

MEETING:	PLANNING AND REGULATORY COMMITTEE
DATE:	15 JANUARY 2020
TITLE OF REPORT:	190032 - PROPOSED DEVELOPMENT OF 8 HOUSES AND GARAGES AT LAND TO THE WEST OF B4361, LUSTON, HEREFORDSHIRE For: Mr Brechtmann per Mr Edward Brechtmann, Kingsland Sawmills, Kingsland, Leominster, Herefordshire HR6 9SF
WEBSITE LINK:	https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=190032&search=190032
Reason Application submitted to Committee – Re-direction	

Date Received: 7 January 2019
Expiry Date: 15th January 2019

Ward: Bircher

Grid Ref: 348644,262710

Local Member: Councillor Sebastian Bowen

1. Site Description and Proposal

- 1.1 The application relates to a site approximately 3km north of the market town of Leominster in the village of Luston. The site is located on the southern edge of the village on the western side of the B4361 and comprises a broadly rectangular parcel of land totalling 0.85 hectares (2.1 acres) in area. The location of the application site in relation to the village is denoted by the red star in Figure 1 below.

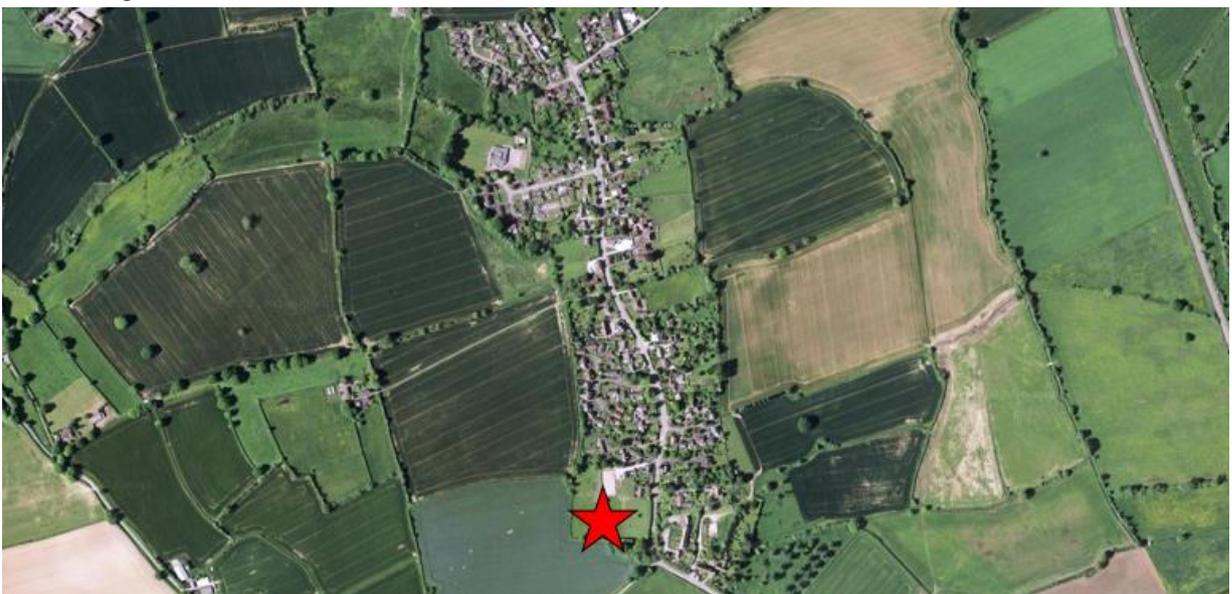


Figure 1: Site Location Plan

Further information on the subject of this report is available from Mr Adam Lewis on 01432 383789

1.2 Historically the proposal site has been associated with the residential dwelling known as the White House and has been used as paddocks / pasture for the grazing of horses. The land is currently subdivided into smaller parcels by post and rail fencing and is laid to grass interspersed with a number of small trees. Whilst not forming part of the proposal site, a ménage and stable building is situated immediately to the north. A residential bungalow known as Ashlea adjoins the site in the north eastern corner near to the roadside. The site has a frontage onto the B4361 to the east which is defined by an established mixed species hedgerow. A hedgerow also forms the site boundary to the west with open countryside beyond, whilst to the south there is thick band of mature trees that includes a patch of oaks and elms which are subject to a Tree Preservation Order. The site is elevated relative to the adjacent highway by approximately 1.75 metres and the topography is gently undulating with the land rising slightly to the south. The site is located within the designated Luston Conservation Area, and the White House (to the north) and the converted barns at Bury Farmhouse (on the opposite side of the highway to the east) are listed at Grade II. The extent of the proposal site is shown on Figure 2 below;



Figure 2: Application Site

1.3 The current application has been made in full and seeks consent for the erection of 8 dwellings. The proposed site layout is shown in Figure 3, below;



Figure 3: Proposed Site Layout Plan

Further information on the subject of this report is available from Mr Adam Lewis on 01432 383789

- 1.4 As part of the proposal a new single point of access would be created approximately midway along the site's frontage onto the B4361, with the existing roadside hedgerow being removed and replanted to achieve the required visibility splays. The dwellings would then be arranged around a permeable tarmac internal road which includes provision to retain a means of access to the parcel of pasture land to the north west of the proposal site. The scheme would also provide a new footpath link which abuts the boundary of the property known as Ashlea and provides pedestrian connectivity to the existing village footway network that runs alongside the B4361 to north east of the site.
- 1.5 Eight dwellings are proposed in total and these would be arranged as six detached units and a pair of semi-detached units. It is understood that the six detached units would be offered as custom build plots whereby future owners would commission their own homes through the developer, whilst the two semi-detached units would be completed by the developer and sold through the open market. A summary of the proposed dwellings is included below;

Plot 1	3 bed two storey detached unit with detached three bay garage
Plot 2	4 bed two storey detached unit with detached two bay garage
Plot 3	3 bed two storey detached unit with detached two bay garage
Plot 4	5 bed three storey detached unit with separate annexe and adjoining two bay garage
Plot 5	4 bed two storey detached unit with detached three bay garage with studio above
Plot 6	3 bed two storey detached with detached two bay garage
Plot 7	Pair of semi-detached 3 bed two storey units
Plot 8	

- 1.6 In general terms, the internal layout of the site has been arranged to have smaller units at the front (east) roadside boundary with the larger units at the rear of the site to the west. The semi-detached units would be sited near to the eastern boundary and, alongside the detached unit on Plot 1, would form the site's frontage on the B4361. A street scene section plan has been provided with the application and is included below at Figure 4;

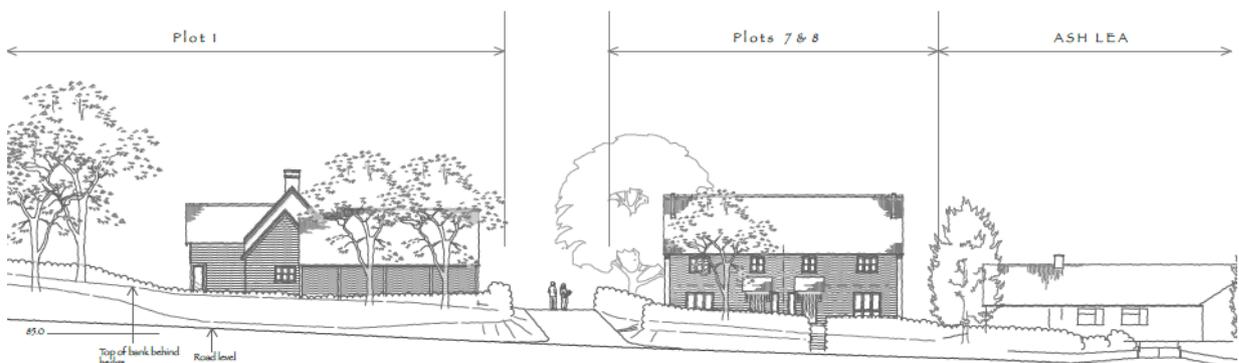


Figure 4: Proposed Street Scene Section

- 1.7 Each unit is individually designed and a mixed palate of materials is proposed for external finishes to include a combination of brick work, render and timber weatherboarding under clay tile roofs. The existing hedge and tree boundaries to the south and west would be retained as part of the scheme, with new internal boundaries between plots being formed by new hedgerow planting and metal 'estate' style fencing. New tree planting is also proposed within the site which includes an area of traditional orchard planting on a parcel of land to the north of the site. The driveway and parking areas to each property would be formed of permeable gravel.
- 1.8 An outline drainage strategy has been provided which shows foul water to be managed through a connection to the mains sewer network. Surface water would be dealt with through the use of soakaways on each individual plot.

Procedural Note

- 1.9 Members are advised that this application was originally scheduled to be heard at the meeting of the Planning and Regulatory Committee on the 16th October 2019. Members will recall conducting a Site Inspection on the 15th October 2019 in advance of the meeting. However, the application was subsequently withdrawn from the meeting's agenda following concerns over amended plans and materials that had been received by Members which had not been sent to Officers or formally consulted upon. For clarity, those materials have not been formally accepted and do not form part of the application that is currently being considered. In essence the proposal before Members is the same as that which was due to be presented to the Committee for consideration on the 16th October; with the exception of an amended Design and Access Statement which has now been formally supplied to the planning authority by the applicant.
- 1.10 The application was subsequently scheduled to be heard at the meeting of the Planning and Regulatory Committee on 11th December 2019. The item was however again withdrawn from the agenda at the request of the Local Ward Member and the Applicant, as the former was unable to attend the scheduled meeting. The proposal before Members today has not changed since 11 December 2019.

