

MEETING:	PLANNING AND REGULATORY COMMITTEE
DATE:	15 JANUARY 2020
TITLE OF REPORT:	192317 - ERECTION OF A SINGLE DWELLING AND GARAGE FOR OCCUPATION BY SITE MANAGER AT DOCKLOW POOLS, DOCKLOW, NR LEOMINSTER, HR6 0RU For: Mr Bozward per Mr Ed Thomas, 13 Langland Drive, Hereford, Herefordshire, HR4 0QG
WEBSITE LINK:	https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=192317&search=192317
Reason Application submitted to Committee – Re-direction	

Date Received: 28 June 2019
Expiry Date: 23 August 2019

Ward: Hampton

Grid Ref: 355753,257522

Local Member: Councillor John Harrington

1. Site Description and Proposal

- 1.1 The site forms part of an extensive coarse-fishing enterprise at Docklow Pools, which is located to the north of the A44 Leominster-Worcester road, approximately 3.5 miles east of Leominster. The business is based at the former West End Farm and is principally arranged as a courtyard, which includes the Grade II listed farmhouse (formerly West End Farmhouse), now called the Fisherman's Arms pub and restaurant.
- 1.2 A number of farm buildings to the west of the Fisherman's Arms have been converted to guest accommodation for visitors to tie in with the fishery enterprise, with additional chalet-style accommodation located around the pools to the north, which offers 52 self-contained units in total on site.
- 1.3 The site is set in amongst approximately 140 acres across the valley floor, including the pools themselves. The applicant is currently the 'de-facto' site manager at Docklow Pools, overseeing the day-to-day management of the site.
- 1.4 For the avoidance of doubt, the applicant already lives on site, residing in accommodation within the Fisherman's Arms.
- 1.5 The site to which this application refers is a well-vegetated and somewhat overgrown parcel of land approximately 80 metres south-west of the main group of buildings at Docklow Pools. The site lies immediately north of a 'pitch-and-putt' golf course, which is visible as visitors enter the site from the A44 and along the access road, which includes a number of passing places into the site. Within this parcel of land under consideration, there are a small number of structures, which are understood to be currently used as storage in relation to the enterprise.

Further information on the subject of this report is available from Mr Josh Bailey on 01432 261903

- 1.6 The application seeks outline planning permission for the erection of a single dwelling and garage for the applicant to reside in. All matters are reserved except that of access. Matters in relation to layout, landscaping, appearance and scale would form part of any future reserved matters application.
- 1.7 Rather than extensively describe the proposal in further detail, attention is drawn to the submitted location plan below, alongside an 'indicative' proposed layout of the site, shown in Figures 1 and 2:

