

MEETING:	PLANNING AND REGULATORY COMMITTEE
DATE:	14 MARCH 2018
TITLE OF REPORT:	<p>150659 - DEMOLITION OF ALL EXISTING BUILDINGS AND HARD STANDINGS, REMEDIATION OF THE SITE, INCLUDING REINSTATEMENT OR LANDSCAPING OF THE FORMER CANAL AND DEVELOPMENT OF UP TO 120 HOMES, LANDSCAPING, PUBLIC OPEN SPACE, NEW VEHICLE AND PEDESTRIAN ACCESS AND ASSOCIATED WORKS AT LAND AT HOLMER TRADING ESTATE, COLLEGE ROAD, HEREFORD, HEREFORDSHIRE,</p> <p>For: Codex Land PCC Cell B per Mr Ben Stephenson, Greyfriars House, Greyfriars Road, Cardiff, CF10 3AL</p>
WEBSITE LINK:	https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=150659&search=150659
Reason Application submitted to Committee – Re-reporting	

Date Received: 5 March 2015

Ward: Holmer

Grid Ref: 351720,241781

Expiry Date: 31 March 2018

Local Member: Councillor AR Round

1. Site Description and Proposal

- 1.1 On 9 March 2015, an application for outline planning permission was submitted to redevelop the application site for up to 120 dwellings, and to restore or to alternatively safeguard the former route of the Herefordshire & Gloucestershire canal included within the application site.
- 1.2 The application site is located approximately 1.8 km from Hereford city centre. The southern portion of the site comprises the former route of the Herefordshire to Gloucestershire canal, which however has now been filled in by demolition material from the tile works that previously operated on the site. In land use terms, the application site is employment land. It should be noted that the site is now vacant; the tenants occupying the site previously having now moved on to new premises.
- 1.3 At its meeting on 13 January 2016, the Council's Planning Committee resolved to grant outline planning permission subject to the completion of a s.106 agreement that, *inter alia*, facilitated the restoration of the canal. In resolving to grant outline planning permission, Members accepted that the proposed development would make no provision for affordable housing or other s.106 contributions (save for the possibility of a claw-back mechanism in the proposed s. 106 agreement).

- 1.4 At the time of Members' consideration of the outline application on 13 January 2016, the viability information before the Council (which included independent advice from the District Valuation office ("DV"), was that it would not be viable for the proposed development to provide both for the restoration of the canal and affordable housing and other s.106 contributions. Members were accordingly advised that a choice had to be made between which of these matters should come forward with the development, i.e. just the affordable housing or just the restoration of the canal.
- 1.5 The advice to Members based on policy E4 was that simply safeguarding the route of the canal and deferral of restoration was "highly likely to prejudice the delivery of a continuous route and is in conflict with Policies E4 and HD2" (paragraph 6.23). The prejudice identified was not to the provision of sufficient land to provide a restored canal in the future; officers made clear that "the canal could be delivered in isolation after the completion of the residential development." Rather, the prejudice was principally the lost opportunity to obtain some form of developer contribution towards the significant cost of restoring the canal.
- 1.6 A s.106 agreement has not been agreed since the resolution of 13 January 2016. Instead, following lengthy discussions and review (which has included the Canal Trust), the applicants have submitted revised viability appraisals which conclude that the proposed development can only viably proceed if:
- a) The works to the canal be limited to preparing the canal for future restoration (i.e. restoration not now taking place);
 - b) No affordable housing be provided; and
 - c) No other s.106 contributions be made.
- 1.7 This appraisal has been independently reviewed by the DV. The DV agrees with the applicant, and has concluded that the proposed development "could not afford the provision of any Affordable Housing or the payment of any Section 106 contributions, in addition to safeguarding the Canal for future restoration." This is on the basis that even without the cost associated with the canal, further detailed investigation aimed at establishing the costs of developing the site as part of a single groundworks contract, has revealed that the abnormal costs associated with the development are significantly higher than originally thought. These costs include demolition, remediation of contamination across the entire site and the off-site highway works.
- 1.8 The proposal as it stands, therefore, is for the erection of up to 120 open market dwellings with associated access and ancillary development, with safeguarding of the canal corridor to include capping with topsoil and landscaping. A s.106 agreement would require the transfer of the canal land to the Canal Trust at nil consideration.
- 1.9 The original application was accompanied by the following technical studies:
- Topographic Survey
 - Flood Risk and Drainage Assessment
 - Noise Assessment (with update)
 - Ground conditions/Contamination Survey
 - Ecological Survey; updated with reptile surveys
 - Arboricultural Survey
 - Transport Assessment
 - Engineering Statement regarding the canal
 - Statement of Community Involvement – A public consultation event was held on 28th October 2014. This was held at the RNC with invitations delivered to households in Victoria Park. The event was also advertised in the Hereford Times.

- 1.10 As alluded to above, subsequent viability appraisals have been independently reviewed by the DV and the applicants have also prepared a feasibility study to demonstrate that the restoration of the canal is possible post-completion of the housing development.
- 1.11 The Council has adopted a Screening Opinion confirming it does not consider the scheme to represent development requiring the submission of an Environment Statement.