2. Policies

2.1 Herefordshire Local Plan – Core Strategy (2015)

The following policies are considered to be of relevance to this application:

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
RA1	-	Rural Housing Strategy
RA2	-	Housing in Settlements Outside Hereford and the Market Towns
RA3	-	Herefordshire's Countryside
H1	-	Affordable Housing – Thresholds and Targets
H3	-	Ensuring an Appropriate Range and Mix of Housing
MT1	-	Traffic Management, Highway Safety and Promoting Active Travel
LD1	-	Landscape and Townscape
LD2	-	Biodiversity and Geodiversity
LD3	-	Green Infrastructure
LD4	-	Historic Environment and Heritage Assets
SD1	-	Sustainable Design and Energy Efficiency
SD3	-	Sustainable Water Management and Water Resources
SD4	-	Wastewater Treatment and River Water Quality
ID1	-	Infrastructure delivery

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:-

https://www.herefordshire.gov.uk/info/200185/local_plan/137/adopted_core_strategy

2.2 The Luston Group Neighbourhood Development Plan (made 2nd January 2018)

LG1	–	General Development Principles
LG2	–	Design of development in Luston Group
LG3	–	Protecting and enhancing local landscape character and views
LG4	–	Dark Skies

- LG5 – Flood Risk, Water Management and Surface Water Run Off
- LG6 – Scale and type of new housing in Luston
- LG11 – Developer contributions and Community Infrastructure Levy

The Luston Neighbourhood Development Plan policies together with any relevant supporting documentation can be viewed on the Council's website by using the following link:-

https://www.herefordshire.gov.uk/directory_record/3083/luston_group_neighbourhood_development_plan

2.3 National Planning Policy Framework (February 2019)

1. Introduction
2. Achieving sustainable development
3. Plan Making
4. Decision-making
5. Delivering a sufficient supply of homes
6. Building a strong, competitive economy
8. Promoting healthy and safe communities
9. Promoting sustainable transport
11. Making effective use of land
12. Achieving well designed places
14. Meeting the challenge of climate change, flooding and coastal change
15. Conserving and enhancing the natural environment
16. Conserving and enhancing the historic environment

3. **Planning History**

3.1 The site does not have any directly relevant planning history.

4. **Consultation Summary**

Statutory Consultations

4.1. **Natural England** – Qualified Comments / Objection

Thank you for your re-consultation on the above dated and received by Natural England on 04 October 2019 following an updated Habitats Regulation Assessment.

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

The application site is within the catchment of the River Lugg which is part of the River Wye Special Area of Conservation (SAC) which is a European designated site (also commonly referred to as Natura 2000 sites), and therefore has the potential to affect its interest features. European sites are afforded protection under the Conservation of Habitats and Species Regulations 2017, as amended (the 'Habitats Regulations'). The SAC is notified at a national level as the River Lugg Site of Scientific Interest (SSSI) Please see the subsequent sections of this letter for our advice relating to SSSI features.

In considering the European site interest, Natural England advises that you, as a competent authority under the provisions of the Habitats Regulations, should have regard for any potential impacts that a plan or project may have. The Conservation objectives for each European site explain how the site should be restored and/or maintained and may be helpful in assessing what, if any, potential impacts a plan or project may have.

European site - River Wye SAC

Natural England notes that your authority, as competent authority, has undertaken an appropriate assessment of the proposal, in accordance with Regulation 63 of the Conservation of Species and Habitats Regulations 2017 (as amended). Natural England is a statutory consultee on the appropriate assessment stage of the Habitats Regulations Assessment process, and a competent authority should have regard to Natural England's advice.

Your appropriate assessment concludes that your authority is not able to ascertain that the proposal will not result in adverse effects on the integrity of any of the sites in question. Having considered the assessment, and the measures proposed to mitigate for any adverse effects, Natural England concurs with the conclusion you have drawn that it is not possible to ascertain that the proposal will not result in adverse effects on site integrity. Following the ruling of Coöperatie Mobilisation (AKA the Dutch Case) (Joined Cases C-293/17 and C-294/17) Natural England is currently unable to advise that the proposals are acceptable within the River Lugg catchment with regards to the question of phosphate inputs to the SAC.

Regulation 63 states that a competent authority may agree to a plan or project only after having ascertained that it will not adversely affect the integrity of the European site, subject to the exceptional tests set out in Regulation 64 of the Conservation of Habitats and Species Regulations 2017 (as amended). As the conclusion of your Habitats Regulations Assessment states that it cannot be ascertained that the proposal will not adversely affect the integrity of the European site, your authority cannot permit the proposal unless it passes the tests of Regulation 64; that is that there are no alternatives and the proposal must be carried out for imperative reasons of overriding public interest.

Your authority may now wish to consider the exceptional tests set out within Regulation 64. Specific guidance about these tests can be found at: <https://www.gov.uk/government/publications/habitats-and-wild-birds-directives-guidance-on-the-application-of-article-6-4>.

4.2 **Welsh Water – No Objection**

We would request that if you are minded to grant Planning Consent for the above development that the Conditions and Advisory Notes provided below are included within the consent to ensure no detriment to existing residents or the environment and to Dwr Cymru Welsh Water's assets.

SEWERAGE

We have reviewed the information submitted as part of this application with particular focus on drawing number 1743.15 which shows that the intention is to drain foul water to the mains sewer and surface water to soakaways to which we have no objection to in principle. Therefore, if you are minded to grant planning permission we request that the following Conditions and Advisory Notes are included within any subsequent consent.

Conditions

No surface water and/or land drainage shall be allowed to connect directly or indirectly with the public sewerage network

Reason: To prevent hydraulic overloading of the public sewerage system, to protect the health and safety of existing residents and ensure no pollution of or detriment to the environment

WATER

Dwr Cymru Welsh Water has no objection to the proposed development

Internal Council Consultations

4.3 **Neighbourhood Planning Manager – Qualified Comment / Objection**

The Luston Neighbourhood Plan was Made on the 2 January 2018. The application for 8 dwellings with associated garages is on the southern section of an allocated site as referenced in Policy LG6 (site 136/212). The whole site is 1 ha and has 11 dwellings as indicative number of dwellings for the site.

The application is contrary to Criteria (e) of policy LG6, as by developing only part of the site means that no affordable housing is required to be delivered as detailed:

(e) Demonstrates a contribution to the delivery of an appropriate mix of dwelling types and sizes including affordable housing, to meet the needs of all sectors of the community;

Therefore it is considered that this application is contrary to the Luston Neighbourhood Plan.

4.4 **Housing Development Officer – Qualified Comment / Objection**

This site has 11 units as an indicative number of dwellings for the site. The developer is proposing 8 units which is contrary to Lustons NDP. As a result there would be a requirement to provide 40% affordable housing on this site which equates to 4 units.

With this in mind I am mindful to object to this application.

In order for me to support this application I would be looking for the developer to provide affordable housing by way of intermediate tenure; 2 x 2 and 2 x 3 bed houses.

With regards to the open market units having reviewed the needs data for the area it is apparent that the greatest need is for 3 beds followed by 2 beds then 4 beds and finally 1 bed.

Whilst the developer is providing a majority of 3 beds it would be good to see the inclusion of 2 bed units as well.

4.5 **Transportation Manager – No objections**

The amended drawings and the submission of an ATC that supports the calculation of the visibility splay is sufficient to demonstrate that an acceptable and correct splay can be formed at the site.

It is noted that the amended drawing shows a tarmac area for the access and shared private drive and the access area should be constructed to the requirements of Appendix A1 (Construction Thicknesses) of Herefordshire Council's Highways Specification for New Developments. If minded for approval it is suggested that a condition would be sufficient to ensure this.

The pedestrian route to the development, connecting residents to the walking routes on the B4361 is shown behind the property 'Ashlea'. Whilst this may be appropriate further agreement over the suitability of this crossing point may be required prior to installation. In any case, it is clear that an acceptable crossing point is deliverable and a further condition may be appropriate to allow more detailed design to occur prior to implementation.

There are no highways objections to the proposal, subject to the following conditions being applied:

CAB (Visibility Splays – 2.4m x 50m in both directions)

CAE (Vehicular Access Construction Details)

CAP (Relating to the provision of a suitable uncontrolled crossing point on the B4361)

4.6 **Arboricultural Officer** – No Objections

After viewing the proposed layout and the documents: Tree survey and Categorisation to BS5837:2012 Arboricultural Impact Assessment – H.E.C Proposed Landscaping – drawing 1743.1B, I can confirm that I do not have any objections to the proposal. Tree protection and soft landscaping will be undertaken via condition.

4.7 **Conservation Manager (Historic Buildings)** – No objections

The proposal is in the south-western corner of Luston Conservation Area, and also within the settlement boundary. This part of the conservation area is characterised by the farm buildings across the road, the road itself and detached dwellings of various ages in good sized plots. Boundaries are tall mature hedgerows and trees which give an enclosed feeling to the road. The older buildings which enhance the character of the conservation area are further into the village, and new housing here will not overly dilute the experience of these older buildings. The proposals are for detached houses in their own plots which is in keeping with the general density of development within the conservation area.

The site plan preserves as much hedgerow as possible whilst allowing for the access required to allow the new housing and maintains the enclosed feel of this part of the village.

The proposal will not harm the setting of the nearby listed buildings - the barns at Bury Farmhouse across the B4361 or the White House to the north. Both are sufficiently shielded from the development site by topography, distance and plantings that there will be little inter-visibility between the listed buildings and new development.

The proposed designs for the houses and garages use materials and proportions which reflect the local vernacular and are appropriate for the conservation area.

Therefore, we have no objection to this proposal.

4.8 **Conservation Manager (Ecology)** – Qualified Comments / Objection

Habitats Regulations Assessment / Appropriate Assessment Comments 4th October 2019

The previous Habitats Regulations Assessment – Appropriate Assessment was undertaken for this application 22nd February 2019 with a formal ‘no objection’ response received from Natural England 6th March 2019. This however was completed prior to recent rulings concerning HRA and before the implications of these rulings for applications in the River Lugg (part of River Wye SAC catchment) became apparent. Further review and scrutiny is therefore required PRIOR to any planning consent being granted. This review is due to the Dutch ‘nitrogen’ Judgement and the failing phosphate level conservation status of the River Lugg SAC catchment area of the wider River Wye SAC. See attached Natural England formal casework response letter dated 4th August 2019.