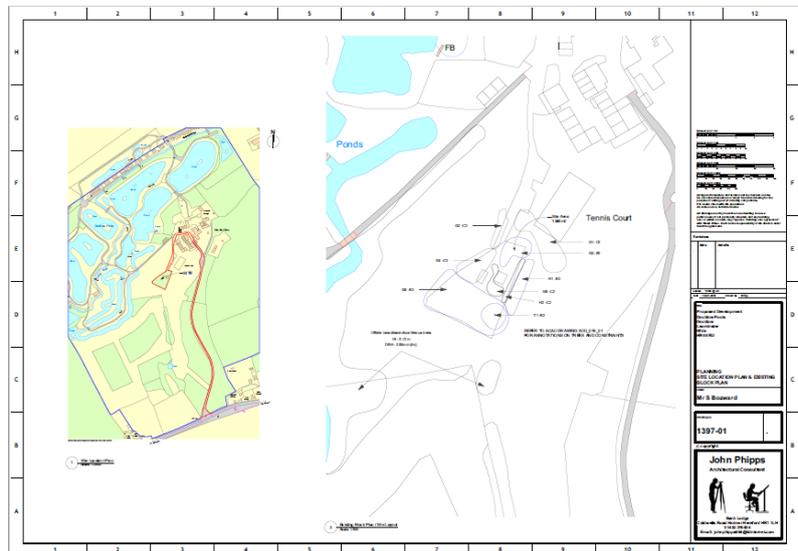


Figure 1: Site Location Plan & Existing Block Plan

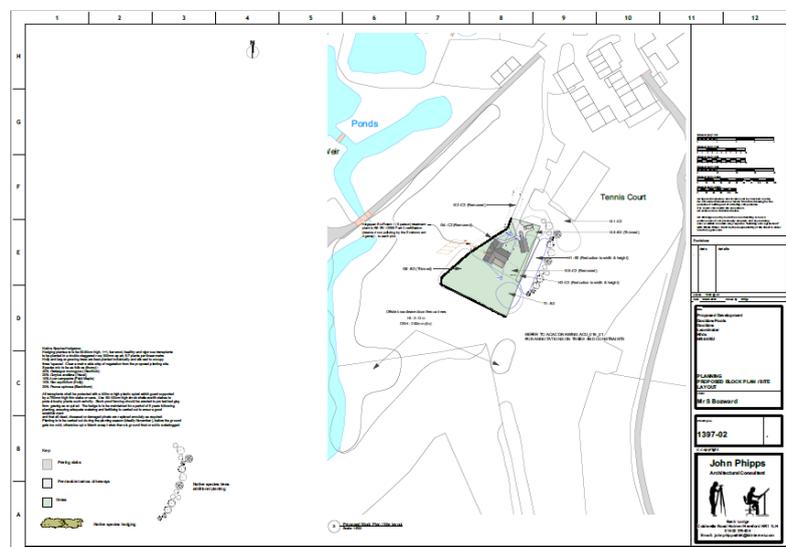


Figure 2: Proposed Block Plan/Site Layout shown 'indicatively'

- 1.8 The current storage sheds on the parcel of land, used in connection with the enterprise, would be demolished, in order to make way for the proposed dwelling.
- 1.9 Foul sewerage will be dealt with by way of the addition of a new package treatment plant to serve the dwelling and surface water will be dealt with by means of soakaway.
- 1.10 The following supporting documentation has been deposited with the application, during consideration of this application by officers:

- Planning, Design and Access Statement;
- Phase 1 Habitat Survey Report;
- Tree Survey & Constraints Plan;
- Tree Retention & Removal Plan;
- Tree Protection Plan; and
- Ecological Method Statement and Additional Ecological Observations Report

1.11 A number of photos of site are also shown below to visually illustrate the site in the context of its surroundings:



Further information on the subject of this report is available from Mr Josh Bailey on 01432 261903

2. Policies

2.1 Herefordshire Local Plan – Core Strategy

The following policies from the Herefordshire Local Plan – Core Strategy are applicable 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
RA4 - Agricultural, forestry and rural enterprise dwellings
RA6 - Rural Economy
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

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 National Planning Policy Framework (June 2019)

1. Introduction
2. Achieving sustainable development
4. Decision-making
5. Delivering a sufficient supply of homes
6. Building a strong, competitive economy
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

The NPPF can be viewed in full detail through the following link:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/810197/NPPF_Feb_2019_revised.pdf

2.3 Neighbourhood Development Plan

The site is within Docklow parish, which forms part of the Hatfield and District Group Neighbourhood Development Plan. A Neighbourhood Development Plan is currently in drafting. In accordance with paragraph 48 of the National Planning Policy Framework (June 2019), the Neighbourhood Development Plan can only be afforded limited weight.

3. Planning History

3.1 The proposal site itself has not been the subject of any previous planning applications.

4. Consultation Summary

Statutory Consultations

4.1 Welsh Water – No objections

“We note from the application that the proposed development does not intend to connect to the public sewer network. As the sewerage undertaker we have no further comments to make. However, we recommend that a drainage strategy for the site be appropriately conditioned. Implemented In full and retained for the lifetime of the development”.

4.2 Natural England – No objection (dated 24 July 2019)

“Based on the plans submitted. Natural England considers that the proposed development will not have significant adverse impacts on designated sites and has no objection.

Notwithstanding the above, your authority should be aware of a recent Ruling made by the Court of Justice of the European Union (the CJEU) on the interpretation of the Habitats Directive in the case of Codperatie Mobilisation (AKA the Dutch Case) (Joined Cases C-293/17 and C-294/17).

The Cooperatie Mobilisation case relates to strategic approaches to dealing with nitrogen. It considers the approach to take when new plans/projects may adversely affect the ecological situation where a European site is already in ‘unfavourable’ conservation status, and it considers the acceptability of mitigating measures whose benefits are not certain at the time of that assessment.

Competent authorities undertaking HRA should be mindful of this case and should seek their own legal advice on the implications of these recent ruling for their decisions”.

Internal Council Consultations

4.3 Ecology – Holding Objection (most recent comments received on 19 November 2019):

“The site falls within the River Lugg SAC catchment, based on current case law in relation to the Conservation of Habitats and Species Regulations (2017 as amended) the Habitat Regulations Assessment process already undertaken for this application will need to be reviewed PRIOR to any grant of planning consent.

The applicant must supply all additional information, including relevant professional reports and testing methodologies and outcomes such as to supply the LPA with legal and scientific certainty that the 5 criteria at the end of the position statement regarding soakaway drainage fields for foul water treatment systems can be demonstrated and legally secured through implementation condition. Once this additional information has been received the LPA can undertake the required reassessment under Habitat Regulations.

Notwithstanding the above

The updated ecology report is noted although it is very surprising that Ash is mentioned as a potential tree to plant in the mitigation scheme given that this species hasn't been available for

sale for several years due to the endemic presence of Ash Dieback Disease in UK and associated DEFRA restrictions on plant sales.

As this is an outline application with an unknown implementation date and proximity to good ecological habitats it is reasonable for this LPA to require an updated ecological report and fully detailed ecological working method statement as a pre-commencement condition.

