricultural, forestry or other rural worker to live permanently at or near their place of work;
- ii) It is essential to enable the establishment or growth of a rural enterprise, and complies with the Herefordshire Core Strategy and the Neighbourhood Plan design criteria;
- iii) It replaces an existing dwelling on the same site and is of a similar size and scale to the dwelling to be replaced;
- iv) It re-uses an existing building that is structurally sound and capable of conversion without substantial rebuilding, providing there are no adverse impacts upon the architectural or historic interest or significance of the heritage asset.
- v) Is rural exception housing in accordance with Policy HR2 of the Core Strategy and meets the requirements of the Neighbourhood Plan design criteria;
- vi) It will not have a detrimental impact on the privacy of neighbours or the appearance of the countryside.
- vii) Is a site that provides for the needs of gypsies or other travellers in accordance with Policy H4 of the Core Strategy and makes a positive contribution to the surrounding environment and rural landscape.
- viii) It shows exceptional quality design and rural enterprise.

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/info/200185/local_plan/137/adopted_core_strategy

3. Planning History

3.1 Temporary Stop Notice 15/5/15

3.2 Enforcement Notice 27/5/15

3.3 Enforcement Appeal dismissed 17/2/16

4. Consultation Summary

Statutory Consultations

4.1. Natural England – no comment

4.2 Welsh Water – no objection

Internal Council Consultations

- 4.3 Conservation Manager (Ecology) – objection re lack of information re drainage and protection of The River Wye SAC Catchment
- 4.4 County Land Agent

Housing:

- a. The farmhouse, this is occupied by Mr and Mrs Hanson senior and their foster children, Mr Hanson works part time on the farm being semi retired.
The farm is a mixed farm with the enterprises being a breeding flock of sheep, fattening cattle and arable including a small area of potatoes.
Mr Hanson is the overall manager of the business, both the sons have their main areas of responsibility but all work together as needed.
- b. The converted barn, this is occupied by Mr and Mrs D Hanson and his family, he manages the cattle and shares the arable work with Mr J Hanson. The conversion has an agricultural tie.
- c. No 3 Park gate, this is occupied by Mr and Mrs J Hanson and his family, he manages the cattle and shares the arable work as well as being the main mechanic on the farm.
- d. No 1 Park gate is occupied by Mr Hanson 's daughter and her family, they are not involved in the farm.
- e. No 2 Park gate, partially restored cottage, unoccupied.
Note, Park gate cottages belong to Mr Hanson senior and have no ag ties, and were bought in the 1960s.

Future proposals, farm to continue as a mixed farm, Mr and Mrs Hanson to retire and move in preference to no 2 Park gate and Mr J Hanson to move to the farmhouse.

Opinion, there would appear to be no reason for the retirement not being to no3 Park gate, although it could be let to bring in income to act as a pension if no 2 was renovated and Mr and Mrs Hanson moved in there.

Financial

We have been given 2 years of accounts, 2014 and 15.

In 2014 the accounts show a loss of £xxxxx and in 2015 a profit of £xxxxx , leaving a loss of the 2 years combined £xxxx overall, there appears to be no specific reason for the loss except poor trading figures for 2014. We are awaiting the accounts for 2016.

Labour

The labour on the farm is provided by the family only, no outside labour is employed at present, although in 2014 £xxxxx was spent on casual labour, none in 2015.

At present with Mr Hanson senior working part time there are 2 full time workers and one part time. The SMD work out at approx 2.5, what the present amount is.

The Land

The farm consists of approx 240ac owned land and 120 ac rented, and is good quality being mainly upper grade 3. The enclosures are suited to mixed farming rather than arable, and suit the size of farm machinery used on the holding. The farm tends to be traditionally farmed and the small area of potatoes approx 15 ac is lifted, bagged, and delivered straight from the farm rather than through a merchant.

The Stock

The sheep flock is approx 600 ewes and the objective is to sell approx 1,000 fat lambs a year. The fattening cattle vary between 150 and 200, and are all sold fat.

The arable area is approx 125 ac, 110ac being grain an oilseed rape the remaining 15 ac are in potatoes.

The Need for an Extra House

In my opinion there is no need for another full time worker, part time yes, but not full time, and therefore there is no justification for another dwelling, part of the justification for a full time dwelling being that it there is a need for another full time worker to be living on site and in this case there only being 2.5 labour units required that is not the case.

