

<b>MEETING:</b>	<b>PLANNING AND REGULATORY COMMITTEE</b>
<b>DATE:</b>	<b>22 AUGUST 2018</b>
<b>TITLE OF REPORT:</b>	<b>174517 - PROPOSED ERECTION OF REPLACEMENT DWELLING AND GARAGE AT LAND ADJOINING THE CHALET, FAWLEY, KINGS CAPLE, NR ROSS-ON-WYE.</b>  <b>For: Mr Phillips per Mr Paul Smith, 1a Mill Street, Hereford, Herefordshire, HR1 2NX</b>
<b>WEBSITE LINK:</b>	<a href="https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=174517&amp;search=174517">https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=174517&amp;search=174517</a>
<b>Reason Application submitted to Committee – Member Redirection and Departure from Local Plan</b>	

**Date Received: 30 November 2017      Ward: Old Gore      Grid Ref: 357231,229818**

**Expiry Date: 12 February 2018**  
Local Member: Councillor BA Durkin

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

- 1.1 The site is located within an open countryside location within the Wye Valley Area of Outstanding Natural Beauty outside of the defined settlement boundary of Kings Caple as shown in the Kings Caple Neighbourhood Development Plan.
- 1.2 The site comprises an infill undeveloped unused vacant plot of land that is read in conjunction with an outlying collection of dwellings arranged in a linear pattern on the north side of the highway.
- 1.3 The application is an outline application for the proposed erection of a replacement dwelling and garage. Details relating to the layout, access, landscaping and scale of development proposed are under consideration, appearance is a reserved matter however an indicative drawing accompanies the application. The proposal is promoted as a 'swap' with lawful residential development use on an adjoining site given up in return.

## **2. Policies**

- 2.1 National Planning Policy Framework
- 2.2 The National Planning Policy Framework (NPPF) has 'sustainable development' central to planning's remit and objectives. The NPPF also seeks positive improvements in the quality of the built, natural and historic environment and in regards people's quality of life.

- 2.3 The National Planning Policy Framework has been considered in the assessment of this application. The following sections are considered particularly relevant:
- 2 Achieving sustainable development
  5. Delivering a sufficient supply of homes
  11. Making effective use of land
  12. Achieving well-designed places
  15. Conserving and enhancing the natural environment
- 2.4 Paragraph 11 of the Framework sets out the presumption in favour of sustainable development. For decision-taking this means where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless the application of policies of the NPPF that protect areas or assets of particular importance provides a clear reason for refusing the development proposed or 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.
- 2.5 NPPF Paragraph 124 states *The creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.* Paragraph 127 outlines that planning decisions should ensure that developments:
- will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;
  - are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;
  - are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);
  - establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;
  - optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and
  - create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.
- 2.6 Policies specific to protected landscapes (including AONBs) are detailed at paragraph 172 that states *Great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty. The scale and extent of development within these designated areas should be limited.*
- 2.7 Herefordshire Core Strategy
- SS1 – Presumption in favour of Sustainable Development  
SS2 – Delivering new homes  
SS4 – Movement and transportation  
SS6 – Environmental quality and local distinctiveness

SS7 – Addressing climate change  
RA1 – Rural Housing Strategy  
RA2 – Herefordshire’s villages  
RA3 – Herefordshire’s countryside  
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 – Waste water treatment and river water quality

2.8 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](https://www.herefordshire.gov.uk/info/200185/local_plan/137/adopted_core_strategy)

2.9 Kings Caple Neighbourhood Development Plan (NDP)

Policies SB1, SB2, E1,E2,E4.H2,BD1,BD2,BD3,BD4,BD5.

[https://www.herefordshire.gov.uk/downloads/file/11245/neighbourhood\\_development\\_plan\\_july\\_2017](https://www.herefordshire.gov.uk/downloads/file/11245/neighbourhood_development_plan_july_2017)

### **3. Planning History**

3.1 DCSE2006/0886/O – Erection of 1 No. new residential unit – Refused, Appeal Dismissed

DCSE2004/3765/U – Use of chalet for residential accommodation as a single dwellinghouse – Approved

CE2001/2716/O – Site for proposed dwelling – Refused, Appeal Dismissed

CE2000/3179/O – Site for proposed dwelling on land adjacent to the British Lion – Refused

### **4. Consultation Summary**

4.1 Statutory Consultations

4.2 Natural England has no objection subject to appropriate mitigation being secured as Natural England considers that without appropriate mitigation the application would:

- have an adverse effect on the integrity of River Wye Special Area of Conservation
- damage or destroy the interest features for which River Wye / Lugg Site of Special Scientific Interest has been notified.