Ecological Working Method Statement

Prior to commencement of any site clearance, preparation or development, an updated ecological assessment including any species specific surveys required shall be undertaken and the report including fully detailed and specified Ecological Working Method Statement (EWMS) including details of appointed Ecological Clerk of Works, shall be provided to the local planning authority. The approved EWMS shall be implemented in full unless otherwise agreed in writing by the local planning authority.

Reason:

To ensure that all species and habitats are protected and conserved having regard to the Wildlife and Countryside Act 1981, Conservation of Habitats and Species Regulations (2017), National Planning Policy Framework , NERC Act (2006), Herefordshire Local Plan - Core Strategy policies SS6, LD1, LD2 and LD3

To secure the mitigation tree planting a relevant condition is requested.

Specification for Tree Planting

Prior to any construction work commencing on site a full specification and management scheme for all proposed tree planting shall be submitted to and approved in writing by the local planning authority.

The specification shall include the quantity, size, species and position or density of all trees to be planted; as well as cultivation details - how they will be planted and protected and the proposed time of planting; a five year establishment plan accompanied by a subsequent 5 year maintenance specification must be included.

All tree planting shall be carried out in the first planting season following the occupation of the building, in accordance with the approved plant specification as well as BS 8545: - Trees from nursery to independence within the landscape.

Any trees or plants which die, are removed or become severely damaged or diseased within 5 years of planting will be replaced in accordance with the approved plans.

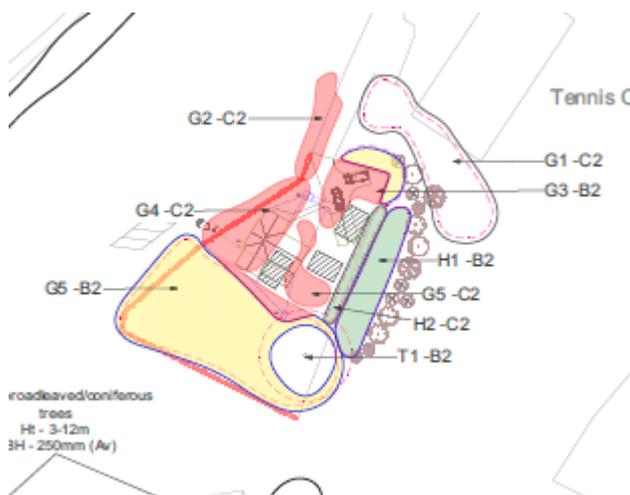
Reason: To safeguard the character and amenity of the area and to ensure that that the development conforms with Policies SS6, LD1, LD2 and LD3 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

4.4 Trees Officer – No objections and conditions Recommended:

“Following a visit to the site on 22-7-19 and viewing the plans I can confirm that I do not have objections to the proposal to erect a single dwelling and garage for occupation by site manager.

Currently the site is used to storage of materials for site management contained within a number of outbuildings which will be removed for development. The buildings are obscured from view by a number of young/early mature trees which I would guess were planted to obscure the view of the buildings.

The tree retention and removal plan illustrates that a large number of trees will be removed to make way for development (red areas) and the yellow parts will be thinned retaining the better specimens.



Due to the poor quality of the trees in the main I don't have any concerns for the losses but it is important that a landscaping plan is submitted to mitigate for the felling's. The western side of the plot which looks towards the access road will be require new planting to soften the building in the setting and I would also suggest that new planting will be required where thinning is to take place.

In summary, I do not have a any objections to the proposals and the information provided in the tree reports supplied by Andrew Cunningham Arboricultural Consultancy demonstrate that tree felling is acceptable on account of their negligible quality. A soft landscaping plan will be required via condition to for the betterment around the site and to ensure the development is compliant with policies LD1 & LD3 of the Herefordshire Core Strategy.

Conditions:

CK3 (c)

CK9 Andrew Cunningham Arboricultural Consultancy (tree constraints report/Tree removal and retention plan/tree protection plan)”

4.5 **Transportation Manager**– No objections:

“The proposals are for the existing ‘Docklow Pools’ access to be utilised onto the A44, this is adequate for the addition of the dwelling. The internal infrastructure of the site is also sufficient to cater for the minor demand of the single dwelling. There are no highways objections to the proposals”.

5. **Representations**

5.1 **Hatfield and District Group Parish Council** – No objections:

“No objections - The PC recommend this for approval NB The Site address is incorrect Docklow Pools is NOT situated at Lower Docklow Church there are approximately 7 houses and 2 fields between Docklow Pools and Docklow Church”

5.2 **Humber, Ford and Stoke Prior Parish Council** (parish council consulted as adjacent to the submitted ‘red line’ of application) – No comments to make:

“Humber, Ford & Stoke Prior Group Parish Council considered this application at its meeting on 31 July 2019. The Council appreciated being consulted, but considered that as the site is some distance from the parish boundary and will not directly affect residents of this parish, it would defer to such comments as are made by Docklow Parish Council”.