4.5 Transportation Manager: No response.

5. Representations

5.1 Town Council: no response

5.2 Two letters of support have been received, one from a local resident the other from CLA.

5.3 In addition to the limited information provided with the application at time of submission and subsequent material relating to the farming operation, further information was submitted by the agent prior to the last Planning Committee as identified at 1.4 above. The points raised are as follows:-

1. Mr John Hanson is nearing retirement from a lifetime of farming during which time he and his wife have also fostered children and intend to continue after retirement from the farm.
2. The application is to re-use a former cottage which had been abandoned.
3. The building together with the adjoining cottages form a small group of dwellings known as Parkgate and close the the applicants farm, Lower Wintercott.
4. All the cottages at Park Gate are within the ownership of the applicant.
5. None of the cottages have an agricultural tie
6. The cottage was abandoned due to insufficient funds to repair and bring up to modern habitable standards. It was always the intention to renovate and re-instate for a member of the family.
7. The works were started in 2011 as Mr Hanson did not believe he needed planning permission.
8. Subsequent visits by enforcement officers were made and eventually a temporary stop notice and enforcement notice were served. Mr Hanson was not given the opportunity or advice to make an application before the notices were served.
9. Mr Hanson's previous agent failed to advice of errors during the appeal process and the Planning Inspectorate upheld the enforcement notice the result of which was that the cottage had to be demolished.
10. There then followed a legal debate resulting in this application.
11. It is confirmed that works to restore the cottage did require planning permission
12. The agent refers to a similar proposal that has been granted planning permission
13. The agent claims that there are other alternatives for which her client could have applied which would be compliant with planning policy such as holiday use or re-use of a redundant building.
14. The demolition of the house would mean a complete waste of an affordable dwelling.
15. This is a family run farm providing accommodation for all family members and is run on a more labour intensive method where an additional worker is required on the retirement of Mr John Hanson.

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=173082&search=173082

5.5 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>

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

6. Officer's Appraisal

- 6.1 The site lies in open countryside where policy RA3 of the Core Strategy applies, this refers on to policy RA4 for agricultural workers dwellings. Policy LANP5 of the Leominster Area NDP also applies.
- 6.2 When the appeal was submitted no case was made at that time to suggest the dwelling met any agricultural need. Consequently the Inspector had no need to consider policy RA4.
- 6.3 When determining the deemed application on the enforcement appeal, the Inspector stated:

'The deemed application is to retain the building in its present form. It is the appellant's intention to occupy the building as a dwellinghouse. The main issue therefore is whether the development is acceptable in this location with due regard to the development plan and national policy.

15. In part 4 of the enforcement notice the reasons for issuing the notice include the unsustainable location of the appeal site. Neither of the main parties have provided evidence regarding the sustainability or otherwise of the appeal site.

16. The overarching aim of CS policy RA3 is to locate new development in sustainable locations. This policy is consistent with the Framework insofar as it does not enable development which would compromise the principles of sustainable development. The development does not meet any of the circumstances that are set out in either the policy or the Framework.

17. Paragraph 7 identifies that there are three dimensions to sustainable development: economic, social and environmental. To promote sustainable development in rural areas, paragraph 55 advises that housing should be located where it will enhance or maintain the vitality of rural communities.

18. The economic role of sustainability includes contributing to a strong, responsive and competitive economy. The building of one dwelling would generate some temporary economic benefit during the construction phase. Furthermore, the contribution one dwelling would make to support the services and facilities in key settlements would be minimal.

19. The social role includes supporting a strong, vibrant and healthy community by providing housing required to meet the needs of present and future generations, and creating a high quality environment, with accessible local services that reflect the community's needs and supports its health, social and cultural well-being. Due to its isolated location it is reasonable to assume that residents would be likely to need to travel by car to access day to day facilities and services which are some distance from the appeal site. Thus, the development would not facilitate sustainable modes of transport. As a result, the development would not meet one of the core principles of the Framework to actively manage patterns of growth to make the fullest use of public transport, walking and cycling.

20. As far as the environmental role is concerned the development would not help to move towards a low carbon economy because it would not help to concentrate development close to infrastructure and services. The Framework is clear that the three roles of sustainability are mutually dependent; they should not be undertaken in isolation. In the overall balance, I am not persuaded that the modest economic benefit of the provision of one additional home demonstrably outweighs the adverse environmental implications of a dwelling in this location.

21. I therefore conclude that the location of this dwelling in the open countryside does not represent a sustainable form of development having regard to the definition of sustainable development as set out in paragraph 7 of the Framework. It is contrary to Policy RA3 of the CS which aims to ensure development is appropriate to the rural area. The appeal on ground (a) and the application for deemed consent fail.'