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
SS2	-	Delivering New Homes
SS3	-	Releasing Land for Residential Development
SS4	-	Movement and Transportation
SS6	-	Environmental Quality and Local Distinctiveness
HD1	-	Hereford
HD2	-	Hereford City Centre
HD3	-	Hereford Movement
HD7	-	Hereford Employment Provision
H1	-	Affordable Housing – Thresholds and Targets
H3	-	Ensuring an Appropriate Range and Mix of Housing
E2	-	Redevelopment of Existing Employment Land and Buildings
E4	-	Tourism
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	-	Landscape and Townscape
LD2	-	Biodiversity and Geodiversity
LD3	-	Green Infrastructure
SD1	-	Sustainable Design and Energy Efficiency
SD3	-	Sustainable Water Management and Water Resources
SD4	-	Wastewater Treatment and River Water Quality
ID1	-	Infrastructure Delivery

2.2 NPPF

Introduction	-	Achieving Sustainable Development
Section 4	-	Promoting Sustainable Communities
Section 6	-	Delivering a Wide Choice of High Quality Homes
Section 7	-	Requiring Good Design
Section 8	-	Promoting Healthy Communities
Section 11	-	Conserving and Enhancing the Natural Environment
Section 12	-	Conserving and Enhancing the Historic Environment

Paragraph 173 – Viability

- 2.3 The Hereford Area Plan (HAP) will set out the detailed proposals to ensure delivery of the targets in the Core Strategy specifically for Hereford. Consultation is on-going. Presently, the HAP is not sufficiently advanced to attract weight for the purpose of decision-making on planning applications.

- 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 DCCE2007/1655/O – Mixed use development comprising residential (115 units), employment (office, industrial and warehousing), retail and supporting infrastructure including new access off College Road, roads, footpaths, open spaces, landscaping, parking and re-opening of part of canal at Holmer Trading Estate, Hereford, HR1 1JS – Refused 3 September 2008 and allowed on appeal 21 August 2009.

This mixed use scheme comprised up to 115 dwellings, 605 square metres of office space, 4,600 square metres of industrial land and 1,500 square metres of retail floor space. The residential element was at 85 dwellings/hectare (including 4-storey apartments). This permission has never been implemented but was subject of an application from the previous owners to extend the lifetime of the permission (S121750).

4. Consultation Summary

Statutory Consultations

- 4.1 No further comments have been received from the Environment Agency or Welsh Water. Neither organisation objected originally.

Internal Council Consultations

- 4.2 Transportation Manager: The application is in outline and the internal layout will be determined at the Reserved Matters stage. In designing the internal layout, care and consideration must be given to the pedestrian and cycle desire lines and the usage of the access by HGV's and the number of visitors to the Cavanagh's site.

Parking will need to be to HC Design Guide and if garages are to be used, the internal dimensions need to be 6m x 3m. The internal layout will need to be adopted under s38 agreement.

The access and links will need to be provided as part of the development, without these the site will not be sustainable from a transport perspective. Please see the conditions below:

CAP - Junction improvement/off site works

Development shall not begin until details of the following off-site highway works have been submitted to and approved in writing by the local planning authority and a S278/S38 agreement has been entered into, and the development shall not be occupied until the scheme has been constructed in accordance with the approved details.

The works identified are:

- Suitable access to the site has been designed and road safety audited and to include the following:
- Pedestrian footpath to the north and south linking to the existing footpaths on College Road
- Include into the design the access to the development to the North.
- Signalised control of the bridge to enable a footpath link

- Safe crossings from the site linking to the Playing fields off Old School Lane (cycles and pedestrians; for pedestrians north of the railway bridge to cross to the eastern side of College Road; from the site to the footpath on the west to cross the railway bridge and to link to the path north of the public open space.
- The design should incorporate the redevelopment opposite and utilise Toucan crossings where the opportunity arises.
- A full construction footway cycle link to the south linking to the existing path south of the site adjacent to Wessington Drive, future proofing for any canal works proposed. Plus link to Wessington Drive itself.
- Identifying and implementing any Traffic Regulation Orders required ensuring the safe passage of pedestrians and traffic in the vicinity of the proposed works.

4.3 Environmental Health Officer:

I refer to the above application and would make the following comments in relation to contaminated land and human health issues.

There is a recognition that remediation is required at the site prior to development. With this in mind and the reports submitted to support the application the following condition should be appended to any approval. Given the canal is not necessarily proposed to be reinstated at this stage, we'd expect a risk assessment be included considering retention of the infilled canal as it stands. This should look at future formal or informal use to demonstrate it won't present a risk to residents of the adjacent site(s).

1. No development shall take place until the following has been submitted to and approved in writing by the local planning authority:
 - a) A 'desk study' report including previous site and adjacent site uses, potential contaminants arising from those uses, possible sources, pathways, and receptors, a conceptual model and a risk assessment in accordance with current best practice
 - b) If the risk assessment in (a) confirms the possibility of a significant pollutant linkage(s), a site investigation should be undertaken to characterise fully the nature and extent and severity of contamination, incorporating a conceptual model of all the potential pollutant linkages and an assessment of risk to identified receptors
 - c) If the risk assessment in (b) identifies unacceptable risk(s) a detailed scheme specifying remedial works and measures necessary to avoid risk from contaminants/or gases when the site is developed shall be submitted in writing. The Remediation Scheme shall include consideration of and proposals to deal with situations where, during works on site, contamination is encountered which has not previously been identified. Any further contamination encountered shall be fully assessed and an appropriate remediation scheme submitted to the local planning authority for written approval.