Notwithstanding the previous information and HRA appropriate assessment (in which the applicant has indicated that foul water will be managed through a connection to the local mains sewer network which had been confirmed as acceptable by Welsh Water) the updated advice

from Natural England and ongoing QC and other consultations by this LPA confirm that any additional phosphate loading, even to main sewage treatment works, will result in additional phosphates being discharged in to the River Lugg SAC catchment which would mean this development is contrary to the 'Dutch Nitrogen' judgement and so 'fail' this HRA appropriate assessment.

This updated HRA has to therefore conclude that there remains a pathway for phosphates to enter the River Lugg SAC and these phosphates would have an adverse effect on the integrity of the River Lugg SAC. This application should NOT be granted planning consent until such time in the future that legal and scientific certainty that these Phosphate pathways can be mitigated and that the Lugg Catchment can scientifically and legally be shown to have a capacity to accommodate additional phosphate loadings can be provided and a further HRA process and supportive appropriate assessment undertaken at that time.

There are no identified adverse effects for surface water based on the supplied information

Comments in Respect of Ecology Report

The supplied ecology report appears relevant and appropriate and full implementation of all recommendations should be secured through condition:

Nature Conservation – Ecology Protection, Mitigation and Protected Species

The ecological protection, mitigation, compensation and working methods scheme including the Biodiversity Enhancements (net gain), as recommended in the report by Betts Ecology dated October 2018 shall be implemented and hereafter maintained in full as stated unless otherwise approved in writing by the local planning authority. No external lighting should illuminate any boundary feature, adjacent habitat or area around the approved mitigation and biodiversity enhancement features.

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 2017 (as amended) and Policy LD2 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework (2018), NERC Act 2006

4.9 **Land Drainage** – No objections

In principle we do not object to the proposals, however we recommend that the following information provided within suitably worded planning conditions:

- Provision of a detailed drainage strategy that demonstrates that opportunities for the use of SUDS features have been maximised, where possible, including use of infiltration techniques and on-ground conveyance and storage features;
- A detailed surface water drainage strategy with supporting calculations that demonstrates there will be no surface water flooding up to the 1 in 30 year event, and no increased risk of flooding as a result of development between the 1 in 1 year event and up to the 1 in 100 year event and allowing for the potential effects of climate change;
- Evidence that the Applicant is providing sufficient on-site attenuation storage to ensure that site-generated surface water runoff is controlled and limited to agreed discharge rates for all storm events up to and including the 1 in 100 year rainfall event, with an appropriate increase in rainfall intensity to allow for the effects of future climate change;
- Evidence that the Applicant is providing sufficient storage and appropriate flow controls to manage additional runoff volume from the development, demonstrated for the 1 in 100 year event (6 hour storm) with an appropriate increase in rainfall intensity to allow for the effects of future climate change;

- Results of infiltration testing undertaken in accordance with BRE365 and confirmation of groundwater levels to demonstrate that the invert level of any soakaways or unlined attenuation features can be located a minimum of 1m above groundwater levels in accordance with Standing Advice;
- A detailed foul water drainage strategy showing how foul water from the development will be disposed of;
- Evidence that the Applicant has sought and agreed permissions to discharge foul water from the site with the relevant authorities;
- Demonstration that appropriate pollution control measures are in place prior to discharge;
- Confirmation of the proposed authority responsible for the adoption and maintenance of the proposed drainage systems.

4.10 **Waste Management – General Comment**

This area is currently accessed by an 18 tonne refuse collection vehicle (RCV). The road within the site, including the turning area, would need to be constructed to adoptable standard in order for the RCV to travel it. A swept path analysis should also be provided to show in principle, that the RCV can safely access and turn within the development.

A collection point at the entrance to the site would not be acceptable for this development due to the risk to collection operatives working to the rear of the RCV, in close proximity to the bend in the road.

5. **Representations**

5.1 **Luston Group Parish Council – Support**

Luston Group Parish Council supports the planning application but would like the physical connection to the village to be improved via a suitable footway for pedestrians, and for surface water run-off to use existing drainage infrastructure to drain away on the other side of the B4361 (to avoid additional water being directed under the culvert by the telephone kiosk).

Second Consultation - Luston Group Parish Council supports the amended and additional plans/ documents

5.2 **Two Letters of Support** have been received. They are summarised as follows;

- The scheme is full compliant with the Luston Group NDP
- The mix, density and character as currently proposed is appropriate to the village
- A higher density of development would be out of keeping with the village
- The allocation of 11 units in the Luston NDP is indicative and not a requirement
- The scheme will support local business and have economic benefits
- The scheme can be delivered quickly by the developer to help the village deliver its required housing growth.
- The scheme provides two lower cost homes
- The proposed orchard planting will enhance biodiversity

5.3 **Two General Letters** have been received. They are summarised as follows;

- The surface water flooding issues need to be resolved before the development proceeds
- External lighting should be kept to a minimum to preserve dark skies
- Visibility from the proposed access is limited. Access would be preferred from the lane to the south of the site near Bury Corner

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=190032&search=190032

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

Policy context and Principle of Development

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 comprises the Herefordshire Local Plan – Core Strategy (CS) and the Luston Neighbourhood Development Plan. The latter was formally 'made' as part of the statutory development plan on 2nd January 2018. The National Planning Policy Framework (NPPF) is also a significant material consideration.

6.3 A range of CS policies are relevant to development of this nature, and these are outlined in full at Section 2.1. Strategic policy SS1 of the CS sets out the presumption in favour of sustainable development, which is reflective of the positive presumption that lies at the heart of the NPPF. Policy SS1 confirms that proposals which accord with the policies of the Core Strategy (and, where relevant, other Development Plan Documents and Neighbourhood Development Plans) will be approved, unless material considerations indicate otherwise.

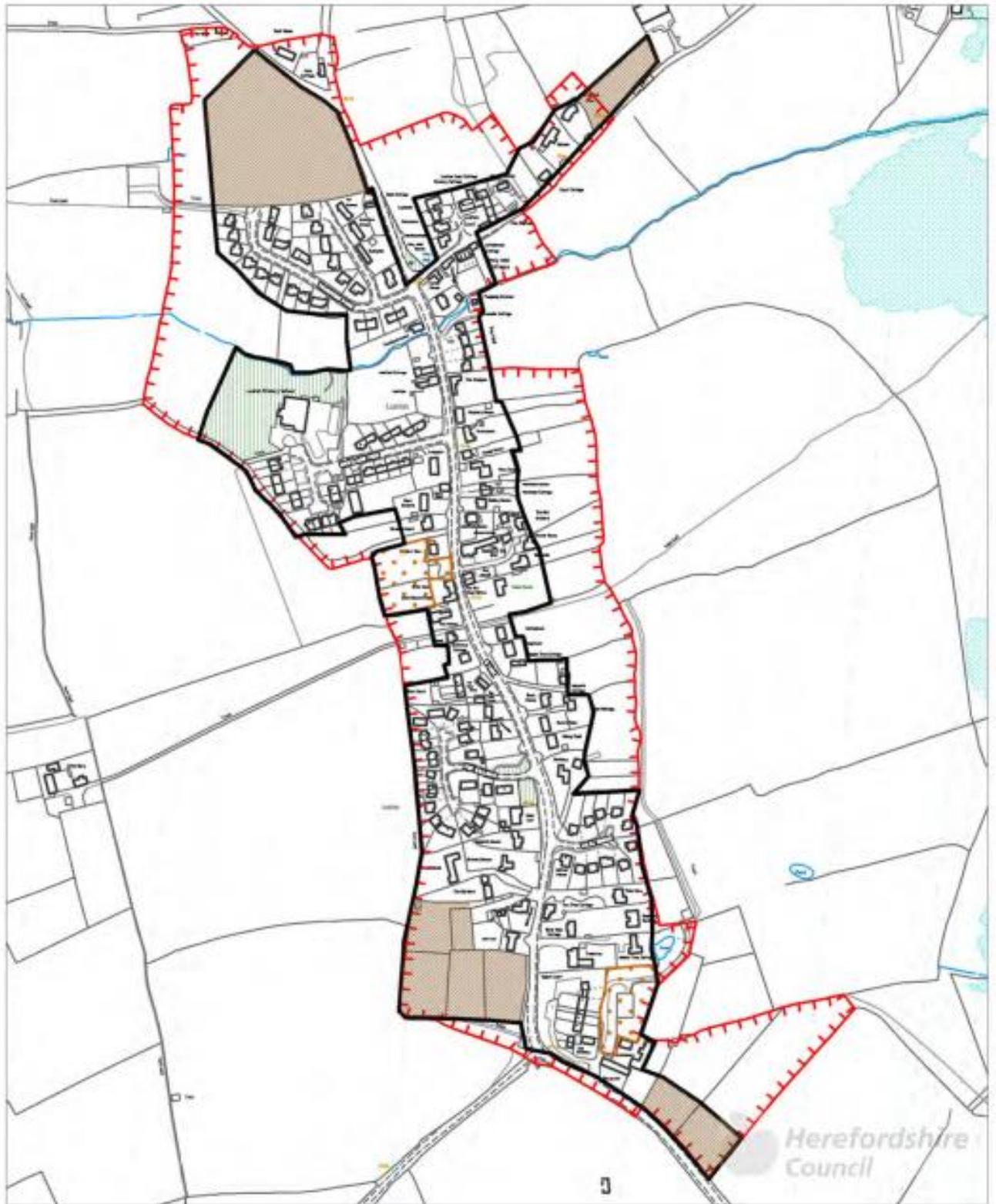
6.4 The presumption in favour of sustainable development and how this should be applied to planning decisions is discussed in more detail at paragraph 11 of the NPPF. At 11 (d), the framework states that where the policies most important for determining the application are 'out-of-date' planning permission should be granted, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits or the application of the policies in the framework provides a clear reason for refusing the proposal. At footnote 7, it is confirmed that a failure to demonstrate a five year supply of housing and requisite buffer in accordance with paragraph 73 will render policies relevant to delivering housing out-of-date.