- 6.4 The only difference between the case during the appeal and the case now is the inclusion of the agricultural occupancy element and the late reliance on the character of the applicant.
- 6.5 Limited information was submitted originally and the agent was advised that additional information was required to give the applicant every opportunity to make his case, this was supplemented by information gathered by the County Land Agent during a meeting with the applicant. His comments are reported above, with confidential elements redacted.
- 6.6 It is clear that there is not an essential functional need for a further dwelling, there are already four dwellings available, the farm justifies 2.5 fte in total, and not all of these for necessarily essential stock welfare, and that as a consequence the application is contrary to policies RA3 and RA4.
- 6.7 Latterly reference has been made to the prospect of selling or letting three of the existing four dwellings on the farm, to non farm workers. Part of the consideration in applications of this nature is to examine the recent history of such transactions, and also the need to impose agricultural occupancy conditions on existing non tied dwellings. The suggestion further demonstrates that a fifth dwelling on the holding is not essential. The fact that the applicant, in the recent letter, chooses not to operate the farm in an optimal manner is a legitimate business decision, but further detracts from his case for an essential agricultural need.
- 6.8 Reference is made to the delay in recognising the breach and then for acting quickly thereafter. As soon as the breach was recognised action was taken swiftly to avoid any further potential abortive work. Prior to the service of any notice, the 'deemed' application is considered, where there is no application. The council cannot be responsible for the advice that is given by agents, nor what is submitted to The Planning Inspectorate in an appeal.
- 6.9 Furthermore the proposal is also contrary to the sustainability requirements of the NPPF. Similarly the proposal is contrary to the Leominster NDP Policy LANP5. This plan has now been sent for examination so can be afforded moderate weight.
- 6.10 The S38 (Planning and Compulsory Purchase Act 2004,) S70 (Town and Country Planning Act 1990) duty is to determine applications in accordance with the development plan unless material considerations dictate otherwise. Development plan policies do not support this proposal. The implication which would follow from the refusal of this application is not a material consideration. There are no other material considerations which would outweigh that duty.
- 6.11 The reference to the character of the applicant being a foster parent over a long period of time and having received the MBE are not material to the determination of this application. They would have been considered a relevant part of the court case had the applicant chosen to continue with the proceedings rather than offer to submit an application prior to commencement on the day of the court case.
- 6.12 Notwithstanding the officer opinion in terms of the essential agricultural need, if members consider that the case has been made, however this is contrary to the evidence above, then it would be appropriate to impose an agricultural occupancy condition not only on this dwelling, but the three other dwellings not already so tied.

RECOMMENDATION

That planning permission be refused for the following reasons:

- 1. It is considered that the proposal is contrary to policies RA3 and RA4 of the Herefordshire Local Plan and policy LANP5 of the Leominster Neighbourhood Development Plan in that there is no essential agricultural need for the dwelling.
- 2. The location of this dwelling in the open countryside does not represent a sustainable form of development having regard to the definition of sustainable development as set out in paragraph 7 of the National Planning Policy Framework.

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 and discussing those with the applicant. However, the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory way forward and due to the harm which have been clearly identified within the reason(s) for the refusal, approval has not been possible.

Decision:

Notes:

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Background Papers

Enforcement Appeal Decision

Site visit made on 15 December 2015

by Elizabeth Jones BSc (Hons) MTCP MRTPI
an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17 February 2016

Appeal Ref: APP/W1850/C/15/3129349

Land at Park Gate, Ivington, Leominster, Herefordshire HR6 0JX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr John Hanson against an enforcement notice issued by Herefordshire Council.
- The notice was issued on 27 May 2015.
- The breach of planning control as alleged in the notice is without planning permission unauthorised operational development in the form of rebuilding of a derelict building.
- The requirements of the notice are:
 1. Permanently cease rebuilding of the unauthorised building.
 2. Permanently demolish the unauthorised building and remove all resulting brickwork and waste materials from the site to a registered waste disposal site.
- The period for compliance with the requirements is 90 days.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matter

1. The enforcement notice refers to Policy H7 of the Herefordshire Unitary Development Plan (Local Plan) together with the National Planning Policy Framework (the Framework). The Local Plan has subsequently been superseded by the Herefordshire Local Plan – Core Strategy (CS). Therefore, the relevant policy is Policy RA3 of the CS.

Site description and background

2. The appeal site lies in open countryside on the south side of the C1106.
3. It is common ground that the building was originally a dwelling which was last occupied in the mid-1950s. The Council maintain that the residential use has been abandoned.
4. At the time of my site visit the building was not occupied.