5.3 25 letters of in support raising the following points:

- Applicant is integral to running of site
- Applicant needs suitable accommodation
- Lack of amenity space at the moment for the applicant
- Lack of impact by nature of proposal
- Improved health and well-being of the applicant
- Improved job security and continued establishment of enterprise

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=192317&search=192317

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 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 Hatfield and District Neighbourhood Area, which is currently drafting a Neighbourhood Development Plan (NDP).
- 6.3 A range of CS policies are relevant to the development proposal, and these are outlined at Section 2.1. Strategic policy SS1 of the CS sets out a presumption in favour of sustainable development. 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 at paragraph 11 of the NPPF. At paragraph 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 the adverse impacts of doing so significantly and demonstrably outweigh the benefits or application of policies in the framework provides a clear reason for refusing a 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 in a number of recent appeal inquiries 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 as of 1 April 2019 outlines that the supply position in Herefordshire stands at 4.05 years. The shortfall in the five year supply means that the presumption in favour of sustainable development as set out at Paragraph 11 of the Framework is engaged.

- 6.6 Notwithstanding this, the absence of a 5 year housing land supply 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.
- 6.7 This is particularly relevant in the context of housing supply in the rural context, where policies RA2 and RA3 accord with the approach endorsed at Paragraph 79 of the NPPF whereby isolated homes in the countryside should be avoided unless there are special circumstances or exceptions. The CS policies relevant to housing supply are in general conformity with the NPPF, it is considered that the relevant policies of the CS continue to attract significant weight.
- 6.8 It is clear that the application site is clearly divorced from an identified settlement under Policy RA2 of the CS, where new sustainable housing growth can be capable of being supported. The village of Docklow lies approximately 0.7 miles to the east of the site across open countryside, whilst the other nearest identified settlements of Steensbridge (1.5 miles west of site) and Pudleston (2.5 miles north of site) are considerable distances away. It therefore follows that the site is not located in a settlement identified as a focus for proportionate housing growth under Core Strategy policy RA2.
- 6.9 Core Strategy policy RA3 relates to proposals for new residential development in rural locations outside of settlements, and states that proposals in such locations will be limited to those which satisfy one or more exceptional criteria. This accords with the approach set out under paragraph 79 of the NPPF, which states that new isolated dwellings in the countryside should be avoided unless special criteria are met. Under criterion 2 of policy RA3 of the CS, it states that one of the special exceptions is where,

“a proposal accompanies and is necessary to the establishment or growth of a rural enterprise and complies with Policy RA4”.

This also reflects point a) of paragraph 79 under the NPPF.

- 6.10 Policy RA4 states that proposals for dwellings associated with agriculture, forestry and rural enterprises can be permitted where it can be demonstrated there is a sustained essential functional need; it forms an essential part of a financially sustainable business and that such need cannot be met in existing accommodation. Policy RA4 states that proposals for such dwellings should:

- **demonstrate that the accommodation could not be provided in an existing building(s);**
- **be sited so as to meet the identified functional need within the unit or in relation to other dwellings; and**
- **be of a high quality, sustainable design which is appropriate to the context and makes a positive contribution to the surrounding environment and rural landscape.**

The fishery enterprise at Docklow Pools is accepted as being financially sound. The holiday units and chalets have been on site for a considerable period of time, and the enterprise is well established. It is not disputed that the fishery enterprise is considered to be financially sustainable and is likely to continue to be so for the foreseeable future.

- 6.11 Core Strategy policy RA4 also states that proposals for a new enterprise worker’s dwelling will be supported where it can be demonstrated that there would be a “sustained functional need” for it, and the supporting text at 4.8.27 outlines that such needs typically relate to providing essential supervision and management. That is the case with the current application, with the planning, design and access statement outlining that in the context of the fisheries enterprise and holiday units, the essential need for a worker to live on site is considered to arise from the

need to respond quickly to any alarms or systems failures. It is accepted that it is essential that such issues are dealt with expediently; both for the welfare of the public and to prevent harm occurring to the business enterprise.