6.5 The matter of housing land supply has been the subject of particular scrutiny and it has been consistently concluded that the Council is not able to demonstrate a 5 year supply of housing land. The most recent supply statement outlines that the supply position in Herefordshire stands at 4.05 years as of April 2019. Owing to this shortfall in the five year supply, the housing relevant policies of the development must be taken to be out-of-date and the presumption as set out at Paragraph 11d is engaged.

6.6 It should also be noted that Paragraph 14 of the Framework directs that in situations where the presumption at 11d) applies to applications involving the supply of housing, the adverse impact of allowing development that conflicts with a neighbourhood plan is likely to significantly and demonstrably outweigh the benefits, provided all of the following apply;

- a) *the neighbourhood plan became part of the development plan two years or less before the date on which the decision is made*
- b) *the neighbourhood plan contains policies and allocations to meet its identified housing requirement*
- c) *the local planning authority has at least a three year supply of deliverable housing sites (against its five year housing supply requirement, including the appropriate buffer as set out in paragraph 73); and*
- d) *the local planning authority's housing delivery was at least 45% of that required over the last three years.*

- 6.7 In this case, the latter three criteria are satisfied in that the Luston Neighbourhood Plan contains policies and allocations to meet its identified housing need; the Local Planning Authority has over a three year supply of housing land (4.05 years); and the housing delivery test exceeds 45% (74%). However, the first criterion is not met as NDP has now been part of the development plan for a period exceeding 2 years (having been formally 'made' on the 2nd January 2018). Paragraph 14 is therefore not engaged in this instance.
- 6.8 Notwithstanding the above, the absence of a 5 year housing land supply and the engagement of Paragraph 11 d) does not render policies related to the supply of a housing an irrelevance for the purposes of decision taking. Indeed, recent case law (Suffolk Coast DC v Hopkins Homes [2016 – EWVA Civ 168]) has reinforced that it is a matter of planning judgement for the decision-maker to attribute the degree of weight to be afforded depending on the context of the decision. In this case, given that the development plan policies relevant to the supply of housing are consistent with the aims of the Framework in terms of promoting sustainable patterns of development which meets identified housing needs (and that Luston NDP in particular contains policies and allocations in order to achieve this), it is considered that the housing policies of the CS and NDP continue to attract a considerable degree of weight. Moreover, development plan policies which are not directly relevant to the supply of housing (such as those dealing with matters of environmental protection, design or heritage) are not considered to be 'out-of-date' by virtue of Paragraph 11 and therefore still attract full weight
- 6.9 Core Strategy policy RA1 sets out the general approach to housing in the rural areas and states that 5,300 new dwellings will be provided across seven Housing Market Areas (HMAs). The application site in this instance lies within the Leominster HMA, which has an indicative growth target of 14% across the plan period. For the Luston Group Parish, this equates to providing a minimum of 55 new dwellings over the period to 2031.
- 6.10 CS policy RA2 goes on to state that within the county's rural areas housing growth will be directed to existing settlements in order to support sustainable patterns of development. The policy identifies the settlements where housing growth is considered to be appropriate at Figures 4.14 and 4.15. The village of Luston is identified in Figure 4.14 as a settlement to be the main focus for proportionate housing growth. The settlement has been identified as a sustainable location for housing which provides a good range of services and facilities, including a primary school and public house, and good access to additional services in the nearby market town of Leominster. The policy also sets the expectation that, where appropriate, settlement boundaries or reasonable alternatives for the identified settlements will be defined by either Neighbourhood Development Plans or Rural Areas Sites Allocations DPD.
- 6.11 The status of Luston as a settlement for proportionate growth is reflected in the policies of the NDP and the approach to meeting the group parishes' housing needs is set out at Section 5.3 of the plan. The supporting text outlines that the parishes housing needs will be met by retaining sites which already have planning permission as commitments; allocating land for development; and making a small allowance for windfall development based upon past trends. Policy LG6 then sets out the approach to development within Luston itself as the parish's main settlement. The policy defines a settlement boundary for the village and states that new residential development will be supported on sites within the boundary which are either allocated for development, are an infill site, or involve the conversion of an existing building. The village policies map is shown in Figure 5 below;



- | | |
|--|---|
|  Luston Settlement Boundary (LG6) |  Housing Commitments (LG6) |
|  Local Green Space (LG11) |  Land Liable to Flood |
|  Conservation Area |  Housing Allocations (LG6) |

Luston village Policies Map

Scale 1:5 000

Figure 5: Luston Village Policies Map

In such circumstances, point C of Paragraph 123 directs that;

'c) local planning authorities should refuse applications which they consider fail to make efficient use of land, taking into account the policies in this Framework'

- 6.17 As highlighted previously, there is a requirement within the Luston group parish for 55 new dwellings to be provided across the plan period to meet identified housing needs. In the parish of Luston alone, this equates to a need to provide 43 new dwellings and the approach to delivering this required growth is manifested through policy LG6. The approach consists of allocating land for development, as well as retaining existing commitment sites and making a small allowance for windfall development. As well as site allocations, the policy also sets out a number of detailed criteria for new residential development in the village, which includes under point e) that schemes should *'demonstrate a contribution to the delivery of an appropriate mix of dwelling types and sizes including affordable housing to meet the needs of all sectors of the community'*. This policy requirement reflects Objective 6 of the NDP, which is to *'ensure that new housing is provided of a size, type and tenure to accommodate local need'*.
- 6.18 From the CS, policy SD1 seeks to ensure that development proposals create safe, sustainable and well integrated environments for all members of the community. The first bullet of the policy also states that proposals should make efficient use of land – taking into account local context and site characteristics. The objective of SD1 to create inclusive communities is further supported by policies RA2 and H3. The former requires under point 4) that development proposals should result in the delivery of schemes that generate the size, type, tenure and range of housing that is required in particular settlements reflecting local demand. The latter requires that residential developments should provide a range and mix of housing units based upon the latest Local Housing Market Assessment in order to contribute to the creation of balanced and inclusive communities.
- 6.19 As previously established, the proposal site in this case forms part of a larger parcel of land which is allocated for residential development through policy LG6. The allocation as a whole totals just over 1 hectare in area and it is earmarked for an indicative 11 dwellings through policy LG6 of the NDP under the site reference 136/212. However, the current application omits a sizeable 0.3 hectare portion of the allocated land (shown hatched red in Figure 7 below) and is only for 8 units. This is despite the omitted area remaining within the ownership of the applicant, and it is also noted that the current proposal scheme has been laid out in a manner which retains a means of access to the excluded part of the allocated site.



Figure 7: Area of allocation 316/212 omitted from current proposal (hatched red)

- 6.20 The issues stemming from the omission of the allocated site are considered to be two-fold.
- 6.21 First, in omitting part of the allocated site the proposal fails to make use of the site's full potential and deliver the indicative number of houses the land has been allocated for by policy LG6 of the Luston NDP. This is in direct conflict with the advice contained with the NPPF in terms of ensuring that development makes optimal use of the potential of each site in order to meet the Government's aim of significantly boosting the supply of housing. Moreover, in the context of the current housing land supply shortfall at a county level the failure of the scheme to make efficient use of an allocated site to deliver housing is a significant dis-benefit that weighs heavily against the scheme. It also leads to conflict with policies SD1, RA2, H3 and LG6 in terms of making efficient use of land and providing housing to meet local needs.
- 6.22 With regards to housing numbers, it is noted that the Parish Council support the application for 8 units and that there has been much discourse throughout the application process between the applicant, the Parish Council and Local Planning Authority regarding the interpretation of policy LG6 and its allocation of the site for an 'indicative' 11 dwellings. It is argued by the applicant that the use of the word 'indicative' means that the figure of 11 is not an absolute requirement; a minimum; or indeed a maximum which is to be delivered on the site. In order to understand the significance of the chosen figure however, it is important to understand how it was established in the first instance. Referring back to the draft version of the NDP which was submitted for Independent Examination in 2016, it is noted that policy LG6 as originally drafted sought to set an upper limit of 5 dwellings to any one site. The Examiner noted at Section 4.51 of their report however that this was an overly restrictive policy which was not based on robust evidence, and hence that reference was removed from the plan. The specific land parcel to which the current application relates (136/212) was also originally put forward as an allocation for 5 units in the Examination version of the NDP; however again the Examiner noted that no evidence had been submitted to support this and justify the provision of such a low density that was equivalent to just 5 units per hectare. At Section 4.52-3 of their, the Examiner noted that the site allocation 136/212 is;
- '...sufficiently large to be developed for 10 or more dwellings and would therefore provide scope for a mix of house types and sizes and the inclusion of some affordable homes should the need be demonstrated.... A more realistic indicative number of dwellings should be included for sites 136/212 [and 136/214] and the background text should explain that the figures are indicative only and not maximum figures'*
- 6.23 There was clearly a concern on the Examiner's part therefore that the original draft allocation on this site failed to make efficient use of land. At 1 hectare in area, the allocated site was considered to be of ample size to accommodate 10 units or more; provide a mix of housing; and provide some affordable housing to meet local needs. Presumably, it was these comments from the Examiner which led to the inclusion of the indicative number of 11 units in the final version of policy LG6 which was subsequently passed through a local referendum and adopted as part of the development plan. Officer's would agree with the findings of the Inspector that this site is readily capable of accommodating 10 units or more, and are also of the view that the current application does not offer any convincing reason which would justify departing from the NDP's indicative figure of 11 and delivering a lesser number of dwellings which does not make use of the site's full potential.
- 6.24 Moreover, even if the omitted part of the allocated site is taken out of the equation the scheme as deposited still presents a very low density of development equivalent to 10 dwellings per hectare. This in itself is still considered to represent an inefficient use of land. For the sake of comparison, an assessment of the existing developed areas of land within the settlement boundary against registered address points shows that Luston village has an existing density of approximately 14 dwellings per hectare. However, it is noted that this calculation includes large

areas of historic buildings within large curtilages and a review of more recent residential developments shows higher densities again. The nearby development at The Willows for instance has a density equivalent to 22 units per hectare, whilst developments at Brick House and Lilac Grove have densities equivalent to 18 and 16 units per hectare respectively. Based on existing patterns therefore, there is clearly scope for the site to accommodate a higher number of dwellings without causing adverse impacts upon the character of the village.