Reason: In the interests of human health.

2. The Remediation Scheme, as approved pursuant to condition no. (1) above, shall be fully implemented before the development is first occupied. On completion of the remediation scheme the developer shall provide a validation report to confirm that all works were completed in accordance with the agreed details, which must be submitted before the development is first occupied. Any variation to the scheme including the validation reporting shall be agreed in writing with the Local Planning Authority in advance of works being undertaken.

Reason: In the interests of human health.

3. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted, and obtained written approval from the local planning authority for, an amendment to the Method Statement detailing how this unsuspected contamination shall be dealt with.

Reason: In the interests of human health.

Technical notes about the condition

1. I would also mention that the assessment is required to be undertaken in accordance with good practice guidance and needs to be carried out by a suitably competent person as defined within the National Planning Policy Framework 2012.

2. And as a final technical point, we require all investigations of potentially contaminated sites to undertake asbestos sampling and analysis as a matter of routine and this should be included with any submission.

4.3 Public Rights of Way: No objection

4.4 Housing Delivery Officer: There is no requirement to provide 35% affordable housing following confirmation from the DV that the scheme is not able to provide an affordable housing contribution due to viability.

With regards to the open market mix, the developer is proposing a mix of 2 and 3 bed flats and houses which meets the need of the area.

4.5 Conservation Manager (Ecology): The only comment I have to make to this additional information is that the method statement and enhancement plan required by Condition 23 should now be informed by an updated survey. The last ecological assessment was made in 2017 and, given the ecologist needs to confirm that no appreciable changes have taken place on the site which may have affected species and biodiversity.

4.6 Environmental Health Manager (Noise): No further comment, but original qualified comments are reported below.

“I can advise that although there are some differences in the predicted noise levels between the August and October 2015 reports on the impacts of Industrial Noise upon the Proposed Residential Dwellings, I do not consider these to be significant and confirmation has been provided that the noise is predicted at the first-floor level. My view as expressed in my response dated the 23rd September 2015 therefore remains substantially the same. I would however express reservations as regards the possible levels of night time noise that could affect parts of the proposed development in that although they are predicted to be within the World Health Organisation Guidelines I am concerned that these levels could be detrimental to the internal amenity of residents particularly those residing closest to Cavanagh's body shop, and whilst not wishing to raise an objection to the proposed development I would recommend that permission is only considered subject to a condition requiring that a scheme of noise protection measures be agreed in writing prior to the commencement of the development and implemented before the dwellings are occupied. The exact nature of these measures will to some extent depend on the final detail of the development, however it is envisaged that they will include the measures identified in the February and October 2015 noise assessments plus additional measures such as acoustically treated passive vents and upgraded fenestration to some properties, particularly those closest to Cavanagh's body shop.”

5. Representations

5.1 Hereford City Council:

Planning Committee objected to Planning Application 150659, on the conditional basis that Councillors do not think that the Canal should be landscaped out, and should instead be reinstated. Councillors would like to see more information on what the applicant wishes to do with the Canal, as the feature is historic in nature. Councillors would also like the answers to the following; Have the Canal Trust been notified? Will the developer ensure it is safe for the public? Until these comments have been taken into consideration and the applicant confirms that the Canal will not be destroyed, Councillors cannot give their approval.

5.2 Neighbour/third party responses

Subsequent to receipt of the District Valuation Officer's final report in December 2017 the Council undertook re-consultation which involved writing to all parties who had been consulted previously, posting notices and re-advertising in the newspaper. This, combined with the applicant's synopsis below, answers the query in respect of the involvement of the Canal Trust.

Given the site is now vacant, no further communication has been received from former tenants and nor has any communication been received from any other local residents or adjoining commercial premises.

5.3 The applicants have submitted a synopsis of the planning history

"Codex purchased the site in April 2014.

Codex liaised with the planning officers, the ward councillor and the Canal Trust to discuss the new proposals which were very different from the previous application scheme which was won at appeal in 2009 but never implemented as it was not commercially viable. The market had changed substantially since the 2008 crash and the site was now no longer regarded as an important employment site due to the poor quality of the buildings. Codex proposed a straightforward residential scheme for small to medium family houses with a few apartments.

It was suggested that whilst in any case the route of the canal should be preserved for possible re-instatement, there was a desire to see this section reinstated if possible as that had been proposed in the previous mixed-use scheme. Codex were asked to consider if this was achievable. Codex appointed Watermans to carry out a detailed cost analysis of these works. It should be noted that Codex were aware at the time that such reinstatement was not a justifiable S106 cost but they were prepared to consider it as an option if that was the wish of the Council and if it was financially possible.