- 6.12 In this case, the fishery enterprise at Docklow Pools has been in operation for a considerable period of time. The last holiday units were granted permission and constructed nearly ten years ago. Over this time, the site has been managed by the applicant, who resides in accommodation on site within the Fisherman's Arms, approximately 100 metres away from the proposed siting of the dwelling under consideration.
- 6.13 The planning and design and access statement confirms the applicant is already resident on site. The close proximity of the existing accommodation, clearly allows for a prompt response to any alarms or issues in conjunction with the enterprise, and this is presumably why no need for an additional dwelling has arisen in the preceding decades that Docklow Pools have been in operation. Put simply, the need for accommodation for the applicant to manage the site is already met.
- 6.14 Whilst the planning, design and access statement outlines a desire to dedicate more time to other areas of the business, no legitimate reason is given why the applicant cannot continue to respond to emergencies or breakdowns from their current accommodation.
- 6.15 Policy RA4 of the Core Strategy, makes it clear that proposals for new dwellings will only be supported where it can be demonstrated "that the accommodation could not be provided in an existing building(s)". Under point 1, it sets out a preference whereby the use of existing buildings should be considered first in order to meet accommodation needs. As well as existing residential properties, it is explained at 4.8.33 of the CS, that preference should be given to the conversion of suitable existing buildings before new development is considered. Whilst there are no existing buildings in the vicinity of the site which could be converted for the proposal, Docklow Pools has the Fisherman's Arms and associated residential accommodation, within its ownership, found approximately 100m to the east of the proposed dwelling. This residential accommodation is currently being occupied by the applicant. Given this level of active involvement, it is considered that significant weight can be given to the availability of this dwelling to house the applicant if there were a genuine essential need.
- 6.16 The applicant already lives on site in accommodation that is unrestricted in terms of its occupancy. In policy terms, the proposal is in conflict with CS policy RA4(1) in this regard, given accommodation can be provided in existing buildings and the proposal would not satisfy the exceptional circumstances which would allow for a new dwelling in the open countryside to be supported.
- 6.17 Indeed, a search of property websites Rightmove and Zoopla show 2 properties for sale within a 3 mile radius of the site under £250,000 (at the time of report publication). Whilst this may be slightly less convenient than living on site, it is not considered that this would be an unreasonable day-to-day commute for a worker given that the existing accommodation at the Fisherman's Arms can still be occupied by the applicant so that any emergencies with the enterprise can be responded to immediately. If such arrangements were not acceptable to the applicant, a site manager could be employed by the enterprise, who could reside in the applicant's accommodation at the Fisherman's Arms, to which the applicant could then subsequently commute to site, given there would still be a continued presence of a site manager.
- 6.18 Members will note that a large number of third party representations make the point that the applicant needs additional curtilage and amenity space. The fact that there is an element of disturbance from musical events and 'untimely' door knockers from users of the Fisherman's Arms, is not in itself sufficient grounds for setting aside the provisions of policies within the CS and the NPPF. Indeed, this would continue to a degree, irrespective of whether the applicant

resides in the existing accommodation or a new dwelling just 100 metres away. It is the needs of the enterprise and not those of the applicant that need to be substantively demonstrated.

- 6.19 Whilst it is not disputed that the applicant is integral to the continued day-to-day operations of Docklow Pools, your officers view is that planning policies should not be 'set aside' on the basis of an application proposing a dwelling to have additional private amenity space. The Core Strategy and NPPF clearly set out where an application can be supported. In this application, such need is already being met by virtue of the applicant residing on site and that existing accommodation on site is meeting such essential need, which has no occupancy restrictions on it.
- 6.20 In light of the preceding, the proposal is therefore viewed to be in conflict with policies RA4 and RA3 of the CS and the application, as submitted, does not represent an exceptional circumstance whereby new residential development in the open countryside can be supported. Notwithstanding this, other matters relevant to the application are considered below.

Design, Amenity and Landscape Impacts

- 6.21 It is acknowledged that matters in relation to appearance, scale, layout and landscaping would form a part of any future reserved matters application. In respect of locality impacts CS policy LD1 is of pertinence, and requires that the character of the landscape and townscape has positively influenced, inter alia, the design, scale and site selection and that the scheme incorporates new landscape schemes to ensure development integrates appropriately into its surroundings.
- 6.22 Whilst unable to comment on the design of a dwelling, your officers consider that it is unlikely the proposal would cause any tension with the above policies in respect of landscape and locality impact. In general terms, the proposed siting of the dwelling is considered to be appropriate in the context of existing surrounding development, being that whilst slightly separated from the main built form at Docklow Pools, the same can be said for the holiday lodges to the north of the pools.

Highways Matters

- 6.23 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 criteria (4) that developments are designed and laid out to achieve safe entrance and exit and have appropriate operational and manoeuvring space, having regard to the standards of the Council's Highways Development Design Guide. This approach accords with the principles outlined in section 9 of the NPPF, in particular Paragraphs 108-9 inclusive, which advise that it should ensure that safe and suitable access can be achieved for all users and that development should only be refused on highways grounds if there would be an unacceptable impact on highways safety.
- 6.24 The proposed dwelling would be served by the existing access onto the private track which heads back south towards the A44, and which also serves all traffic using Docklow Pools. It is considered that the provision of a single new dwelling would lead to a minimal intensification in the use of this access over the current, and the layout of the access and nature of the highway is not such that any concerns arise in respect of highways safety. Appropriate parking to serve the new dwelling could also be provided within the site, subject to an appropriate layout, and adequate manoeuvring space would be available to ensure that vehicles can turn and enter/leave the site in a forward gear. The Council's Transportation Manager does not object to the proposal, and no conflict with policy MT1 is identified.