6.25 The second issue stemming from the subdivision of the allocated site and the delivery of fewer dwellings is that the proposal now falls below the threshold whereby affordable housing provision is required. The NPPF and policy H1 of the CS stipulate that schemes of 10 units or more will be expected to contribute to meeting affordable housing needs, and criterion e) of NDP policy LG6 requires that schemes demonstrate delivery of affordable housing where appropriate. Had the allocated site been brought forward in full for 11 units (or more) in line with indicative figures set out by LG6, there would be a policy requirement for the scheme to make provision for affordable housing to meet local needs. The Council's Housing Development Officer has confirmed there is a need for affordable homes within the village and advises that in this area of the county (Northern Rural housing value area) a target of 40% affordable would be sought from qualifying schemes. The Herefordshire Local Housing Market Assessment (2013) also provides an insight into affordable housing needs and the estimated requirements within the Leominster HMA are included below for reference;

Table 62: Estimated Size and Type of Dwellings Required 2011 to 2031 – Affordable Housing (Leominster HMA)

Type/size	Leominster Urban		Leominster Rural		Leominster HMA	
	Number	%	Number	%	Number	%
1 bedroom	133	23.1%	44	24.1%	177	23.4%
2 bedroom	188	32.6%	57	31.5%	245	32.4%
3 bedroom	225	39.0%	78	42.6%	302	39.9%
4+ bedroom	30	5.2%	3	1.8%	33	4.4%
Total	575	100.0%	183	100.0%	757	100.0%
Houses	385	66.9%	171	93.9%	556	73.4%
Flats	190	33.1%	11	6.1%	201	26.6%
Total	575	100.0%	183	100.0%	758	100.0%

Source: Housing Market Model

Figure 8: Estimated requirements for affordable housing in the Leominster HMA

6.26 The provision of affordable housing would represent a significant benefit of any scheme and would contribute to the achievement of the social dimension of sustainable development as set out in the NPPF. Moreover, the NDP highlights at Section 1.9 that Luston Parish has a lower proportion of shared ownership and social rented housing (9.4%) than Herefordshire as a whole (14.9%), and therefore the provision of affordable housing on this allocated site would have tangible benefits locally in terms of addressing this shortfall and helping to create a balanced and inclusive community. The provision of affordable housing, which is likely to be more attainable to younger households and families, would also have benefits in terms of supporting service such as the local primary school, which is understood to currently be under capacity across all year groups.

6.27 It is the view of Officers that the allocated site as a whole is more than capable of delivering in excess of 10 units and consequently affordable housing, and no reasonable explanation has been offered by the applicant as to why the full extent of the site allocation has not been brought forward as one comprehensive scheme. The only conclusion that can be reached is that the omission of part of the allocated site from the current application is a mechanism to artificially bring the number of dwellings proposed below the threshold whereby affordable housing (and other financial contributions) is required by the NPPF, policy H1 and LG6. It is noted in this sense that the omitted 0.3 hectare part of the allocated site remains in the ownership of the

applicant, and had it been included in the current scheme at the same density of 10 dwellings per hectare it could support a further 3 units; which would bring the scheme up to 11 units given as a indicative figure in policy LG6 of the NDP. It is entirely possible that the remaining area of the allocation may come forward in the future; but granting planning permission for the current scheme of 8 dwellings would sterilise the site's ability to provide any affordable housing and deprive the community of this significant benefit.

- 6.28 In considering the scheme's liability to provide affordable housing, is noted that the supporting D&A makes reference to Paragraph 64 of the NPPF. This paragraph sets the expectation that where major development involving the provision of housing is proposed, planning policies and decisions should seek a minimum of 10% of homes to be provided for affordable home ownership. The applicant however draws attention to the exceptions offered by Paragraph 64, specifically point C) which advises that exceptions to the 10% requirement should be made where the site is proposed to be developed by people who wish to build or commission their own homes. The D&A statement therefore concludes that a self build scheme would be exempt from affordable housing obligations. However, Officers are of the view that Paragraph 64 has limited relevance to the current application and that the Applicant's interpretation of this paragraph is incorrect in any case. With the proposal being for eight dwellings, the scheme falls below the threshold of major development and therefore Paragraph 64 is not applicable to the determination of the current application. Moreover, even if it were engaged the Applicant's interpretation of Paragraph 64 fails to recognise that it only refers to affordable home ownership. No references (or indeed exceptions) are made to other permutations of affordable housing, such as affordable rented, which would suggest that self-build schemes would be wholly exempt from providing any form of affordable housing. Indeed, Footnote 29 makes it clear that the requirement referenced in Paragraph 64 to provide 10% of dwellings for affordable home ownership should form part of the 'overall affordable contribution from the site'. Overall, it is not considered that Paragraph 64 provides any reason to justify why the allocated site has been subdivided and no affordable housing subsequently provided.
- 6.29 In summary of the above, it is the view of Officers that the scheme as deposited fails to make efficient use of land by omitting part of a site which has been allocated for residential development and in doing so it fails to provide the number of dwellings which could reasonably be accommodated on the land; including the provision of affordable housing for which there is a local need. By consequence the proposal is contrary to policy LG6 of the NDP, policy RA2, H3 and SD1 of the CS, and the guidance set out at Chapters 5 and 11 of the NPPF.

Housing Mix

- 6.30 Notwithstanding the issue above in relation to tenure, the NPPF, CS and NDP all also seek to ensure that development proposals provide a range of housing types and sizes to support the creation of strong, inclusive and vibrant communities. This is integral to the achievement of the social objective of sustainable development as set out at Paragraph 8 of the NPPF.
- 6.31 At Section 5.3, the Luston NDP highlights that a key issue arising from the plan's supporting evidence and questionnaire was support for a mix of house sizes to be provided in new developments to meet local housing need. This is reflected by Objective 6 of the plan which is to 'ensure that new housing is provided of a size, type and tenure to accommodate local need'. Policy LG6 e) supports this objective by requiring that schemes should 'demonstrate a contribution to the delivery of an appropriate mix of dwelling types and sizes including affordable housing to meet the needs of all sectors of the community'. Based on Census data, the plan also recognises that there is currently a disproportionately high number of larger dwellings within the parish when compared to Herefordshire as a whole (33.5% four+ bedrooms in Luston, compared to 24.8% four+ across Herefordshire as a whole).

6.32 The Herefordshire Local Housing Market Assessment was undertaken in 2013 and forms part of the evidence base to the CS. It provides an assessment of housing need across the county's seven Housing Market Areas (HMA) in terms of sizes, types and tenure for the plan period 2011-2031. The site in the case is within the rural part of the Leominster HMA and the table below sets out the estimated requirements for Open Market Housing in this region;

Table 61: Estimated Size and Type of Dwellings Required 2011 to 2031 – Market Housing (Leominster HMA)

Type/size	Leominster Urban		Leominster Rural		Leominster HMA	
	Number	%	Number	%	Number	%
1 bedroom	112	6.5%	32	5.8%	144	6.3%
2 bedroom	412	23.9%	142	25.8%	554	24.4%
3 bedroom	846	49.1%	324	59.1%	1,170	51.5%
4+ bedroom	354	20.5%	50	9.2%	405	17.8%
Total	1,725	100.0%	548	100.0%	2,272	100.0%
Houses	1,623	94.1%	547	99.9%	2,170	95.5%
Flats	102	5.9%	1	0.1%	103	4.5%
Total	1,725	100.0%	548	100.0%	2,273	100.0%

Source: Housing Market Model

Figure 9: Estimated market housing needs in the Leominster HMA

- 6.33 The Needs Assessment indicates that the greatest area of need for open market housing within the Leominster Rural area is for three bedroom dwellings at 59.1%. This is followed by a 25.8% need for two bedroom properties and a 9.2% need for dwellings which have four bedrooms or more.
- 6.34 The scheme in this case provides 5 three bedroom dwellings which are delivered as three larger detached units and two smaller semi detached units. They make up the equivalent of 62.5% of the scheme and this is broadly in line with the requirements highlighted above. The remaining three units, however, provide four bedrooms or more and make up the equivalent of 37.5% of the scheme as a whole. By contrast, the estimated requirement for units of this size is just 9.2%. There is not any provision in the current scheme for two bedroom units; despite this making up the second greatest area of need in the HMA at 25.8%.
- 6.35 The under provision of smaller units in the current scheme and over provision of larger ones is considered to be such that the proposal fails to deliver an appropriate mix of housing types and sizes to meet local needs. The over provision of 4+ bedroom units in particular fails to address the disproportionately high number of larger dwellings in the Parish's existing housing stock which has been identified by the NDP, whilst the absence of any smaller and more attainable units compounds the issue identified previously in terms of no affordable housing being provided. For this reason the scheme as deposited is considered to be contrary to the requirements of policy LG6 e), RA2 (4) and H3 and the guidance set out at Chapter 5 of the NPPF.