Eventually Watermans came up with an estimated figure of around £3.2m on top of the site costs which meant that delivery of the canal re-instatement seemed possible as long as there were no other S106 burdens. Codex proposed to the Council that they were prepared to go forwards on an either or basis. Either the canal re-instatement or social housing and S106 contributions. The planning department required Codex to put the case to the District Valuer to be independently assessed and they came back with the conclusion that the site was indeed only viable with one of the two elements in place. The outline application for 120 units was submitted in March 2015.

The planning department originally told Codex they would recommend the social housing option as they considered that a priority over the canal re-instatement but then changed their minds and recommended the latter and the application went to committee in January 2016 and achieved a resolution to grant.

The resolution insisted that the S106 should be a three way document including the Canal Trust. Codex embarked on protracted discussions with them and the Council to sort out that document and put the site on the market for sale. That process was adversely affected by the requirement to reinstate the canal and by the ongoing financial demands of the Canal Trust for annual stipends from all the completed houses in perpetuity. Eventually a potential purchaser was found but they insisted that they would only go ahead if the canal re-instatement was treated as a separate civil engineering project from the housebuilding and a fixed price contract was obtained for that element alongside the decontamination and groundworks contract for the site so that they would know those costs were fixed. They also needed far more detailed investigations carried out across the site before going out to tender for the works.

Whilst this was going on, Codex began to manage the process of both compensating the remaining commercial tenants and helping them find new premises.

By January 2017 the S106 was well advanced and the site virtually empty when a serious problem was flagged by the prospective purchaser. They had completed extensive further site investigations and gone out to competitive tender on the groundworks contract. They said that the canal element was coming out at £8.2m rather than the £3.2m originally estimated by Watermans due to unforeseen engineering works needed to support the canal. Codex and the housebuilder consulted the Canal Trust who suggested ways to reduce the cost. The works were re-costed with the lead contractor but still came out at £5.8m and not only was that a problem but the costs of decontaminating the site itself and the groundworks associated had also gone up substantially.

Codex met with the planning officers in April and explained the situation and both parties agreed that the canal re-instatement would probably have to be dropped despite their best efforts to support the project and that a new evaluation would have to be carried out in light of the current information that was based on updated investigations and competitive tenders.

Opus International were selected to re-evaluate the site and to go to an independent groundworks company to confirm the costs. Savills then took this information and re-valued the site. This report was then submitted to the District Valuer in the summer for independent verification both by them as valuers and an independent QS company to provide them with advice. After a series of exchanges and requests for further clarification and information, the DV finally confirmed in January of this year that despite Opus's efforts to further save costs, the site would not support either the canal restoration or normal S106 requirements due to the re-assessed costs of demolition, decontamination, groundworks, service costs and offsite works to the highway.

Codex now request that the application is taken back to committee as soon as possible with a view to a revised resolution taking into account what is now known. Codex entered into this project with the best intentions and took on the canal restoration wish in the belief it could be done. Unfortunately some four years on, this has now proved impossible and the project costs have grown to crippling levels. This contaminated brownfield site is now empty and a security problem and is in desperate need of remediation and regeneration. The principle of residential is established and it can still provide 120 much needed small to medium sized family homes in the heart of the city if a suitable planning consent is forthcoming that follows the DV's recommendations. The route of the canal will be safeguarded and landscaped in accordance with policy. There is no reason why the reinstatement cannot be done at a later date when the funds required are available. “

- 5.4 Herefordshire and Gloucestershire Canal Trust: No further comment at the time of writing, but the comments produced in the original Case Officer Report from 13 January 2018 is set out below:

Obviously our Objection will remain in place until such time as a suitable tri-partite s.106 is signed delivering the Canal and maintenance income. We would wholly support the scheme subject to that s.106.

For clarity the s.106 for delivery of a restored Canal through this site is required as:

1. It is a fundamental breach of Policy if this scheme does not deliver the Canal, as to not deliver the scheme at the time of the adjoining development would severely prejudice the delivery not only of the Canal on this site but also within the City. It is therefore a Breach not only of the wider Canal Policies but also those for the Canal Basin area Policies as well, which is reliant on the connecting Canal. There is no alternative route at this location due to the Aylestone Tunnel [in perfect condition; we have full diving surveys] and the close proximity of the high pressure gas main.
2. The development proposals include development of the cutting side and require significant retaining walls as shown in the developers own drawings. This is development on the associated infrastructure of the Waterway which is protected within and beyond the protected corridor and is in Breach of the Protection Policy. This would also completely prejudice the restoration of the Canal due to significantly increasing its restoration costs in breach of Policy. However, with a suitable tri-partite s.106 to ensure restoration of the Canal and provision of these retaining walls and other infrastructure at the time of development and income stream we would fully support the proposals subject to all other matters herein.
3. It should be noted that the site requires decontamination at the time of the development. Neither the Trust nor the Council would have the resources to do this at a later date. It is not viable to restore this section after development undertaking such heavy civil engineering immediately adjoining the new properties and in conflict with the site access road, and to do so would prejudice the restoration in Breach of Policy.