Ecology/Biodiversity and Green Infrastructure

- 6.25 The applicant has submitted an ecology report although the Council's ecologist is somewhat surprised that Ash is being mentioned as a potential tree to plant in the mitigation scheme given that this species hasn't been available for sale for several years, primarily due to the endemic presence of Ash Dieback Disease in UK and associated DEFRA restrictions on plant sales.
- 6.26 However, whilst this is an outline application with an unknown implementation date and proximity to good ecological habitats, it is reasonable for this LPA to require an updated ecological report and fully detailed ecological working method statement, which can be dealt with by way of a pre-commencement condition.
- 6.27 As identified in the NPPF, NERC Act and Core Strategy Policy LD2, all developments should demonstrate how they are going to practically enhance ("Net Gain") the Biodiversity potential of the area. To secure these enhancements, a relevant Condition can be suggested.
- 6.28 The Council's tree officer has also visited the site and from viewing the plans, does not have objections to the proposals. The submitted tree retention and removal plan illustrates that a large number of trees will be removed to make way for the development (red areas) and the yellow parts (shown in section 4.4 of this report) will be thinned retaining the better specimens. The tree officer's view is that due to the poor quality of the trees in the main, there are not any concerns for the losses, but it is important that a landscaping plan is submitted to mitigate for the fellings. The western side of the plot which looks towards the access road will require new planting to soften the building in the setting and it is suggested that new planting will be required where thinning is to take place. A soft landscaping plan will be required via condition for the betterment around the site and to ensure the development is compliant with policies LD1 & LD3 of the CS.

Heritage

- 6.29 Grade II listed buildings adjoin the complex at Westend Cottage and Westend Farmhouse, and therefore Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (hereafter '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.
- 6.30 The NPPF contains guidance for considering proposals affecting heritage assets at Paragraphs 193-196.
- 6.31 The proposal site in this instance lies at the fringes of the site where the character of the settlement transitions from the built up form of Docklow Pools to undeveloped countryside. It is considered that the degree of separation, topography and visual screening between the site and nearby listed buildings by a large number of holiday lets, 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 Section 66 of 'the Act' are fulfilled.

Drainage and Habitats Regulation Assessment

- 6.32 Policy SD3 of the Core Strategy states that measures for sustainable water management will be required to be an integral element of new development in order to reduce flood risk, avoid an adverse impact on water quality, protect and enhance groundwater resources and provide opportunities to enhance biodiversity, health and recreation. This will be achieved by many factors including developments incorporating appropriate sustainable drainage systems to manage surface water. For waste water, policy SD4 states that in the first instance developments should seek to connect to the existing mains wastewater infrastructure. Where

evidence is provided that this option is not practical alternative arrangements should be considered in the following order; package treatment works (discharging to watercourse or soakaway) or septic tank (discharging to soakaway).

- 6.33 The scheme in this instance proposes the use of a package treatment plant to manage foul water with outfall to a soakaway drainage field. In the absence of a mains sewer proximal to the site, this would be an acceptable solution which would accord with the hierarchal approach set out in CS policy SD4. Surface water from the development will be managed through the use of soakaways. This is an acceptable method in principle which would accord with CS policy RA3. Full details of both management schemes can be secured through appropriately worded conditions.
- 6.34 Members will note that the site in this instance 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 in CS policies LD2 and SD4, as well as the guidance of the NPPF.
- 6.35 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.
- 6.36 The proposal in this case would generate additional phosphates through foul water. Whilst foul water is to be managed through a new package treatment plant system, some phosphates will remain in water discharged post-treatment and therefore there is a 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 of 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.
- 6.37 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 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). This is confirmed above by Natural England's consultation response on 24 July 2019 (section 4.2 of this report).
- 6.38 Natural England have therefore advised 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 on this matter and members will be aware of the Council's position statement of October 2019.

6.39 It is noted that the Council's Ecologist initially undertook the required AA in July 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 Appropriate Assessment (AA) was undertaken, members will note the Council's Ecologist's updated comments of 19 November 2019. This clarifies that the proposal would result in the generation of foul water in that the development would lead to additional phosphates entering the River Lugg, which is already failing its conservation objectives in these terms. Consequently, it cannot be demonstrated that the development would not 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. The proposal is not considered to have any imperative public interests which would justify overriding this.

6.40 Owing to this, 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'.

6.41 The applicant has been requested to supply all additional information, including relevant professional reports and testing methodologies and outcomes such as to supply the LPA with legal and scientific certainty that the 5 criteria at the end of the Council's issued position statement of October 2019, regarding soakaway drainage fields for foul water treatment systems can be demonstrated and legally secured through implementation condition. However, this has not materialised. Thus the application is to be considered on the basis of the Council's current position on policies on such matters and the onus is on the applicant to demonstrate otherwise.