Self and Custom Build Housing

- 6.36 The amended D&A which supports the application highlights the contribution that the scheme would make towards addressing local needs for self and custom build plots. It is understood that the six detached units would be offered as custom build plots whereby future owners would commission their own homes through the developer, whilst the two semi-detached units would be completed by the developer and sold through the open market.

6.37 Paragraph 61 of the NPPF (supplemented by Footnote 26) explains that planning policies should contain provision which reflects and seeks to meet the different needs in the community. This includes, amongst others, those who wish to build or commission their own homes. This obligation is embodied in the Self Build and Custom Housebuilding Act 2015 which requires Local Authorities to keep a register of individuals or groups who are seeking to acquire a serviced plot in the area for those purposes. The Authority also has a duty under sections 2 and 2A of the Act to have regard to this register and to give enough suitable development permissions to meet the identified demand. The NPPG provides the following clarification on what this 'duty to grant planning permission' means;

Relevant authorities must give suitable development permission to enough suitable serviced plots of land to meet the demand for self-build and custom housebuilding in their area. The level of demand is established by reference to the number of entries added to an authority's register during a base period.

Paragraph: 023 Reference ID: 57-023-201760728

6.38 The NPPG then goes on to provide a definition of 'serviced plots of land'. It states;

A serviced plot of land is a plot of land that either has access to a public highway and has connections for electricity, water and waste water, or, in the opinion of a relevant authority, can be provided with access to those things within the duration of a development permission granted in relation to that land.

Access to a public highway can include sections of private or unadopted road, it does not mean that the plot has to be immediately adjacent to the public highway just that there is the guaranteed right of access to the public highway.

Connections for electricity, water and waste water means that the services must either be provided to the boundary of the plot so that connections can be made as appropriate during construction or adequate alternative arrangements must be possible such as the use of a cesspit rather than mains drainage.

For example a plot of land alongside an existing public highway that is an infill between existing dwellings would count as being serviced. There is no expectation that services must be physically connected to the plot at the time of granting planning permission

Paragraph: 026 Reference ID: 57-026-201760728

6.39 A review of the Local Planning Authority's register shows that there are currently 587 entrants who have formally registered their interest in building or commissioning their own homes in Herefordshire (recorded across 5 annual 'base periods'). The Authority's monitoring figures show that in the first three base periods alone, permission was granted for 679 plots which meet the definition of self build or serviced plots. With the number of permissions granted exceeding the number of entries on the register, it is clear that the Local Planning Authority has already fulfilled its duty under the Self Build and Custom Housebuilding Act 2015 to give enough suitable development permissions to meet the identified demand. In light of this, it is considered that the benefits of the current scheme in terms of providing self build plots can be given only limited weight as sufficient permissions have already been granted elsewhere to meet the recorded need.

Design, character and appearance

6.40 CS Policy RA2 requires that the design and layout of new development within identified settlements should reflect the size, role and function of the location. Schemes should result in high quality, sustainable developments which are appropriate to the their context and make a

positive contribution to the surrounding environment. Policy SD1 supports this insofar as it directs that proposals should be designed to maintain local distinctiveness through detailing and materials, respecting scale, height, proportions and massing of surrounding development. LD1 is also of relevance in so far as it relates to the impact of the development upon the landscape and townscape. At a local level, policy LG2 sets out a range of principles for the design of new development in the Luston Group Parish. Amongst other things, it requires that developments contribute to local identity and sense of place, respect the character and setting of Luston Conservation Area, and have an active frontage which relates well to the surrounding street scene. These all embody the tenets set out in the NPPF with regards to achieving well designed places.

- 6.41 The site in this instance is well related to the existing built up form of the village and the allocated land forms a natural extension of the settlement to the south west. The topography of the surrounding land and vegetation features at its boundaries also mean that the site is reasonably well contained within the wider landscape and hence the potential for adverse impacts in this regard is fairly limited. Whilst the dwellings would be slightly elevated within the street scene on account of the sunken nature of the road in this location, this characteristic is typical in this area of the village and Officers are satisfied that the frontage of the development would not appear as unduly prominent or overbearing. The design of the dwellings themselves is also broadly appropriate, with the use of locally distinctive features and materials being seen throughout the scheme. On the whole therefore, the design of the scheme is not considered to create any significant tension with development plan policy.
- 6.42 Policies SD1 and LG1 also both require that all developments achieve good standards of residential amenity for existing and future occupiers and avoid any potential for adverse impact through means such as overlooking, overshadowing, overbearing, noise or nuisance. This accords with the principles of the NPPF to achieve well designed places and high standards of amenity. In this case, Officers are satisfied that the proposal adheres to these principles. The proposal is compatible with neighbouring land uses; the amenity of existing residents is safeguarded; and good standards of living would be delivered for future occupants of the dwellings. No conflict with SD1 or LG1 is therefore found in these terms.

Sustainable Design and Energy Efficiency

- 6.43 SS7 of the CS also sets the strategic objective for all development proposals to include measures which help mitigate the impact upon climate change. This includes locating development in the most sustainable locations; reducing the need to travel; and designing development to reduce carbon production and promote the efficient use of resources. Policy SD1 also states that development will be supported where it utilises physical sustainability features such as orientation of buildings, water conservation measures; cycle storage and renewable energy generation. In this case, the proposal is considered to adhere to the principles of SS7 in the sense that the site is sustainably located within a settlement that offers a range of services, facilities and public transport links – including to the wider range of services found in nearby Leominster. In terms of the details of the scheme, the Design and Access Statement highlights that the dwellings will be constructed using sustainably grown oak framing and these will be pre-fabricated within a 5 mile radius of the site. The statement also confirms that the dwellings will be built to high levels of efficiency and insulation which will reduce demand upon ‘conventional’ energy sources and natural resources. Whilst no specific details have been provided with the proposal, the statement also advises that the properties are capable of incorporating solar panels and air source heat pumps if required. Any future dwelling will also be required to meet the minimum standards of energy efficiency as required by Building Regulations. On the whole therefore, it is not considered the proposal creates any significant conflict with SS7 or SD1.

Potential for Impact upon Designated Heritage Assets

- 6.44 The proposal site in this case is within the Luston Conservation Area and as such Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a duty upon the Local Planning Authority to have special attention to the desirability of preserving or enhancing the character or appearance of that area. Grade II listed buildings are also found nearby at the White House and the barns at Bury Farmhouse, and therefore Section 66 of the Act places a similar duty upon the Local Planning Authority to have special regard to the desirability of preserving the buildings or their setting.
- 6.45 These duties are manifested through policies LD4, LD1, LG2 and LG3 of development plan. The policies broadly require that development proposals affecting heritage assets and the wider historic environment should protect, conserve, and where possible enhance heritage assets and their settings. The NPPF contains guidance for considering proposals affecting heritage assets at Paragraphs 193-196.
- 6.46 The proposal site in this instance lies at the fringes of the conservation area where the character of the settlement transitions from built up form to undeveloped countryside. It is the view of the Council's Conservation Officer that the scheme respects this setting and he advises that no adverse impact would occur upon the Conservation Area as a result of what is proposed. In a similar vein, it is also considered that the degree of separation, topography and visual screening between the site and nearby listed buildings is such that no harm or adverse impacts are identified upon their settings. There is hence no conflict with relevant conservation policies and the duties placed upon the Local Planning Authority by Sections 66 and 72 of the 1990 Act are fulfilled.

Highways and Pedestrian Connectivity

- 6.47 Core Strategy Policy MT1 relates to the highways impacts of new development, and requires that proposals demonstrate that the strategic and local highway network can absorb the traffic impacts of the development without adversely affecting the safe and efficient flow of traffic on the network or that traffic impacts can be managed to acceptable levels to reduce and mitigate any adverse impacts from the development. It also requires under (4) that developments are designed and laid out to achieve safe entrance and exit and have appropriate operational and manoeuvring space. Similar principles are found in policy LG1 of the NDP, and both policies are reflective of Chapter 9 of the NPPF. Of particular relevance is Paragraph 109, which advises that development should only be prevented or refused on highways grounds if there would be an unacceptable impact upon highways safety, or the residual cumulative impacts on the road network would be severe.
- 6.48 The application here proposes the creation of a new access onto the B4361 to the east of the site which would require the removal of a section of roadside hedgerow and ground works to accommodate the change in levels between the site and the highway. The plans indicate that the new access would deliver visibility splays of 2.4m x 50m in each direction. An Automated Traffic Count (ATC) survey has also been undertaken and the Council's Transportation Manager confirms that the visibility splays are appropriate for the recorded traffic speeds on the adjacent highway. The internal layout of the site also ensures that adequate manoeuvring space is available for a range of vehicles, and adequate parking is provided with the curtilage of each dwelling to ensure there would be no overspill onto the public network. The Transportation Manager consequently confirms he is satisfied the proposal would have no adverse impact upon the highways network and thus no conflict with MT1 or LG1 is found.
- 6.49 In terms of pedestrian connectivity, the application proposes the creation of a new footpath link onto the B4361 to the north of the site between the existing dwellings at the White House and Ashlea. Limited details of this footpath have been supplied, however, the Transportation

Manager is satisfied that the solution is appropriate subject to full details of the crossing point on the B4361 being secured by condition. The path would facilitate pedestrian access from the development to the existing village footway network which provides access to services and facilities such as the school and public house. The scheme therefore promotes the use of sustainable transport modes, and accords with MT1 and SS4 in this sense.