The only viable way to restore the Canal through this site in our lifetimes is as an integral part of a redevelopment scheme. Any failure to deliver this will not only be a breach of policy on several counts but also will prejudice the redevelopment of the Canal Basin and bringing forward developments closer to the city centre.

It should be remembered that the Canal will bring significant Economic benefits to the area which will help mitigate for the loss of employment land on this site. The British Waterways report in 2009 indexed and updated to today projects in the order of £30m/year and 650 jobs. The previous inspector applied significant weight to this and the wider benefits of the Canal on this site:

20. *On the main issue, I have found that the proposal would conflict with UDP Policy E5, and would be likely, by reason of the loss of some employment land and possible hardship for some existing tenants, to result in harm. However, in my judgement, the Canal restoration, and its resultant benefits to long-term planning objectives for the City, are material considerations in this case, which are sufficient to outweigh the conflict with the development plan and the limited harm I have identified.*

We should make clear that the drawings supplied for the 'restoring the Canal option' do however have our full support. Subject to a suitable tri-party s.106 covering restoration of the Canal and ongoing maintenance contributions our Objection will be removed and we wholly support this scheme which would see a crucial section of Canal within the City delivered.

We must stress that this scheme with delivery of the Canal is the only potential means which we can realistically see for delivering the Canal on this site. That will dramatically increase the attractiveness and viability of delivering the Canal within the City and as identified with Dwr Cymru - Welsh Water and the Environment Agency provide a route for surface water disposal [we have already invested some £35k delivering the storm overflow weir at Aylestone Park to provide for this].

Subject to an agreed tri-partite s.106 we fully Support this Application and will remove our existing Objection.

- 5.5 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=150659&search=150659

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 2004 Act embodies a "presumption in favour of the development plan." This is not to say, however, that a development plan cannot be departed from. So long as the presumption in favour of the development plan is recognised, a decision-maker may depart from the development plan if "material considerations indicate otherwise".
- 6.2 In this case much revolves around the correct approach to interpreting policies. These must be interpreted objectively in accordance with the language used, read in their proper context. But while the meaning of policies is a question of law, when the application of a policy requires matters of judgement, those judgments are exclusively for the decision-maker to resolve.
- 6.3 It is Policy E4 that falls to be considered in light of the above principles. This policy provides so far as is material as follows:

"Policy E4 – Tourism

Herefordshire will be promoted as a destination for quality leisure visits and sustainable tourism by utilising, conserving and enhancing the county's unique environmental and heritage assets and by recognising the intrinsic character and beauty of the countryside. In particular, the tourist industry will be supported by a number of measures including:

5. The safeguarding of the historic route of the Herefordshire and Gloucestershire Canal (shown on the Policies Map), together with its infrastructure, buildings, towpath and features. Where the original alignment cannot be re-established, a corridor allowing for deviations will be safeguarded. New developments within or immediately adjoining the safeguarded corridor will be required to incorporate land for canal restoration. Development not connected with the canal that would prevent or prejudice the restoration of a continuous route will not be permitted."

- 6.4 In your officer's opinion, what policy E4 achieves is the safeguarding of the route of the canal, together with its associated infrastructure and features. This is what the first sentence of policy E4(5) is directed towards. The policy achieves this by two means. First, per the penultimate sentence, new developments within or adjacent to the canal corridor must incorporate land for canal restoration. This ensures that land can be safeguarded (e.g. by a s.106 agreement as is proposed here) but imposes no positive requirement on a developer to actually restore the canal.
- 6.5 Second, per the final sentence, new development must not "prevent or prejudice the restoration of a continuous route". Again, this imposes no positive requirement on a developer to actually restore the canal. Read with the first sentence of policy E4(5), which is concerned with the "safeguarding of the historic route" of the canal, the requirement under policy in the view of officers, is to not prevent or prejudice the ability to provide a continuous restored canal by reason of the route of the canal being either built over or otherwise unable to be utilised as such, because of new development.
- 6.6 The officer's report for the 13 January 2016 Planning Committee meeting confirms that the canal could be delivered in isolation after the completion of the residential development and this is further explained by the applicant's feasibility report. Plainly, as the officer's report also confirms, there would be amenity impacts for future residents if restoration of the canal takes place in the future. There is also the prospect of the costs of restoration being increased to some extent by reason of the adjacent residential development. It would remain, however, that the route of the canal will still be available and sufficiently accessible for such restoration works to take place.
- 6.7 In the view of officers, consistent with the meaning of policy E4(5) set out above, it would in these circumstances be reasonably open to the decision-maker to conclude that the proposed development does not prevent or prejudice the restoration of the canal, contrary to policy E4(5), by reason of it only preparing the canal for future restoration and by safeguarding the relevant land. This analysis is of course contradictory to the original comments of the Canal Trust reported at 5.4, but an approach that has been informed by legal opinion.
- 6.8 Officers are conscious that the view about policy E4(5) set out above takes a more limited view of the type of "prejudice" contemplated by this policy, compared to that set out in paragraph 6.23 of the original officer report. There are two points that follow from this difference in approach.
- 6.9 Firstly, even if the interpretation of E4(5) set out above is wrong, the Local Planning Authority is able to depart from the development plan if material considerations indicate otherwise. The material considerations that can be relied upon in this case are:
- (a) that it is unviable for the developer to do more than prepare the canal for future restoration (i.e. restoration not now taking place); and
 - (b) approval of the development will bring material benefits through the provision of up to 120 new homes, so supporting the aim in national and local policy to boost significantly the supply of housing. On this approach, departing from the presumption in favour of the development plan would be a matter of planning judgment, which in the view of officers would be rationally and reasonably open to Members.