6.42 Indeed, members will note a recently dismissed appeal decision at Risbury, Herefordshire (*Appeal Decision: 3234852*) by the Planning Inspectorate, in which case law (*People over Wind and Peter Sweetman v Coillte Teoranta (Case C-323/17)*) requires the decision maker, when considering the effect that a proposal may have on such a European Site either individually or in combination with other development, to consider mitigation within an appropriate assessment rather than at screening stage. In the absence of mitigation measures and using a precautionary approach, run off from drainage associated with the development may affect the nutrient levels and therefore, the water quality of nearby watercourses. The balance of which could impact on the habitat supporting wildlife and further exacerbate the unfavourable water quality condition within the SAC. As such, there is a risk of a significant effect on the internationally important interest features of the SAC.

6.43 The limited evidence provided does not clearly establish that drainage arrangements for the proposal would be able to comply with the detailed criteria concerning the distance from watercourses, gradient of the field and hydrological pathways in order to provide mitigation.

6.44 As such, officers do not have certainty that there is a reasonable basis to suppose that a condition would secure compliance with the required criteria. Given this uncertainty, it is not a matter that can be left to a condition as it goes to the principle of the development. Therefore,

officers are not assured that the proposal would not add to the unfavourable phosphate levels within the river.

- 6.45 In the light of these changes in circumstances, in conjunction with the lack of information submitted to undertake a Appropriate Assessment, and case law, the Habitats Regulations require consideration as to whether there are any alternative solutions and if not, whether there are any imperative reasons of overriding public interest that would justify the development. Officers have nothing before themselves that would rule out alternative solutions being available but are aware that none have been put forward for consideration. Nevertheless, the provision of one additional dwelling would not amount to an imperative reason of overriding public interest justifying the development. In these circumstances the Habitats Regulations indicate that permission must not be granted.
- 6.46 Therefore, officers find that the proposed development cannot beyond reasonable doubt demonstrate that it would not harm a designated nature conservation site, with particular regard to the discharge of phosphates into the River Lugg, based on the Council's current policy position and advice available at this time. It would therefore, conflict with policy SD4 of the CS which primarily seeks to ensure that development should not undermine the achievement of water quality targets for rivers within the county, in particular through the treatment of waste water. Additionally, the proposal would be inconsistent with the provisions in the Framework in relation to conserving and enhancing the natural environment and would not accord with the Conservation of Habitats and Species Regulations 2017.

Planning Balance and Conclusion

- 6.47 For the reasons outlined above, your officers have found, having been offered limited information to demonstrate otherwise and given the current policy and Council's position on the matter, that the proposal would adversely affect the integrity of the River Wye SAC and thus, it is clear from paragraph 177 of the Framework that the presumption in favour of sustainable development does not apply in these circumstances. Moreover, the policies in the Framework relating to the protection of such areas provide a clear reason for refusing the proposal. As such, the tilted balance in paragraph 11d (ii) does not apply.
- 6.48 Even if this is set aside, there is no essential functional need for a new dwelling given the proposal fails to meet the policy tests, as outlined under Policy RA3 and RA4 of the Core Strategy, for permitting new residential development at this location.
- 6.49 Planning law requires applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. There are benefits arising from the proposal including the provision of an additional dwelling in addressing the Council's lack of a five-year housing land supply where there is unmet demand. Furthermore, this would be close to other development and the applicant intends to live in the accommodation. It would also bring economic benefit as a result of the construction, and the social and economic benefits associated with the occupants of an additional dwelling supporting local services at Docklow Pools. However, in light of the modest scale of the proposal, these benefits attract limited weight. Accordingly, the benefits arising from the proposal do not provide sufficient justification for development that conflicts with the development plan, the NPPF and the Habitats Regulations.
- 6.50 In short, and taking planning policy and material considerations into account, and having regard to the information provided, the application does not demonstrate that there is an essential functional need for a new dwelling to be provided at Docklow Pools. This is given that accommodation is already provided on site, which the applicant resides in and to which they have full access. The proposal does not satisfy any of the special circumstances which would allow new residential development in the countryside to be supported and is contrary to Policies RA3 and RA4 of the Herefordshire Local Plan – Core Strategy and Paragraph 79 of the National

Planning Policy Framework. Furthermore, conflict has also been identified in respect of the Habitats Regulations, to which recent appeal decisions have confirmed due thought needs to be given, as a material consideration.

- 6.51 In applying the planning balance, the proposal for a new residential dwelling in this rural location is without appropriate justification, would lead to significant harm in terms of its conflict with the Development Plan and promotes unsustainable development. The scheme is hence not representative of sustainable development, and does not benefit from the positive presumption set out in in the NPPF and CS, given the conflict with the development plan. The application is accordingly recommended for refusal in line with the reasons outlined below.