In order to mitigate these adverse effects and make the development acceptable, the following mitigation measures are required / or the following mitigation options should be secured:

- Foul sewage to be disposed in line with Policy SD4 of the adopted Herefordshire Core Strategy. Where a package treatment plant is used for foul sewage, this should discharge to a soakaway or a suitable alternative if a soakaway is not possible due to soil/geology.
- Surface water should be disposed of in line with Policy SD3 of the adopted Herefordshire Core Strategy and the CIRIA SuDS Manual (2015) C753.

Natural England advise that an appropriate planning condition or obligation should be attached to any planning permission to secure these measures. Subject to the above appropriate mitigation being secured, we advise that the proposal can therefore be screened out from

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

further stages in the Habitats Regulations Assessment process, as set out under Regulation 62 of the Habitats Regulations 2017, as amended.

#### 4.3 Internal Council Consultations

4.4 The Transportation Manager has no objection on the basis requested conditions are imposed on any permission.

4.5 The Conservation Manager – Ecology, notes that the proposed PTP will have a soakaway drainage field on adjacent land. This should be made part of the approved plans so as to ensure that the required Habitat Regulations screening (River Wye SSSI/SAC) returns a NO unmitigated ‘*Likely Significant Effect*’ result.

The ecology report appears relevant and appropriate and providing standard best practice ecological working methods are used there should be no immediate ecological issues. As these best practice working methods form part of the applicants/developers/builders obligations under UK Legislation no specific Condition is required/reasonable.

In line with NERC Act, NPPF Guidance and Core Strategy all developments should demonstrate how they are going to enhance the local biodiversity potential. To secure this I would request a relevant Condition is included on any Planning Consent granted.

### 5. Representations

5.1 Kings Cople Parish Council objects to the proposal as it does not conform to the Kings Cople NDP policy SB2 and the Core Strategy policy RA3 (specifically point 3 as explained in para. 4.8.25) in that it proposes a dwelling in a different location to the one it claims to replace but does not provide technical justification for the need for the re-siting. The application site does not include the area to which the Certificate of Lawfulness. Following reconsultation on further details submitted, the Parish Council are of the opinion that the additional information submitted does not provide any justification for the relocation of the proposed dwelling outside the lawful domestic curtilage of the one it claims to replace.

The Parish Council believes that the application is, therefore, still contrary to the policy RA3 of the Core Strategy and policy SB2 of the Kings Cople NDP and the Parish Council remains opposed to it.

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

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

#### *Legislation and Policy context*

6.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states as follows:

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

6.2 In this instance the adopted development plan is the Herefordshire Local Plan – Core Strategy (CS). The National Planning Policy Framework (NPPF) is also a significant material

consideration. It is also noted that the site falls within the Kings Cople Neighbourhood Area, which published a made Neighbourhood Development Plan (NDP) on 16 October 2017.

- 6.3 The legal framework for AONBs in England and Wales is provided by the Countryside and Rights of Way Act (CROW) 2000 which reaffirms the primary purpose of AONBs: to conserve and enhance natural beauty, and sets out responsibilities for their management. In particular relevance to the application are the following sections –

*Section 82 reaffirms the primary purpose of AONBs: to conserve and enhance natural beauty.*

*Section 84 confirms the powers of local authorities to take appropriate action to conserve and enhance the natural beauty of AONBs.*

*Section 85 places a duty on all public bodies and statutory undertakers to 'have regard' to the 'purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty.*

### **Herefordshire Core Strategy**

- 6.4 Core Strategy policy SS6 – *Environmental quality and local distinctiveness* describes proposals *should conserve and enhance those environmental assets that contribute towards the county's distinctiveness, in particular its settlement pattern, landscape, biodiversity and heritage assets and especially those with specific environmental designations.*

- 6.5 Policy SS6 then states in its list of criteria: *Development proposals should be shaped through an integrated approach and based upon sufficient information to determine the effect upon landscape, townscape and local distinctiveness, especially in Areas of Outstanding Natural Beauty.*

- 6.6 Policy RA2 states settlement boundaries (or a reasonable alternative) for those settlements listed in Policy RA2 will be defined in neighbourhood development plans. In the period leading up to the definition of appropriate settlement boundaries the Council will assess any applications for residential developments against their relationship to the main built up form of the settlement. Outside of these settlements new housing will be restricted to avoid unsustainable patterns of development. Outside of these defined areas residential development is limited to the exceptions listed under Policy RA3 which includes the replacement of an existing dwelling with a lawful residential use that is comparable in size and scale with, and is located in the lawful domestic curtilage of the existing dwelling.