Ecology and Green Infrastructure

- 6.50 Policy LD2 of the CS is most applicable in considering matters of ecology and this broadly requires that all developments should conserve, restore and enhance the biodiversity assets of the county through a range of measures. Policy LD3 also requires that proposals should protect, manage and plan for the preservation and provision of green infrastructure, whilst policy LD1 states that developments should maintain and extend tree cover where they are important to amenity. Similar requirements are also found within the development and design principles set out by policies LG1 and LG2 of the Luston NDP. All of these policies are in line with the tenets set out by Chapter 15 of the NPPF.
- 6.51 The proposal site in this case predominantly comprises grassland interspersed by a number of small fruit trees with mature hedgerows and trees at the site boundaries. An Ecological Survey of the site has been undertaken and concludes that the proposals are likely to have only minor adverse impacts on ecological or biodiversity assets. The Council's Planning Ecologist has reviewed this report in the context of the site and does not dispute its conclusion. Subject to the recommended surveys, mitigation, compensation and working methods being secured by condition, no conflict with relevant policy is identified and no objections are offered.
- 6.52 The application is also supported by a Tree Survey conducted to BS5837:2012. The report highlights that the majority of the trees on the site are to be retained with only two specimens, which are recorded as being in poor condition, proposed for removal. There would be no impact upon the area of TPO'd trees which lie slightly beyond the site boundary to the south. Existing hedgerows would also be retained with the exception of an area to the eastern roadside boundary which would be relocated in order to deliver the necessary visibility splays. The scheme however offers a range of additional planting and enhancement measures, including the provision of a new area of traditional orchard to the north of the site, and the Tree Report sets out protection measures for the trees and hedgerow features which are to be retained. The Council's Arboricultural Officer offers no objections to the scheme subject to the recommendations and measures being secured through condition if consent is granted. On that basis, no conflict with policies LD3, LD2 or LD1 is identified.

Drainage

- 6.53 It is proposed to manage foul water from the development through a connection to the mains sewer network. This is an appropriate solution in principle which would accord with the hierarchical approach required by CS policy SD4. Welsh Water confirm that there are no capacity issues and they have no objection to the connection being made, hence there is no conflict with the requirements of LG1 (h) in particular. The Habitats Regulations impacts of the proposed drainage arrangements are considered at 6.55.
- 6.54 In respect of surface water, the scheme proposes the use of soakaways within each individual plot to manage additional runoff. The Council's Land Drainage Team have reviewed the context of the site and have not identified any critical drainage issues. In principle therefore there are no objections to the proposals and the use of SuDS features accords with the principles set out in policies SD3 and LG5. It is recommended that full technical details of the scheme be secured by condition if permission is granted.

Habitats Regulations Matters

- 6.55 The site in this instance also lies within the catchment of the River Lugg which, in turn, is a sub-catchment of the River Wye Special Area of Conservation (SAC). The River Wye SAC is an internationally important conservation site which has been designated for its special features of ecological and biodiversity value. Under the Conservation of Habitats and Species Regulations 2017, Herefordshire Council has a legal duty to assess the potential impact of new developments in this area by undertaking an 'Appropriate Assessment' (AA) which must be able to determine with scientific certainty that there would be no 'likely significant effects' upon the designated site. The obligations are embodied with CS policies LD2 and SD4, as well as the guidance of the NPPF.
- 6.56 The River Lugg, which is a tributary of the River Wye and forms part of the SAC designated site, is currently failing its conservation targets on phosphate levels. This as a result of water pollution from 'point' source, particularly sewage outlets, and 'diffuse' source, particularly from agricultural run-off.
- 6.57 The proposal in this case would generate additional phosphates through foul water. Whilst foul water is to be managed through the mains system, some phosphates will remain in water discharged post-treatment and therefore there is potential pathway for the development to have an adverse impact upon the River Wye SAC. Until recently, the approach taken by Herefordshire Council and Natural England has been that there is a route for development to be able to proceed in the River Lugg catchment, even when it may add to the existing phosphate levels in the river as above, as any increases would be mitigated by the River Wye's Nutrient Management Plan (NMP). The NMP is a partnership project developed to reduce phosphate levels in the Wye catchment, including the River Lugg, to below the target level by 2027 in line with the Water Framework Directive. The NMP is managed by the Nutrient Management Board (NMB), comprising Herefordshire Council, Powys Council, Natural England, Natural Resources Wales, the Environment Agency, Dwr Cymru Welsh Water, CABA (WUF), National Farmers' Union and the County Land and Business Association.
- 6.58 However, this situation regarding development with potential phosphate impacts in the Lugg catchment is currently under review following Natural England's advice to Herefordshire Council, on 22nd July 2019, and through subsequent further advice in August 2019, that, in light of the interpretation of the recent 'Dutch Case', a ruling in July 2018 by the Court of Justice of the European Union (the CJEU) on the interpretation of the Habitats Directive, from which the Habitats Regulations arise in UK law, in the case of *Cooperatie Mobilisatie* (AKA the Dutch Case) (Joined Cases C-293/17 and C-294/17).
- 6.59 Natural England have advised that following the Dutch Case, that where a site is failing its water quality objectives, and is therefore classed as in unfavourable condition, there is limited scope for the approval of additional damaging effects and that the future benefit of measures cannot be relied upon at Appropriate Assessment, where those benefits are uncertain at the time of the assessment. Natural England have advised that for any plans or projects with a significant effect (on phosphate levels in the River Lugg) and which require Appropriate Assessment, the effects are currently uncertain, as in their opinion there remains reasonable scientific doubt as to whether the NMP can provide appropriate mitigation (based on how much certainty this currently demonstrates). Natural England have therefore advised that they will not, in the short term, provide advice on such planning applications that require Appropriate Assessments, while they seek legal advice. The Council is also seeking its own advice and published a Position Statement on the matter in October 2019 (Appendix 1).
- 6.60 It is noted that the Council's Ecologist initially undertook the required AA in February 2019 and this concluded that the scheme would have no un-mitigated likely significant effects upon the River Wye SAC. Natural England, as the relevant statutory consultee, confirmed they had no objections shortly after. As above however, the circumstances have changed considerably since

the initial AA was undertaken and therefore a further assessment was undertaken on 3rd October 2019 in light of recent developments and advice from statutory consultees. The revised assessment finds that the scheme would lead to the generation of additional phosphates through foul water and that there would be a pathway for these phosphates to enter the River Lugg through discharge from the mains sewerage treatment network. It consequently concludes that the development would have a likely adverse effect on the integrity of the River Lugg and River Wye SAC and hence permission should not be granted at the present time. This assessment has been presented to Natural England and they have confirmed that they agree with its conclusions. The proposal is not considered to have any imperative public interests which would justify overriding the identified harm in accordance with Section 64 of the Habitats Regulations.

- 6.61 It is understood that the Applicant has explored alternative means of foul water management, specifically a package treatment plant and soakaway field, in response to the identified HRA issue. However, policy SD4 states that developments should connect to the mains wastewater infrastructure in the first instance and alternative options should only be considered where a mains connection is not practical. It is not impractical for the scheme here to connect to the mains system given that there is a sewer proximal to the site and it is noted that EA General Binding Rules would restrict the installation of a treatment plant as the site is within 30m of a mains sewer in any case. The use of a package treatment plant to manage foul water in lieu of a mains connection is therefore not supported by SD4 and this would not be an appropriate response to the current HRA issue.
- 6.62 Owing to this potential for adverse effects on the integrity of the River Lugg and the River Wye SAC, the proposal fails to meet the requirements of the Conservation and Habitats and Species Regulations 2017 and would also be in conflict with policies LD2 and SD4 of the CS. It is also noted that Paragraph 177 of the NPPF is engaged insofar as it directs that;

‘The presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site’

- 6.63 The issue of phosphates within the River Lugg catchment has recently been considered in an appeal relating to a proposal for a single dwelling in Risbury and the approach of the Inspector in that case is relevant to the current application (LPA Ref: 184541 / PINS Ref: APP/W1850/W/19/3234852 – Appendix 2). In dismissing the appeal, the Inspector confirmed that the identification of an adverse impact upon the River Wye SAC through an Appropriate Assessment engages Paragraph 177 of the Framework whereby the presumption in favour of sustainable development does not apply. Moreover, it was concluded that where such an adverse impact is identified the policies of the Framework provide a clear reason for refusing the development and, as such, the tilted balance in paragraph 11d) (ii) does not apply.

Planning Balance and Conclusions

- 6.64 The application here is to be considered in the context of the presumption in favour of sustainable development as set out by Paragraph 11 of the National Planning Policy Framework. In light of the identified shortfall in the Council's five year housing land supply, Paragraph 11 d) directs that planning permission should be granted unless;
- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
 - ii. 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.