RECOMMENDATION

That outline planning permission be refused for the following reasons:

- 1. Having regard to the supporting information provided, the nature of the existing enterprise and the applicants circumstances, the application does not demonstrate that there is an essential functional need for a new dwelling to be provided at Docklow Pools. This is given that the need is already being met through existing accommodation already on site, which the applicant resides in. The proposal hence does not satisfy any exceptional circumstance which would allow new residential development in the countryside to be supported and is contrary to Policies RA3 and RA4 of the Herefordshire Local Plan – Core Strategy and Paragraph 79 of the National Planning Policy Framework.**

- 2. 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 currently 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. In accordance with guidance from Natural England and Herefordshire Council's current position, the Local Planning Authority is unable to conclude that that the development would not have an adverse effect on the integrity of the River Lugg / River Wye SAC. As a result, the proposal cannot undertake a positive Appropriate Assessment as 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.**

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

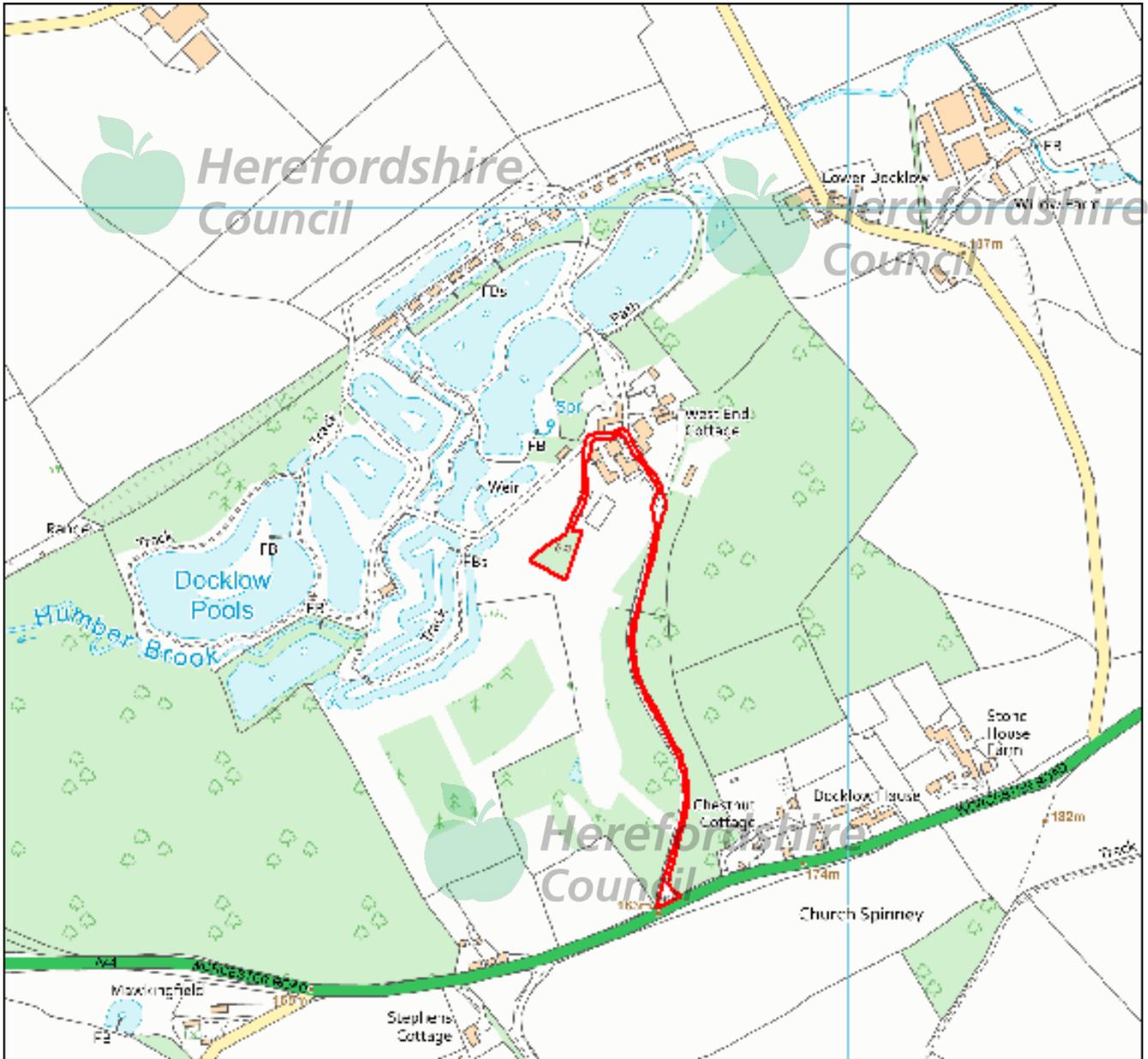
Decision:

Notes:

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Background Papers

Internal departmental consultation replies.



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APPLICATION NO: 192317

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Further information on the subject of this report is available from Mr Josh Bailey on 01432 261903