- 6.7 Policy RA3 – *Herefordshire's countryside* states: in rural locations outside of settlements, as to be defined in either neighbourhood development plans or the Rural Areas Sites Allocations DPD, residential development will be limited to proposals which satisfy one or more of the following criteria:

1. meets an agricultural or forestry need or other farm diversification enterprise for a worker to live permanently at or near their place of work and complies with Policy RA4; or

2. accompanies and is necessary to the establishment or growth of a rural enterprise, and complies with Policy RA4; or

3. involves the replacement of an existing dwelling (with a lawful residential use) that is comparable in size and scale with, and is located in the lawful domestic curtilage, of the existing dwelling; or

4. would result in the sustainable re-use of a redundant or disused building(s) where it complies with Policy RA5 and leads to an enhancement of its immediate setting; or

- 5. is rural exception housing in accordance with Policy H2; or
  - 6. is of exceptional quality and innovative design satisfying the design criteria set out in Paragraph 55 of the National Planning Policy Framework and achieves sustainable standards of design and construction; or
  - 7. is a site providing for the needs of gypsies or other travellers in accordance with Policy H4
- 6.8 Core Strategy policy LD1 – *Landscape and townscape* criteria requires new development must achieve the following:
- demonstrate that character of the landscape and townscape has positively influenced the design, scale, nature and site selection, including protection and enhancement of the setting of settlements and designated areas;
  - conserve and enhance the natural, historic and scenic beauty of important landscapes and features, including Areas of Outstanding Natural Beauty, through the protection of the area’s character and by enabling appropriate uses, design and management

### **Wye Valley AONB Management Plan**

- 6.9 The Wye Valley AONB Management Plan is a material consideration in the assessment of this application and the following policies are particularly applicable –

WV-D2 – Encourage and support high standards of design, materials, energy efficiency, drainage and landscaping in all developments, including Permitted Development, to ensure greater sustainability and that they complement and enhance the local landscape character and distinctiveness including scale and setting and minimise the impact on the natural environment. *[see also WV-L3, WV-D4, WV-U1, WV-U3, WV-T2, WV-S4 and WV-P5]*

WV-D3 – Resist inappropriate development which will create a persistent and dominant feature out of keeping with the landscape of the AONB and/or if it damages Special Qualities in the AONB, including through high levels of noise and/or light pollution or any SAC, SPA or Ramsar site or other sites designated as environmentally important. *[see also WV-L3, WV-F3, WV-U1, WV-U3, WV-T2 and WV-S4]*

### **Kings Caple Neighbourhood Plan**

- 6.10 The made Kings Caple NDP has consistency and conformity with the Herefordshire Core Strategy and has a defined settlement boundary. Outside of the settlement boundary Policy H2 states proposals must comply with the criteria of Herefordshire Core Strategy Policy RA3; such proposals for development will not be supported if located on sites where the visual sensitivity of the site is high or very high.

### **Assessment**

- 6.11 This is an interesting and somewhat unique situation where there is a policy conflict tension however a pragmatic approach represents a better solution. It is suggested a hard line policy approach undermines wider aims and objectives with regards the safeguarding and enhancing the character and appearance of the AONB and achieving sustainable design quality aims and objectives.
- 6.12 The proposal is a proposed erection of replacement dwelling and garage offsetting a CLUED for residential use on an adjoining backland site and relocating residential use on to what is considered in landscape terms, a better location for a dwelling.