- 6.65 The restrictive policies which are referred to at Paragraph 11 i) are set out at Footnote 6 of the NPPF. They include those relating to habitats sites, which the glossary of the Framework confirms includes Special Areas of Conservation (SAC). The proposal in this instance has been identified through an Appropriate Assessment as having an adverse impact upon the integrity of the River Lugg / River Wye SAC through the generation of additional phosphates through foul water. This adverse impact would be contrary to the requirements of the Conservation and Habitats and Species Regulations 2017 and Policies LD2 and SD4 of the CS. Moreover, Paragraph 175 a) directs that if significant harm to biodiversity cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused. Paragraph 177 also directs that the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site. Given an adverse effect has been identified on the River Wye SAC in this case, the proposal does not benefit from the positive presumption and the tilted balance in favour of development at Paragraph 11 d (ii) does not apply. Rather, the policies of the Framework provide a clear reason for refusing the proposal in accordance with Paragraph 11 d (i).
- 6.66 Notwithstanding this clear direction on account of HRA issues, it is also considered that there are a number of fundamental issues with the proposal as deposited which ultimately stem from the omission of part of the land which has been allocated for residential development through policy LG6 of the Luston Group NDP. In omitting part of the allocated site from the current application, the proposal fails to utilise the site allocation to its full potential and deliver the indicative number of houses which have assigned to it by the NDP. Permitting the proposal for a fewer number of dwellings would therefore potentially compromise the ability of the NDP to achieve its minimum housing growth requirements, and in the context of the current shortfall in the Council's housing land supply the under-delivery of housing on an allocated site would represent a significant harm which goes against the Government's objective to substantially boost housing supply. In this regard, it is noted that Paragraph 123 of the NPPF directs that where there is a shortage of land for meeting housing needs, Local Planning Authorities should ensure that developments make optimal use of each site and refuse applications which they consider fail to make efficient use of land (123 c)).
- 6.67 Moreover, Officers consider that they have not been presented with any reasonable justification for the omission of part of the allocated site from the current application and therefore the only conclusion that can be reached is that it has been used as a mechanism to artificially keep the scheme below the threshold whereby affordable housing provision and financial contributions would be due. Whatever the reason may be, the failure to deliver any affordable housing - for which there is an identified local need - is again a significant harm which weighs against the proposal and would compromise the achievement of the social dimension of sustainable development as defined in the NPPF. It also brings the proposal into conflict with the requirements of Core Strategy policies RA2 and H3 and NDP policy LG6 e), which broadly are that schemes should provide of an appropriate mix of housing, including affordable, to meet the needs of all sectors of the community. Notwithstanding the 5 year supply issue, these policies continue to attract considerable weight.
- 6.68 It is also considered that the deposited scheme for 8 market houses fails to provide an appropriate mix of dwellings sizes and types to meet local needs. The scheme is predominantly comprised of larger 3 and 4+ bed units, and there is no provision of any smaller 2 bed units which make up the second largest area of need (25.8%) within the Leominster HMA. Further conflict is identified with CS policies RA2 and H3 and NDP policy LG6 e) for these reasons.
- 6.69 Overall, it is considered that the policies of the Framework (specifically Paragraph 175) clearly direct that the application in this case should be refused in light of the adverse impact which would occur upon the integrity of the River Wye Special Area of Conservation. Paragraph 177 of the Framework also makes it clear that when such an adverse impact is identified, the presumption in favour of sustainable development does not apply.

- 6.70 Even with HRA issues were to be placed aside, it is considered that the adverse impacts associated with granting planning permission for the scheme as deposited would significantly and demonstrably outweigh the benefits. Whilst it is acknowledged that the current proposal would bring some benefits in terms of helping to address the housing supply shortfall and delivering socio-economic gains as a result of this, it is considered that these benefits can be given only limited weight as they have been stunted by the scheme's failure to make effective use of an allocated housing site. If the proposal had utilised the site to its full potential in accordance with policy LG6, the benefits which could be attributed to the scheme would be proportionately and inherently greater. The identified harms therefore, in terms of the failure to make effective use of the site and provide housing to meet identified local needs, significantly and demonstrably outweighs the limited benefits.
- 6.71 Drawing together the above, it is recommended that the application be refused for the reasons set out below.

RECOMMENDATION

That planning permission be refused for the following reasons;

- 1. The application site lies within the River Lugg sub-catchment of the River Wye Special Area of Conservation (SAC) and the nature of the proposal triggers the requirement for a Habitat Regulations Assessment to be undertaken. Under the Regulations there is a requirement to establish with certainty, and beyond all reasonable scientific doubt, that there will not be any adverse effect on the integrity of the River Wye SAC. The River Lugg sub-catchment however suffers from the effects of point source and diffuse water pollution and phosphate levels in the river have already exceeded conservation objectives. The proposal in this case would add to this through the generation of additional foul water / phosphates and as such the Local Planning Authority is unable to conclude that the development would not have an adverse effect on the integrity of the River Lugg / River Wye SAC. As a result, the proposal has failed the Appropriate Assessment required by The Conservation of Species and Habitats Regulations 2017 and is hence contrary to Policies LD2 and SD4 of the Herefordshire Local Plan Core Strategy, the Natural Environment and Rural Communities (NERC) Act 2006 and the guidance set out at Paragraphs 174-177 of the National Planning Policy Framework**
- 2. By omitting a large portion of land parcel 136/212 which has been allocated for an indicative 11 dwellings through Policy LG6 of the Luston Group Neighbourhood Development Plan, the Local Planning Authority considers that the scheme as deposited represents an underutilisation of land which fails to provide the number of dwellings which could reasonably be accommodated on the site in order to meet local housing needs. Moreover, by bringing forward only part of the allocated site in the current scheme the proposal has circumvented the requirement to provide affordable housing, for which there is an identified local need. In the context of the current shortfall in the county's housing land supply, the under delivery of housing is considered to be a significant harm which is contrary to the advice contained at Paragraph 123 of the National Planning Policy Framework to ensure that developments make efficient use of land and make optimal use of a site's potential. In failing to make efficient use of the site and provide a range of housing to meet local needs, the proposal is also in conflict with policy LG6 of the Luston Group Neighbourhood Development Plan and policies RA2, H3 and SD1 of the Herefordshire Local Plan Core Strategy.**

3. **The scheme as deposited fails to deliver an appropriate mix of sizes and types of market housing to meet the needs of all sectors of the local community and thus the proposal would be contrary to policy LG6 of the Luston Group Neighbourhood Development Plan, policies RA2 and H3 of the Herefordshire Local Plan Core Strategy and the guidance set out at Chapter 5 of the NPPF.**

INFORMATIVES

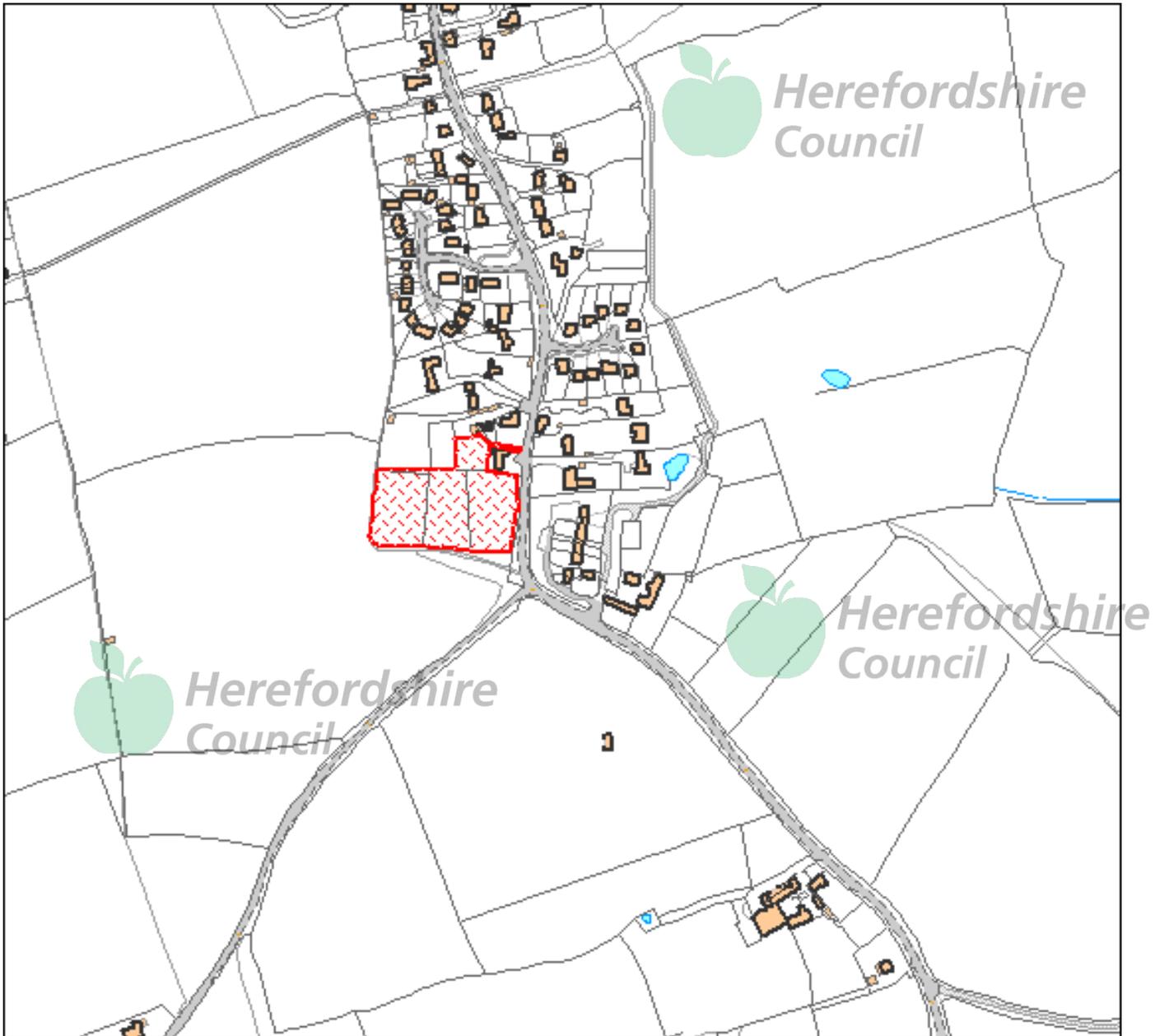
- 1 **The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against planning policy and any other material considerations by identifying matters of concern with the proposal and discussing those with the Applicant. Unfortunately, it has not been possible to negotiate a way forward for the current proposal. However, the Local Planning Authority has clearly set out, within its report, the steps necessary to remedy the harm identified within the reasons for refusal – which may lead to the submission of a more acceptable proposal in the future. The Local Planning Authority is willing to provide pre-application advice in respect of any future application for a revised development.**

Appendices

1. Development in the River Lugg Catchment Area Position Statement 15th October 2019
2. Appeal Decision APP/W1850/W/19/3234852 (LPA Ref: 184541)

Background Papers

Internal departmental consultation replies



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APPLICATION NO: 190032

SITE ADDRESS : LAND TO THE WEST OF B4361, LUSTON, HEREFORDSHIRE

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Further information on the subject of this report is available from Mr Adam Lewis on 01432 383789