- 6.10 It is prudent to advise Members to consider this application on the basis of these two competing interpretations of policy E4(5). That is, on the one hand, that policy E4(5) does not require the developer to do more than safeguard land such that there is no conflict with the development plan if a restored canal is not provided (as the developer now proposes), and on the other hand, that even if the policy should be read as requiring that development be refused if prejudice of any kind is caused to the prospect of restoration of the canal, that Members can depart from the development plan if in their judgment the above mentioned material considerations indicate to them that they should do so.
- 6.11 Second, on the basis that the view of the meaning of policy E4(5) is accepted, the Council is not prevented in other cases (where viability considerations do not limit the ability to undertake restoration in the same way) to seek either restoration of the canal or contributions towards such restoration, and would in appropriate cases be able to give weight to the provision of such restoration or contributions in an overall planning balance. This is in addition to being able to rely on policy E4(5) to ensure that sufficient land is retained within relevant developments for the future restoration of the canal (as is proposed in this case).
- 6.12 For the above reasons, it is the view of officers that development on the application site which does not include actual restoration of the canal but which does safeguard land for a restored canal complies with policy E4(5) of the Core Strategy.
- 6.13 If Members were to take the alternate view, then refusal would ensue and officers do not consider it the intention of E4(5) to prevent the redevelopment of previously developed land; particularly where the development makes provision sufficient land to facilitate future restoration.

Other Matters

The Loss of Employment Land

- 6.14 The original Committee Resolution accepted that the redevelopment of the estate for residential purposes was acceptable. The site is now vacant; tenants having moved on. Officers do not consider there are any material changes to circumstance that would warrant retention of the site as employment land and conclude that the proposal continues to comply with CS Policy E2. In short, the redevelopment of poor rated employment land in a sustainable location for residential development continues to be acceptable and is in fact given more weight by the continued inability to demonstrate a 5 year supply of housing land. The original Committee resolution was taken as constituting a 'commitment' for the purposes of calculating housing land supply and the loss of the 120 dwellings would further diminish the land supply figure.

Housing Mix

- 6.15 The viability assessment assumed a housing mix comprising 2 and 3-bed properties. The Housing Delivery Officer has acknowledged that the absence of affordable housing notwithstanding, more modest open market units such as proposed, would continue to fulfil a need. Thus, insofar as it can do absent affordable housing, the scheme is considered to comply with CS Policy H3. A condition is recommended requiring that the housing mix brought forward at the Reserved Matters stage is consistent with the Council's evidence of need.

Vacant Building Credit

- 6.16 It should also be noted that even if the site could viably support the provision of affordable housing, which is demonstrably not the case, the 'Vacant Building Credit' introduced by the Government to stimulate the redevelopment of previously developed land, would act to reduce the number of affordable dwellings that could be sought to 13 units, not 42 (or 35%).

- 6.17 Consultation responses from the Land Drainage officers, Archaeologist and Environmental Health Officer (noise) have not changed from the original report. All were content that the scheme is acceptable subject to the imposition of planning conditions, which are reported below.

7. Conclusions

- 7.1 The first officer report to committee concluded that the scheme could not viably support both the restoration of the canal (then estimated at c. £3,000,000) and the provision of affordable housing and other s.106 contributions. The Committee resolution favoured the restoration of the canal and discussions ensued with a view to completing the necessary s.106 agreement.
- 7.2 As reported above, further analysis of the costs of delivering a fully restored canal have been scrutinised independently by the DV, who concludes that as a consequence of the costs of canal restoration now being more accurately assessed (in conjunction with other abnormal costs), the scheme can no longer viably support the restoration of the canal or affordable housing (and other s.106 contributions). In other words, even absent the cost of the canal restoration the increase in the costs associated with demolition, remediation, groundworks, off-site highways works and services means that the scheme cannot viably support affordable housing either.
- 7.3 On the basis of independently verified reports produced by the DV, officers are content that the position in respect of viability is unarguable.
- 7.4 The Canal Trust's original response at 5.4 above (no update having been received at the time of writing) considers that non-delivery of the canal in conjunction with the housing development proposed would cause prejudice to and prevent the delivery of a fully restored canal in conflict with E4(5).
- 7.5 However, legal opinion sought on the interpretation of E4(5) confirms that there is no positive requirement placed upon a developer to restore the canal. The requirement of E4(5) relates to the safeguarding of the canal route, supplemented by a legal agreement that will see the canal land transferred to the Canal Trust's ownership. If these two things happen, as is proposed here, then the legal opinion is clear that there is no breach of E4(5).
- 7.6 Officers are of course sympathetic to the common-sense view that says it would be easier to restore this section of canal and develop the housing site simultaneously. This approach has lots to commend it, but does not reflect the inability of the housing development to support the cost of restoring the canal. As the applicant notes above at 5.3, this was the genuine intent from the outset.
- 7.7 If one accepts the analysis of E4(5) above (i.e. that there is no positive requirement that a developer should restore the canal) then it must follow that it cannot be the realistic intent of Policy E4(5) to prevent the sustainable redevelopment of previously developed land until such time that a scheme that *might* viably support the restoration of the canal arrives.
- 7.8 Overall, therefore, it is no longer an issue of balancing the restoration of the canal against the provision of affordable housing. The development cannot afford either. The correct interpretation of E4(5) confirms that there is no positive requirement placed upon a developer to restore the canal, merely to safeguard the route to allow for future restoration. Moreover, if a planning permission is not issued, then the canal land would not be transferred to the Canal Trust (or at least such a transfer would be rendered far less likely).