- 6.13 The site to which the Certificate of Lawfulness for Existing Use or Development (CLUED) relates is located to the north of the application site comprising a rectangular parcel of land encompassing the plot width of Fawley Orchard and the application site served by vehicular access adjoining and to the rear of Fawley Orchard. The Council was satisfied that the chalet still in situ was used as a dwellinghouse for the four years preceding the CLUED application and as such the use was regularised under reference DCSE20043765/U conferring lawful use as *Use of chalet for residential accommodation as a single dwelling house*.
- 6.14 The application site is vacant and unused and adjoins the highway. Development of this site relies upon effectively a 'land swap' whereby adjacent land under the applicants' ownership which benefits from lawful residential use is given up to develop an alternative site. A Section 106 legal agreement would secure the 'swap' and ensure an additional dwelling was not gained. Notwithstanding the tension with Policy RA3 and as such NDP policy H2 it is considered the proposal complies with the spirit of these policies. Furthermore, it is considered this in principle, has significant benefits to the character and appearance of the AONB and character and amenity hereabouts as follows
- Amends the existing lawful situation so development reflects the prevailing development pattern hereabouts, namely development fronts the road
  - Enables landscape and biodiversity enhancements through the uses of the land involved being reconfigured and reclassified and new planting secured
  - Better inter relationship with adjoining land uses and dwellings
- 6.15 The site which benefits from the Certificate of Lawfulness is a backland site and relatively unkempt. Development here through parlaying the CLUED into a replacement dwelling under policy RA3, whilst acceptable, would undermine and detract from the clear historic development pattern hereabouts of dwellings fronting the rural lanes in isolated or small pockets of linear development.
- 6.16 The proposed site, however, fronts the rural lane and represents a natural infill site which would replicate and reinforce the character and pattern of development. A higher quality solution is also achievable vis-à-vis design and impact upon adjoining land uses.
- 6.17 The proposal also allows for the betterment of the CLUED site and enhanced, appropriate landscaping, planting and biodiversity benefits. The application is an outline application, however to ensure some degree of consistency with policy RA3 criterion 3 the replacement of an existing dwelling (with a lawful residential use) that is comparable in size and scale with, and is located in the lawful domestic curtilage, of the existing dwelling a condition limiting the size of the dwelling to 100sq metres is proposed.
- 6.18 The planning history and appeal decisions referenced above are noted, however these relate to stand alone new development and an incomparable situation to the one considered here. As such there is minimal relevance to the assessment and determination of this application except to note the landscape and locational characteristics and presumption against development hereabouts unless exception policies apply.
- 6.19 On the basis of the above, the significant and material benefits of the proposal outweigh, in this case, the conflict with Core Strategy policies RA2 and RA3 and the Kings Caple Neighbourhood Plan. The character and appearance of the Wye Valley AONB and countryside hereabouts would be enhanced, the amenity of adjoining dwellings enhanced and a modest dwelling secured beneficial to the provision of accommodation in the rural locality. On this basis and the compliance with Core Strategy policies SS1, SS6, LD1, LD4 and SD1, and the relevant aims and objectives of the CROW Act, Wye Valley AONB Management Plan and National Planning Policy Framework, approval is recommended.

## RECOMMENDATION

That subject to the completion of a Section 106 Town & Country Planning Act 1990 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. 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. C05 – Plans and particulars of reserved matters
5. C07 – Development in accordance with approved plans and materials
6. H09 Driveway gradient
7. H13 Access, turning area and parking
8. H20 Road completion in 2 years
9. H27 Parking for site operatives
10. H29 Secure covered cycle parking provision
11. Within 3 months of completion of the building works evidence (such as photos/signed Ecological Clerk of Works completion statement) of the suitably placed installation of at least ONE bat roosting enhancements (habitat boxes, tubes, tiles, bat bricks, raised weatherboarding); TWO bird nesting boxes, ONE Hedgehog House and ONE pollinating insect habitat home built in to, or attached to the new property or on land or buildings under the applicant's control, should be supplied to and acknowledged by the local authority; and shall be maintained hereafter as approved unless otherwise agreed in writing by the LPA.

**Reason:** To ensure that all species are protected and habitats enhanced having regard to the Wildlife and Countryside Act 1981 (as amended), the Conservation (Natural Habitats, &c) Regulations 1994 (as amended) and Policy LD2 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework, NERC 2006

12. The dwelling hereby approved shall be limited to a gross internal floor area of 100sq metres, including all internal spaces.

**Reason:** In order the dwelling, which is essentially a replacement residential use, is commensurate with the lawful residential use the development replaces, in order to comply with the requirements of Herefordshire Core Strategy policy RA3, and in order to safeguard the character and appearance of the locality and one which is within an Area of Outstanding Natural Beauty and to comply with Herefordshire Core Strategy policies SS1, SS2, RA1, LD1 and SD1, The Wye Valley AONB Management Plan and National Planning Policy Framework.



**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. HN01 Mud on highway
3. HN04 Private apparatus within highway
4. HN10 No drainage to discharge to highway
5. HN24 Drainage other than via highway system
6. HN28 Highways Design Guide and Specification
7. It is suggested advice should be sought from an appropriately experience ecologist or bat worker. Habitat boxes should be suitably hard wearing and durable eg Schwegler woodcrete, Greenwood habitat's 'ecostyrocrete' or similar. No external lighting should illuminate any of the enhancements, surrounding woodland habitat or other boundary features beyond any existing illumination levels and all lighting on the development should support the Dark Skies initiative (DEFRA/NPPF Guidance 2013).