Appeal on ground (c)

5. For the appeal on ground (c) to succeed the onus of proof is on the appellant to demonstrate that there has been no breach of planning control. The appellant contends that although the property has not been lived in for some time, the use has not been abandoned and it is still a dwelling house, the substantial rebuilding of which does not constitute operational development.

6. Section 55 of the Act sets out the meaning of development and section 55 (2) sets out certain operations which do not involve development. Paragraph (2) (a) allows for the carrying out for the maintenance, improvement or other alteration of any building of works which (i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building.

7. The appellant stated in 2012 (in response to the Requisition for Information) that the works being carried out were “renovating an existing farm cottage into a house”. The Council contest that “nothing of the main structure of the original building remains apart from a small section of the stone wall at the front of the building. All other stone work, brick work and roof are new”.

8. Case law establishes four criteria to be of relevance in considering whether a use has been abandoned; the period of non-use, physical condition of the land or buildings, whether any other use has occurred and the owner’s intentions.

9. The appellant’s evidence would suggest that whilst there was a cottage on this site for many years, it has not been used as a dwellinghouse for approximately 60 years and over the passage of time has fallen into a state of disrepair. The appellant’s photographic evidence shows the cottage in an advanced stage of dereliction. The main body of the cottage had no roof, parts of its walls were missing and extensive vegetation was growing on and within its remains. I therefore consider that due to its physical condition the cottage was not capable of being a lived in as a dwelling house. The submissions indicate that there has not been any other use.

10. Whilst it was the appellant’s intention to “repair and improve the dwelling once the funds became available”, there is no evidence before me to show that the appellant or anyone else previous undertook any works to preserve the remains of the cottage or to prevent its deterioration. The absence of any such action does not indicate an intention to retain residential use in due course.

11. Based on the available evidence, on the balance of probabilities I consider that the residential use of the cottage was abandoned before the present works commenced.

12. In any event, the substantial rebuilding of the walls, new internal block work, the addition of a completely new roof and a rear extension goes well beyond what might be regarded as the carrying out for the maintenance, improvement or other alteration of a building (s55(2)(a)). Only part of the building remained and the operational development carried out is tantamount to a new building. Consequently, I consider that the building works constitute development as defined in s55.

13. From all I have seen and read, I agree with the Council, that the building was not a dwellinghouse at the time the work was being undertaken. The works have gone beyond repair and renovation and have amounted to building operations for which planning permission is required. Planning permission has not been granted. Thus, there has been a breach of planning control and the appeal on ground (c) therefore fails.

Appeal on ground (a) and the deemed planning application

14. The deemed application is to retain the building in its present form. It is the appellant’s intention to occupy the building as a dwellinghouse. The main issue therefore is whether the development is acceptable in this location with due regard to the development plan and national policy.

15. In part 4 of the enforcement notice the reasons for issuing the notice include the unsustainable location of the appeal site. Neither of the main parties have provided evidence regarding the sustainability or otherwise of the appeal site.

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20. As far as the environmental role is concerned the development would not help to move towards a low carbon economy because it would not help to concentrate development close to infrastructure and services. The Framework is clear that the three roles of sustainability are mutually dependent; they should not be undertaken in isolation. In the overall balance, I am not persuaded that the modest economic benefit of the provision of one additional home demonstrably outweighs the adverse environmental implications of a dwelling in this location.

21. I therefore conclude that the location of this dwelling in the open countryside does not represent a sustainable form of development having regard to the definition of sustainable development as set out in paragraph 7 of the Framework. It is contrary to Policy RA3 of the CS which aims to ensure development is appropriate to the rural area. The appeal on ground (a) and the application for deemed consent fail.

Appeal on ground (f)

22. Section 173(4) (a) of the Act provides that the purpose of an enforcement notice can be to remedy the breach of planning control which has occurred by restoring the land to its condition before the breach took place.

23. The appellant contends that the steps to remedy the breach which require the demolition of the entire building are excessive and that the building could be returned to its original size.

24. The alleged breach of planning control is the rebuilding of a derelict building. The enforcement notice is not therefore directed at any demolition works that may have been carried out to facilitate those rebuilding works. It is not therefore necessary for the requirements of the notice to require any works to be carried out, other than the demolition of all of the new building, to remedy the breach.

25. The appellant has provided limited evidence regarding how much of the derelict building still remains. The Council argue that apart from a small section of the stone wall at the front of the building, this is completely a new dwelling. Accordingly, by requiring the demolition of those building operations carried out, the requirements of the notice would remedy the alleged breach of planning control. Insufficient evidence is available to demonstrate accurately what, if any, of the derelict building, still remains. Accordingly an alternative requirement could not be drafted with any necessary precision. In any event, in so far as any remains, it has been subsumed into the new building.