- 7.9 Moreover, even if a decision-maker were to consider that E4(5) *does* require the developer to restore the canal, it would not be perverse or irrational to depart from the requirements of this policy if material considerations as outlined at 6.9 above, indicates that the decision-maker should do so.
- 7.10 These material considerations include, very obviously, the viability of the scheme and also the weight that should go to the delivery of 120 dwellings on sustainable, previously developed land in the context of an absence of a demonstrably 5-year supply of housing land.
- 7.11 On this basis, the application as before Members now, is considered to comply with the Development Plan and is recommended for approval subject to the conditions set out below (as well as any others considered necessary by officers) and the execution of a legal agreement requiring that the canal land be transferred to the Canal Trust.

RECOMMENDATION

That subject to the completion of a Section 106 Town and Country Planning Act 1990 obligation requiring the safeguarding of the route of the Canal and transfer of the Canal Land (at nil consideration), officers named in the Scheme of Delegation to Officers are authorised to grant outline planning permission, subject to the conditions below and any other further conditions considered necessary by officers.

- 1. A02 Time Limit for Submission of Reserved Matters (Outline Permission)**
- 2. A03 Time Limit for Commencement (Outline Permission)**
- 3. A04 Approval of Reserved Matters**
- 4. A05 Plans and Particulars of Reserved Matters**
- 5. B03 Amended Plans**
- 6. H06 Vehicular Access Construction**
- 7. H17 Junction Improvement/Off site Works**
- 8. H19 On Site Roads - Phasing**
- 9. H20 Road Completion in 2 Years**
- 10. H21 Wheel Washing**
- 11. H27 Parking for Site Operatives**
- 12. H29 Secure Covered Cycle Parking Provision**
- 13. H31 Outline Travel Plan**
- 14. G19 Details of Play Equipment**
- 15. G10 Landscaping Scheme**
- 16. G11 Landscaping Scheme - Implementation**
- 17. G14 Landscape Management Plan**

18. **L01 Foul/Surface Water Drainage**
19. **L02 No Surface Water to Connect to Public System**
20. **L03 No Drainage Run-Off to Public System**
21. **L04 Comprehensive & Integrated Draining of Site**
22. **The recommendations for species mitigations set out in Section 5 of the ecologist's reports from Ecology Services dated November 2015 and habitat enhancements set out within Section 5 of the ecologist's reports from Ecology Services dated February 2015 should be followed unless otherwise agreed in writing by the local planning authority and the scheme shall be carried out as approved. A working method statement for protected species present and habitat enhancement plan should be submitted to the local planning authority in writing. The plan shall be implemented as approved.**

Reason: 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).

23. **Development shall not commence until a scheme to safeguard the residential units hereby permitted from road traffic, railway and industrial noise has been submitted to and approved in writing by the local planning authority. All works which form part of the approved scheme shall be completed before occupation of any dwellings and shall thereafter be retained.**

Reason: To protect the amenities of the residential units hereby approved so as to comply with Policy SD1 of the Herefordshire Local Plan – Core Strategy and the NPPF.

24. **Prior to the commencement of development, details of a scheme for acoustic attenuation of noise from the extract fans at Cavanaghs shall be submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details prior to first occupation of any of the residential units hereby permitted and any works or attenuation measures shall thereafter be retained.**

Reason: To protect the amenities of the residential units hereby approved so as to comply with Policy SD1 of the Herefordshire Local Plan – Core Strategy and the NPPF.

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

- a) **A 'desk study' report including previous site and adjacent site uses, potential contaminants arising from those uses, possible sources, pathways, and receptors, a conceptual model and a risk assessment in accordance with current best practice**
- b) **If the risk assessment in (a) confirms the possibility of a significant pollutant linkage(s), a site investigation should be undertaken to characterise fully the nature and extent and severity of contamination, incorporating a conceptual model of all the potential pollutant linkages and an assessment of risk to identified receptors**

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

Reason: In the interests of human health and to ensure that the proposed development will not cause pollution to controlled waters or the wider environment.

26. The Remediation Scheme, as approved pursuant to condition no. 25 above, shall be fully implemented before the development is first occupied. On completion of the remediation scheme the developer shall provide a validation report to confirm that all works were completed in accordance with the agreed details, which must be submitted before the development is first occupied. Any variation to the scheme including the validation reporting shall be agreed in writing with the Local Planning Authority in advance of works being undertaken.