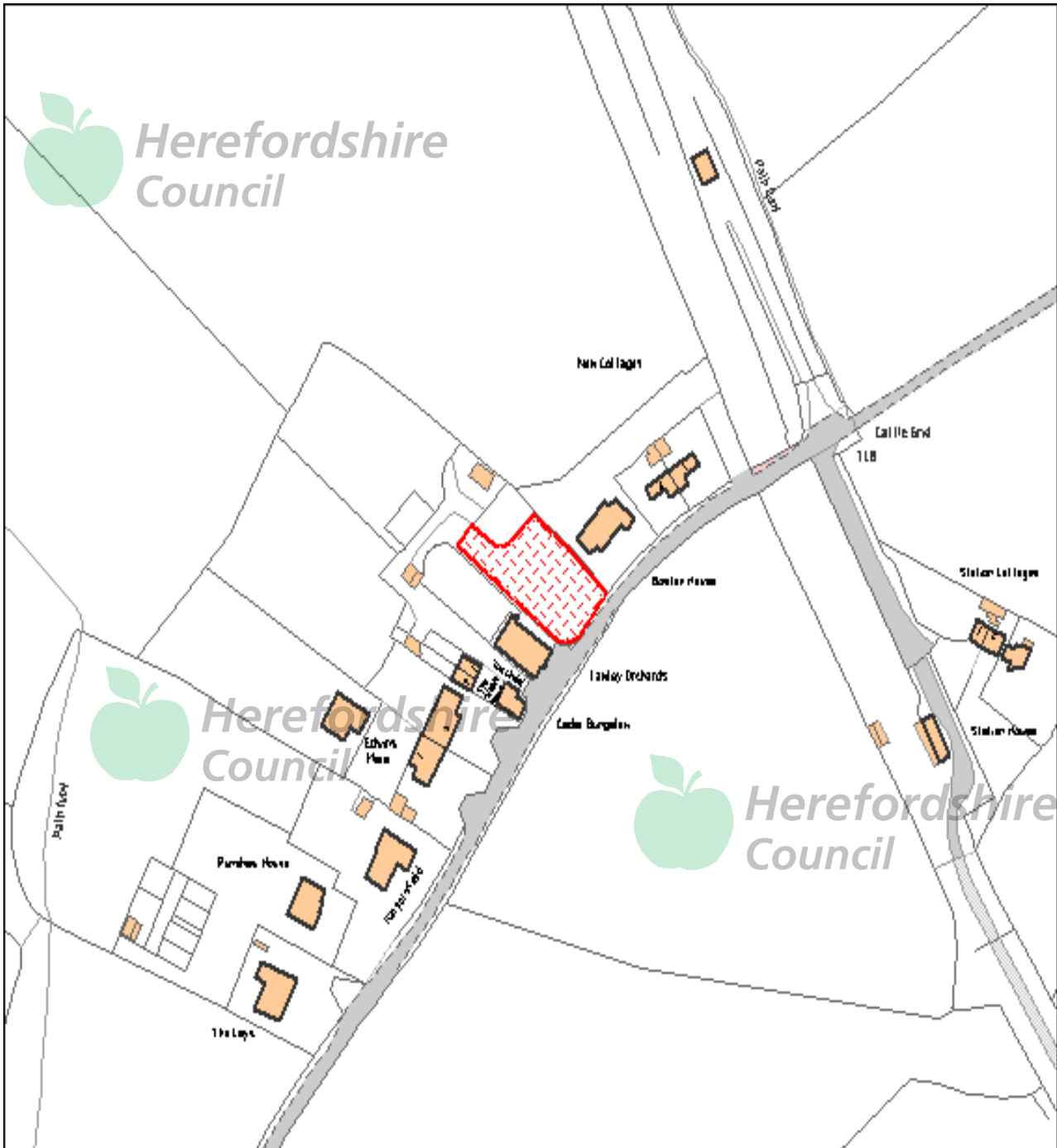
Decision: .....

Notes: .....

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**Background Papers**

Internal departmental consultation replies.



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**APPLICATION NO:** 174517

**SITE ADDRESS :** LAND ADJOINING THE CHALET, FAWLEY, KINGS CAPLE, NR ROSS-ON-WYE, HEREFORDSHIRE

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