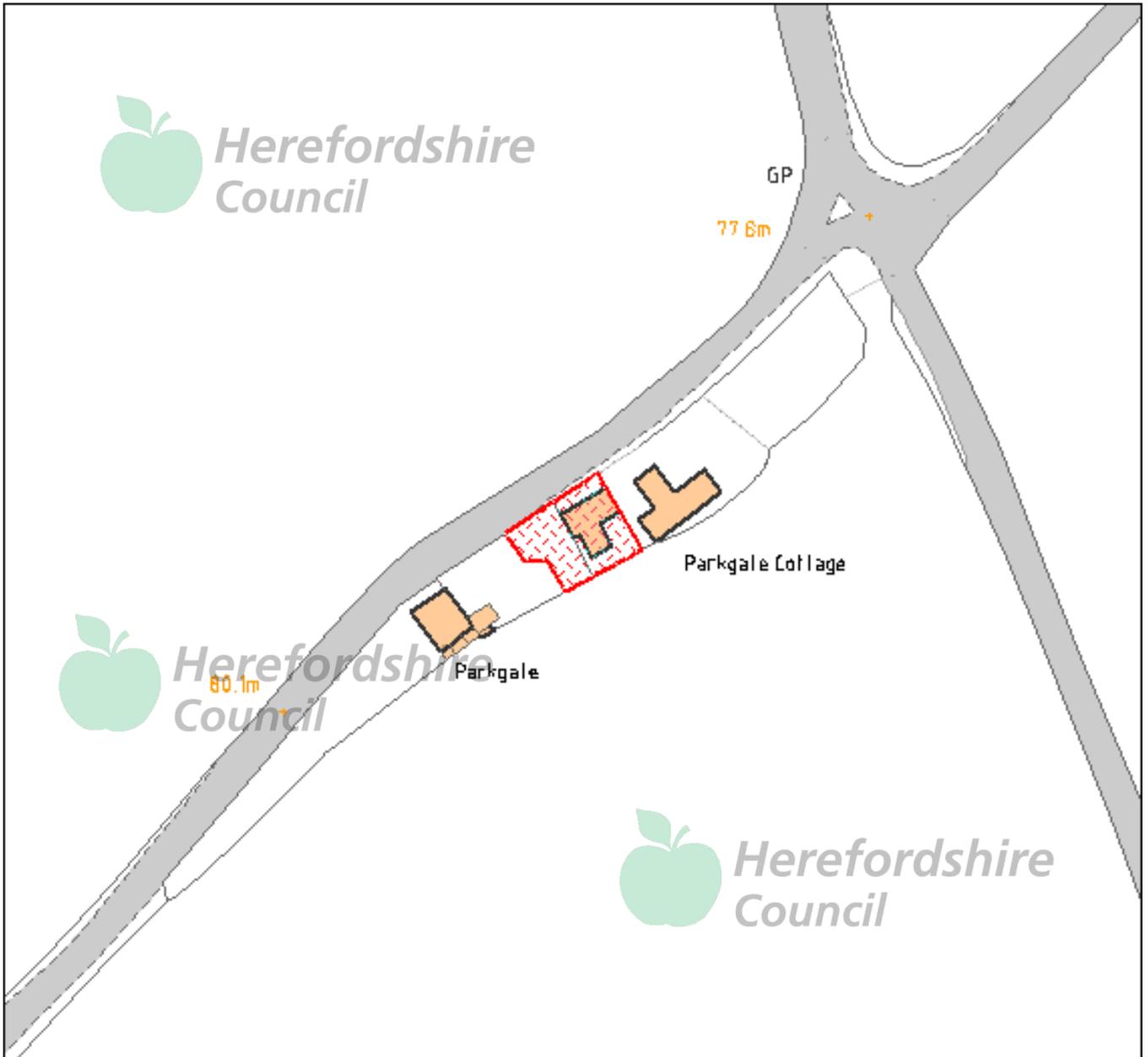
26. For the reasons above, I conclude that no lesser steps would remedy the breach of planning control that has occurred. The appeal on ground (f) therefore fails.

Decision

27. It is directed that the appeal is dismissed and the enforcement notice is upheld.

Elizabeth Jones
INSPECTOR

Internal departmental consultation replies.



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APPLICATION NO: 173082

SITE ADDRESS : LAND AT PARKGATE, IVINGTON, LEOMINSTER, HEREFORDSHIRE, HR6 0JX

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