Reason: In the interests of human health and to ensure that the proposed development will not cause pollution to controlled waters or the wider environment.

27. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted, and obtained written approval from the local planning authority for, an amendment to the Method Statement detailing how this unsuspected contamination shall be dealt with.

Reason: In the interests of human health and to ensure that the proposed development will not cause pollution to controlled waters or the wider environment.

28. M17 Water Efficiency – Residential

29. Non-standard – Housing Mix

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. N02 Section 106 Obligation
3. HN01 Mud on Highway
4. HN04 Private Apparatus within Highway
5. HN05 Works within the Highway
6. HN07 Section 278 Agreement

- 7. **HN08 Section 38 Agreement & Drainage Details**
- 8. **HN10 No Drainage to Discharge to Highway**
- 9. **HN21 Extraordinary Maintenance**

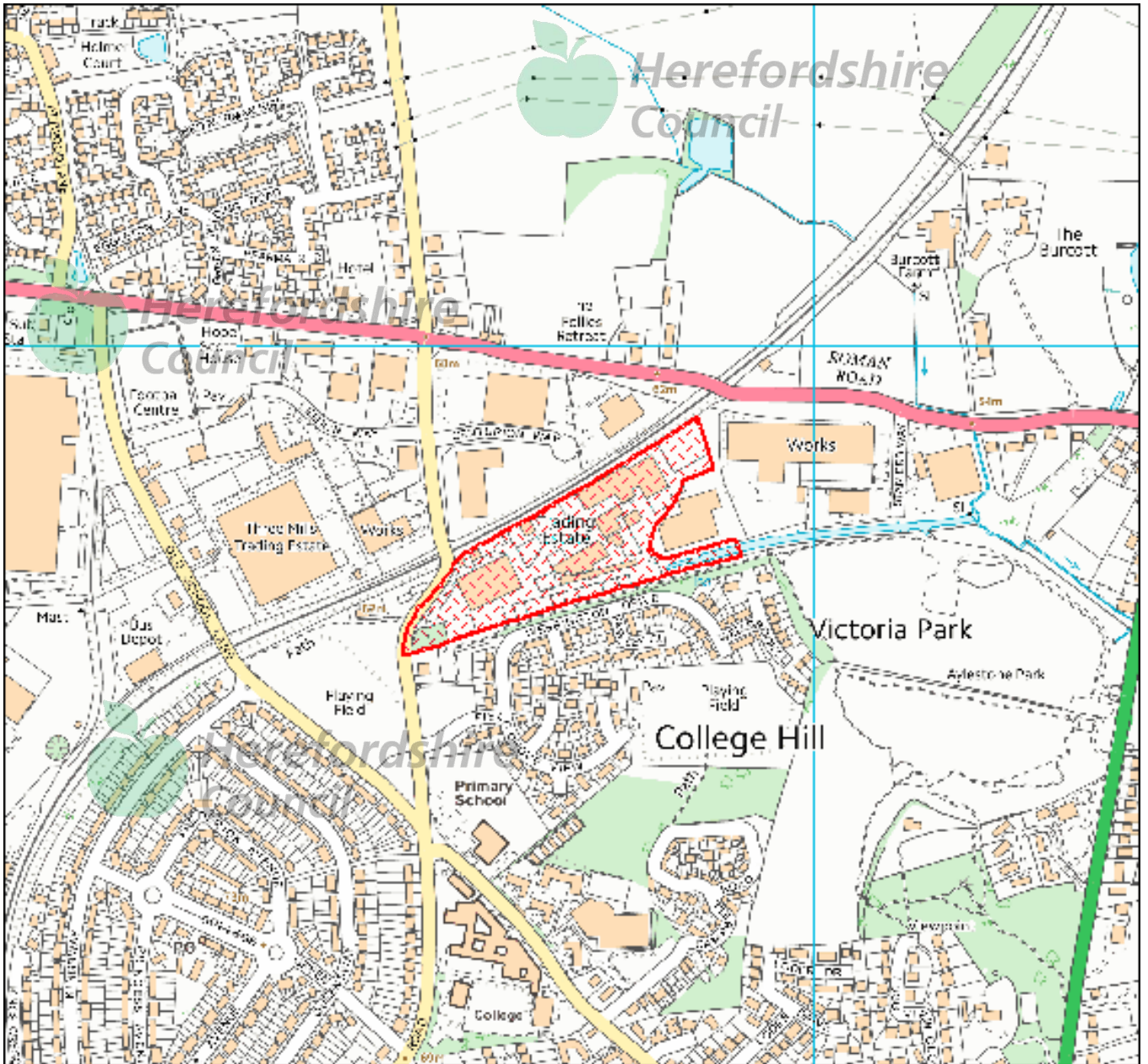
Decision:

Notes:

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Background Papers

Internal departmental consultation replies.



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APPLICATION NO: 150659

SITE ADDRESS : LAND AT HOLMER TRADING ESTATE, COLLEGE ROAD, HEREFORD, HEREFORDSHIRE

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